



Victorian  
Chamber of Commerce  
and Industry



# Victorian Inquiry into the Labour Hire Industry and Insecure Work

Victorian Chamber of Commerce and  
Industry Submission

November 2015

## Introduction

The Victorian Chamber of Commerce and Industry welcomes the opportunity to provide a submission to the *Victorian Inquiry into the Labour Hire Industry and Insecure Work*.

As Victoria's leading business organisation, each year the Victorian Chamber informs and services more than 15,000 members, customers and clients across the state, encompassing all industry sectors and spanning small, medium and large-sized businesses.

Our submission:

- Highlights the current state of the labour market and the adverse impact that additional employment costs would have on jobs.
- Discusses the changing nature of work in the modern economy and the need for flexible employment options to ensure businesses can remain competitive.
- Urges the inquiry to take an objective approach to its analysis and to acknowledge the broader economic benefits of flexible employment options.
- Argues that there is already more than sufficient workplace relations regulation.
- Recommends a best practice approach to the evaluation of any proposed regulatory options, including closer consideration of non-regulatory approaches.

**The Victorian Chamber of Commerce and Industry is opposed to the introduction of any additional state or federal regulatory scheme for labour hire operators. We do not consider there is sufficient evidence of widespread problems in the labour hire industry that warrant the introduction of new regulation.**

## The Victorian economic context

This inquiry is being conducted in the context of a challenging economic environment for Victorian business which is unlikely to change in the near term.

Victoria's economic position is fragile. Our labour market is soft and unemployment, at 5.6 per cent has only recently dropped from the 15-year high of 6.8 per cent observed at the end of 2014. Business sentiment is precarious, with a recent Victorian Chamber survey showing only 16 per cent of Victorian businesses expect stronger state economic conditions over the year ahead. Many small businesses are facing difficult trading conditions as a result of strong international competition.

Given such an environment, it is important that the inquiry is cognisant of the impact that any increase in employment related regulatory burdens will have on business hiring intentions.

## The changing nature of work

The nature of work in the modern economy has changed. Flexible forms of employment have become an established part of the economy and independent contractors, labour hire and casual employees now comprise just under 40 per cent of the workforce.

Each of these employment forms have become established aspects of the Australian employment landscape and together have grown as a share of the workforce over the last few decades.

While permanent employment relationships make up more than 60 per cent of the workforce, businesses in a modern, global marketplace are requiring a higher level of labour market adaptability and flexibility that is being met by flexible forms of employment.

This flexibility is necessary for Australian businesses who face increased overseas and online competition. Enterprises operating in key service industries like retail, tourism and hospitality must be able to respond to peaks and troughs in demand. Increasingly, flexible forms of employment provide this and are important to high skill, high wage sectors such as information technology, design and government policy.

In today's marketplace consumers also expect businesses to operate 24/7 and businesses need to be highly responsive to customer demand in order to remain competitive. Customers are also benefiting from this trend through greater availability of goods and services, higher service levels and lower prices.

Flexible forms of employment assist firms to structure their business operations in the most efficient and productive manner which increases the efficiency of the labour market and the productivity of the economy.

Inflexible workplace relations rules, which operate on a 'one size fits all' basis or a 9 am to 5 pm, Monday to Friday paradigm, simply do not reflect the evolution of business and the specific needs of the majority of Australian employers or of many job seekers.

We also note that, while independent contracting and casual workers now make up an increased share of the workforce, labour hire still remains a relatively niche form of employment.

The Australian Bureau of Statistics recently reported updated figures on the number of labour hire workers in Australia in its Characteristics of Employment (ABS Cat. 6333.0) publication. This new data shows that in August 2014 there were approximately 124,400 labour hire workers in Australia (who were paid by a labour hire firm/employment agency), representing only around one per cent of the total number of employed persons.

This highlights the need for this inquiry's recommendations to be proportionate to the size of the sector and the number of workers at risk of being adversely impacted.

## Productivity Commission Inquiry into Australia's Workplace Relations Framework

The Victorian Chamber made a detailed submission to the Productivity Commission Inquiry into Australia's Workplace Relations Framework arguing that the key outcome of the review must be the creation of a simpler, fairer and more efficient Workplace Relations Framework that spurs economic growth, increased productivity and improved business competitiveness<sup>1</sup>.

The Commission's draft report addresses many of the issues being examined by this inquiry. It includes a detailed analysis of the dynamics of the Australian labour market, the use of temporary forms of employment including casual, labour hire and independent contracting, and issues impacting migrant workers.

It presents a balanced, evidence based analysis of the issues and the pros and cons of flexible forms of employment for both workers and employers. The *Victorian Inquiry into the Labour Hire Industry and*

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<sup>1</sup>[http://www.vecci.org.au/sites/default/files/page/documents/attachment\\_3\\_productivity\\_commission\\_review\\_-\\_vecci\\_submissions.pdf](http://www.vecci.org.au/sites/default/files/page/documents/attachment_3_productivity_commission_review_-_vecci_submissions.pdf)

*Insecure Work* should draw on the valuable work done by the Productivity Commission to inform its findings.

The Victorian Chamber's submission to the Productivity Commission also specifically raised concerns regarding the broad reach of current 'permitted matters' under enterprise agreements, particularly in relation to the engagement of contractors, labour hire and/or casual staff.

The Victorian Chamber argued that an employer should have the prerogative to determine the mix of employment forms that minimise costs or maximise productivity. We called for the removal of the capacity for enterprise agreements to include terms that act to restrict an employer's ability to choose the employment mix suited to their business.

The Commission's draft report came to the same view, recommending that "Terms that restrict the engagement of independent contractors, labour hire and casual workers, or regulate the terms of their engagement, should constitute unlawful terms under the Fair Work Act 2009 (Cth)."

## Ensuring an objective analysis

It is critical that this inquiry takes an objective approach to its analysis.

While the Victorian Chamber welcomes the focus of the inquiry on fact finding, the terms of reference and discussion paper use language which indicates that its approach may not be entirely objective. In particular, the discussion paper implies that casual, fixed term and seasonal work is inherently bad for employees and indicates that these are only appropriate for short term employment. There is little evidence to support such a conclusion. Further there is little recognition given to the benefits temporary and flexible working arrangements provide to both employees and employers.

Alternative employment forms satisfy the wide variety of preferences across the workforce. Whether it be the autonomy of independent contracting, the flexibility and the higher wage rate typically accorded to casual workers or the reduction in job search costs for the labour hire worker. Each of these employment forms appeals to a large number of workers.

Where flexible forms of employment meet the needs of employees they can lead to higher levels of workforce participation.

Employers value these alternative forms of employment because they can improve productivity or lower costs in circumstances such as infrequent tasks that require special skills, work that is seasonal, sporadic, or short term, or work with a definable end date.

Where flexible forms of employment lower costs, the wider community benefits through lower prices and higher service levels.

It is important that the inquiry acknowledges the broader economic benefits of flexible employment options.

## Existing legislative and regulatory frameworks are sufficient

There is currently significant regulation of the employment of temporary and other employees under a range of legislation, including the:

- *Fair Work Act 2009* (Cth)
- *Equal Opportunity Act 2010* (Vic)

- *Crimes Act 1958 (Vic)*
- *Workplace Injury, Rehabilitation and Compensation Act 2013 (Vic)*
- *Long Service Leave Act 1992 (Vic)*
- *Competition and Consumer Act 2010 (Cth)*
- *Independent Contractors Act 2006 (Cth)*
- *Migration Act 1958 (Cth)*
- *Superannuation Guarantee (Administration) Act 1992 (Cth) and the Superannuation Guarantee (Charge) Act 1992 (Cth)*
- *Tax Administration Act 1953 (Cth)*

What is needed is more education and support for employers and employees, quick and efficient complaint resolution options for employees and employers, targeted compliance and enforcement activity by regulators, and effective prosecution of employers who consistently and wilfully breach labour laws.

In recent high profile cases where employees involved in temporary work have been adversely impacted, it is typically where existing workplace laws have been breached. Further, such cases do not represent the conduct of the great majority of Australian businesses. What is required is better enforcement of existing laws, not additional regulation.

Victorian Chamber members operating in the labour hire sector were consulted in the preparation of this submission and they expressed a range of concerns regarding new regulation of the sector.

For example, a member operating a regional recruitment and labour hire firm highlighted the significant effort and resources they currently devote to ensuring compliance with workplace relations, health and safety and other legal requirements. They expressed significant concern with the cumulative burden of regulation on their business and at the prospect of having to comply with an additional regulatory scheme targeting the labour hire industry.

Another member, whose business focusses on the placement of very high skill, high value workers, stressed the need for any approach to addressing issues in the sector to clearly differentiate between low and high wage placements as they consider that there is little risk of workers earning more than double average weekly earnings being exploited.

Members of the Victorian Chamber in the labour hire industry are proactive in utilising the Victorian Chamber Workplace Relations helpline to confirm the pay and conditions applicable to their workers. Calls from businesses involved in labour hire make up almost 8 per cent of total calls to the helpline with some individual firms making an average of three calls per week.

For the many compliant operators in the sector, an additional regulatory overlay would be both an unnecessary and unwelcome impost. For example, under a state based licencing scheme, there would likely be costs associated with understanding obligations, meeting licence requirements, preparing documentation, paying a licence fee, keeping records and ensuring compliance. These would all add to the costs of employment.

A new regulatory scheme would also impose significant costs on the majority of compliant firms operating in the sector, including those that deal solely with high skill / high wage employment where there is very little risk of workers being exploited.

In an environment where the Victorian Government is trying to create jobs, imposing additional employment costs on business would be counterproductive. It would also directly undermine the government's commitment to cut red tape by 25 per cent per annum.

The Victorian Chamber is similarly opposed to the adoption of international approaches flagged in the discussion paper regarding setting time limits for labour hire postings. Labour hire is a legitimate and completely legal form of employment and there is no reason why it should be limited to short term arrangements.

It is also unclear to the Victorian Chamber why the Victorian Government is undertaking an inquiry in this area given that the majority of examples of harm to workers cited in the discussion paper relate to non-compliance with commonwealth laws.

## Best practice regulatory design

The *Victorian Guide to Regulation* is the Victorian Government's definitive guide to developing regulation in Victoria.

It outlines a clear approach to best practice regulatory design that progresses through:

1. Problem identification.
2. Identification of clear objectives for government policy.
3. Consideration of policy options, including both regulatory and non-regulatory options.
4. Comprehensive cost benefit analysis.
5. Consultation on the proposed approach.

The Victorian Chamber is concerned that the inquiry terms of reference and discussion paper too hastily contemplate regulatory options, including a state based statutory licensing scheme.

In our view, greater emphasis should be placed on ensuring the effective compliance with existing laws. The Victorian Chamber also supports efforts to work with employers and the recruitment and labour hire industry to promote best practice conduct, strong compliance with existing laws and better outcomes for vulnerable workers, without restricting the use of labour hire and casual employment.

**The Victorian Chamber of Commerce and Industry is opposed to the introduction of any additional state or federal regulatory scheme for labour hire operators. We do not consider there is sufficient evidence of widespread problems in the labour hire industry that warrant the introduction of new regulation.**