

Impact Case Study

Professor Anthony Forsyth - Protecting Vulnerable Workers and Enhancing Business Integrity through Labour Hire Licensing Legislation

In September 2015, Prof Forsyth was appointed by the Victorian Government as independent Chair of its Inquiry into the Labour Hire Industry and Insecure Work. Prof Forsyth's role in the Inquiry was undertaken through a research contract entered into between RMIT and the Victorian Department of Economic Development, Transport, Jobs and Resources. The Inquiry was constituted as a Formal Review under the Inquiries Act 2014 (Vic). It was established following concerns (first aired on ABC's Four Corners program 'Slaving Away' in May 2015) that underpayments and other breaches of workplace laws were closely associated with the provision of workers to host businesses by labour hire contractors.

Under its Terms of Reference, the 12-month Inquiry examined the extent of the connection between third party labour providers and instances of exploitation of vulnerable workers; as well as the broader issue of the nature and extent of insecure work (including casual, fixed-term and seasonal work, independent contractor arrangements and sham contracting).

The research Prof Forsyth undertook has had, and will have, significant social and economic impact. It led directly to new legislation which 'protects vulnerable labour hire workers from exploitation by the providers of labour hire services and hosts'; and improves 'the transparency and integrity of the labour hire industry' and 'commercial conditions for law abiding businesses' (Parliament of Victoria, Labour Hire Licensing Bill 2017, Explanatory Memorandum, page 1). This legislation, along with that introduced in Queensland and South Australia, provides a model for national reform of the labour hire industry. The federal Opposition has a policy commitment to introduce a national labour hire licensing scheme if it wins the next election, while the Coalition Government has announced plans to implement a national system of labour hire registration.

The Inquiry received around 700 written submissions and heard from more than 200 witnesses in 17 days of public hearings held in Mildura, Geelong, Shepparton, Morwell, Dandenong, Melton and Melbourne. It also held an academic roundtable and stakeholder consultation meetings with workers, unions, labour hire companies, industry and community groups. It found considerable evidence of labour hire practices which are not compliant with workplace and other laws, across the Victorian economy. Breaches included underpayment of award wages, non-payment of superannuation, unsafe working conditions, dangerous transportation to work sites and sub-standard accommodation linked to the provision of work. These practices were found to be most prevalent in three industries: horticulture, meat processing and cleaning.

Focusing just on horticulture, many growers in the fresh food supply chain use labour contractors to source seasonal workers including international students and working holiday visa-holders. The Inquiry found that workers picking and packing fresh produce in regional areas of Victoria (e.g. Sunraysia and Gippsland) were being underpaid by as much as \$8.00 per hour; and living in accommodation described (in one instance) as 'doss houses'. A worker from Hong Kong described her experience of living and working in Robinvale as: 'one part of dark in Australia. Just like the dark. Many, many bad things there.'

The main research output is the Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report (31 August 2016), which Prof Forsyth co-authored with Industrial Relations Victoria. The 418-page report presents the evidence given in written submissions and at public hearings of the Inquiry; the findings based on that evidence; literature reviews; analysis of ABS and other statistical data; an overview of interstate/overseas regulation of labour hire and various forms of insecure work, and the Victorian regulatory framework; and 35 reform recommendations. The Inquiry Final Report is available at: <https://economicdevelopment.vic.gov.au/inquiry-into-the-labour-hire-industry/final-report>

It was preceded by the following two publications:

- Victorian Inquiry into the Labour Hire Industry and Insecure Work: Confidential Interim Report, Victorian Government, Melbourne, April 2016;
- Background Paper for the Victorian Inquiry into the Labour Hire Industry and Insecure Work, Victorian Government, Melbourne, 16 October 2015.

The principal recommendations in the Final Report (presented to the Premier and Minister for Industrial Relations on 31 August 2016) were that:

- The Victorian Government should introduce a labour hire licensing scheme, which would require labour hire providers in the horticulture, meat and cleaning industries in this state to demonstrate that they operate as a legitimate business and can comply with workplace and other laws.
- A licensing authority should be established to assess whether labour hire providers meet strict licensing standards, and to enforce the dual obligations of providers to operate with a licence and of hosts to only use a licensed provider (backed up by civil penalties).

The State Government announced in May 2017 that it was adopting 33 of the Inquiry's 35 recommendations (including the licensing scheme proposal). On 10 September 2017, the Premier announced details of the licensing legislation which would be introduced into Parliament. Importantly, the Government indicated that the legislation would apply to all labour hire providers in Victoria, going beyond Prof Forsyth's recommendations for a sector-specific scheme. This was primarily to ensure consistency with similar legislation already in place in Queensland and South Australia. However, regulations issued by the Government to accompany the labour hire licensing legislation (see below) included provisions which recognise the specific problems and heightened risks of exploitation in the horticulture, meat and cleaning sectors.

The Labour Hire Licensing Bill was introduced into the Legislative Assembly on 14 December 2017. It was debated and passed by that chamber in February 2018. Debate followed in the Legislative Council in May and June, leading to passage of the Bill with two amendments. On 20 June 2018, the Legislative Assembly passed the Bill with those amendments. The Labour Hire Licensing Act 2018 (Vic), and the Labour Hire Licensing Authority it established, came into full operation in 2019 (see: <https://labourhireauthority.vic.gov.au/>).

The full impact of this new law and its counterparts in other states will become apparent over the next few years, but can be expected to include enhanced workplace protections for labour hire employees and reduced levels of exploitation through the eradication of unscrupulous operators. Over the next 3-5 years, Prof Forsyth will be very strongly positioned to assist state governments with evaluation of their labour hire licensing schemes.

The implementation of labour hire licensing forms one part of a broader suite of policy responses by state and federal Governments to the issue of worker exploitation in Australia. Other business models associated with underpayment and 'sham contracting' include the franchise sector, complex supply chains and the evolving 'gig economy'. The emergence of state-based regulation to these problems addresses the limitations of federal workplace laws and their enforcement by the Fair Work Ombudsman.

The Inquiry received extensive coverage in print and electronic media, in Victoria and nationally. A full list of these media contributions is provided at pages 391-393 of the Inquiry Final Report. Subsequent media coverage is listed below:

- Tom Nightingale, 'Exploitation prompts calls for nationwide labour hire licences', ABC Radio PM, 27 October 2016
- Nick Toscano, 'Worker abuses prompt labour hire reform in Victoria', The Age/Sydney Morning Herald, 27 October 2016
- Paul Karp, 'Victoria to introduce labour hire licensing scheme to stem exploitation', The Guardian, 27 October 2016
- Anthony Galloway, 'Labour hire workers treated like second class citizens', Herald Sun, 27 October 2016
- Kath Sullivan, 'Labour hire inquiry: Victorian government to introduce licensing', The Weekly Times, 27 October 2016
- Jonathon Kendall Interview with Inquiry Chair, ABC Gippsland Radio, 28 October 2016
- Warwick Long Interview with Inquiry Chair, ABC Country Hour, 28 October 2016
- Nick Toscano, 'Scandals prompt state labour hire reforms', The Age, 28 October 2016
- Inquiry Chair interviews on: ABC 774, 'Mornings with Jon Faine', 30 October 2016;
- ABC Radio National, 'The Law Report with Damien Carrick', 8 November 2016 and 21 November 2016
- Nick McKenzie and Richard Baker, 'Victoria to introduce tough new laws, penalties over exploitation of vulnerable workers', The Age, 10 September 2017
- Luca Esposito, 'Forsyth: "Un'opportunità unica"', Il Globo, 26 April 2018
- Interview on ABC 774, 'Mornings with Jon Faine', 22 June 2018

On 23 June 2021, the Victorian Government introduced the *Occupational Health and Safety and Other Legislation Amendment Bill* into State Parliament. This implemented several other recommendations of Prof Forsyth's Inquiry, aimed at ensuring that labour hire workers placed at the work-site of a host business have the same workplace health and safety rights as direct employees of the host under the *Occupational Health and Safety Act 2004* (Vic). The Bill was passed by State Parliament on 16 September 2021, becoming the *Occupational Health and Safety and Other Legislation Amendment Act 2021* (Vic).

In addition to the policy and legislative impact of the Victorian Inquiry's Final Report, Prof Forsyth:

- published two academic journal articles based on the research initially undertaken for the Inquiry: 'The Victorian Inquiry into Labour Hire and Insecure Work: Addressing Worker Exploitation in Complex Business Structures' (2017) 6:3 *E-Journal of International and Comparative Labour Studies* 1; and 'Regulating Australia's "Gangmasters" through Labour Hire Licensing' (2019) 47:3 *Federal Law Review* 469 (A*).
- delivered 13 seminars/conference presentations on the Inquiry's findings and recommendations, including to the UK Gangmasters and Labour Abuse Authority on 15 November 2016 and the Federal Migrant Workers Taskforce on 5 April 2017.