

2017 VICTORIAN GOVERNMENT RESPONSE TO:  
THE VICTORIAN INQUIRY INTO THE LABOUR  
HIRE INDUSTRY AND INSECURE WORK



Economic Development,  
Jobs, Transport  
and Resources

## INTRODUCTION

The Victorian Government welcomes the final report of the independent Victorian Inquiry into the Labour Hire Industry and Insecure Work (the Inquiry), chaired by Professor Anthony Forsyth. The Inquiry was established by the Victorian Government to examine the practices of labour hire companies, insecure work, sham contracting and the abuse of visas to avoid workplace laws and undermine minimum employment standards. It follows a number of recent high profile cases, which have exposed underpayment and exploitation of workers, in particular vulnerable and migrant workers.

The final report is a comprehensive and wide-ranging review of the labour hire industry in Victoria and of the prevalence and impacts of insecure work. Valuable contributions were made by individuals and organisations to the Inquiry, which attracted a high degree of engagement and participation. The final report was tabled in Parliament on 27 October 2016 and includes 35 recommendations.

The report recognises that labour hire operators are a significant employer of Victorian workers and a major contributor to the Victorian economy. However, the report recognises evidence which found there is a problem with some 'invisible' labour hire agencies and arrangements, operating outside existing regulatory frameworks. The Inquiry found that there are various ways in which labour hire workers are treated almost like a 'second class' of worker, with treatment ranging from outright exploitation in certain sectors through to differential treatment in respect of issues like health and safety, dismissal and rostering.

The Inquiry also found that while there are legitimate drivers for businesses to utilise various non-permanent modes of engaging workers, the outcomes for these workers – especially those engaged on a casual or fixed term basis – often resulted in financial insecurity, difficulty in planning and saving and stress.

The Victorian Government is committed to addressing worker exploitation and improving the job security of all Victorian workers, so that they can fully participate in the community and plan ahead for their future.

The Government supports in full or in principle the majority of the Inquiry's 35 recommendations. For two recommendations, further development or review is needed in order to respond. The Government's response will ensure enhanced protections for vulnerable workers and appropriate regulation of the labour hire industry, while addressing the challenges highlighted by the Inquiry.

Our commitment to establishing a licensing scheme will target 'rogue' labour hire operators, and is designed to improve compliance with employment and health and safety standards, promote a level playing field by eliminating businesses prepared to compete on a basis of unethical, inappropriate or unlawful conduct, and improve the reputation and perception of the labour hire industry. The Government will consult further with key stakeholders as part of the development and implementation of the licensing scheme.

The Inquiry's report provides a strong basis for action and will continue to inform the Victorian Government's response to address worker exploitation and insecure work.

## RESPONSE TO RECOMMENDATIONS

### GUIDE TO RESPONSE

This response has been prepared in accordance with the Guidelines for Victorian Government Submissions and Responses to Inquiries.

The following key explains the four categories of response, which are consistent with these guidelines.

#### KEY

<b>support in full</b>	All elements of the recommendation are supported.
<b>support in part</b>	Some elements of the recommendation are supported.
<b>support in principle</b>	The Victorian Government generally supports the intent or merit of the policy underlining the recommendation, but does not necessarily support the method for achieving the policy.
<b>under review</b>	Further analysis is required for the Victorian Government to determine its position.

RECOMMENDATION	RESPONSE	COMMENT
1 The Victorian Government should develop or resource targeted data collection to investigate the prevalence and nature of labour hire employment within the state.	Support in full	<p>The Victorian Government notes the Inquiry's finding that there are deficiencies in and inconsistencies between the available data relating to the prevalence of labour hire employment arrangements in Victoria and Australia. The Government supports the collection of data to develop a more comprehensive profile of the prevalence and nature of labour hire employment in Victoria.</p> <p>The Government will investigate avenues for collecting data related to labour hire workers, including examining whether existing data sources could be adapted or improved and whether such data could be collected by the licensing authority tasked with implementing the labour hire licensing scheme. In determining the type of data collected and avenue for collection, it will also consider Recommendations 7, 17 and 24.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>2 Labour hire employees should have the opportunity to be covered by enterprise agreements applying at a host's workplace – whether this occurs de facto (arising from the voluntary decision of the labour hire employer to observe the site enterprise agreement); or because of the application of a parity clause in the host's enterprise agreement.</p> <p>On that basis, there should not be impediments to the negotiation of parity clauses in enterprise agreements (such as the prohibition recommended by the Productivity Commission). Given that the view has developed in the case law that parity clauses are a 'matter pertaining' to the employment relationship, and are therefore permitted matters in agreements, whether or not they are included should remain a matter of negotiation between bargaining representatives.</p> <p>The Victorian Government should advocate the above position in any consultation processes instigated by the Federal Government over implementation of the Productivity Commission's report.</p>	<p>Support in full</p>	<p>The Victorian Government supports the <i>Fair Work Act 2009</i> (Fair Work Act) emphasis on collective bargaining and the rights of businesses and employees to negotiate in good faith and agrees that labour hire employees should have the opportunity to be covered by enterprise agreements applying at a host's workplace. Parity clauses provide that where a labour hire worker is performing work which is the subject of an enterprise agreement, that employee is entitled to be paid at the same rate, and receive the same conditions, as a direct employee of the host performing that work.</p> <p>The Victorian Government does not support the Productivity Commission's recommendations to place further limitations on the content of workplace agreements, namely, the proposed prohibition of clauses that restrict the engagement of labour hire workers or regulate their terms of engagement. It has previously advocated this position in its Reply Submission to the Draft Report of the Productivity Commission Inquiry into the Workplace Relations Framework. The Victorian Government will continue to advocate that position to the Federal Government, noting that the Federal Government is yet to respond to the Productivity Commission recommendation</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>3 The Victorian Government should legislate to remove the disparity in minimum terms and conditions between casual relief teachers engaged by school councils directly, and those engaged by school councils via a labour hire agency.</p>	<p>Under review</p>	<p>The Victorian Government acknowledges the intent of this recommendation, but does not consider legislation is the appropriate mechanism to achieve parity of terms and conditions for casual relief teachers.</p> <p>The Victorian Government may regulate the operations of school councils by creating a legislative instrument such as a Ministerial Order, under the terms of the <i>Education and Training Reform Act 2006</i> (ETRA). However as school councils are not parties to the terms and conditions between labour hire agencies and their employees, a Ministerial Order cannot regulate the terms of employment contracts between labour hire agencies and their employees.</p> <p>Further work will be undertaken by the Department of Education and Training to examine whether there are other feasible mechanisms for achieving the policy intent of this recommendation, including through the use of government procurement mechanisms. This work will also be informed by consideration of potential service delivery implications.</p>
<p>4 The Government should introduce amendments to the <i>Equal Opportunity Act 2010</i> (Vic) to clarify that the protections from discrimination in respect of an employee engaging in employment activity, and reasonable adjustments for an employee with a disability, apply in the context of a host's relationship with a labour hire employee.</p>	<p>Support in principle</p>	<p>The Victorian Government supports in principle amending the <i>Equal Opportunity Act 2010</i> (Vic) to clarify the application of employment discrimination protections in the context of a host employer's relationship with a labour hire worker. This is subject to an assessment of the impact of the proposed amendments through a legislative impact assessment.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>5 The Model Work Health and Safety Act approach to regulating labour hire relationships should be adopted in Victoria. In the absence of Victoria adopting wholesale the approach under the model laws Victoria should adapt an approach which matches the substantive provisions under the model laws in this regard.</p>	<p>Support in principle</p>	<p>The Victorian Government supports in principle amending the <i>Victorian Occupational Health and Safety Act 2004</i> (OHS Act) to ensure adequate protection for labour hire workers.</p> <p>It is considered important to ensure that labour hire workers are not disadvantaged in comparison to direct employees. However, further work is necessary to investigate what changes need to be made to ensure appropriate coverage for these workers. This work will include examining the extent of legislative change that may be required, as well as canvassing stakeholder views. Care will be needed to ensure that any proposed changes to the scope or coverage of legislation do not have unintended consequences.</p>
<p>6 The Model Work Health and Safety Act approach to regulating to provide for worker representation and to protect workers against victimisation for asserting their rights in <i>Occupational Health and Safety Act 2004 (Vic)</i> matters, by either a labour hire agency or a host should be adopted in Victoria. In the absence of Victoria adopting wholesale the approach under the model laws, Victoria should adapt an approach which matches the substantive protections under the model laws in this regard.</p>	<p>Support in principle</p>	<p>Victoria supports in principle amending the Victorian OHS Act to ensure adequate representation and protection from victimisation for labour hire workers. It agrees that the framework for representation and protection of labour hire employees against victimisation for asserting their rights in occupational health and safety matters, by either the labour hire agency or the host, should be the same as protections for direct employees.</p> <p>Further work is necessary to investigate what changes should be made to ensure this outcome. This work will include examining legislative options, as well as canvassing stakeholder views. It is important to ensure that any proposed changes to the scope or coverage of legislation do not have unintended consequences.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>7 An accurate picture of occupational health and safety risk factors in the labour hire sector, and of injured labour hire workers in Victoria, requires the establishment of an occupational injury and illness monitoring and reporting system that extends beyond injury compensation claims data. With such data available it would be possible to identify occupational health and safety risks for labour hire workers, and develop interventions to minimise or remove those risks. The Victorian Government should collect this data and, periodically, make it publicly available.</p>	<p>Support in principle</p>	<p>Victoria supports in principle improving the collection of data on occupational health and safety risks for labour hire workers, in order to better identify risks for labour hire workers, and direct interventions to minimise or remove those risks. However, there are complexities in determining the best way to collect data that extends beyond injury compensation claims data.</p> <p>In its role as manager of Victoria’s workplace compensation scheme, WorkSafe Victoria collects a significant amount of data related to injury compensation claims, including claims made by workers employed by labour hire firms. WorkSafe also collects data on workplace deaths and serious incidents that are ‘notifiable’ under Part 5 of the OHS Act. However, it collects limited data on workplace injuries outside of these categories.</p> <p>Employers, including employers of labour hire workers, are required to maintain a register of injuries under the Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC Act). In order to submit a claim for compensation under the WIRC Act, a person must notify the employer of an injury that may entitle them to compensation within 30 days, and an injury must be entered on the register in order for a person to submit a claim for compensation under the WIRC Act. However, employers are not required to provide the register to WorkSafe. Any such requirement may impose a significant burden on both employers and the regulator.</p> <p>Victoria will investigate other avenues for collecting injury data related to labour hire workers, including whether such data could be collected by the licensing authority tasked with implementing the labour hire licensing scheme.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>8 Section 121 of the <i>Inquiries Act 2014</i> should be amended so that it applies not only to employer-employee relationships, but also to other relationships in which a worker carries out work for a business or undertaking.</p>	<p>Support in full</p>	<p>The Victorian Government supports the recommendation to broaden the scope of the existing statutory protection in the <i>Inquiries Act 2014</i>. This will assist to ensure that workers who give evidence to Formal Reviews are consistently protected and that candid evidence is provided to Formal Reviews.</p>
<p>9 That the Victorian Government introduce legislation to amend the <i>Public Health and Wellbeing Act 2008</i> (Vic) to clarify the limitation applicable to the section 3 definition of prescribed accommodation, subparagraph (b), that the accommodation must be provided on payment of consideration. Circumstances where accommodation is provided notionally without charge, as part of a broader arrangement between the parties to the relevant transaction, should be included within the definition.</p>	<p>Support in principle</p>	<p>The Victorian Government supports extending regulation of prescribed accommodation under the <i>Public Health and Wellbeing Act 2008</i> (Vic) to include accommodation provided notionally without charge under labour hire arrangements.</p> <p>This objective will be achieved by implementation of recommendation 10, i.e. amendment of paragraph (c) of the definition of "prescribed accommodation" under section 3 of the Act.</p> <p>Amendment of paragraph (b) of the definition is not required to achieve the objective and may have unforeseen consequences beyond extension of the scheme to accommodation provided under labour hire arrangements.</p>
<p>10 That the <i>Public Health and Wellbeing Act 2008</i> (Vic) section 3 definition of prescribed accommodation, subparagraph (c), be amended to reflect a wider range of working situations than simply the provision of accommodation by an employer to an employee under an award or contractual provision. The definition should include provision of accommodation to a worker by a labour hire operator, as part of the arrangement under which that operator facilitates the placement of the worker with a host.</p>	<p>Support in full</p>	<p>The Victorian Government supports amendment of paragraph (c) of the definition of "prescribed accommodation" under the <i>Public Health and Wellbeing Act 2008</i> (Vic) to extend the scope of the Act to regulate accommodation provided to workers under labour hire arrangements.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>11 The Victorian Government should advocate for the Fair Work Ombudsman to focus more of its compliance activity on underpayment/non-payment of award rates in the horticulture and meat industries; unlawful deductions (e.g. for accommodation) and the imposition of piece rate arrangements in those sectors; and sham contracting in the cleaning industry.</p>	<p>Support in full</p>	<p>The Inquiry identified particular areas of non-compliance related to labour hire agencies in the horticulture, meat and cleaning industries, that it recommends would benefit from increased enforcement of existing workplace rights.</p> <p>The Victorian Minister for Industrial Relations has written to the Commonwealth Minister for Employment to advocate for better resourcing of the Fair Work Ombudsman (FWO), so that it is adequately resourced to address non-compliance in these high-risk areas. The Victorian Government will continue to advocate this to the Federal Government. This is consistent with the recommendation of the Productivity Commission Inquiry into the Workplace Relations framework, that the Federal Government should provide the FWO with greater resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant employees.</p> <p>It is noted that the FWO, as part of its Community Engagement Grants Program, has allocated funding to Growcom to assist employers in the horticulture sector to comply with workplace laws, firstly in Queensland and then expanding into other states.</p> <p>The Federal Government has also committed to deliver \$20 million in funding to increase the capabilities and workforce of the FWO. However, this commitment sat alongside Federal Government cuts to the FWO's budget in 2016-17 of approximately \$16.5 million from the previous financial year.</p> <p>The FWO plays an important role in ensuring the enforcement of minimum employment standards for vulnerable workers, including labour hire workers. The Victorian Government considers that it is important that the FWO is properly resourced to promote compliance and enforce workplace laws to ensure vulnerable workers are protected.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>12 The Victorian Government should advocate for the Federal Government to implement, as quickly as possible, its 2016 election commitments to increase the Fair Work Ombudsman's investigatory powers and to increase the penalties applicable under the Fair Work Act for award breaches and failure to maintain proper employment records.</p>	<p>Support in full</p>	<p>The Commonwealth Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 was introduced into the Commonwealth Parliament on 1 March 2017. The Bill expands the evidence-gathering powers of the Fair Work Ombudsman, increases penalties for record-keeping failures in employee records such as pay slips, and introduces a higher scale of penalties for serious contraventions of prescribed workplace laws.</p> <p>The Victorian Government welcomes increased protections for vulnerable workers and will continue to advocate for strengthened legislative provisions, should the Bill not pass.</p>
<p>13 Victoria should advocate through the Council of Australian Governments process for the national adoption of a sector-specific labour hire licensing scheme. As a national approach may take some time to develop – or may not eventuate at all – Victoria should lead the way in reforming the labour hire sector, through the introduction of its own sector-specific licensing scheme. In implementing this reform, Victoria should explore the opportunities for developing cooperative arrangements with other states.</p>	<p>Support in full</p>	<p>The Victorian Government supports the introduction of a licensing scheme for labour hire agencies (see response to Recommendation 14).</p> <p>Victoria will advocate for national adoption of a labour hire licensing scheme. The Victorian Minister for Industrial Relations has raised this issue with the Commonwealth Minister for Employment and will request that a national labour hire licensing scheme is placed on the agenda of the Meeting of Ministers for Workplace Relations and Safety, which includes representation from all Commonwealth, state and territory ministers with responsibility for workplace relations and work health and safety.</p> <p>Both the Queensland and South Australian Government are also exploring the establishment of state-based labour hire licensing schemes, and the Victorian Government will work with those states to explore opportunities for cooperative arrangements.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>14 Victoria should introduce a licensing scheme for labour hire agencies, that is initially targeted at those supplying labour in the following specific sectors: the horticultural industry (including the picking and packing of fresh fruit and vegetables), and the meat and cleaning industries. It is recommended that capacity be provided within the framework for the proposed Victorian labour hire licensing system, allowing it to be expanded to cover other industry sectors, or to be contracted in response to changing (improved) practices in the regulated industries.</p>	<p>Support in principle</p>	<p>The Victorian Government supports the introduction of a licensing scheme for labour hire agencies operating in Victoria and is consulting further on whether the scheme should apply only to the horticulture, meat and cleaning industries or more broadly. The Government notes the Inquiry's finding that "in determining its response to the recommended licensing approach, it remains open to the Victorian Government to consider introducing a labour hire licensing scheme of general application."</p> <p>The scope of the licensing scheme will be determined following consultation with stakeholders and a detailed assessment of the costs and benefits of a "sector specific" as against a general licensing scheme. In particular, consideration will be given to: difficulties in the design and application of a sector specific scheme and any potential for confusion within the labour hire market; the effectiveness of different models in ensuring protections for labour hire workers; the regulatory burden on labour hire providers and users of labour hire of a general scheme; and how various models may impact on the ability of potential labour hire providers to enter or remain in the market.</p> <p>As noted in response to Recommendation 13, Victoria will continue to advocate for national adoption of a labour hire licensing scheme.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>15 The scheme should require that any person or organisation supplying a worker to another person/organisation (whether directly or through an intermediary), in the specific industry sectors (identified in Recommendation 14) in the state of Victoria, must be a licensed labour hire operator; and must only carry on such activity through a registered business or company. The precise definition of the sectors covered by the proposed licensing scheme could be identified from the Australian and New Zealand Standard Industrial Classifications (ANZSIC).</p>	<p>Support in principle</p>	<p>The Victorian Government supports a requirement that all labour hire operators that come within the scope of the scheme be licensed.</p> <p>Specific consideration needs to be given to the definition of a labour hire operator. The Inquiry recommended that a key requirement for application of the scheme is the existence of a triangular relationship between the labour hire provider, a host organisation and a worker. However, the Inquiry also recommended that it apply in situations where the provision of workers to host employers occurs through an intermediary. The Inquiry did not recommend that the scheme would apply to contracting out or outsourcing arrangements, unless these involve a labour hire relationship of the type described above.</p> <p>Given the complexities in arrangements and that the boundaries of what is considered to be labour hire may be unclear, it will be important to ensure that the definition of a labour hire operator is simple to understand and clearly describes the work relationship to be regulated by the licensing scheme, including any exclusions. This will be considered further as part of the design of the scheme, in consultation with stakeholders.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>16 To obtain a licence under the proposed Victorian labour hire licensing scheme, the labour hire operator would need to provide identifying details of the business through which they operate (e.g. Australian Business Number, Australian Company Number, business/company/trading name), and meet the criteria set out below. It is envisaged that the obligation would be imposed on licence applicants to provide a statutory declaration and information demonstrating their compliance (both initially to be licensed and then as a condition of remaining licensed) with the following criteria:</p> <ul style="list-style-type: none"> <li>the business/company and its key personnel must pass an objective 'fit and proper person' test, which would include no past convictions for offences involving fraud, dishonesty or violence and no past involvement in insolvent businesses or breaches of workplace or occupational health and safety laws;</li> <li>the business/company must demonstrate (e.g. through employment records) that it pays its employees in accordance with the minimum rates specified in applicable industrial instruments, and affords its employees all other employment conditions (e.g. leave entitlements, rest breaks, limits on working hours) under those instruments and/or legislation;</li> <li>the business/company must be registered with the Australian Taxation Office and be deducting taxation and remitting superannuation contributions on behalf of employees as required by federal legislation;</li> <li>if accommodation is provided to employees in connection with the arrangements they enter into with a labour hire business/company, the business/company must show that the accommodation meets the standards required under applicable Victorian/local authority laws and regulations;</li> </ul>	<p>Support in principle</p>	<p>The criteria that applicants must meet in order to obtain a licence will be a critical part of the licensing scheme. The criteria will be determined as part of the development of the licensing scheme, and in consultation with stakeholders.</p> <p>Key matters for consideration in determining the licence criteria include:</p> <ul style="list-style-type: none"> <li>the advantages and disadvantages of criteria that can be objectively assessed (as opposed to a subjective assessment);</li> <li>how verification could be assessed by licensing staff, in particular compliance with migration laws;</li> <li>the effectiveness of a statutory declaration in lieu of other verification methods;</li> <li>the cost of administration and compliance burden on users and industry;</li> <li>any impacts on labour hire workers; and</li> <li>how the requirement will apply to new or start-up businesses that may not yet have records demonstrating adherence to the criteria when initially applying for a licence.</li> </ul>

RECOMMENDATION	RESPONSE	COMMENT
<p>16</p> <ul style="list-style-type: none"> <li>the business/company must be registered with WorkSafe and be paying any required premiums;</li> <li>the business/company must provide details of its systems for ensuring compliance with occupational health and safety legislation and ensuring the safety of workers provided to host organisations (including safety in the transportation of workers to the host's work-site, where the labour hire business/company is involved in such transportation); and</li> <li>the business/company must demonstrate compliance with federal migration laws, including systems for ensuring that all employees have a right to work in Australia.</li> </ul>		
<p>17</p> <p>To the extent permissible under federal law, the labour hire licensing scheme should also require the business/company to provide specified information to the licensing authority relating to the numbers and categories of workers engaged on temporary work visas. This is to enable a clearer picture to be developed about the prevalence of temporary visa workers engaged by labour hire agencies in Victoria in the regulated sectors, and the type of visa those workers hold.</p>	<p>Under review</p>	<p>The Victorian Government recognises there are current data gaps and deficiencies on the prevalence of temporary visa workers engaged by labour hire agencies in Victoria and the type of visa those workers hold.</p> <p>However, further analysis is required for the Government to confirm how this information could best be obtained, noting that immigration is a Federal Government responsibility. The Government will investigate: whether existing data sources could be utilised; if there are any privacy implications in how the information is collected or utilised; how onerous the obligation would be for labour hire agencies; and how or whether the data could be used by the Victorian Government to better inform policy development.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>18 A labour hire operator meeting the licensing criteria would have to pay an initial licence fee, and an annual fee for renewal of their licence.</p>	<p>Support in full</p>	<p>It is an expectation that labour hire operators will need to pay a fee to obtain a licence, which is an essential part of a licensing scheme. There are a number of fee structure models that could be applied. The fees and fee structure will be determined as part of the development of the licensing scheme. Modelling will be undertaken to determine the type and level of licence fees that should be set and which can be sustained without undermining the other policy objectives of the scheme. In determining the fees and fee structure regard will be had to: the costs incurred by government in administering the scheme; the regulatory impact on business; and equity considerations.</p>
<p>19 Accompanying the introduction of a sector-specific labour hire licensing scheme in Victoria, hosts operating in the regulated sectors should be subject to a legal obligation to use only a licensed labour hire provider.</p>	<p>Support in full</p>	<p>The Victorian Government supports that hosts should be regulated by the licensing scheme. The Government accepts that there is a need, as part of a comprehensive licensing scheme to have a dual obligation on licence holders and the users of labour hire services. This is necessary given the triangular relationship of labour hire arrangements between the labour hire operator, the host and workers.</p> <p>As part of the development of the licensing scheme, the Government will consider how this obligation is best enforced.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>20 here should be a public register of all licensed labour hire operators. In addition, a system modelled on the Gangmasters Licensing Authority 'Active Check' service could be implemented to assist host organisations to ensure they are using licensed providers (including through updates on any changes to, or revocation of, issued licences).</p>	<p>Support in principle</p>	<p>The Victorian Government supports the implementation of a public register of licensed labour hire operators, consistent with other licensing schemes.</p> <p>The Inquiry report suggests that the public register be modelled on the UK Gangmasters Licensing Authority 'Active Check' service. However, there are some key differences between the 'Active Check' service and public registers currently administered by the Victorian Government such as registers for licensed real estate agents and motor car traders. The Government will further consider the appropriate model for the register as part of the development of the licensing scheme.</p>
<p>21 Civil liability provisions and/or criminal offences should be created in respect of the following:</p> <ul style="list-style-type: none"> <li>• a labour hire provider operating in the regulated sectors without holding a licence; and</li> <li>• a host organisation using the services of an unlicensed operator.</li> </ul> <p>In addition, liability provisions/offences should be created in respect of the following actions on the part of a labour hire business/company covered by the licensing scheme:</p> <ul style="list-style-type: none"> <li>• the business/company must not coerce or restrict a worker's freedom of movement in any way (e.g. by entering into unfair debts/loans, retention of migration papers or refusal to sign off on the 88-day requirement for obtaining a second year working holiday visa);</li> <li>• the business/company must not sub-contract the provision of a worker through a non-licensed operator; and</li> <li>• the business/company must not provide false or misleading information to the licensing authority.</li> </ul>	<p>Support in principle</p>	<p>The Government supports in principle this recommendation as a necessary element of the enforcement function of the licensing scheme.</p> <p>However, further consideration needs to be given to determine whether it is appropriate for offences to be subject to civil or criminal liability, or a mixture of the two.</p> <p>The Government will consider the development of offences as part of the development of the licensing scheme, and in consultation with stakeholders.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>22 The Victorian Government should explore whether the Business Licensing Authority would be the appropriate body to administer the proposed labour hire licensing scheme, or whether a specific licensing authority should be established.</p>	<p>Support in full</p>	<p>The Government is exploring the feasibility of the Business Licensing Authority (BLA) operating the licensing scheme or whether a stand-alone body should be created, having regard to cost, resource and efficiency considerations.</p> <p>The BLA is an independent regulator within the Victorian Government Department of Justice and Regulation. The BLA licences and registers: conveyancers, estate agents, motor car traders, owner corporation managers, second-hand dealers and pawnbrokers; and sex work service providers.</p>
<p>23 The licensing authority should maintain the public register of licensed labour hire operators.</p>	<p>Support in full</p>	<p>The Victorian Government supports the maintenance of a public register of licensed labour hire operators by the licensing authority. As noted in response to Recommendation 20, the Government will consider the appropriate model for the public register as part of the development of the licensing scheme.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>24 As far as possible, the emphasis should be on licence applicants and licence-holders providing the information required to demonstrate that they meet the criteria for issuing/renewing a licence. Licensing authority staff would approve or reject applications for new licences or renewals objectively on the basis of the information presented.</p>	<p>Support in full</p>	<p>The Victorian Government supports the provision of information by licence applicants and licence-holders, for objective assessment by licensing staff.</p> <p>The Government will give further consideration to how compliance with criteria for issue/renewal of a licence will be met as part of the development of the scheme. Key considerations will include:</p> <ul style="list-style-type: none"> <li>• that applications can be processed as quickly and efficiently as possible;</li> <li>• that the information provided by applicants is able to be objectively verified;</li> <li>• the availability and use of external verification services, such as CrimTrac;</li> <li>• how best to substantiate compliance for certain eligibility criteria; and</li> <li>• ensuring the obligation on applicants is balanced and does not deter businesses from applying for a licence.</li> </ul>

RECOMMENDATION	RESPONSE	COMMENT
<p>25 Legislation establishing the proposed labour hire licensing scheme will also need to address:</p> <ul style="list-style-type: none"> <li>• the rights of persons from whom enforcement officers seek information;</li> <li>• the obligations of licence-holders to provide information;</li> <li>• data protection and the powers of the licensing authority to share that information for law enforcement and compliance purposes (e.g. with Victoria Police, the Fair Work Ombudsman, the Australian Taxation Office);</li> <li>• the powers and conduct of licensing enforcement officers (whether engaged by the licensing authority or through a new entity);</li> <li>• the processes for complaints, dispute resolution, and appeals (including appeals against licensing decisions or processes to revoke a licence); and</li> <li>• A voluntary code for labour hire agencies</li> </ul>	<p>Support in full</p>	<p>The Victorian Government supports the introduction of legislation to establish the licensing scheme.</p> <p>The legislation will ensure the scheme can operate effectively and is expected to set out (amongst other things): the functions and powers of licensing and enforcement staff, the criteria to obtain a licence, obligations of licence holders, when information may be shared and appropriate data protection requirements; and complaint and appeal processes.</p> <p>The legislation will be drafted following determination of the scope and model for the scheme, which will be undertaken in consultation with stakeholders.</p> <p>In relation to a voluntary code for labour hire agencies, refer to the response to Recommendation 26.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>26 Through a tripartite process involving government, representatives of the labour hire industry and representatives of labour hire workers, the Victorian Government should develop a voluntary code of practice for the labour hire industry. The code would establish best practice requirements for labour hire employment arrangements, including in the following areas:</p> <ul style="list-style-type: none"> <li>• Contractual arrangements between labour hire agencies and hosts, and labour hire agencies and their workers, should not include terms which prevent or hinder a labour hire employee from obtaining direct employment with a host, or terms requiring an employee to pay a fee or commission to a labour hire company in order to obtain work.</li> <li>• Labour hire agencies should adopt fair processes in decisions leading to dismissal of labour hire employees, and should not use the contractual relationship between</li> <li>• the labour hire agency and host to defeat the rights of a dismissed employee to seek a remedy.</li> <li>• Labour hire agencies should be encouraged to manage rostering so that notice and planning of shifts work for the mutual benefit of all parties involved in labour hire relationships.</li> <li>• Labour hire agencies should adopt a best practice approach to the use of piece rates in sectors such as the horticulture and meat industries, including fair and transparent processes for entering into piece rate arrangements, and should not use piece rates as a device to pay workers below the minimum time based rate of pay.</li> </ul>	<p>Support in full</p>	<p>The Inquiry identified practices of labour hire agencies that, while not unlawful, might be considered unfair and which a responsible labour hire industry could go a long way towards addressing by modifying its own behaviour, and the setting/promotion of standards of best practice.</p> <p>The Victorian Government encourages the development of best practice standards for labour hire employment arrangements, which is industry-led and where stakeholders have a voice.</p> <p>The terms and form of the code will be determined in consultation with representatives of the labour hire industry, labour hire workers and host employers, and will also be informed by the model and scope of the licensing scheme.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>27 The Victorian Government should consider further funding measures to provide assistance to temporary visa workers through established community organisations and networks, including the provision of employment rights information to international students through Victorian universities.</p>	<p>Support in full</p>	<p>The Victorian Government notes the Inquiry finding that working holiday and student visa holders (temporary visa workers) do not have access to resources to outline their workplace rights and responsibilities and are being subjected to exploitation in the labour market.</p> <p>As noted by the Inquiry, the addition of appropriate safeguards to ensure the fair treatment of overseas workers holding temporary work visas is for the most part a matter for the Federal Government to address. The Federal Government's migrant workforce taskforce has recognised that there are barriers to getting information out to visa holders about workplace rights and entitlements and to migrant workers coming forward to make complaints and is exploring ways to address this. The Fair Work Ombudsman has recently released an app aimed at tackling underpayment of migrant workers.</p> <p>The Victorian Government supports the provision of assistance to temporary visa workers through established community organisations and networks.</p> <p>In 2015, the Victorian Government provided \$4 million over four years to deliver the International Student Welfare Grants Program to support new approaches and partnerships to protect student welfare and enhance student experience. In 2016, under the grants program, \$240,000 was provided to support a legal service at the Study Melbourne Student Centre (the International Students Work Rights Legal Service). The service provides international students with free, confidential and independent legal assistance with work-related legal problems.</p> <p>The Government will give consideration to other initiatives, in consultation with community organisations and networks, to support assistance to temporary visa workers.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>28 The Victorian Government should advocate for changes to section 357 of the Fair Work Act in any consultation processes instigated by the Federal Government over implementation of the Productivity Commission's Workplace Relations Framework Report, so that it is unlawful to misrepresent an employment relationship or proposed employment arrangement as an independent contracting arrangement where the employer could be reasonably expected to know otherwise.</p>	<p>Support in full</p>	<p>Section 357 of the Fair Work Act prohibits an employer from representing to a worker that the worker is an independent contractor, when as a matter of law the worker is being employed under a contract of employment. An employer who has made such a representation may escape liability if they can prove that they did not know, and were not reckless, as to whether the contact was a contract of employment (section 357(2), Fair Work Act).</p> <p>The Victorian Government supports changes to section 357 of the Fair Work Act to remove the present 'reckless defence' and replace it with a narrower reasonableness test. That is, that an employer may escape liability if the employer believed the contract was a contract for services rather than a contract of employment, and could not reasonably have been expected to know otherwise.</p> <p>This was a recommendation of the 2012 Fair Work Act review, which was supported by the Productivity Commission Inquiry into the Workplace Relations Framework.</p> <p>The Victorian Government made a submission to the Productivity Commission Inquiry into the Workplace Relations Framework noting its support for the recommended amendments to section 357 of the Fair Work Act. It will continue to advocate this position to the Federal Government, which has not yet responded to this recommendation of the Productivity Commission.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>29 The Victorian Government should develop and promote a fair engagement checklist for the engagement of independent contractors.</p>	<p>Support in principle</p>	<p>The Victorian Government supports the development of information tools that can assist businesses understand their legal obligations and responsibilities in relation to the engagement of independent contractors.</p> <p>However, the Government notes that there are range of existing materials and tools available to assist businesses ensure contracting relationships are genuine and non-coercive. The Government will review and give consideration to existing information tools that are available before determining the most effective mechanism to provide information to businesses and independent contractors.</p>
<p>30 The Victorian Transport Industry Council should give consideration to developing a comprehensive, industry based rates and costs schedule and/or code under the <i>Owner Drivers and Forestry Contractors Act 2005</i> (Vic) which would apply to the tip truck industry. This schedule should be primarily facilitative, and not mandatory in nature.</p>	<p>Support in full</p>	<p>The Victorian Government supports the development of information tools to improve the position of small businesses by providing them with information and support to operate successful businesses. The Minister for Industrial Relations has met with the Transport Industry Council and the Council is considering the development of an industry-based rates and costs schedule and/or code for the tip truck industry.</p>
<p>31 The Victorian Government should review the threshold requirements upon hirers to provide the applicable rates and costs schedule to owner drivers under s 16 of the <i>Owner Drivers and Forestry Contractors Act 2005</i> (Vic), so as to ensure that the requirement is triggered based on the usual hiring practices in the tip truck industry.</p>	<p>Support in full</p>	<p>The Victorian Government is currently undertaking a review of the <i>Owner Drivers and Forestry Contractors Act 2005</i> (Vic). This recommendation is being considered as part of that review.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>32 The Victorian Government should take steps to encourage and facilitate the implementation of industry based supply chain regulation by major retailers, addressing exploitation of workers within those supply chains.</p>	<p>Support in principle</p>	<p>The Victorian Government supports the need to address exploitative employment practices, while ensuring there is not undue or unnecessary additional burden placed on business.</p> <p>The commencement of a licensing scheme for labour hire agencies will enact change across Victoria and form the Government's primary response to addressing underpayment and exploitation of labour hire workers. This recommendation will be considered further by the Government once a licensing scheme is operational, and there has been sufficient time to consider the scheme's reach and compliance rates by labour hire operators. At that point, the rationale for any particular focus on major retailers will be considered to ensure it delivers further benefit over and above the operation of any licensing scheme.</p> <p>The Government notes there may be efforts underway by industry which will help to meet the intent of this recommendation.</p> <p>The Government also notes that there are some initiatives at the Commonwealth level, which are directed at addressing concerns about exploitation of vulnerable workers by franchisees, including retail franchises. The Fair Work Act provides that a person may be held responsible for being 'involved in' a contravention, even if they are not the direct employer. The Commonwealth Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 introduces new provisions to make franchisors and holding companies responsible for contraventions of the Fair Work Act where they knew or ought reasonably to have known of the contraventions, and failed to take reasonable steps to prevent them.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>33 The Victorian Government should, in conjunction with affected employees and their representatives, develop and implement a process for monitoring and assessment of the extent to which the secure employment commitments in the Victorian Public Service Enterprise Agreement 2016 are being adhered to; the extent to which enterprise agreements across the Victorian public sector include similar commitments to limit fixed term and casual forms of engagement; whether such commitments are being observed in practice; any barriers to their observance, and how these may be overcome.</p>	<p>Support in full</p>	<p>The Victorian Government recognises the importance of secure employment and is committed to improving the job security of all Victorian workers.</p> <p>The Victorian Public Service Enterprise Agreement 2016 (VPS Agreement) includes a secure employment provision, which commits Departments and public sector agencies to giving preference to secure forms of employment where possible. The Government has established an Agreement Monitoring Committee, which includes representatives from the Community and Public Sector Union and the Department of Economic Development, Jobs, Transport and Resources. This Committee will monitor and assess compliance with the secure employment clause in the VPS Agreement.</p> <p>The Central Bargaining Unit (CBU) in Industrial Relations Victoria oversees enterprise bargaining across the Victorian public sector and provides government and public sector agencies across Victoria with access to industrial relations expertise and assistance. The CBU will:</p> <ul style="list-style-type: none"> <li>• monitor the extent to which enterprise agreements across the Victorian public sector include similar commitments; and</li> <li>• engage with Departments and public sector agencies whose enterprise agreements contain secure employment provisions to establish the extent to which such provisions are being adhered to and any barriers to observance.</li> </ul> <p>The Government's Public Sector Industrial Relations Policies 2015 require employers and unions to work together to identify methods to reduce the use of casual or fixed-term engagements where concerns are raised. Departments and agencies should already have mechanisms in place to overcome any barriers to observance. Where this is not the case, the CBU can be contacted to help resolve the matter.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>34 I recommend that the Victorian Government through the Department of Education and Training, in conjunction with affected employees and their representatives, review available data on the extent and reasons for use of fixed term employment in public schools, identify areas where its use can be minimised, and implement alternatives to its use.</p>	<p>Support in principle</p>	<p>The Victorian Government is committed to the standard mode of employment in schools being ongoing, while recognising that for some classroom teachers and education support class positions fixed term employment is necessary.</p> <p>The Victorian Government Schools Agreement 2013 (VGSA 2013) sets out specific circumstances when fixed-term employment may be used and provides that an eligible fixed term employee should be offered ongoing employment where a suitable ongoing position becomes available. The VGSA 2013 requires the Department of Education and Training to implement proactive processes to ensure fixed term vacancies satisfy the specific criteria. The Department actively monitors fixed term vacancy trends to identify those schools that appear to have a larger number of fixed term vacancies than the school's circumstances would indicate.</p> <p>The Department recently reached in principle agreement with unions for an enterprise agreement to replace the VGSA 2013. As part of the in principle agreement, the successor agreement will allow for:</p> <ul style="list-style-type: none"> <li>• an increase in the number of fixed term employees, including teachers and education support staff, offered translation to ongoing employment; and</li> <li>• a further increase in ongoing employment amongst education support class staff employed under student support funding.</li> </ul> <p>The Victorian Government notes that these commitments, which have been agreed in principle, will meet the objective of this recommendation - to minimise the incidence of fixed term employment and provide security of employment.</p>

RECOMMENDATION	RESPONSE	COMMENT
<p>35 The Victorian Government should establish procurement principles or standards that must be met by successful tenderers for a range of contracts with government departments and agencies, including those for the provision of IT, cleaning, security, transport, hospitality and other similar services. The precise application and limits of the scheme (including whether it should apply only to contracts above a specified monetary value) will need to be determined with reference to other competing procurement criteria. The principles/standards should be objective and measurable, however they should be directed towards requiring the successful tenderer to demonstrate that:</p> <ul style="list-style-type: none"> <li>• The organisation predominantly engages workers in secure employment, rather than as casuals or on fixed term contracts (this could be assessed on the basis of the tenderer's provision of information about the composition of its workforce).</li> <li>• Independent contractor relationships are genuine rather than sham arrangements.</li> <li>• Employees are receiving at least the wages and conditions under any applicable industrial instruments (award or enterprise agreement), and applicable legislation (e.g. National Employment Standards under the Fair Work Act, federal superannuation legislation, Victorian long service leave legislation).</li> <li>• Proactive arrangements are in place to ensure health and safety compliance through the tenderer's occupational health and safety management system.</li> <li>• The cost structure of the tender submitted clearly demonstrates how workers will be accorded their legal employment entitlements over the life of the contract.</li> </ul>	<p>Support in principle</p>	<p>The Victorian Government has recently released a Supplier Code of Conduct which requires suppliers to meet minimum requirements in the areas of integrity, ethics and conduct; corporate governance; and labour and human rights.</p> <p>The Government will explore further opportunities for using government procurement principles and standards to encourage government suppliers to provide secure employment.</p>

RECOMMENDATION	RESPONSE	COMMENT
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- Appropriate contractual arrangements require any further subcontracting by the primary contractor to include the above principles/standards as a term and condition applicable to the subcontractor's provision of services.

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