

THE CONVERSATION

Labour hire, plight of insecure workers to be put under the spotlight

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Conditions for Insecure workers will form part of an Victorian government Inquiry. Image sourced from www.shutterstock.com

Over the coming months, the Victorian Government Inquiry into Labour Hire and Insecure Work will hold public hearings to investigate the activities of labour hire companies and will also look into the the plight of insecure workers.

I have been appointed to chair this Inquiry, which was established in October this year to fulfil an election commitment by the Daniel Andrews government to review the impact of short-term, temporary and casual work on the job security of Victorian workers and to develop a licensing system for labour hire agencies.

This move has turned out to be quite prescient, given the greatly increased focus on the emergence of a “black labour market” in Australia over the last 12 months.

Scandal after scandal

In May, the ABC’s Four Corners revealed the exploitation of workers by a number of labour hire operators in the fresh food supply chain, producing goods that are sold in our major supermarkets and fast-food stores.

This was followed by the joint exposé by the ABC and Fairfax Media of significant underpayments and other breaches of minimum working conditions for employees in 7-Eleven franchises.

The resulting scandal claimed both the chairman and CEO of 7-Eleven. But in its wake, concerns have been raised that the franchising business model creates an incentive for franchisees to underpay workers and engage in visa breaches.

And Fairfax has recently identified the mistreatment of migrant workers on working holiday and student visas, with advertisements in Chinese newspapers seeking applicants prepared to work for well below minimum award wages.

How widespread are these problems?

The labour hire sector is of particular interest as this is a major industry in Victoria and nationally, with around 6000 operators employing up to half a million workers. It also generates almost \$20 billion a year in revenue.

The labour hire model creates a triangular relationship in which the host organisation effectively contracts out of responsibility for meeting the minimum legal entitlements of employees, whose direct employer is the labour hire agency.

While there are many reputable labour hire companies, there are also a number of smaller outfits that mistreat workers. Often, when employees complain about being underpaid and enforcement processes are instigated (for example, through the Fair Work Ombudsman), the employing entity will be liquidated – and its directors will start business again elsewhere (a process known as “phoenixing”).

The Inquiry will seek to gather evidence about what kinds of companies are involved in these abuses, and the sectors and regions where they are predominantly occurring. Given the significant economic benefits that labour hire also brings, the Inquiry wants to highlight firms that are engaging in “best practice” in this sector.

Insecure workers and “sham contracting”

On the broader issue of insecure work, the Inquiry aims to find out about the experiences of workers engaged as casuals, on fixed-term contracts, or as independent contractors. We want to know how insecure work affects these workers and their families: how it impacts upon their financial security, housing affordability and overall standard of living.

We especially need to find out more on the incidence of “sham” contracting, whereby an employment relationship is disguised as contracting in order to avoid legal obligations under awards and workplace laws. Previous research has shown that up to 13% of workers in the construction industry may have been engaged under sham arrangements.

Starting in the regional centre of Mildura, in Victoria’s north-west next week, the Inquiry will hear from state Workers, unions, employer associations, labour hire companies, host employers who use labour hire services, community groups and academics. Closed hearings can be held where any individual or organisation has concerns about confidentiality.

International approaches

Although mainly a fact-finding exercise, the Inquiry is also required to consider and make

recommendations on options for regulatory reform. Relevant overseas laws will be examined, including the UK's Gangmasters Licensing Authority.

The GLA was established following public outcry after the deaths of 23 Chinese cockle-pickers at Morecambe Bay in 2004. Organisations providing workers to employers in the forestry, agriculture, horticulture, shellfish-gathering or food processing/packaging sectors must register and obtain a licence through the GLA. The licensing standards aim to protect workers from exploitation, covering minimum pay and taxation; accommodation; health and safety; and prevention of forced labour. Criminal offences including fines and imprisonment can be imposed on gangmasters who operate without a GLA licence, and those who use their services.

Other international approaches include laws such as those in Ontario, Canada, which prevent fees being imposed on workers for agency placements, and requiring the provision of detailed information to the worker about the agency, host, nature of assignment, pay and conditions. Other countries give labour hire staff the right to the same employment conditions as comparable employees of the host after 12 weeks (for instance, the UK Agency Workers Regulations); and the setting of time limits for on-hire postings, for example nine months (as is the case in Israel), or three years (in Italy and Japan).

The Inquiry's report will add significantly to the evidence base on these important social and economic issues, and will be provided to the Government by 31 July, 2016.

Anthony will be on hand for an Author Q&A between 3 and 4pm AEDT on Wednesday, November 18, 2015. Post your questions in the comments section below. Please keep your questions on the content of the article; Anthony will not be able to provide advice or assistance for individuals facing situations similar to those described above.



labour hire

Author Q&A

Phoenix companies

7-eleven