

Submission to Victorian Inquiry into the Labour Hire Industry and Insecure Work- 2015

Lodged on behalf of the Safety Institute of Australia Ltd

27 November 2015

Introduction

The Safety Institute of Australia Ltd (SIA) believes that labour hire and insecure work can present higher risk of physical and psychological injury and illness.

We consulted our Victorian members and the members of our College of Fellows for this submission.

The SIA acknowledges the importance of creating and providing jobs, but we believe that each job should also be a safe job – one that is designed to eliminate or minimise harm to workers. Such jobs are already part of all employers' occupational health and safety (OHS) duties, and have been in Victoria since 1985.

“An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.”
(Victorian OHS Act 2004, Section 21 (1))

Submission

Our comments are based on the substantial work already undertaken by OHS regulators in this sector and by the excellent research of Australian academics into precarious employment such as Michael Quinlan, Professor of the School of Management and Director of the Industrial Relations Research Centre at the University of New South Wales and a Fellow of the SIA, Dr Elsa Underhill, a Senior Lecturer in the Faculty of Business and Law at Deakin Business School.

We identified the following questions from the Inquiry's background paper that relate, in some way, to occupational health and safety issues.

What working conditions do labour hire workers typically have?

Our members believe that labour hire workers have compromised and conditional work structures compared to full-time employees. We believe that labour hire workers get the jobs not favoured by permanent staff or are required to carry out duties that they are not experienced in.

What differences are there, if any, between the conditions of direct employees of a host organisation and labour hire workers?

Occupational health and safety has a history of arguments about the employment status of workers. We believe that the OHS laws identify responsibilities of workers and employees to ensure safe workplaces regardless of employment status.

Labour hire workers are often not seen as employees and therefore supervision is usually of a lesser standard. Induction and job-specific training can be bypassed as labour hire workers are often called in at the last moment. This can lead to omissions of basic OHS requirements such as personal protective equipment, consultation and risk management can be forgotten.

Some industry sectors provide accommodation as part of the work. The quality of such accommodation is variable. Where accommodation is supplied, for example in fly-in, fly-out industries it is usually similar to normal employees however often it is share or communal rather than separate.

To what extent is accommodation provided by labour hire companies to workers, and what is its nature and cost?

Members believe that accommodation for labour hire workers is usually provided by the host employer; or at least the costs of accommodation are covered by the host.

We point out to the inquiry that WorkSafe Victoria has long had a Compliance Code that includes specific requirements on employer-provided accommodation. We believe that these requirements should be applied to any accommodation provided by labour hire providers, who we consider employers for the purposes of OHS, as well as the host employers.

The [Compliance Code for Workplace Amenities and work environment](#) says:

Employees working in regional and remote areas are often required to make use of employer-provided accommodation. Examples of these arrangements are where accommodation is provided for remote or seasonal work such as mining, hospitality, shearing or fruit picking.

The accommodation needs to be separated from any hazards at the workplace likely to present a risk to the health or safety of an employee using the accommodation. The facilities also need to meet the following standards:

- *the accommodation is lockable, with safe access and egress*
 - *fire safety arrangements are in place*
 - *electrical safety standards are implemented*
 - *drinking water is available*
 - *there are appropriate toilets, as well as washing, bathing and laundry facilities*
 - *procedures are in place to ensure cleanliness*
 - *suitable sleeping accommodation is provided, ensuring noise is reduced, so far as is reasonably practicable*
 - *crockery, utensils and dining facilities are available*
 - *rubbish is collected*
 - *heating, cooling and ventilation meet the standard of workplaces*
 - *adequate lighting is available*
 - *there are storage cupboards and other appropriate furniture*
 - *a refrigerator or cool room is provided*
 - *the accommodation meets all relevant structural and stability requirements*
 - *the fittings, appliances and any other equipment supplied are maintained in good repair.*
- (page 21)*

We believe that this Compliance Code could, and should, be used to establish minimum standards for employer-provided accommodation.

More importantly, WorkSafe Victoria should be given sufficient resources to undertake an annual inspectorial blitz of such accommodations.

Is there evidence of labour hire being used to evade workplace laws and other legal obligations?

We believe that such evidence already exists and refer the Inquiry to these documents in particular:

- The ACTU Submission to Labour Hire Task Force - New South Wales Department of Industrial Relations, 2000, (<http://www.actu.org.au/media/299461/nswsub.doc>)

- Dr Elsa Underhill's 2011 Submission to ABCC inquiry into Sham Arrangements and the use of Labour Hire in the Building and Construction Industry (<http://fwbc.gov.au/sites/default/files/Dr.%20Elsa%20Underhill%2C%20Deakin%20University.pdf>), and
- The Australian National University's 2005 document "The OHS Regulatory Challenges Posed by Agency Workers: Evidence from Australia" (https://www.researchgate.net/publication/29463380_The_OHS_Regulatory_Challenges_Posed_by_Agency_Workers_Evidence_from_Australia)

Additional documentation is available should it be required.

SIA members also believe that training and supervision are sub-standard for labour hire/group hire contractors. There is often no safety representation to management or systems in place to assist in hazard identification or reporting.

We are also concerned that some in the labour hire sector are not providing any, or adequate, workers compensation services.

[Do other actors in supply chains have responsibilities towards labour hire workers, whom they do not directly engage?](#)

There is a history of clients or principal contractors "contracting out" their OHS obligations as part of the outsourcing process. Although this cannot be legally done, we believe that such a perception continues to operate, particularly in the labour hire sector in Victoria. In fact, it is the avoidance of OHS obligations and costs that is part of the attraction of some labour hire providers.

There is a large amount of legal opinion stating that labour hire arrangements do not allow for the avoidance of occupational health and safety obligations.

[What experience or evidence can you provide of insecure work in Victoria?](#)

Members have provided names of several companies in the transport and logistics sector. These can be shared with the Inquiry, if needed.

[What form of working arrangements give rise to this?](#)

Members report the application of piece rates such as that involved with unloading shipping containers.

[What are the effects of insecure work on Victorian workers, including their family life, community involvement, housing and financial arrangements?](#)

Members report that the worker's experience of labour hire is unsettling, disruptive and stressful and that workers will "continue to put up with poor conditions due to [their] financial commitment."

[Do workers experiencing insecure work desire more ongoing working arrangements, and if so, of what kind?](#)

We believe that insecure workers desire:

- Superannuation,
- Formal leave entitlements,
- Regular working hours,
- Better rates of pay,
- More opportunities to work,

- More consistent employment,
- Better quality training, and
- Appropriate levels of supervision.

What regulatory options are available to address the issues raised by the Terms of Reference, within the limits of Victoria's legislative powers?

We believe that National, or nationally-consistent OHS laws remain important but specifically within Victoria's jurisdictions, members believe that greater attention should be given to:

- The application and enforcement of national employment standards, and
- Localised Chain of Responsibility legislation.

What models could operate for a national approach to regulation of the labour hire industry?

SIA members have suggested:

- A unified and consistent OHS and industrial relations structure for Australia
- A specific national code of practice for the labour hire sector
- A pro rata system of Union Membership to make all Labour Hire contracts include compulsory membership for the period of the contract
- An incident notification system to the regulator by the labour hire company
- Requiring group labour hire contracts to ensure that representatives of those groups be allowed to participate in OHS consultative processes
- Enforcing guidelines already developed by the industry themselves and investigating those who do not meet minimum standards
- Seriously consider closing down those labour hire firms that do not meet minimum safety standards (and ensure that such firms do not become "phoenix" companies).

What would be the impact of a statutory licensing scheme for labour hire operators in Victoria, including requirements for licensees to comply with minimum standards for the fair treatment of workers?

Such a scheme operates successfully in other industry sectors such as demolition and asbestos removal. However, the success of any such scheme would rely on strict policing, which in turn requires adequate resourcing, and severe penalties. Regardless of the good efforts of some within the labour hire sector, self-regulation has failed to ensure worker safety in this sector.

The Inquiry may also wish to investigate the current [Rail Industry Worker](#) scheme where individual workers must undergo mandatory safety requirements before being allowed to work in the rail corridors. The RIW Card is issued to an individual on which all of the relevant competencies and prerequisites are encoded. The card, significantly, includes a photo of the card holder. The cards can be checked throughout Australia through the use of a card reading app available on smart phones.

Each RIW Card is linked to an employer or business. In the context of the labour hire sector the use of a similar card will allow for host employers to ensure that labour hire workers have met all the relevant safety prerequisites.

For large employers or labour hire suppliers, the registration process may seem cumbersome however, we believe that the safety benefits outweigh the costs which we consider comparatively minimal.

The RIW Card also requires identity verification through a system accessed through specific Australia Post outlets. We believe that identity verification is a core concern for those working in precarious employment and the established RIW system provides a model for this Inquiry to consider.

SIA members believe that an industry licensing scheme is warranted but suggest an individual “registration” card also has merit.

Case Study

One of the SIA’s members employed in the quarrying, construction, transport and asphalt industry interviewed their labour hire provider and has offered the following information, which we believe this Inquiry can consider as an OHS case study. It provides information on what is working well, what is not and the challenges they face.

Tender Stage

The employer offered a tender for labour hire focussing on the compatibility of the organisation and their understanding of risk. Rates were **not** requested at this stage.

The Tender questions were:

- a) Compatibility with client’s values
- b) Health and safety performance including lead and lag indicators
- c) Capability of health and safety organisation
- d) Appreciation of client’s enterprise risks
- e) Management system/s, preferably certified
- f) Experience with industry and roles
- g) Appropriate incentive structures for consultants

A critical part of the tender process, for the client, was a safety contact/observation on the worksite between the client and each short-listed supplier. This enabled the client to assess if potential labour hire organisations assessed risk the same way the client did.

The client decided to change from a temporary labour supplier to a supplier with relevant industry experience.

The selected labour hire organisation demonstrated good OHS practices, including asking each host employer or client to complete a safe work self-assessment of their management system. The labour hire organisation reviews this, and may decline to work for certain customers/employers if adequate systems are not in place.

Labour hire then conducts a site visit at the client’s premises where labour hire worker will be placed. This visit may identify relevant issues such as one instance where work for a small cabinet maker was declined as there were inadequate incident reporting procedures, facilities (toilet, lunchroom), machine guarding or traffic control.

The labour hire organisation is very mindful that the OHS regulator will request and scrutinise all documented work processes and risk assessments for any investigation and that labour hire are responsible for ensuring this is in place.

Placement of Labour Hire Workers on Site

The labour hire organisation conducts a site risk assessment before an individual placement at a location. These occur at least annually where there are repeated visits by labour hire management during the year.

The labour hire organisation allocates an employee/manager with an understanding of the key risks to which the workers will be exposed. This results in more suitable candidates being put forward which is a critical concern of the client.

The labour hire organisation inducts workers into their OHS and work system.

The labour hire organisation actively seeks candidates for their own RTO training facility, which includes both classrooms and a yard, to train experienced people who don't have tickets. Clients and employers value references provided by Trainers and Assessors.

The labour hire company ensures that industry tickets or licences are current and relevant.

The labour hire organisation regards the face-to-face site induction and the on-site induction as the most critical process for each labour hire worker.

The labour hire organisation considers the incident report and Take-5 booklet provided by the client as useful for reinforcing site requirements to workers.

An emergency contact card for workers is provided by the labour hire organisation to report incidents to the labour hire field contact.

The labour hire organisation sees general operational management as critical and this can often be judged by the visible segregation of pedestrians and mobile plant, safety signage and housekeeping.

The labour hire organisation appreciates clients who treat labour hire personnel as part of their own workforce. Critical practices include:

- A common site induction and induction into relevant risk assessments and safe work method statements
- Limiting the placement of labour hire workers into mobile plant
- Providing the same quality Personal Protective Equipment.

The labour hire workers are also happy as there is no "us/them" mentality on the site and labour hire does not feel like they are being given the "crappy work".

The client/employer immediately notifies the labour hire organisation of any incident involving the labour hire staff.

One of the clients is including labour hire workers in a day-long on-site induction at their cost.

Labour hire management is in regular contact with the employer at the workplace to manage progress.

The labour hire organisation has declined to work for customers when the labour hire's OHS manager raises a serious concern about the client's practices.

Labour hire workers have come to accept that they may be tested for drugs and alcohol under the client's testing regime. This is included in labour hire's contract of employment.

Labour hire reports hours worked and all incidents to the client/employer.

Injury Management

In the case of a labour hire worker being absent due to a work-related injury, the labour hire organisation offers a worker free-of-charge to the client until the original labour hire worker can return to full duties.

Case Study Challenges

Competency assessments of labour hire workers to operate in an employer's work environment are essential and not every employer will have a competency trainer or assessor. An example of the significance of competency assessment can be seen when considering a ticketed excavator operator who may not be familiar with using a hammer or pulverizer; or someone who is able to bulk load but not do the final trim.

Key Performance Indicators for labour hire are still based on the number of staff engaged.

Around half of the clients/employers are reluctant to find and provide restricted duties for labour hire workers in Return to Work programs, where the injury was sustained at their site. Alternative duties are also more difficult to find for these blue collar workers.

The transient nature of labour hire workforce makes pre-employment medicals uneconomical for the labour hire organisation but these are often done by some employers.

Issues for Consideration

Labour hire processes should not only be about providing jobs but about providing safe jobs.

Safety must be considered as an integral part of the initial labour hire supply negotiations and procurement.

There is copious evidence from existing and ongoing academic research, inquiry submissions and inquiry reports into the labour hire and precarious employment sectors that such short-term employment opportunities place workers at higher risks of injury and illness. However, such evidence is often overlooked in favour of industrial relations and wages issues.

The perception that it is possible to contract out one's OHS responsibilities continues to exist even though there is no legal basis. This (mis)perception needs to be continuously countered at the worker, client and supplier levels.

Labour hire operators need to understand that the supply of well-trained, suitably qualified and safety conscious workers will provide a competitive advantage by increasing the attractiveness of their services to clients (as demonstrated by our case study).

There are existing OHS licencing processes that could be expanded to the labour hire sector to establish safety benchmarks and minimum standards.

Our case study shows that if clients and employers integrate labour hire into their workforce, they obtain a safer, and therefore more productive and reliable, workforce, which in turn has cost benefits for all parties.

The case study also shows that such OHS administrative processes are already in existence should the client/employer apply them to labour hire.