

# VACC Submission concerning the Labour Hire Industry and Insecure Work

Dated 27 November 2015



## Introduction

The Victorian Automobile Chamber of Commerce (VACC) established in 1918 and federally registered in 1940, pursuant to the then *Conciliation and Arbitration Act 1934*, represents the interests of almost 5,500 mainly small businesses in the automotive industry.

The VACC is the peak body for the repair, service and retail sector of the automotive industry in Victoria and Tasmania. VACC members employ over 50,000 people and have an annual turnover of around \$50 billion.

Our members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture) and recycling.

The Victorian automotive industry is largely made up of small businesses. Small businesses with between one and 19 employees comprise approximately 54% of all automotive businesses. Medium to large business make up just 4% of the automotive industry, with the remainder operating as sole traders. About 14% of businesses have an annual turnover of less than \$50,000.

According to the Auto Skills Australia (ASA) Automotive Environmental Scan 2015, total employment in the Victorian automotive industry amounted to 100,687 for 2013-14. The planned departure of Ford, General Motors Holden and Toyota's manufacturing divisions will lead to further structural change in the industry, as importation of vehicles will rise to 100% rather than the current rate of 80%. ASA modelling shows that Victoria's automotive workforce will reduce to approximately 87,000 after the closure of manufacturing operations.

Some sectors of the industry have seen rationalisation and consolidation. As a consequence, the 2014 Automotive Environmental Scan Survey found that employment levels within the industry overall declined by 3,910 in Victoria alone over the 2012-13 financial year. Positively, the industry in Victoria has begun showing the early signs of a return to growth, with an overall increase of 1,454 jobs reported for the 2013-14 financial year in the 2015 Automotive Environmental Scan Survey. There remains significant softness in the Victorian automotive industry and VACC is concerned that anti-competitive change to the regulatory environment risks pushing the industry back into a cycle of job losses. Nonetheless, the industry has been a consistent contributor to the nation's GDP at around 2.5% as of 2013-14.

## Key messages

Labour hire serves important functions within the Victorian automotive industry, but it is not particularly prevalent. Labour hire firms are used primarily as a cost effective means for increasing labour flexibility across a segmented industry. The segmented nature of the automotive industry means that it relies on specialist providers providing independent contracting services across workplaces.

Victoria's automotive industry faces significant challenges relating to severe shortages of skilled tradespeople, particularly in rural areas. The cost on business for running apprentice schemes directly and the complexity of the legal frameworks makes Group Training Schemes, such as the one operated by VACC, are effective means for addressing the skills shortfall. However, Group Training Schemes (and labour hire firms in general) also face a number of operational and regulatory challenges due to extensive and often unnecessary red tape.

Care must be taken to properly distinguish between labour hire and independent contracting arrangements. There is very little evidence of labour hire being used to evade workplace laws and other legal obligations. VACC does not support sham contracting arrangements and regularly advises members against engaging tradespeople as contractors.

## The nature of the automotive industry

The automotive industry has seen two emerging trends relating to labour hire in Victoria: group apprenticeship schemes and subcontracting through labour hire firms. These trends have occurred largely due to skill shortages in the industry and rapidly changing technology that has resulted in segmentation of the industry. The automotive industry has contributed to skills development by training Group Scheme apprentices and trainees whilst also relying on labour hire for specialist services or in times of economic fluctuations and unexpected consumer demand.

The automotive industry relies heavily on trade based apprenticeship and traineeship qualifications as its underpinning skills development and recognition platform. New and constantly changing technologies, found in modern motor vehicles, continue to change the nature of skills development in the sector and the degree to which existing employees can work effectively on new vehicle technologies without ongoing skill and knowledge development. For instance, the traditional trade qualification of motor mechanics can lead to a career as a generalist or a specialist in modern vehicles. The emergence of traineeships addresses the segmentation of the industry, while also allowing for the articulation into a career path within the automotive industry.

This changing technology and skills in the automotive industry has led to the growth of specialist services, which often provide mobile services. For instance, windscreen repair is a specialist service that services the industry and the consumer direct. The automotive industry relies on specialist providers that may provide a service on the client's site without the need to transfer the vehicle between businesses. Consequently, segmentation of the industry through the development of specialist mobile services has seen the growth of independent contractor relationships. Changing skill needs in the industry and fluctuating

economic conditions has also lead to an increasing reliance on labour hire services. VACC members report a labour shortage, which in some instances has resulted in utilisation of labour hire firms.

Businesses that service commercial and vehicle fleets may rely on specialist providers or labour hire providers from time to time. The reliance on labour hire can be due to the need to meet an immediate consumer demand, due to the lack of qualified staff or to relieve staff while absent on leave.

Technological changes are resulting in increased competition between businesses and changes in jobs and skills. Consequently, the industry is also experiencing segmentation in terms of types of business, relevant skills and career paths. This form of segmentation, competition and the fact that the industry consists of predominantly small business contributes to the industry's sensitivity to economic fluctuations.

Many of the businesses within the industry commenced as sole operators that may provide services to the public and the trade. This form of trade-to-trade business of specialist services is caught up within the arguments of labour hire. Contractors that offer services to client companies should not be viewed as cheap labour options in the automotive industry. The automotive industry is typical of small business characteristics, i.e. the career aspiration of self-employment with the potential to grow into an employing entity.

## VACC's Group Training Scheme

The automotive industry currently suffers severe shortages of skilled tradespeople into its member businesses. Skilled labour shortages have affected the industry at varying levels since the early 1990s. VACC, through the support of members, has progressively initiated projects and programs to address emerging skill shortages since at least the early 1980's. VACC's Group Apprenticeship Scheme has been the most successful program to directly increase the level of quality skilled trades people in the automotive industry. In 2003, the VACC Group Apprenticeship Scheme applied for and was granted the official 'stamp of approval' consistent with the National Group Training Organisation Standards introduced by ANTA operative from 1 July 2003.

Small and medium size businesses are often unable to recruit and train apprentices directly due to the significant financial and regulatory burdens that must be overcome. Group Apprenticeship Schemes have grown to be a reliable (and, in some cases, a supplementary) source of skills development for the automotive industry, as opposed to an apprenticeship with a single employer for the duration of the contract of training.

Due to changing technologies and skills, the VACC Group Apprenticeship Scheme selects candidates for the apprenticeship and traineeship programs that are potential leaders and can cope with a changing industry. More than 90% of our apprentices complete their trade training and also undertake additional technical or post trade skills. Many of our graduates subsequently contribute to skills development by training new recruits into the industry, manage businesses, or continue to have successful careers in their chosen field, which may involve specialisation.

The types of technologies and training required to maintain Australia's commercial and domestic vehicle fleets are changing. The skills required by the industry are shifting to meet the needs of hybrid vehicle maintenance and diagnostic systems. The VACC Group Apprenticeship Scheme relies on the participation of members as host employers who are at the forefront of technological change. The scope to move apprentices and trainees amongst members enables exposure for the apprentice/trainee to the latest and varied technologies and sectors within the industry.

Training opportunities through Group Apprenticeship Schemes ensure apprentices and trainees are actively engaged and trained without suspension for the duration of the contract of training. Labour hire services are a resource to meet the economic needs of the automotive industry.

VACC apprentices are engaged full-time, subject to the Federal *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (VMRSR Award), and for the duration of the training agreement that lasts up to four years. An apprentice's final host employer invariably offers full time employment as a tradesperson once the apprentice completes his or her contract of training with VACC. VACC trainees may be full-time or engaged part-time through a New School Based Apprenticeship Scheme, which is for a maximum period of two years. VACC trainees are subject to the VMRSR Award. A School Based Apprenticeship involves the participation of a VCE student combining VCAL studies with part-time training in a traineeship through a TAFE with a component of work placement. VACC provides the work placement through the participation of members as host employers.

All VACC apprentices and trainees are fully inducted before they are placed with a host employer. During the induction, the apprentices and trainees are educated in industrial and employee relations matters (their rights and obligations), equal opportunity, health and safety and the policies of the group scheme. VACC provides supervision through field officers that maintain a pastoral service for the duration of the contract of training. VACC provides WorkCover coverage and manages rehabilitation services where required. Due to the induction program, the support through field officers, the regular reinforcement of VACC policies and procedures and the co-operation of host employers, the injury rate is exceptionally low.

VACC submits that OHS obligations are the joint responsibility of the employer and host employer in so far as they have an ability to control the apprentice's day to day working arrangements. Section 21 of the Victorian *Occupational Health and Safety Act 2004* places the onus of responsibility on both the employer and host employer. In some respects the obligations create some confusion in terms of the level of control (both for group schemes and labour hire). VACC overcomes to a degree this level of confusion by ensuring VACC apprentices and trainees are fully inducted on health and safety procedures and policies and it is reinforced that both VACC and the host employer must always adhere to the highest standards. Because of the complexity relating to health and safety obligations, VACC is of the view that Group Schemes in the automotive industry are essential to address skill shortages.

## Benefits of labour hire arrangements

The many legitimate uses of labour hire arrangements in the automotive industry demonstrate that sweeping generalisations about labour hire services as a 'precarious' form of employment offering little employment protection are unfounded. VACC cautions that assumptions that independent contractors that offer services to client companies should not be viewed as cheap labour options to client companies. This is not to say that there are no sham labour hire arrangements in Victoria, but broad generalisations are unwarranted and risk creating unexpected and potentially harmful consequences.

The labour hire industry consists of a range of agencies or companies that provide labour. There are placement agencies, labour hire firms and individual companies that offer services to client companies. The use of placement agencies and labour hire firms are not highly relied on in the automotive industry, however these firms have somewhat increased in prominence since the 1990's. In the automotive industry all three forms of services may be accessed from time to time, with a growing trend of reliance on specialist companies due to the segmentation of the industry. The use of labour hire firms is most beneficial to automotive businesses in terms of increasing labour flexibility in a cost effective manner.

The automotive industry, which is predominantly made up of small business, has become more specialised due to the advancement of technology. The economic performance of the industry is dependent on consumer demand. This demand can vary significantly at different times of the year and may be dependent on the economic performance of the local community. As a consequence, many businesses use labour hire firms to supplement their labour in peak demand times, to cover staff absences and to meet consumer needs despite the limited capacity of the business.

## Labour hire and independent contracting arrangements

VACC submits that contractors are entrepreneurs operating under contracts for service, not under employment law. Contractors in the automotive industry do not seek the protections of industrial law. However, the industry accepts that superannuation, WorkCover and OHS laws do provide deeming provisions that require protections for certain contractors. At the same time, Victorian OHS obligations place significant onus on the client company without sufficient onus on the contractor or self-employed servicing industry.

VACC does not support sham contracting arrangements and regularly advises members against engaging tradespeople as contractors (which often occurs at the initiative of the employee). VACC members are told categorically that they cannot contract out of award coverage and legal obligations. Members are advised of the exposure to potential claims of underpayment, as well as the possible lack of control over quality of work despite the ongoing legal liability to the consumer.

Various Court and Tribunal decisions confirm that the particular circumstances of a contracting engagement will distinguish genuine from sham arrangements. At the same time, the position of the Courts has evolved to adopt the shifting social conditions by

interpreting the control test to the right to exercise control or “who held the position of responsibility and wielded the power in the employment relationship.”<sup>1</sup>

Australia has a large small business community and small business start-ups are expected, and in some cases encouraged. Research on labour hire and contractors often characterise these forms of engagement as ‘non-standard forms of employment.’ Many statistics show an increase in casual employment and contractor engagements. It is not surprising that Australia has seen a growth in contractors, as Australia has remained one of the most entrepreneurial countries in the world. The Global Entrepreneurship Monitor found in 2014 that 13.1% of more than 2,000 adults surveyed were involved in starting or running a business, ranking us amongst the highest of all developed countries.<sup>2</sup>

In Victoria, small business start-ups are encouraged and due to the advancement of technology the automotive industry continues to see the creation and diversification of niche markets or greater specialisation. Concern over the growing reliance on contractors in these circumstances is not an indication of an alternative form of cheap labour. VACC recommends that the Inquiry into the Labour Hire Industry and Insecure Work should distinguish labour hire employment from genuine contractor arrangements and should not make any recommendations that may stifle entrepreneurship or small business development.

## Consistency across jurisdictions

WorkCover and OHS laws vary between States and Territories. This creates difficulties for those businesses that operate across borders and which rely on independent contractors. VACC is supportive of consistent legislative approaches to OHS and WorkCover across States and Territories.

The ANTA National Standards require GTOs to record their performance, systems and standards, financial plans, provide corporate governance procedures, ethical standards and demonstrate compliance with State and Federal legislation.

In Tasmania, a similar program was developed requiring GTOs to meet nationally consistent standards in order to register in the state. VACC is also a registered GTO in Tasmania. Whilst national standards are supported by VACC, requiring GTOs to duplicate national standards in each state can be time consuming and costly. VACC supports the national standards for GTOs.

The imposition of additional costs associated with potential registration programs or through the imposition of codes of practice will adversely affect the quality of the VACC Group Apprenticeship Scheme. Many VACC members commit to the Group Scheme for financial reasons or the complexity of training requirements. VACC members support the Group Scheme because of the quality of apprentice and the ease of the service. The Group Scheme also provides an opportunity for employers that otherwise cannot commit to

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<sup>1</sup> See *Hollis v Vabu Pty Ltd*, (2001), 207 CLR 21; *Abdalla, Abraham v Viewdaze Pty Ltd t/as Malta Travel*, (2003), AIRC, Print PR 927971; *Damevski v Giudice* (2003) FCAFC252; *Paul Paisley v Leigh Mardon & ICS Pty Ltd*, (2000), AIRC, Print T0808; *Rebecca Thomson v Brunel Energy Pty Ltd* (2001) WAIRC, Print 04102, (Beech C).

<sup>2</sup> Steffens P and Hechavarría D, *Global Entrepreneurship Monitor Australia 2014*.

training an apprentice over a four year period to engage in training. Furthermore, the Group Scheme assists with addressing the shortage of skills in the industry.

VACC considers that GTOs, whilst a form of labour hire, are different and should be treated separately. VACC is not supportive of different State and Territory legislative approaches to labour hire and independent contractors.

## The needs of the rural automotive industry

Pressures on small business operators in rural Victoria to attract new recruits into their business are compounded by uncertainty in the regional market in respect to long term demand and growth potentials. In the immediate term, employers must ascertain their capacity to maintain enough work to support the training of an apprentice over a four year period. Where employers are unable to commit to provide training for the full term of the apprenticeship, they are less likely to engage an apprentice in the first place. These circumstances have led to the expansion of the VACC Group Apprenticeship Scheme into rural Victoria due to member demand.

Rural members' experience has demonstrated that:

- Rural business is directly dependent on the local economic environment, particularly the farming community;
- There is a need to train youth in trades, however rural small businesses are often unable to guarantee employment for the full term of an apprenticeship;
- When labour migrates to metropolitan areas, it does not return to rural areas despite increased employment prospects for skilled tradespeople; and
- Access to a Group Scheme ensures a small business contribution to training of youth, development of skills and retention of skills in the local community, including the opportunity to experience the varied rural automotive industry sector.