



Victorian
Chamber of Commerce
and Industry



Review of Victorian laws governing owner drivers and forestry contractors

Victorian Chamber of Commerce and
Industry Submission

January 2017

Introduction

The Victorian Chamber of Commerce and Industry welcomes the opportunity to provide a submission to the Victorian Government's review of laws governing owner drivers and forestry contractors.

As Victoria's leading business organisation, each year the Victorian Chamber informs and services more than 15,000 members, customers and clients across the state, encompassing all industry sectors and spanning small, medium and large-sized businesses.

Around 5 per cent of Victorian Chamber members operate in the transport and distribution sector.

The Victorian Chamber also has extensive experience in helping members understand and comply with workplace relations obligations.

The Victorian Chamber is concerned that the review is considering whether protections under the *Owner Drivers and Forestry Contractors Act 2005* should be strengthened and coverage expanded to include other small businesses.

The Victorian Chamber considers that the objectives of Victorian laws governing owner drivers and forestry contractors can be achieved without a mandatory regulatory scheme.

The Victorian Chamber is opposed to the expansion of the scheme to other areas of small business as there is no evidence that any further regulation is warranted.

Any proposed expansion of the current scheme must be subject to a rigorous regulatory impact analysis which includes consideration of non-regulatory approaches and a full assessment of impacts on hiring businesses.

Victoria needs less regulation, not more

The Victorian Government is currently undertaking a number of activities which propose or impose increasing regulatory costs on business. Among these are:

- The review of the *Long Service Leave Act 1992* which is examining a number of proposed options that would increase the cost and complexity of long service leave.
- The proposed extension of portable long service leave arrangements to the community services, security and contract cleaning industries.
- The introduction of a licencing scheme for labour hire operators in the horticultural, meat and contract cleaning industries.
- The imposition of two new public holidays, plus an additional, rather than substitute public holiday where Christmas day falls on a weekend.

The Government should be looking at reducing the regulatory burden on Victorian businesses, not increasing it.

The changing nature of work

Flexible forms of employment have become an established part of the economy and independent contractors now comprise around 9 per cent of employed persons.¹

While permanent employment relationships make up more than 60 per cent of the workforce, businesses are requiring a higher level of labour market adaptability and flexibility that is being met by flexible forms of employment, including independent contracting. This flexibility is particularly necessary for Australian businesses who face increased overseas and online competition.

Flexible forms of employing labour assist firms to structure their business operations in the most efficient and productive manner which increases the efficiency of the labour market and the productivity of the economy.

¹ Productivity Commission 2015, Workplace Relations Framework, Final Report, p.107.

Independent contracting benefits workers as it offers greater autonomy and flexibility than ongoing work. Because they contract out their services on a job by job basis, independent contractors can usually choose what jobs to take, the hours they work, and the way in which they complete the job. They can also work for a number of clients simultaneously.² Thus, independent contracting is an important part of the labour market for business and workers and should not be further restricted.

Objectives can be achieved without regulation

The *Owner Drivers and Forestry Contractors Act 2005* has a number of key components:

- It requires that hiring businesses provide owner drivers with an information booklet to assist them to set their costs.
- It provides for a mandatory code of conduct that aims to promote fair and equitable business relationships between owner drivers and their hirers.
- It provides a framework for the resolution of disputes through the Victorian Small Business Commissioner.

While obligations under the Act are primarily facilitative in nature, they still impose costs on businesses that engage owner drivers, including:

- Costs associated with understanding their obligations.
- Administrative costs associated with establishing and maintain systems to provide an information booklet to owner drivers.
- Record keeping costs to demonstrate compliance with the requirements of the Act.

It is not clear why the current regulatory scheme is required for owner drivers when the vast majority of non-employing businesses in the wider economy operate effectively without similar regulation.

With around 23,000 non-employing businesses in the transport, postal and warehousing sector in Victoria, these businesses represent only 7 per cent of non-employing businesses in Victoria.³

The Victorian Chamber considers that the objectives of the scheme could be achieved at a much lower cost to business without a mandatory regulatory scheme.

Specifically, we consider the information contained in the information booklet could be made available to owner drivers without placing a specific obligation on hiring businesses to do so. The obligation to promote awareness of good business practices among owner drivers could sit with a government department like Business Victoria or Industrial Relations Victoria (IRV), rather than hiring businesses. Owner drivers have a strong commercial incentive to set appropriate prices for their services and to access information that helps them understand their operating costs.

There is also little reason for owner drivers to be provided with the information booklet at the beginning of every engagement of over 30 days. The information in the booklet is relevant to drivers starting out in the industry but much less so to drivers that have been operating for an extended time and have a good understanding of their business costs.

As the Government would be aware, low cost dispute resolution is available to all Victorian businesses through the Small Business Commission and it is unclear why specific arrangements for owner drivers are required.

It is also the Victorian Chamber's view that fair and equitable business relationships between hiring businesses and owner drivers can be promoted through an industry based code of practice rather than a mandatory code prescribed in regulation.

² Productivity Commission 2015, *Workplace Relations Framework*, Final Report, p.802.

³ ABS, 8165.0, *Counts of Australian Businesses, including Entries and Exits*, Jun 2011 to Jun 2015

Protections for independent contractors are also provided in other Commonwealth legislation including the *Fair Work Act 2009* which provides protections against sham contracting, and the *Independent Contractors Act 2006* which provides for a national unfair contracts scheme for independent contractors where they can ask a court to set aside a contract if it is found to be harsh or unfair.

Concluding Comments

The Victorian Chamber considers that the objectives of Victorian laws governing owner drivers and forestry contractors can be achieved without a mandatory regulatory scheme.

The Victorian Chamber is opposed to the expansion of the scheme to other areas of small business as there is no evidence that any further regulation is warranted.

Any proposed expansion of the current scheme must be subject to a rigorous regulatory impact analysis which includes consideration of non-regulatory approaches and a full assessment of impacts on hiring businesses.