

Your reference:
Our reference:

27 January 2017

Mr Andrew Harris
Labour Hire Regulation
Executive Director Industrial Relations
Office of Industrial Relations
GPO Box 69
BRISBANE QLD 4001

Dear Mr Harris

Re: Response to the Office of Industrial Relations Issues Paper: *Regulation of the Labour Hire Industry 2016* (December 2016)

The Residential Tenancies Authority (RTA) appreciates the opportunity to make a submission to respond to the Office of Industrial Relations issues paper.

The RTA is a Queensland Government statutory body that administers the *Residential Tenancies and Rooming Accommodation Act 2008* (the RTRA Act) and is responsible to the Minister for Housing and Public Works. The RTRA Act covers residential tenancies in Queensland where the premises are the principal place of residence.

The RTA provides information, bond management, dispute resolution, investigation, and policy and education services for the more than one third of Queenslanders living in more than 530,000 rental properties in Queensland.

The RTA's submission is attached, and addresses the relationship and issues between the RTRA Act and the Labour Hire Industry in the rental housing sector.

If you require further information or assistance regarding this matter, please do not hesitate to contact Ms Janet Arber, Manager Policy on 07 3046 5515 or by email on janet.arber@rta.qld.gov.au.

Yours sincerely


Darren Barlow
Chief Executive Officer

Enc. (1)



RTA response to the Office of Industrial Relations Issues Paper – Regulation of the Labour Hire Industry 2016 (December 2016)

Regulating Queensland's residential tenancy market

The Residential Tenancies Authority (RTA) is Queensland's independent statutory body that regulates residential tenancy agreements through administration of the *Residential Tenancies and Rooming Accommodation Act 2008* (the RTRA Act).

To regulate the rental market the RTA delivers quality services relating to impartial tenancy information, bond management, dispute resolution, investigation, and policy and education. The RTA also provides policy advice to the Minister for Housing and Public Works, provides and analyses rental sector data, and conducts research.

The RTA regulates the residential tenancy market by working with all relevant sector groups including tenants and residents, property owners and property managers, community and industry stakeholder groups and the Queensland Government.

Australia's residential tenancy legislation

The RTRA Act covers short term moveable dwelling tenancies of up to 42 days and long-term tenancies, but does not apply to accommodation relating to budget accommodation agreements, holiday lettings or backpackers' hostels.¹ Budget hotel and motel accommodation and backpacker hotels are regulated under the *Traveller Accommodation Providers (Liability) Act 2001*. No Australian State or Territory jurisdiction regulates workers' accommodation through residential tenancy laws.

Regulating workers' accommodation

In Queensland, responsibility for regulating and enforcing compliance with standards regarding accommodation provided by an employer to their employees lies primarily with the Office of Industrial Relations, with their administration of section 19 'Duty of care' in the *Work Health and Safety Act 2011* coupled with enforcement of section 4.3 'Accommodation' in the *Managing the work environment and facilities Code of Practice 2011* (the Code) to ensure workers are not exposed to health and safety risks. The Code specifies accommodation facilities provided to regional and remote area should meet relevant structural and stability requirements, electrical and fire safety standards and have adequate lighting, heating, cooling and ventilation.

The *Pastoral Workers' Accommodation Act 1980* (PWA Act) and the *Workers' Accommodation Act 1952* (WA Act) mandate specific requirements for employer provided accommodation in certain industries. The PWA Act regulates the provision of accommodation of workers employed in pastoral work including the management of horses, cattle or sheep on a premises other than on dairy farms, shearing and crutching of sheep, wool production and declared work under regulation that is pastoral work. The WA Act regulates employer provided accommodation for workers who are employed in a meatworks or sawmill or sugar farm or any sugar works.

Queensland's local governments have key statutory responsibilities, including those relating to the *Building Act 1975*, *Plumbing and Drainage Act 2002* and planning laws and also food, hygiene and public health under the *Public Health Act 2005*.

¹ Section 44(1)(g) of the RTRA Act excludes accommodation provided by holiday makers or travellers.

Some longer term accommodation, including rooming accommodation for workers, may be captured by the RTRA Act, but would depend on the circumstances. For example, the RTRA Act allows a tenancy to be ended on the grounds of ending of employment (where the lessor is the tenant's employer), and has provisions around maximum bonds for employer subsidised housing.²

Responses to issues raised in the OIR Issues Paper (December 2016)

The OIR issues paper referred to the Queensland Parliament's Finance and Administration Committee's (FAC) *Inquiry into the practices of the labour hire industry in Queensland* (30 June 2016) and the Government tabled response to the FAC's Report on 30 September 2016. The FAC Report and the Government response highlighted evidence of exploitation and mistreatment of labour hire workers including workers in overcrowded and sub-standard accommodation.

FAC Report and the Queensland Government Response

The Queensland Government response accepted the one report recommendation to progress the matter of the issuance of ABNs to employees as a way for labour hire companies to avoid their employer obligations through future COAG meetings. However, the Government noted the FAC Report contained disturbing evidence of exploitation and mistreatment of labour hire workers that is unlikely to be properly addressed by adopting the Report's sole recommendation. Evidence referred to:

- requiring workers to reside in, often overcrowded and substandard, accommodation at a price much higher than would be achieved on the rental market (e.g. the worker is required to pay \$150 per week for a shared room in a house with numerous other workers, where rental income could be as much as \$600 per week for a rental property that would normally achieve around \$300 per week on the rental market.
- paying lower than a minimum wage, not paying workers, holding payment for spurious reasons e.g. alleged damage to the accommodation (FAC Report, June 2016, page 25).

In the FAC Report the Government members of the Committee considered that a licensing scheme should be established to regulate labour hire employers. The licensing regime must require compliance with fundamental issues that include:

- standards of transport and accommodation where these are part of the labour hire arrangements (FAC Report, June 2016, page 39).

The Committee also heard testimony by Mr Journeaux, Assistant Branch Secretary of the Queensland Meat Industry Employees Union:

We have also uncovered workers paying membership fees to labour hire companies, labour hire workers being housed in atrocious conditions that are overcrowded and unsuitable and also paying exorbitant rents for that accommodation (FAC Report, June 2016, page 50).

² Sections 146, 288 and 374 of the RTRA Act state conditions for employer provided accommodation.

The conditions of housing for workers had been identified by the Honourable A. Jones, Secretary for Labour and Industry, when the Workers' Accommodation Bill was initiated in Committee on 11 March 1952. Mr Jones then had identified workers' accommodation as an industrial matter and stated reasons for the Bill that included:

I would point out – and Hon. members realise this – that the Act only lays down a minimum standard of accommodation ... I believe that one of the greatest factors in keeping people from taking up work today in our rural industries is the lack of amenities that could easily be provided by employers ... There is no reason why, for instance, inspectors of the Department of Labour and Industry last year [1951] should have had to issue to employers 583 orders to provide proper accommodation for their employees. The orders covered such matters as sleeping-room, alterations, meat houses, bathrooms, washhouses, drinking-water facilities and lavatory accommodation ... The duty of providing accommodation rests on the owner of the premises as well as on the person entitled to immediate possession. The Bill contains more detailed power relating to the provision of temporary accommodation and makes it clear that an employer will be required to provide the prescribed accommodation even though an order has not been served upon him by an inspector (Legislative Assembly Hansard, 11 March 1952, pages 1667-1668).

The then Secretary for Labour and Industry established that the statutory obligation in the *Workers' Accommodation Act 1952* for workers rests on the owner of the premises as well as on the person entitled to immediate possession. An employer providing worker accommodation, then the employer supplied accommodation must meet all standards required under law, including all health and safety requirements.

The Government's further consideration of measures to improve the protection of vulnerable workers and ensure improved and effective regulation of the labour hire industry includes of a dedicated compliance unit to enforce statutory obligations.

This submission will respond to specific questions raised in the OIR Issues Paper.

Licensing and regulation in Queensland

1. What do you think are the important features of a system to effectively regulate the labour hire industry in Queensland?

Response: An effective regulatory system for the labour hire industry in Queensland would require the provision of information to host employers, labour hire providers and workers on their rights and responsibilities under relevant statutory obligations. Essential to compliance is the ease by which a party may be informed of their rights and responsibilities and the means by which a party may enforce their own rights. A regulatory body responsible for administration of laws would need to be easily identified and contactable using telephone and various means of communication.

If concerns are raised on non-compliance with statutory obligations then documented avenues for equitable dispute resolution are required to help resolve matters, initially

at the local level, depending on the severity of an alleged breach of statutory duties. If matters are severe, then workplace Inspectors or Investigators should be authorised to intervene to enter, inspect, and examine any premises to establish breaches and seek rectification by the responsible party. Review or appeal mechanism are required to resolve disputes between parties which may ultimately be decided by an appeal body like the Queensland Industrial Relations Commission.

'Fit and proper person' test

2. What criteria do you consider appropriate to include in a 'fit and proper person' best or otherwise to obtain a licence as a labour hire provider?

Response: A suitable criteria to be used for vetting an applicant as a 'fit and proper person' to hold a licence as a labour hire provider could help establish if the person:

- had been a declared bankrupt
- had no major criminal convictions with the last 5 years
- had no substantial convictions under the *Work Health and Safety Act 2011* or any legislation applicable to the regulation of workers' accommodation
- could demonstrate their knowledge and understanding of the obligations of a licensee, specifically relating to their obligations as a labour hire provider
- do not have a history of behaviour that would make the person unsuitable to hold a licence (determined by a police report i.e. a mandatory national and also international criminal history check and suitable referee checks; and
- can also demonstrate a responsible attitude to managing and carrying out all their proper financial, employment and work health and safety obligations.

The *Residential Services (Accreditation) Act 2002* (Accreditation Act) regulates residential services in Queensland that includes accommodation needs for residents who are often vulnerable. The Accreditation Act might provide some guidance on developing criteria, and criteria to decide the suitability of people to conduct residential services includes: age, qualifications, financial status (i.e. bankruptcy) and criminal history assessments.

Provision of annual reports on compliance with industry standards

6. What types of information do you think would be appropriate to be reported regularly by labour hire providers to demonstrate their compliance with their obligations?

Response: Reporting requirements need to ensure a labour hire provider demonstrates compliance with obligations with their licence requirements. Also, reporting needs to provide sufficient information to the regulator to enable assessment of compliance with agreed statutory and industry standards while minimising the administrative burden and red tape for industry participants report:

- notifiable incidents (complaints, serious injuries/illnesses or workplace death)
- major consultation with workers on workplace conditions and accommodation
- compliance with notices issued under relevant Acts or Regulations
- training and instruction of all workers about work health and safety
- ensuring workers receive information on their work rights and responsibilities
- maintaining of a register with names/addresses of workers' accommodation.

Compliance Unit

10. Do you think it would assist the workers, host employers and labour hire operators if there was access to information and referral services by way of a 'one-stop-shop'?

Response: A Call Centre or a 'one-stop-shop' via the internet is an effective way to facilitate information to parties and to redirect queries to referral pathways. Parties are able to be informed on their rights and responsibilities and ways to address their concerns. A Call Centre provides timely information to facilitate issue resolution and provides a means to log matters to address any continuous improvement of services.

The RTA has provided the feedback in this submission on the basis of its role in regulating the residential tenancy sector, and acknowledges that accommodation arising from employment in the labour hire industry is a discrete arrangement which does not usually give rise to a residential tenancy.

Further contact:

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Date: 27 January 2017