



**RECRUITMENT & CONSULTING  
SERVICES ASSOCIATION  
AUSTRALIA & NEW ZEALAND**

Queensland Government

Regulation of the Labour Hire Industry 2016 – Issues Paper

**Submission of**

**Recruitment & Consulting Services Association (RCSA)**

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## Introduction to RCSA

The Recruitment & Consulting Services Association Australia & New Zealand (RCSA) is the peak body for the recruitment and employment industry in Australia and New Zealand which includes recruitment services and on-hire worker services. It represents over 3,000 corporate and individual Members with over 60% of Australia's on-hire workers being engaged by RCSA corporate members.

RCSA members assign (on-hire) and place employees and independent contractors within business, government and not-for-profit organisations operating within every industry and State in Australia. They also provide workforce consulting and HR services to improve the productive capacity of Australian business in an ever-changing global economy.

The RCSA membership is focused on promoting positive outcomes for business, workers and governments across Australia. The RCSA sets the benchmark for recruitment and on-hire industry standards through the establishment of codes, representation of the industry, education of members and stakeholder, research and business support.

RCSA members, as professional employers and labour market facilitators, operate in accordance with Australian workplace law and relevant standards. Their knowledge, understanding, interpretation and support of the law is evident in everyday dealings with clients, employees and independent contractors.

All RCSA member organisations and Accredited Professionals agree to abide by the ACCC authorised *RCSA Code for Professional Conduct*.

## RCSA Code for Professional Conduct

RCSA has a Code for Professional Conduct (the Code) which is authorised by the ACCC. In conjunction with the RCSA Constitution and By-Laws, the Code sets the standards for relationships between Members, best practice with clients and candidates and general good order with respect to business management, including compliance. Acceptance of, and adherence to, the Code is a pre-requisite of Membership. The Code is supported by a comprehensive resource and education program and the process is overseen by the Professional Practice Council appointed by the RCSA Board. The Ethics Registrar manages the complaint process and procedures with the support of a volunteer Ethics panel mentored by RCSA's Professional Practice Adviser, Barrister Andrew Wood.

RCSA's objective is to promote the utilisation of the Code and our proposed *Employment Services Industry Code* to achieve self-regulation of the on-hire worker services sector, wherever possible and effective, rather than see the introduction of additional legislative regulation. The *Employment Services Industry Code* (ESIC) would, if approved, become a prescribed industry code under Australian competition law.

RCSA provided a copy of the current *RCSA Code for Professional Conduct* to the FAC Inquiry. The Code is also available from the RCSA website at [RCSA Code for Professional Conduct](#).

## RCSA Submission Keypoints

The Recruitment & Consulting Services Association (RCSA) is pleased to make this submission in response to the Issues Paper released by the Queensland Government seeking the views of stakeholders about a system of licensing for labour hire contractors in Queensland.

Key points of this submission include:

1. It is neither fair nor practical to impose responsibilities on an Employment Services Provider for matters that are beyond the scope of its effective control or influence. Single point licensing doesn't work in Multi-Party environments. To therefore seek to license or restrictively regulate a Labour Hire company overlooks the role and liability of the multiple parties involved in the supply of labour.
2. A national regulatory framework, is the only reliable means of stamping out the poor and dodgy practices of labour contractors and, will provide consistency and transparency for employers and work seekers alike. We believe a single point of focus state-based scheme, as discussed in the Issues Paper, will increase costs for government and business in Queensland at a time when economic conditions are uncertain.
3. The imposition of a 'catch-all' single focus state-based licensing scheme in Queensland will not stamp out illegal and illegitimate labour contractors and dodgy operators. Instead it will increase the cost for business through imposing the burden of additional compliance on the professional and legitimate employment, contracting and recruitment services industry in Queensland.
4. The evidence from regulatory agencies is that genuine on-hire worker service firms demonstrate high levels of compliance and, in fact, are commonly better performers in workplace relations and WHS compliance than direct hire employers. Therefore, there is no justification for the introduction of restrictive licensing which will only increase costs and make non-compliant labour contractors comparatively cheaper and therefore more attractive to unsophisticated end-users.
5. The duplication of national regulatory bodies, such as the Fair Work Ombudsman, Australian Tax Office and Department of Immigration and Border Protection, by a state-based Labour-Hire regulatory authority in Queensland, will increase costs for government and business and, create an inefficient regulatory environment that makes it easy for dodgy and illegal labour contractors to simply cross borders and continue to ply their trade from another state.
6. RCSA is finalising a national certification program for Employment Services Providers, including Labour-Hire, which has the support of the horticulture and agriculture sectors as well as unions and Government. It addresses six key areas the Finance and Administration Committee and the Government of Queensland have identified in the Issues Paper:
  - a. Fit and Proper Persons Test
  - b. Work status and remuneration
  - c. Financial assurance
  - d. Safe Work
  - e. Migration

f. Decent accommodation (as applicable)

7. The Employment Services Provider Certification scheme will provide a widely available register of Certified Employment Services Providers allowing buyers of services in Queensland to make informed choices. Certification is available to all employment service providers and is paid for by the employment service providers that seek certification.
8. RCSA's proposed Employment Services Industry Code (ESIC) lays out a single national framework for regulation of the sector, without the need for licensing or more restrictive forms of regulation. It articulates professional standards of Equal Opportunity & Diversity, Service; Integrity & Good Faith, Co-operation, and Assurance in dealings for the supply and acquisition of employment services and would provide access to consumer and unfair competition remedies in circumstances where labour market exploitation occurred in contravention of the Code.

## Dispelling the Myths - On-hire Worker Services

RCSA believes it is of great importance the Queensland Government understands the nature and role of the on-hire and labour-hire sector in an Australian context and, to address a number of the myths and misinformation raised in the Issues Paper.

The employment services industry, which covers a wide range of labour supply and employment placement services, was estimated, in 2015-2016, to generate revenues in Australia of \$29.5 Billion<sup>i</sup>. It is responsible for the employment of 600,000 on-hire workers and a further 100,000 skilled consultant staff in 10,000 businesses, who support employment services and labour supply operations in Australia.<sup>ii</sup>

### **1. On-hire employment, as a percentage of all employees, is stable and non-threatening**

Despite the claims of some stakeholders, 'labour hire' is not growing at an alarming rate. In fact, according to the recently released Productivity Commission report on the workplace relations framework (page 1092) on-hire employees are of "small magnitude" at 1.8% of the employed workforce.

*The estimates of the proportion of employed persons paid through labour hire arrangements are of a similar (small) magnitude, but vary slightly between the ABS FOE and HILDA surveys. The ABS reports that in 2011, 1.3 per cent of employed persons were paid through a labour hire arrangement and the estimate from HILDA for 2013-14 is 2.4 per cent. The latter is broadly in line with a 2002 HILDA estimate of 2.9 per cent presented in a Productivity Commission staff working paper (Laplagne, Glover and Fry 2005).*

*The labour hire category in both the FOE and HILDA surveys appears to include employees, independent contractors and business operators who are hired by labour hire firms. However, it is only employees who are engaged through a labour hire arrangement who are of interest. Restricting the HILDA estimates to this group (and to avoid double counting), it is estimated that around 1.8 per cent of employed persons are employees on labour hire arrangements (HILDA adjusted, figure D.6).*

### **2. Casual employees are NOT paid less than permanent employees**

HILDA found that men and women have higher wages (wages per hour) in casual employment than full time employment (5% higher). However, with men permanent employment wages per hour are slightly higher than casual but not markedly. As Professor Sue Richardson, of the National Institute of Labour Studies at Flinders University observed, this is opposite to the image that part time and casual employment is lower paid work and is not a finding you would get in other countries.

The ABS, Average Weekly Earnings, June 2014, finds that the average earnings of workers in Queensland who found their job through a labour hire firm or employment agency (\$1,295 per week) were higher than the average earnings for Queenslanders generally (\$1,102). Overall males who found their job through a labour hire firm or employment agency earned \$1,494 on average compared to an average of \$1,328 for all Queensland males at the time<sup>1</sup>.

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<sup>1</sup> ABS Cat.No

6302.0 Average Weekly Earnings, June 2014.

In addition, 67% of workers had paid leave entitlements while 72% had stable earnings. Similarly, 75% usually worked the same number of hours each week while over 98% worked on a fixed term contract.

### **3. On-hire employment creates jobs and doesn't necessarily replace direct hire employment opportunities**

RMIT University research found that 51% of organisations using on-hire employees would not necessarily employ an equivalent number of employees directly if they were unable to use on-hire employees. In fact, 19% of organisations said they would rarely do so. Furthermore, 19% of RCSA Members' on-hire employees eventually become permanent employees of the host organisation they are assigned to work for.

In Queensland, *ABS; Characteristics of Employment report from August 2014*, found a majority (67%) of workers who found their job through a labour hire firm or employment agency (103,900) had been in their job for 12 months or more, and 84% expected to be in the same job in 12 months-time<sup>2</sup>.

### **4. Flexible forms of work are necessary components of dynamic and inclusive labour markets**

Flexible forms of employment such as fixed-term contract work, part-time work and temporary agency work are components of inclusive and dynamic labour markets, which are necessary and useful to complement open-ended full-time employment.

They are important not only as elements of flexibility for employers, but also because they contribute to the improvement of the quality of working life and to the employability of people by facilitating a better work-life balance, by reinforcing the ability of workers to find new employment when existing jobs disappear and by increasing their opportunities to acquire professional experience.

In particular, flexible forms of employment can help the most vulnerable groups, namely young people at the start of their careers, the long-term unemployed and low-skilled workers, to regain a foothold in the labour market by giving them the chance to acquire work experience and new skills. Flexible forms of employment are also key enablers for businesses to retain and create jobs whilst staying adaptable and competitive.

It is therefore misleading and counterproductive if trade unions and certain political groups misrepresent flexible forms of work as 'precarious'. According to the International Trade Union Confederation (ITUC), precarious work is characterised by atypical employment contracts, with limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease<sup>3</sup>.

RCSA and employers internationally are concerned by the lack of clarity and usefulness of the definition of 'precarious work' and particularly by suggestions that flexible forms of employment are systematically precarious.

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<sup>2</sup> ABS Cat. No 6333.0, *Characteristics of Employment, Australia, August 2014: Customised Reports, Unpublished*

<sup>3</sup> ITUC - World Day for Decent Work 2011 (<http://www.ituc-csi.org/unions-worldwide-mobilise-for>)

Precariousness, as defined by ITUC, prevails in the informal economy. RCSA is strongly committed to fundamental principles and rights at work. They therefore believe that illegal employment and jobs which clearly do not respect these principles must be unreservedly discouraged.

In responding to broader claims of insecure employment, RCSA relies upon the Position Paper of the International Organisation of Employers, attached to this Submission as Attachment 3.

#### **5. On-hire workers are primarily employees, not contractors**

There is a common misconception that on-hire workers are primarily engaged as independent contractors and therefore, not receiving employment protections. RMIT University research found that the majority of on-hire workers are employees and that on-hire workers engaged as independent contractors are primarily professionals. RCSA does not accept the engagement of unskilled and semi-skilled workers as independent contractors. RCSA is of the opinion that such workers are typically incapable of fulfilling the indicia required to sustain a genuine business to business relationship when working as an individual.

#### **6. An increasing number of on-hire employees are employed on a permanent basis**

RMIT University research found that 16% of on-hire employees are now employed on a permanent basis. On-hire permanent employment is more prevalent amongst larger firms that are able to pool client assignments and reduce the chance that an on-hire employee will be left without a suitable assignment. There are also examples of where a client's wish for an on-hire employee to be assigned on an ongoing basis to them and are willing to agree to a minimum period of notice of termination to ensure an employer of an on-hire permanent employee can provide the requisite period of notice.

#### **7. Business uses on-hire to help with recruitment and urgent labour requirements, not to reduce cost or pay**

RMIT University research found that the main reason that organisations use on-hire employee services is to resource extra staff (30%), cover in-house employee absences (17%), reduce the administrative burden of employment (17%) and overcome skills shortage issues (9%). Only 2% of organisations surveyed indicated that the primary reason for using on-hire employees was related to pay.

The National Institute of Labour Studies within Flinders University found, in its November 2014 analysis of the Use of Agency Staff in Residential Aged Care, that the main reason given by facilities for using agency nurses and agency personal care attendants is that recruitment of employees within the facility is too slow, and they need specialist skills that have been hard to recruit<sup>4</sup>.

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<sup>4</sup> Wei, Z, and Knight, G, (2014) *Use of Agency Staff in Residential Aged Care*, National Institute of Labour Studies, Flinders University, page 14.

**8. Most on-hire workers are either skilled or professional and, therefore, less likely to be vulnerable**

RMIT University research into on-hire worker services conducted in 2003<sup>5</sup> found that 61% of RCSA on-hire employees are skilled or professional workers with the remaining 39% being semi-skilled or unskilled. It is critical that the Queensland government does not introduce regulation which inadvertently stifles this significant segment of the industry in order to respond to exploitative behaviour of labour contracting firms in a handful of industry sectors.

**9. Where on-hire employees are employed on a casual basis they have improved opportunities for ongoing work as they are supplied to alternative workplaces**

RMIT University research found that half of all on-hire casual employees employed by RCSA Members are immediately placed in another assignment following the completion of their initial assignment. That is, they enjoy 'back to back' assignments without having to search for new work like those engaged in direct hire casual employment.

**10. Individuals are choosing to work as on-hire or casual employees and the reasons for their choice are not what you may expect**

RMIT University research found that 67% of on-hire employees chose to work as an on-hire employee and 34% prefer this form of work over permanent employment. The most important reasons for choosing on-hire employment were diversity of work, to screen potential employers, recognition of contribution and to receive payment for overtime worked.

In 2014 Flinders University conducted research into workers' experiences of nonstandard employment and how it related to health and wellbeing<sup>6</sup> and found that "our most striking findings were that the majority of the participants made a deliberate choice for casual employment and to explain this, almost most of these cited *improved* health and wellbeing as a motivation". The findings identified that over half of the participants described being 'deliberate casuals' and had chosen casual employment despite having the option of permanency in the same or very similar job.

Almost a third of all participants in the research explained that they had deliberately chosen casual work because it was protective of their health and wellbeing. Reduced responsibility, less 'workplace politics', less work-life conflict, and less job stress than in their prior (permanent) job were determining factors in their decision.

The recently released Productivity Commission report on the Workplace Relations Framework observed, on page 208, that "given not everybody wants to work under the same conditions, these alternative employment forms partly satisfy the wide variety of preferences across the workforce. Whether it be the autonomy of independent contracting, the flexibility and the higher wage rate of the casual worker or the reduction in job search costs for the labour hire worker, each of these employment forms has some appeal to a large number of workers".

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<sup>5</sup> Brennan, L. Valos, M. and Hindle, K. (2003) *On-hired Workers in Australia: Motivations and Outcomes RMIT Occasional Research Report. School of Applied Communication, RMIT University, Design and Social Context Portfolio Melbourne Australia*

<sup>6</sup> Keuskamp, D, Mackenzie CR, Ziersch AM, Baum FE. *Deliberately casual? Workers' agency, health, and nonstandard employment relations in Australia. Journal of Occupational and Environmental Medicine, 2013*

**11. On-hire drives down segmentation of labour markets by providing a stepping-stone function that enables individuals to transition from education to work, from unemployment to employment and from job to job**

Based on data from the HILDA Survey<sup>7</sup> for 2001 to 2010, on average, about 30% of on-hire workers will still be in that state one year later and 38% will have moved to permanent employment. After 10-years only 4% will still be an on-hire worker and 56% will be in permanent employment. Furthermore, the HILDA Survey has identified that casual male employees are far more likely to obtain permanent employment compared with being unemployed.

Therefore, if you have a choice between looking for work in casual employment and looking for work when unemployed, as a male, you are far better off being employed casually.

The 2015 Intergenerational Report clearly outlines that “continued efforts to encourage higher participation across the community would have widespread benefits for Australia’s economy and society” and RCSA members are at the forefront of workforce participation facilitation with members finding and matching individuals and work opportunities every day.

The work creation attributes of the industry are further explored in the Boston Consulting Group Report on ‘Adapting to Change’ which was provided as part of RCSA’s initial submission.

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<sup>7</sup> *The Household, Income and Labour Dynamics in Australia (HILDA) Survey*

## What is 'Labour Hire'?

In the interests of providing the Queensland Government with a comprehensive understanding of the 'Labour hire' industry it is important the Government has a clear and concise understanding of the terminology and definitions used to describe the industry.

Labour Hire is an imprecise and commonly misused term. Indeed, some of the examples of exploitation given on page 19 and 20 of the Issues Paper do not involve labour hire at all. Frequently, little attempt is made to differentiate between business models that are sustainable only on the basis of exploitation with all simplistically being dubbed "labour hire". RCSA has not used, nor encouraged, the use of the term for many years and utilises and promotes the term 'on-hire' which was incorporated in to Australia's Modern Awards in 2010.

**The confusion associated with the use of multiple terms to describe on-hire worker services has resulted in confusion as to the method of engagement and the provision of correct entitlements to workers.**

We are opposed to the use of the term 'labour hire' for the following reasons.

- The term is imprecise and non-descriptive.
- The term is, almost wholly, used to describe blue collar occupations within industries such as manufacturing, construction, logistics and mining. The term fails to account for the majority of on-hire occupations within industries such as health, business administration, telecommunications, information and communications technology (ICT), professional services, education, finance and hospitality;
  - Queenslanders who found their job through a labour hire firm or employment agency are spread broadly across professional occupations such as: Specialised managers (9,800), Business, human resource and marketing professionals (7,000), road and rail drivers (5,300) and numerical clerks (5,200) being the most common occupations<sup>8</sup>.
- The term has grown, in general use, to describe all forms of outsourced labour service including contracting services and does not account for the true elements of genuine on-hire worker services where a worker is assigned to perform work under the general guidance and instruction of a host organisation.
- The term does not account for the method of engagement adopted i.e. employee or independent contractor.

Workers on-hired to a client to work under the client's general guidance, instruction and supervision are also referred to as 'agency workers', 'temporary employees', 'contractors' and a range of other titles.

Outlined below is a selection of terms used within different industries and occupations to assist the inquiry to have a more informed discussion.

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<sup>8</sup> ABS Cat. No 6333.0, Characteristics of Employment, Australia, August 2014: Customised Reports, Unpublished

<b>Industry / Occupation</b>	<b>Common Terms for On-hire Workers</b>
Manufacturing and Logistics	Labour hire worker
Construction and Mining	Labour hire worker
Health	Agency worker
Media and Communications	Agency worker
ICT	Contractor
Professional e.g. engineers, scientists, managers	Contractor
Hospitality	Temp'
Office Support	Temp'
Agriculture and Horticulture	Labour hire worker
Cleaning services	Contractor
Security services	Contractor

RCSA promotes the use of the term on-hire employee for employees and on-hire contractor and individual independent contractors assigned to work for a host organisation. Collectively we describe both forms as on-hire workers. This terminology allows us to be more descriptive. See below for an example of the descriptive terminology we use in discussions with members, their workers and other stakeholders.

<b>Term</b>	<b>Description</b>
On-hire casual employee	The most common form of on-hire employment
On-hire permanent employee	An employee employed on a permanent basis and on-hired to a client or multiple clients performing an average of 38 ordinary hours per week
On-hire part-time employee	An employee employed on a permanent basis and on-hired to a client or multiple clients performing an average of less than 38 ordinary hours per week
On-hire maximum-term employee	An employee employed on a permanent basis for a specified term yet, with the capacity of the employer to end the employment earlier with notice in accordance with the relevant legal instrument.
On-hire contractor (individual)	An individual independent contractor engaged as an individual (sole trader) independent contractor. Under Australian taxation law the hirer (engaging firm) is required to withhold PAYG Withholding tax and submit it to the ATO.
On-hire contractor (incorporated)	An individual independent contractor engaged as an employee of a company which is typically controlled by the same individual as a sole or joint Director. There are examples where the individual will be an employee of a larger, multiple employee, company where the company nominates a key person for the completion of the work on assignment.
On-hire worker	A general term used to describe either an on-hire employee or contractor.

Host organisation	The client receiving the on-hire worker service which is also responsible for providing general guidance, instruction and supervision to the on-hire worker/s.
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RCSA submits that the absence of precise and consistent terminology in the employment services industry is contributing to confusion, especially when we examine exploitation of vulnerable workers by labour contractors within the horticulture and food processing industries.

RCSA has been instrumental in developing and promoting modern terminology and categories of service with a view to improving the capacity of all stakeholders to have an informed and constructive discussion on the special responsibility and contribution of the on-hire worker service provider within Australia.

**RCSA submits that a proper examination of the employment services sector must be more precise and requires an unambiguous understanding of the services provided and the providers, particularly in relation to on-hire worker services and contracting.**

The following definitions and categories of service were developed by RCSA to promote a better informed marketplace and a more precise description of on-hire employment services. They can also be found at [RCSA Definitions and Categories of Service](#)

# 1

## On-hire Employee Services

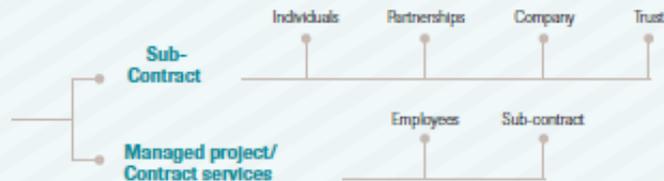
A commercial service where an organisation, in return for an hourly fee, assigns one or more of its employees to perform work for a third party (client) under their general management and instruction.



# 2

## Contracting Services

A commercial service where an organisation, in return for a fee, completes a defined scope of work for a third party (client). Such services may be performed utilising employees or sub-contractors employed or engaged by the service provider.



# 3

## Contractor Management Services

A commercial service where an organisation, in return for a fee, recruits independent contractors on behalf of a third party (client) and, following direct engagement of the independent contractors by the client, the organisation manages the ongoing supply of the independent contractors and their contract performance.



# 4

## Permanent Placement Services

A commercial service where an organisation, in return for a fee, recruits on behalf of a third party (client) candidates that match a desired profile for employment or engagement by the client.



# 5

## Workforce Consulting Services

A commercial service where an organisation, in return for a fee, identifies and/or responds to client workforce issues and implements strategies designed to assist clients to achieve business success.



## Understanding the Difference between On-Hire Services and Contracting Services

Despite its misuse 'labour hire' in its pure form, is a simple concept which is characterised by individual workers being employed or, in the case of individual independent contractors, engaged by an on-hire firm and then assigned, or on-hired, to a client controlled workplace to perform work on an hour-by-hour basis under that client's general management and instruction.

In return for the on-hire of a worker on an hourly basis the on-hire firm receives a fee from the client which is based upon the number of hours the worker works on assignment for the client or, in the case of on-hire permanent employees, the number of days or weeks worked. The fee structure is typically inclusive of the following components:

- a) an hourly or weekly wage rate;
- b) allowances, penalties and loadings from an industrial instrument (where applicable);
- c) superannuation;
- d) a workers compensation premium loading based upon the relevant insurance premium percentage established by the relevant insurer in that State or Territory;
- e) payroll tax;
- f) a general insurance loading (in some cases); and
- g) margin (to cover operating expenses and profit).

Each of these elements of a "labour-hire" is reflected in the provisions of sub-sect. 4(3) of Queensland's *Private Employment Agents Act 2005*, which seeks to exempt the State's "labour hire" operators from the requirements of that Act and its accompanying *Private Employment Agents (Code of Conduct) Regulation 2015*.

In an on-hire arrangement the client, or service recipient, is commonly described as the 'host' because the client takes responsibility for supervising and directing the on-hire employee much as they would their own directly hired employees. The use of the term 'host', rather than 'principal', as commonly used in typical contracting services, provides a key insight into the difference between an "on-hire" arrangement and typical forms of "contracting".

In an on-hire arrangement the client takes on significantly more responsibility for an on-hire worker given the worker is, in effect, on loan to the client and is not presented in a way where the on-hire agency is responsible for supervising, instructing and directing the performance of the labour and the contracted outcomes. In an on-hire arrangement a worker is on-hired without additional integrated services, property or special know-how. Additional services may be provided to a client however; those services do not fall within the scope of on-hire services, are not integrated with the on-hire services and are effectively ancillary in nature.

**The key indicia of a genuine on-hire arrangement are outlined below.**

- a) A Worker is employed or engaged by the On-hire worker service provider.
- b) The On-hire worker service provider pays the Worker and is responsible for paying work-related costs, fees and charges such as wages, penalties, allowances, public holiday payments, leave payments, workers compensation insurance, superannuation, payroll tax (where applicable) and portable leave entitlements (where applicable).
- c) The Worker is placed on an assignment with a 'host' (Client/Host), and performs personal labour services (the work) for the host employer on an hour-by-hour basis or, in select circumstances, for a specified term.
- d) The Worker performs the work under the general guidance and instruction of the client or a representative of the client.
- e) The On-hire worker service provider does not directly supervise, instruct nor direct the Worker on an hour-to-hour or day-to-day basis.
- f) In select circumstances, the On-hire worker service provider may, at the request of the Client/Host also assign a team leader on an on-hire basis and that team leader may lead the Worker in relation to defined scopes of work. In circumstances where a team leader is also assigned to a Client/Host that team leader will be directly supervised, instructed and directed by the Client/Host or a representative of the Client/Host.
- g) The On-hire worker service provider does not provide plant, equipment or other work related materials with the Worker, other than personal protective equipment or, in circumstances where the Worker is a tradesperson, worker-owned trade tools. The On-hire worker service provider may provide other services to the Client/Host however, those services are ancillary or complementary in nature rather than being an inherent component of an "on-hire" service.
- h) Rosters for the performance of work are typically prepared by the Client/Host and communicated to the Worker and On-hire worker service provider.
- i) The Client/Host will typically maintain the discretion as to whether additional 'labour' is required.
- j) The On-hire worker service provider does not provide systems of work, management systems, intellectual property, work planning, other non-labour services or property to the Client/Host as an inherent component of the service.
- k) The contract between the Client/Host and the On-hire worker service provider provides for the payment of services on the basis of an hourly fee attributable to the performance of work by each Worker assigned to work for the Client/Host on an hourly basis. This may, in select circumstances, extend to weekly fee payment arrangements.

- l) The contract between the Client/Host and the On-hire worker service provider would rarely include commercial terms whereby the On-hire worker service provider's fee is contingent upon the completion of a scope of work or delivery of a result.
- m) In recognition of the labour-only, and unsupervised, nature of the services, the contract between the Client/Host employer and the On-hire worker service provider typically indemnifies the On-hire worker service provider against liability for the inadequate performance of work by the Worker on assignment.

### **Contracting Services in Contrast**

The key element of Contracting Services, in contrast to on-hire employee services, is that the service provider receives a fee for completing 'a defined scope of work'. This fee is commonly a lump sum or fixed fee, rather than an hourly fee. Implied in this is the commercial risk associated with the completion of that scope of work. Unlike on-hire employee services, where the on-hire worker service provider typically receives a fee based on each hour that an on-hire employee performs work for the client/host on assignment, a Contracting Service Provider payment is conditional upon the completion of scopes of work.

## RCSA Submission

The employment services industry is an important industry that has supported the welfare of the Australian public and the economy over many decades. Changes taking place in the international marketplace, requiring flexible and adaptable labour supply arrangements and timely access to a wide range of skills, make it more important than ever that Australia has a reliable and reputable employment services industry.

Australian's are adapting to changing economic conditions and social pressures and accept that we have to work differently to how our parents, and earlier generations, worked. It is critical that the Queensland and Australian regulatory framework respects and accommodates those social and economic changes. Being locked in to an ideologically constrained framework based on the retention of traditional employment models is no longer a viable option if Australia is to remain progressive and internationally competitive.

**RCSA are committed to achieving the right balance between the protection of vulnerable workers and the promotion of a responsive and flexible regulatory framework to ensure businesses in Queensland can compete in the national and international market and under changeable economic conditions. However, any regulation must be proportional and targeted.**

The majority of business operators are professional, reliable and successful. Yet the open market for labour in Australia is being exploited by illegal and unscrupulous labour contractors that place personal gain and profit ahead of the wellbeing of workers and interests of other industry participants.

Australia has so far resisted the restrictive regulatory measures encountered in other jurisdictions – such as licensing, bonds and guarantees, quotas, maximum length of assignment, site-rate parity (with or without derogation by reason of payment between assignments), sectoral bans, prohibitions on replacing striking workers, and restrictions on reasons for which employment services may be acquired.

The RCSA remains opposed to the imposition of measures such as bonds and guarantees. We believe these are regarded as a 'cost of doing business', rather than a barrier to entry, or a measure that encourages good practice.

In reality, restrictive licensing will impose further cost on professional and legitimate operators, while driving further 'under-ground' unregistered and illegitimate labour hire contractors that are unlikely to ever be licensed, are unlikely to lodge a bond or guarantee and, are extremely unlikely to provide genuine financial statements or documentation, if at all, to verify their financial capacity.

Typically, lighter regulation has been associated with higher levels of compliance and lower levels of informal or undeclared work<sup>9</sup>.

**RCSA is concerned that restrictive and State-based negative regulation will only increase business costs for businesses which are demonstrating high degrees of compliance, as evidenced earlier in our submission, and will only justify further client use of ‘cheaper’ options offered by non-compliant labour contractors.**

These poor practices are damaging the reputation of users of services and legitimate and professional labour hire firms. The CEOs of Australia’s leading Employment Services firms unanimously agreed at a CEO Forum in November 2016 that the industry needed to raise the barriers to entry and, to promote and support the highest standards of professionalism and practice through an industry certification program.

The standards and audit framework of the Employment Services Provider Certification program addresses a majority of the questions and areas identified in the Issues Paper.

### **National Regulatory Approach**

RCSA has long held the view that a single national approach to regulation of the employment services industry is the only reliable means of stamping out the poor and dodgy practices of labour contractors in order to provide consistency and transparency for employers and work seekers alike. This is illustrated in RCSA’s proposed Employment Services Industry Code (ESIC) and in the development of the Employment Services Provider Certification.

We believe a ‘catch-all’ state-based scheme, as discussed in the Issues Paper, will create an inefficient regulatory environment that makes it easy for dodgy and illegal labour contractors to simply cross borders and continue to ply their trade from another state, or concentrate exploitation at other points of the labour supply chain or value network that operate outside the definitional boundary of “labour-hire”. It will also create further red tape and increase costs for government and business in Queensland at a time when economic conditions are uncertain.

Indeed, the Western Australian Government's consultation paper on the review of that state's employment agents licensing scheme notes:

*... despite the existing long standing licensing regime, a common complaint received by the Department is that of unlicensed trading as an employment agent, suggesting that this issue already exists to some extent.*

### **Duplication should be Avoided**

RCSA opposes any licensing scheme that creates further red tape and an inefficient and uncertain regulatory environment. Important legislative instruments and regulatory bodies operate at a national level: Fair Work Act, Fair Work Ombudsman, Australian Tax Office and the Department of Immigration and Border Protection.

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<sup>9</sup> Ibid.

RCSA is very concerned the duplication of these national bodies, with the creation of a state-based restrictive licensing scheme and regulatory authority for the labour hire industry in Queensland, will discourage the engagement of legitimate and legal Labour Hire services and continue these poor practices.

### **National Market for Employment Services requires a National Solution**

The market for employment services is a national market. It requires a high level of assurance and visibility and transparency so that buyers of employment, contracting and recruitment services know what and, with whom, they are dealing.

Single point State-based licensing doesn't work in Multi-Factor environments. It is neither fair nor practical to impose responsibilities on an Employment Services Provider for matters that are beyond the scope of its effective control or influence. Therefore, to seek to license or restrictively regulate a Labour Hire company overlooks the role and liability of the multiple parties involved in the supply of labour. We describe the multi-party supplier environments and illustrate their nature in an employment services environment in the following section.

### **Multi-Party Supplier Environments**

The Multi-Party nature of the Employment Services industry makes it neither fair nor practical to apply a certification requirement only to one party (e.g. an on-hire / labour hire firm) in a multi-party environment. That is because key roles may be played by many different parties - some of whom will be in a business relationship with the Certified Employment Services Provider and some of whom will not.

Labour market exploitation is a poly-centric problem that properly engages competition & consumer, equal opportunity, privacy, workplace relations, work health & safety, revenue, and immigration regulators; as well as their industry, union, and consumer stakeholders. Labour market exploitation is not localised to any state or territory. It is widely recognised as a global problem that requires coordinated responses.

Today's market for employment services is complex and includes multiple tiered, outsourcing, or supply chain models, which we describe in *What is 'Labour Hire'?* earlier in this submission.

Parties, who are in a business relationship with an Employment Services Provider, and supply key services, are part of its Service Network and can properly be considered to be within its sphere of influence.

The Service Network are the people with whom the employment services provider has a contract, arrangement or understanding for the performance of any two of the following Service Network Roles in relation to workers:

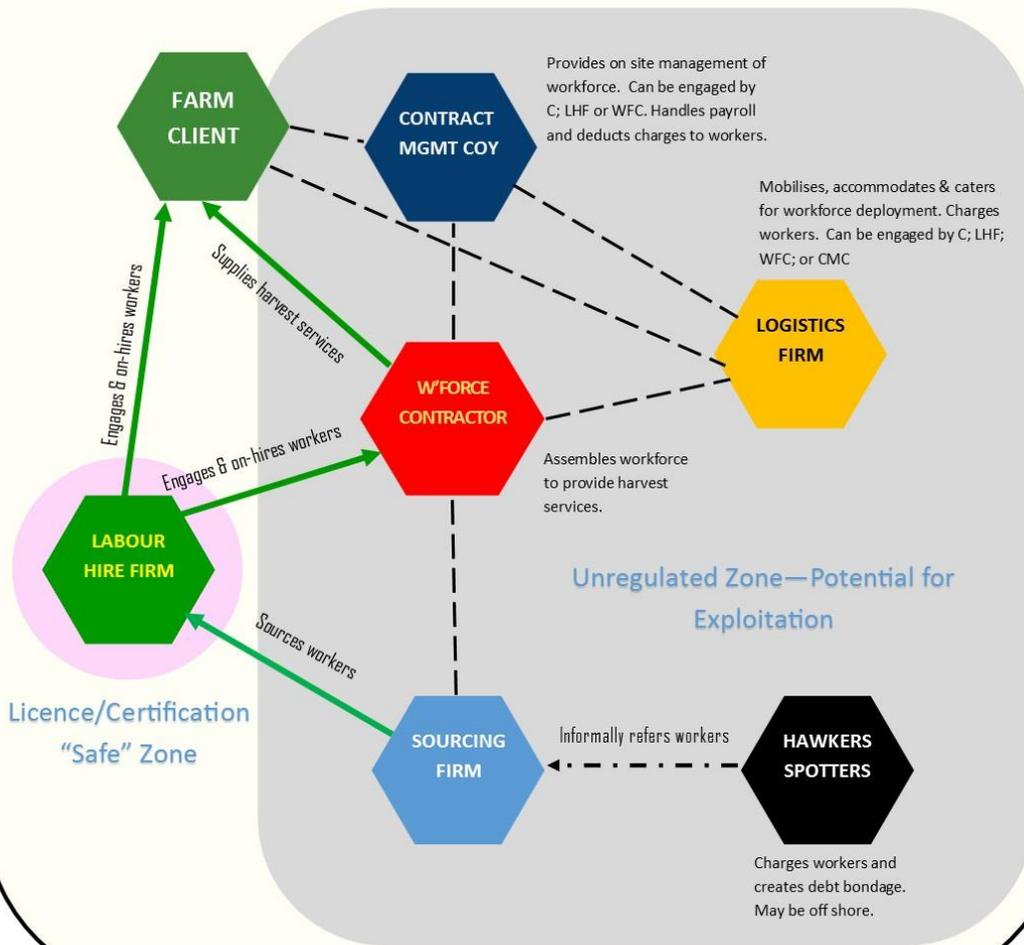
Sourcing & selection	Management & supervision
Engagement	Accommodation
Mobilisation	Payment
Performance of work (by workers)	Demobilisation

For the purposes of RCSA's Employment Services Provider Certification program we consider a participant is part of a Service Network if they perform two or more of these roles eg:

- a. A labour hire contractor that sources fruit pickers from a hostel and then places those workers to pick fruit for an agreed rate. The labour hire contractor (*sourcing & selection, engagement, management & supervision and payment*) is part of a Service network, as is the hostel owner (*accommodation and sourcing & selection*).
- b. Or; a hostel owner (*accommodation and sourcing & selection*) that offers work to backpackers as part of their accommodation services and then organises those backpackers for a labour contractor (*engagement, mobilisation, management & supervision, payment*) that then places those workers to pick fruit. Both the hostel owner and the labour contractor are part of a Service Network.
- c. Or; the labour hire contractor that, at the request of a farmer/host, engages a team of workers on behalf of the farmer (*sourcing & selection, engagement*) to pick fruit. The labour-hire contractor (*engagement, mobilisation, management & supervision, payment*) then on-hires those workers back to the farmer for a fee.

The following diagram on page 21 depicts a typical Multi-Party environment within the Employment Services environment. In particular, it highlights the inability of a "safe zone" constructed around "labour hire licensing" to deter or prevent the exploitation of workers at other points in the labour supply chain or value network, where workers have contact with firms that do not operate within the definitional boundary of "labour-hire".

## Why Single-Point Licensing (or Certification) Doesn't Work in Multi-Actor Environments



Andrew C. Wood 2016

## Employment Services Provider Certification

The Recruitment & Consulting Services Association (RCSA), as the peak industry body for the recruitment and employment industry, including labour hire, has created a certification program to support the integrity, compliance and professionalism of the employment industry and end-users of employment services.

The audit assurance program confirms the existence and strength of an Employment Service Provider's systems and processes and, evaluates those processes through evidence and documentation to clearly demonstrate how a business operates and deals with workers and clients alike.

RCSA's Employment Services Provider Certification program addresses a substantive number of the areas identified in the Issues Paper, including:

- a. Fit and Proper Persons Test and
  - i. Assessment of:
    - a. Owner/Managers
    - b. Consultants
    - c. Customer facing Administration Staff
    - d. And; third party suppliers in the supply chain for labour
- b. Financial assurance to operate the Employment Services business:
  - i. Existence and strength of work systems and processes that evidence and validate that capital exists, systems exist to assess and monitor the financial stability and performance of a business
  - ii. Financial systems and financial management processes eg: audits, cash flow management and assessment, budgets exist
  - iii. Systems and evidence are in place for withholding of entitlements, evidence of super accounts and relevant registrations including ATO registration
  - iv. Systems and evidence are in place to monitor and fund accumulated annual leave, LSL and accruals
  - v. Insurance and Certificates of Currency are in place for all required insurances
- c. Work status and remuneration
  - i. Fair Work Legislation
  - ii. Employment agreements and conditions, compliance with Awards and conditions
  - iii. Wages and records
  - iv. Standard form contracts
  - v. Volunteers, Interns and Supported wages
- d. Safe Work and Work Health & Safety
  - i. Safe work environments
  - ii. Ascertain and Assure
  - iii. Structures and controls for the management of work health & safety hazards
  - iv. Roles & Responsibilities
- e. Migration Compliance
  - i. Right to work and eligibility or conditions
  - ii. Monitoring and systems

- f. Decent accommodation (as applicable)

Certification is open to all employment services providers and will give balanced assurance that a provider is making every effort to operate legally and honestly in its activities and transactions.

Certification is paid for by the employment service providers that seek certification.

An overview and information about the Employment Services Provider Certification is attached as Appendix 1.

### **Registry of Certified Employment Services Providers**

An important component of the Employment Services Provider Certification program is to provide a high level of assurance for purchasers of employment services, and those in a service value network, through a widely available public register of certified employment service providers allowing buyers to make informed choices about the providers they use.

Certified providers will be listed on a web-based listing following completion and sign-off from the independent audit team. These providers will be displayed as a 'Certified' provider.

Employment Service Providers that are in the process of completing an audit, or are addressing non-compliance or corrective action notices, will be displayed as 'Completing Certification' and the details of actions or notices will be displayed also.

### **Certification Levels**

The Certification program will further provide buyers of services with information as to the credentials of an Employment Services Provider through a star rating system classification.

#### **6.1 1 Star**

1 Star certification indicates that the agency has controls in place to meet the Employment Services Provider Certification Guiding Principles & Criteria and that the controls are:

- a. evidence based
- b. suitably documented
- c. regularly monitored
- d. providing feedback to support corrective action
- e. transparent
- f. supported by appropriate training and resources.

#### **6.2 2 Star**

2 Star certification indicates that all 1 Star level controls are in place and have operated effectively for at least two continuous years.

#### **6.3 3 Star**

3 Star certification indicates that all 1 Star level controls are in place to a standard equivalent to or exceeding RCSA's Service Delivery Standard or an equivalent such as ISO 9001.

## Industry Consultation is well Advanced

The Employment Services Provider Certification program is already well advanced with the Certification Standard and audit framework receiving the support of the horticulture and agriculture sectors (NFF, Growcom, Voice of Horticulture) as well as from the AWU and NUW), retailer representative groups (PMA) and Government through an Industry Working Group convened following a national industry forum held in Canberra in November 2016.

## Penalties for purchasers not using Certified Providers

The RCSA would, in principle, support the notion of the States applying penalties or sanctions on purchasers that do not use a Certified Employment Services Provider. This is within the remit of the Queensland Government to legislate to impose a penalty in these circumstances.

## Employment Services Industry Code

Over the past two years RCSA and major players in the industry have exhibited leadership in wanting to clean up the reputation of the industry. To that end, RCSA has been at the forefront in developing a prototype industry code of conduct that has been described by the World Employment Confederation (2015) as providing, if adopted, *“the standard for global best practice in employment services legislation”*.

RCSA’s proposed Employment Services Industry Code (ESIC) proposes a single national regulatory scheme that will provide further consistency and transparency. ESIC will be submitted by RCSA to the Federal Government in February 2017, and recognises that the employment services industry is a “high consequence” industry in terms of the way in which poor practice within its operations might directly contribute to exploitation.

In proposing that provisions of the Employment Services Industry Code (ESIC) might be prescribed under the *Competition and Consumer Act 2010*, RCSA:

- recognises the role which that Act has played in contributing to the development of a Seamless National Economy and in removing barriers to market entry, access and participation;
- recognises that protections against unconscionable conduct under that Act already permit inquiry into whether parties have conducted their dealings in good faith and consistently with the requirements of any applicable industry code;
- observes that there is presently neither any contextually relevant and specific statement of the duty of good faith so far as it applies to the supply and acquisition of employment services; nor any accepted employment services industry wide code to which reference may be had under s. 22 of the ACL;
- seeks to strike a balance between demand side and supply side pressure and responsibility;
- elevates and promotes the role played by demand side pressure and responsibility;

- contends that such a code, without the need for licensing or more restrictive forms of regulation, would articulate professional standards of Equal Opportunity & Diversity, Service; Integrity & Good Faith, Co-operation, and Assurance in dealings for the supply and acquisition of employment services and would provide access to consumer and unfair competition remedies in circumstances where labour market exploitation occurred in contravention of the Code;
- contends further that the prescription of such a Code, may provide a less restrictive and cumbersome response to labour market exploitation; and one that preserves the goals of a Seamless National Economy and a National Workplace Relations System;
- contends, finally, that such a code fills in gaps in the level of professional and consumer knowledge about acceptable standards of service and conduct in the employment services market and so helps to ensure that the employment services industry is –
  - ✓ more engaged in social dialogue about the risks and harm of exploitation and the promotion of acceptable business and social standards;
  - ✓ more alert and better able to identify signs of exploitation and risks of potential exploitation;
  - ✓ better able to educate and protect its customers and work seekers against the risk of exploitation;
  - ✓ more confident to resist and report conduct that may result in labour market distortion and exploitation; and
  - ✓ more able to make a valuable contribution to the proper functioning of the labour market with which it interacts.

RCSA provided a copy of the Employment Services Industry Code in its initial submission. ESIC is available [HERE](#) or RCSA would be pleased to provide a further copy on request.

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<sup>i</sup> Ibis World reports N7211 *Employment Placement & Recruitment Services in Australia (2016)* and N7212 *Temporary Staff Services in Australia (2016)*

<sup>ii</sup> RCSA benchmarked estimates (2016) based on Ibis World and ABS data and cross matched to member experience