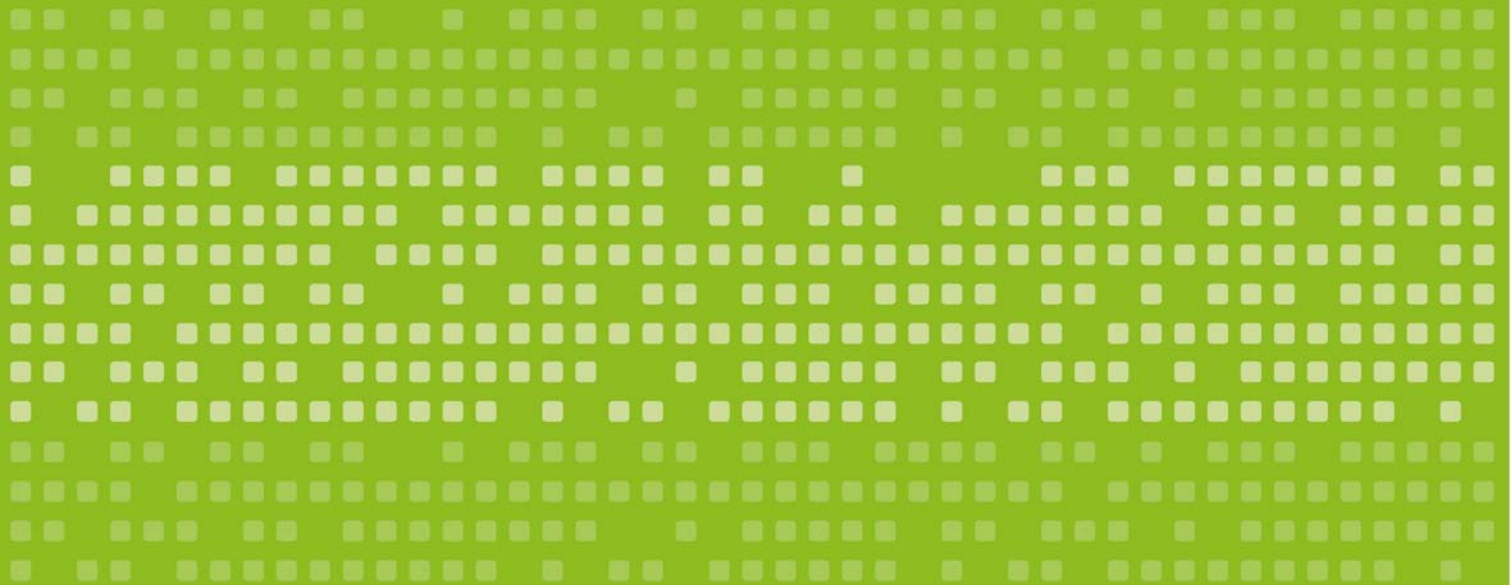


# Regulation of the Labour Hire Industry 2016

Issues Paper



## Contents

Introduction.....	3
Chapter 1 - Background.....	6
The labour hire industry .....	6
Chapter 2 – Recent Inquiries.....	9
The Queensland Parliamentary Finance and Administration Committee Inquiry into the practices of the labour hire industry in Queensland.....	9
Commonwealth Senate Inquiry into the impact of Australia’s temporary work visa ..	10
South Australian Parliamentary Inquiry into the labour hire industry.....	12
Victorian Inquiry into the labour hire industry and insecure work.....	13
Fair Work Ombudsman Inquiries.....	15
Inquiry into trolley collection services procurement by Woolworths Limited.....	15
Baiada inquiry .....	17
Report into 417 visa holders .....	17
Harvest Trail Inquiry.....	19
FWO investigations.....	20
Summary .....	20
Chapter 3 Overseas experience regulating the labour hire industry.....	22
Singapore .....	22
Japan.....	23
South Korea.....	24
United States.....	25
Countries in the European Union .....	26
Chapter 4 - Options to better regulate the labour hire industry .....	30
Licensing and regulation in Queensland.....	30
‘Fit and proper person’ test .....	32
Licensing fees to operate as a labour hire provider .....	33
Threshold capital requirement to operate in the labour hire industry .....	33
Payment of a bond to operate in the labour hire industry.....	34
Provision of annual reports on compliance with industry standards.....	34
Mandatory workplace rights and entitlements training.....	35
Regulating the contractual employment relationship.....	36
Compliance unit .....	36

## Introduction

The Queensland Government continues to be concerned about the ongoing evidence of exploitation and mistreatment of labour hire workers and the practices of labour hire companies.

High profile media stories, such as the ABC's *Four Corners* report 'Slaving Away' which aired on 4 May 2015, have highlighted the mistreatment of labour hire workers, particularly working holiday maker visa holders, in the agricultural and food processing industries supplying major supermarkets. In response to these concerns, between December 2015 and June 2016, the Queensland Parliamentary Finance and Administration Committee (FAC) conducted an Inquiry into the practices of the labour hire industry in Queensland.

The Report of the FAC Inquiry was released on 30 June 2016 and contains disturbing evidence of exploitation and mistreatment of labour hire workers in Queensland.<sup>1</sup> Evidence to the FAC included cases of underpayment of wages and unauthorised deductions; sexual harassment; workers housed in overcrowded and sub-standard accommodation; lack of proper safety equipment and appropriate training; systemic tax avoidance; sham contracting and phoenixing of companies leaving workers stranded without their entitlements and uncertainty about the identity of their employer.

These cases, these practices, have been going on far too often and for far too long. A stream of other reports and inquiries outlined in this paper have uncovered similar damning evidence of exploitation over a number of years. Given the weight of this evidence, a 'business as usual' approach is clearly not acceptable. Now is the time for action.

A national response is required, but if the Commonwealth Government fails to act, the Queensland Government will do all it can at the state level to clean up the labour hire sector. In doing so, we are prepared to work with those other states who take a similar view in tackling these issues.

The Queensland Government tabled its response to the FAC's Report on 30 September 2016. The Government has accepted the FAC's only recommendation to 'request that the Federal Government place the matter of the issuance of Australian Business Numbers (ABNs) to employees as a way for labour hire companies to avoid their employer obligations on the agenda of the next Council of Australian Government (COAG) meeting'. However, the Government considers that this recommendation, on its own, will not address the exploitation and mistreatment of workers by some in the labour hire industry. Consequently, the Government response made clear that it is considering further measures to protect vulnerable workers and ensure improved and effective regulation of the labour hire industry. This includes options for a rigorous labour hire licensing scheme that will protect both workers and those reputable labour hire providers that are doing the right thing.

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<sup>1</sup> Finance and Administration Committee, Report No 25, 55<sup>th</sup> Parliament, *Inquiry into the practices of the labour hire industry in Queensland*, June 2016.

This issues paper is designed to provide further detail of the Government's current thinking and to seek the views of stakeholders on the regulation of the labour hire industry in Queensland and, in particular, the necessary components of a rigorous business licensing scheme and other measures to address the exploitation of labour hire workers and restore confidence in the industry.

The features under consideration include a fit and proper licence holder test; threshold capital requirements and compliance bonds for operating in the labour hire industry; and other features including supply chain responsibility; the provision of information and training on workplace rights; and establishing a compliance unit to ensure the integrity of the licensing scheme and to refer potential breaches of Commonwealth, State and local government laws to the relevant authority.

Regulation of the labour hire industry through rigorous licensing, monitoring, and information and referral services is anticipated to promote greater transparency and scrutiny of labour hire operators, give confidence to those businesses who use the services of labour hire providers and raise the standard of integrity and professional conduct across the industry.

I encourage you to consider the information contained in this issues paper and to make a submission.

GRACE GRACE MP  
Minister for Employment and Industrial Relations  
Minister for Racing  
Minister for Multicultural Affairs

15 December 2016

## **Making a submission**

All submissions will be published unless provided in confidence. Material provided in confidence should be clearly marked 'IN CONFIDENCE'. For submissions received from individuals, all personal details (for example, home and email address, signatures, phone, mobile and fax numbers) will be removed before it is published on the website for privacy reasons.

Submissions should be received as a Microsoft Word (.docx) files. PDF files are acceptable if produced from a Word document or similar text based software.

Your submission can be emailed to [labourhirereg@justice.qld.gov.au](mailto:labourhirereg@justice.qld.gov.au) or by mail to

Labour Hire Regulation  
Executive Director Industrial Relations  
Office of Industrial Relations,  
GPO Box 69  
Brisbane QLD 4001.

The closing date for submissions is 6 February 2017.

## Chapter 1 - Background

### The labour hire industry

Labour hire arrangements characteristically involve a ‘triangular relationship’ in which a labour hire business supplies the labour of a worker to a third party (host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships, whereby:

- the host employer pays the labour hire agency for the labour provided by the worker and also has a direct contractual relationship with the labour hire agency;
- the worker is under the direction or control of the host employer for the performance of work, but is not engaged in any contractual or employment relationship with the host employer; and
- the worker is paid by the labour hire agency. The labour hire agency retains the contractual or employment relationship with the worker. As the employer of the worker the labour hire agency is responsible for ensuring the worker’s entitlements are met as well as the full range of associated employer responsibilities and liabilities, including legal requirements for workplace health and safety, workers’ compensation and taxation.

Labour hire is a growing part of the employment placement services industry. The Australian Bureau of Statistics reported in August 2014 that there were approximately 599,800 persons in Australia who had found their job through a labour hire firm/employment agency.<sup>2</sup> Further, in September 2014, although likely to be under reported, wages declarations for workers’ compensation insurance reported there were 103,900 persons in Queensland who found their job through a labour hire firm or employment agency.<sup>3</sup> Of these, an estimated 59,100 (57%) were full-time males, 3,900 (4%) were part time males, 25,900 (25%) were full-time females and 15,900 (15%) were part-time females. There were 13,900 (13%) workers who identified as public sector workers and 90,600 (87%) who identified as private sector workers<sup>4</sup>.

These workers are employed across all industries and occupations in Queensland. The industries with the most labour hire workers include manufacturing, construction, healthcare and social assistance, public administration and safety, and agriculture, forestry and fishing.

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<sup>2</sup> Australian Bureau of Statistics, *Persons who found their job through a labour hire firm or employment agency, By Industry of main job - By Sex-Labour hire firm or employment agency, By industry of main job - By sex, August 2014*

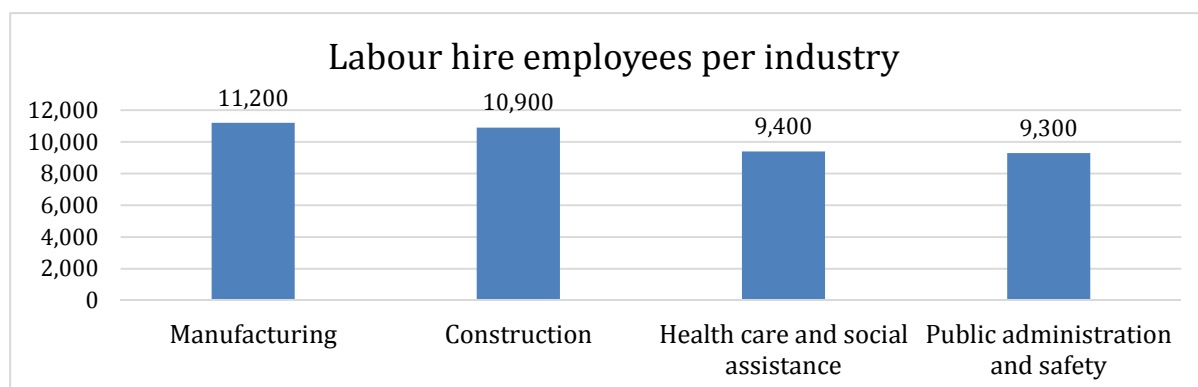
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/EF3BF9BDA5BF304ECA25801F00186541?opendocument>>.

<sup>3</sup> Queensland Treasury Briefing Paper to the Finance and Administration Committee Inquiry into the practice of the Labour Hire Industry in Queensland, 2016, <<https://www.parliament.qld.gov.au/documents/committees/FAC/2015/15-LabourHire/15-bp-25Feb2016.pdf>>.

<sup>4</sup> Australian Bureau of Statistics, *Persons who found their job through a labour hire firm or employment agency, By Industry of main job - By Sex-Labour hire firm or employment agency, By industry of main job - By sex, August 2014*

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/EF3BF9BDA5BF304ECA25801F00186541?opendocument>>.

The graph and tables below show the number of employees in the largest industry groups and the breakdown of male and female workers across occupational groups.



Occupation	Males
Labourers	12%
Machinery operators and drivers	8.5%
Sales workers	2.3%
Clerical and administrative workers	3%
Community and personal service workers	2.3%
Technicians and trades workers	38.9%
Professionals	20.2%
Managers	12.9%

Occupation	Females
Labourers	10.5%
Machinery operators and drivers	1.9%
Sales workers	4.3%
Clerical and administrative workers	19.2%
Community and personal service workers	10.8%
Technicians and trades workers	5.3%
Professionals	36.3%
Managers	10.8%

\* Data collected from ABS website "persons who found their job through a labour hire firm or employment agency, By Industry of main job - By Sex-Labour hire firm or employment agency, By industry of main job - By sex, August 2014"

A number of studies have noted the increase in labour hire arrangements in Australia. Burgess, Rasmussen and Connell<sup>5</sup> noted the rapid expansion in the early 1990s and Wooden<sup>6</sup> presented evidence that the proportion of agency workers in workplaces with twenty or more employees doubled from 1989 to 1999. More recent developments have seen the expansion of labour hire into nearly all areas of the workforce. In addition, the emergence of other non-standard forms of employment in the 'sharing' economy raises similar concerns in relation to insecurity of employment and lack of clarity about the employment relationship (and consequentially where workplace responsibilities lie) to those encountered in labour hire arrangements.

<sup>5</sup> Burgess, Rasmussen and Connell 2004 *Temporary Agency Work in Australia and New Zealand: Out of Sight and Outside the Regulatory Net*. Paper presented at the New Economies: New Industrial Relations, Proceedings of the 19th AIRAANZ Conference, Noosa, Queensland.

<sup>6</sup> Wooden, M 1999 *Outsourcing and the Use of Contractors: Evidence from the AWIRS*. The Economic and Labour Relations Review; 10(1), 22-35.

The nature of labour hire work leads to a number of concerns. Professor Elsa Underhill, in a submission to the Productivity Commission review of the national workplace relations system<sup>7</sup>, noted that:

- labour hire workers, in Australia and overseas, receive a lower hourly rate of pay than comparable direct hire workers;
- labour hire workers, in Australia and overseas are more likely to be injured at work, compared to direct hire workers;
- Australian and international research shows that the main reason organisations use labour hire workers is to reduce labour costs and increase flexibility;
- injured labour hire workers, in Australia and overseas, are less likely to be offered employment post-injury than permanent employees;
- labour hire workers overwhelmingly would prefer to be employed directly rather than work for a labour hire employer; and
- there is little evidence internationally that non-standard employment creates a stepping stone to more secure employment.

A good part of the reason for the poorer labour market outcomes for labour hire employees lies in the insecurity of employment. This makes workers vulnerable to exploitation but also less likely to speak up about their concerns for fear of losing their job, and, in the case of temporary visa workers from overseas, jeopardising their prospects of staying in the country. In addition, labour hire workers have no access to collective bargaining. Even labour hire workers who have worked for a long period of time with the same firm are denied the right to participate in enterprise bargaining and so are prevented from negotiating better pay and conditions of employment and have limited recourse to raise issues of concern such as in relation to workplace and safety.

The regulatory jurisdiction for labour hire employers and employees is spread across Commonwealth, State and local governments. The Commonwealth Government regulates private sector employment (through the *Fair Work Act 2009* (Cth) (FW Act) and the Fair Work Ombudsman (FWO)); taxation (through the Australian Taxation Office (ATO)), immigration and border protection. The State is engaged through workplace health and safety; workers' compensation; electrical safety and police, fire and emergency services. Workplace Health and Safety Queensland, Office of Industrial Relations, Queensland Treasury has also established a Horticultural Workers' Interagency Group to inform the whole-of-government approach to ensuring the well-being, health and safety of migrant workers (417 visa holders) in the agricultural industry. The local government sector is engaged through regional planning laws around dwelling standards and policies to facilitate community cohesion.

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<sup>7</sup> Underhill, E 2015, Submission to the Productivity Commission inquiry into the workplace relations framework. <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0019/193303/subdr0321-workplace-relations.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0019/193303/subdr0321-workplace-relations.pdf)>.



## Chapter 2 – Recent Inquiries

A number of recent inquiries in Australia have highlighted the vulnerability of labour hire employees to poor treatment at work, ranging from cases of underpayment and unauthorised deductions of wages, dangerous conditions of work and substandard accommodation, to more extreme cases of exploitation akin to slavery and bonded labour. Many of these inquiries have made similar recommendations for labour hire licensing schemes and other improved regulatory requirements. The following discussion provides an overview of those inquiries.

### The Queensland Parliamentary Finance and Administration Committee Inquiry into the practices of the labour hire industry in Queensland

On 2 December 2015, the Queensland Legislative Assembly agreed to a motion that the Parliamentary FAC Inquiry into and report on the practices of the labour hire industry in Queensland. In particular, the Inquiry was required to consider the extent, nature and consequence of labour hire employment, allegations of exploitation of workers and the regulation of labour hire in Australia and effective enforcement mechanisms, including bonds, licensing, registration and other forms of compliance. Further, the FAC inquiry was required to consider allegations of whether labour hire arrangements were used to avoid workplace laws and the effectiveness of enforcing current laws and instruments.

The Inquiry received a total of 41 submissions, with a number of submissions made in confidence. Public and private hearings were held in May and June 2016 in Brisbane and across regional Queensland.

The Inquiry report was tabled in the Queensland Parliament on 30 June 2016.<sup>8</sup> The FAC reported that while labour hire arrangements can be beneficial in providing flexibility for businesses and workers, a wide range of adverse consequences and risks were found to be associated with the use of labour hire employment.<sup>9</sup> The report detailed that labour hire workers tend to have poorer employment conditions than their direct hire counterparts, including lower rates of pay and higher rates of occupational injury.<sup>10</sup> The report raised a number of other issues of concern in the industry including the systematic avoidance of legal obligations such as payroll tax, sham contracting arrangements and phoenixing activity.<sup>11</sup>

The report also documented evidence of serious mistreatment and exploitation particularly of workers in low paid industries, including the horticultural, meat processing and cleaning industries.<sup>12</sup> Mistreatment included sexual harassment, requiring workers to reside in sub-standard accommodation, withholding of the worker's

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<sup>8</sup> Finance and Administration Committee, Report No 25, 55<sup>th</sup> Parliament, *Inquiry into the practices of the labour hire industry in Queensland*, June 2016.

<sup>9</sup> Ibid 12-14.

<sup>10</sup> Ibid 14.

<sup>11</sup> Ibid 13.

<sup>12</sup> Ibid 49.

passport and failure to provide pay slips and pay tax.<sup>13</sup> It was found that overseas workers in particular are vulnerable to mistreatment.

The report identified that despite the existing regulations to protect labour hire workers, a number of submissions found enforcement of the current regulatory framework to be ineffective. The report noted that weight should be provided to whether further regulation is required and the need to expand resources in the current form.

Submissions to the FAC inquiry provided support for the labour hire industry to be regulated beyond existing arrangements. Support for a licensing scheme was made on the basis that it would achieve greater accountability, scrutiny and transparency for the actions of intermediaries. Supporters of a licensing scheme included the Anti-Discrimination Commission Queensland (ADCQ), Lockyer Valley Regional Council (LVRC), Broadspectrum (a large scale contractor), and MADEC (a community based not for profit employment, training and community development business), Queensland Nurses Union (QNU), National Union of Workers (NUW) Construction, Forestry, Mining and Energy Industrial Union of Employees (CFMEU) Queensland, Australian Workers' Union, Australasian Meat Industry Employees' Union (Queensland Branch), United Voice, and the Electrical Trades Union (ETU).

The Government and non-Government members of the FAC were unable to reach agreement on the introduction of a licensing scheme.<sup>14</sup> The FAC made a single recommendation, 'that the Industrial Relations Minister progress this issue through COAG meetings to work together with the Federal Government to address the issuance of ABNs to employees as a way for labour hire companies to avoid their employer obligations'.

On 30 September 2016 the Government tabled its response accepting the Report's single recommendation however noted that the exploitation of labour hire workers exposed through the Inquiry is unlikely to be addressed by adopting the Report's sole recommendation. The Government's response added that the Queensland Government will undertake further consideration of measures to address exploitation of vulnerable labour hire workers to ensure improved and effective regulation of the labour hire industry, including various features of a labour hire licensing scheme.

### Commonwealth Senate Inquiry into the impact of Australia's temporary work visa

On 24 March 2015, the Senate referred the inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders to the Education and Employment Committee (Senate Committee).<sup>15</sup>

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<sup>13</sup> Ibid 25.

<sup>14</sup> Finance and Administration Committee, Report No 25, 55<sup>th</sup> Parliament, *Inquiry into the practices of the labour hire industry in Queensland*, June 2016, 39.

<sup>15</sup> Education and Employment References Committee, *The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders*, March 2015, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/~media/Committees/eet\\_ctte/temporary\\_work\\_visa/report/report.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/~media/Committees/eet_ctte/temporary_work_visa/report/report.pdf)>.

The Senate Committee reported that it '*received harrowing evidence from temporary visa holders who had been exploited by unethical labour hire contractors. It is clear from the evidence that some of the worst exploitation of temporary visa workers occurred at the hands of labour hire companies*'. The Senate Committee focused largely on matters related to 457 (temporary work visa holders) and 417 visa programs.

A number of unions raised the issue of labour hire companies operating in Australia working with overseas labour hire agencies to find work for overseas nationals prior to even entering into Australia. Evidence was also presented by the CFMEU about the exploitation of 457 visa workers in the construction industry. One worker, recruited by a labour hire company in the Philippines, reported that conditions were not safe, accommodation was substandard, overcrowded and expensive, that he was not provided with payslips, and that workers were dismissed and evicted from their accommodation without notice. In one case, the CFMEU recovered \$883,000 in underpayments for 38 workers who were employed for between six weeks and four months. CFMEU organiser Dave Curtain explained why migrant workers are unwilling to complain, including justifiable fear of being dismissed and deported, and a fear of what may happen to their families back in their home countries.

The Inquiry also heard how growers in the horticulture industry used labour hire companies in Australia that had set up a labour hire company in a different country to recruit workers, often requiring the worker to pay a fee of several thousand dollars to arrange flights, accommodation, transport and a job. A number of farmers noted that they used a web page, whilst others used Facebook pages. Evidence was presented from Growcom that many fruit and vegetable employers choose to use a labour hire company as they take responsibility for ensuring that workers arrive for their shifts. The Growcom representative also noted that fly by night phonenix operators were the scourge of the industry and remarked, '*gee, there are a lot of them around*'. They were also very difficult to track down, Growcom observed. An organiser with the NUW stated that the conditions around the granting of a second year Working Holiday Maker visa render 417 visa workers vulnerable to exploitation, particularly by labour hire contractors.

The final Report of the Inquiry, titled *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, made 33 recommendations aimed at increasing transparency and increasing awareness of workplace rights for temporary migrant workers.<sup>16</sup> Amongst other matters, the Inquiry recommended that the federal government establish a licensing regime for labour hire contractors. The recommendation noted that there should be a public register of all labour hire contractors, that they must meet and be able to demonstrate compliance with all workplace, employment, tax and superannuation laws in order to gain a licence, and that labour hire contractors that use labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a licence. The Inquiry also recommended that the federal government review the resources and powers of the FWO.

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<sup>16</sup> Education and Employment References Committee, *Recommendations of The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders*, March 2015, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/~media/Committees/eet\\_ctte/temporary\\_work\\_visa/report/a04.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/~media/Committees/eet_ctte/temporary_work_visa/report/a04.pdf)>.

The Committee found that a significant benefit of labour hire licensing would be the creation of a level playing field for legitimate labour hire companies and for businesses that use labour hire contractors to source labour. It would also be vital in disrupting the current business model of unscrupulous labour hire contractors in Australia, including the practice of supplying vulnerable temporary visa workers to pre-allocated jobs in Australia.

### South Australian Parliamentary Inquiry into the labour hire industry

The South Australian Parliamentary Economic and Finance Committee (EFC) also conducted an inquiry into the labour hire industry to provide recommendations to ensure a secure industry. The inquiry received 13 written submissions from interested stakeholders, including government departments, industry groups and union groups. The inquiry also held a total of seven public hearings, and received testimony from 34 witnesses.

The EFC Report was released on 18 October 2016.<sup>17</sup> The report found evidence of exploitation in regional areas of South Australia, particularly where farmers insisted that the workers live in their accommodation. The EFC highlighted that certain sectors and certain groups of employees are disproportionately susceptible to exploitation, including those regions that are heavily reliant on seasonal or itinerant workers, workers engaged in these regions often have a non-English speaking background and are representatives of the lower socio-economical groups in their countries of origin.

In its submission to the Inquiry, the South Australian Government noted that the development of standards for labour hire businesses could ensure better protection of workers against exploitation and mistreatment.<sup>18</sup> As seen in the Victorian and Queensland Inquiries, submissions from many groups supported a licensing scheme. The Recruitment & Consulting Services Association proposed that a single national framework for the regulation of the employment services sector is required.

The Report recommended that the most desirable solution to the issue of labour hire exploitation is to introduce a national licensing and registration scheme for labour hire companies.<sup>19</sup> If the federal government declines to introduce a national scheme, the Report highlights that the issue is of sufficient public concern to warrant the South Australian Government proceeding with a state-based licensing scheme for labour hire providers, based on the model recommended by the Senate Committee report.<sup>20</sup> The EFC said that submissions advocated support for the introduction of a licensing scheme, and that entry into the labour hire market is too simple. The EFC recommended that a compliance unit be established within Government, to be funded, in part or in whole, by the established fee and bond structure. Other specific provisions included the establishment of a fit and proper test for owners and directors, threshold capital

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<sup>17</sup> Economic and Finance Committee, South Australia Inquiry into the Labour Hire Industry, October 2016, <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CIId=173>.

<sup>18</sup> Government of South Australia, Submission to the Economic and Finance Committee, South Australia Inquiry into the Labour Hire Industry, October 2016, <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CIId=292>.

<sup>19</sup> Ibid 9.

<sup>20</sup> Ibid.

requirements, annual reporting requirements and penalties for employers who knowingly engage the services of unlicensed labour hire providers.

The EFC also made the following recommendations<sup>21</sup>:

- that where accommodation is provided, such accommodation must be in keeping with the acceptable standards of the wider community;
- that the South Australian Government agencies establish formal relationships with each other, and other relevant interstate and Commonwealth agencies, to ensure compliance, and further to work through COAG to facilitate sharing arrangements between State and Commonwealth agencies;
- the South Australian Government to work with Federal agencies to educate foreign workers on their workplace rights, workplace health and safety, workers compensation, superannuation and other entitlements; and
- the above recommendations be implemented in consultation with industries and businesses who rely on seasonal and temporary labour, and with the relevant unions in those industries.

### Victorian Inquiry into the labour hire industry and insecure work

In September 2015, the Victorian Government announced an inquiry into the labour hire industry and insecure work in Victoria to examine the practices of labour hire companies, insecure work, sham contracting and the abuse of visas to avoid workplace laws and undermine minimum employment standards.

The inquiry conducted 17 days of public hearings across regional Victoria and metropolitan Melbourne and received 695 primary submissions. Evidence of exploitation was highlighted by unions where workers were paid as little as \$10 per hour, were not provided with breaks, and some were reported to the Department of Immigration and Border Protection for 'illegal work'.<sup>22</sup> The Shearers and Rural Workers Union reported that foreign pickers were paid less, and that workers were not advised if they were paying tax or super, or if they were covered by any form of Workcover.<sup>23</sup> In instances where workers raised concerns, they were not asked to come back to work, even where there was unfinished work.<sup>24</sup>

Submissions from the Australian Council of Trade Unions, the Centre for Employment and Labour Relations Law, academics, Jobwatch Inc and Master Builders Association of

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<sup>21</sup> Ibid 9-10.

<sup>22</sup> Robinvale Network House, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work, September 2015, <[http://economicdevelopment.vic.gov.au/\\_data/assets/word\\_doc/0008/1317185/Submission-Robinvale-Network-House.docx](http://economicdevelopment.vic.gov.au/_data/assets/word_doc/0008/1317185/Submission-Robinvale-Network-House.docx)>.

<sup>23</sup> Shearers and Rural Workers Union, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work, September 2015, <[http://economicdevelopment.vic.gov.au/\\_data/assets/word\\_doc/0019/1317214/Submission-Shearers-and-Rural-Workers-Union-Bernard-Constable.DOCX](http://economicdevelopment.vic.gov.au/_data/assets/word_doc/0019/1317214/Submission-Shearers-and-Rural-Workers-Union-Bernard-Constable.DOCX)>.

<sup>24</sup> Harry Marshall, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work, September 2015, <[http://economicdevelopment.vic.gov.au/\\_data/assets/word\\_doc/0019/1317160/Submission-Harry-Marshall.docx](http://economicdevelopment.vic.gov.au/_data/assets/word_doc/0019/1317160/Submission-Harry-Marshall.docx)>.

Victoria (who supported a negative licensing scheme) supported regulation of the industry through a licensing scheme.

That Inquiry delivered its final report to the Victorian Government on 31 August 2016 and was publicly released on 27 October 2016. The report notes that labour hire workers are treated as a 'second-class' of workers who were vulnerable to exploitation at work and who, because of insecure employment, suffered financial insecurity which affected their ability to save and plan for their futures. Amongst other matters, the Report<sup>25</sup> recommended a national sector-specific licensing scheme for labour hire operators. In the alternative, the Report recommended that Victoria 'lead the way in reforming the labour hire sector, through the introduction of its own sector-specific licensing scheme'.

The licensing scheme would initially be targeted at those supplying labour in the horticultural, meat and cleaning industries, but could be increased in scope over time. The proposed scheme would impose an obligation on licence applicants to provide a statutory declaration and information demonstrating their compliance with the following criteria:

- 'fit and proper person' including no past convictions for offences involving fraud, dishonesty or violence and no past involvement in insolvent businesses or breaches of workplace or occupational health and safety laws;
- the business must demonstrate that it pays its employees in accordance with the minimum rates, and affords its employees all other employment conditions;
- the business must be registered with the ATO and complying with taxation laws;
- if accommodation is provided, that the accommodation meets the standards required under law;
- the business is registered with WorkSafe and pay required premiums;
- the business details its systems for ensuring compliance with occupational health and safety legislation;
- the business demonstrates compliance with federal migration laws;
- payment of a licensing fee and annual fee for renewal;
- hosts be subject to legal obligations to use a licensed labour hire provider;
- public register of all licensed labour hire operators, operated by the licensing authority;
- civil liability provisions for unlicensed labour hire providers and host organisations using services;
- businesses must not coerce worker's freedom of movement (for example, retention of migration papers or refusal to sign off on the 88-day requirement for obtaining a second year working holiday visa);
- the business must not sub-contract the provision of a workers through a non-licensed operator;
- the business must not provide false or misleading information to the licensing authority.

The Report recommends that the Victorian Government should consider if the existing Business Licensing Authority would be the appropriate body to administer the proposed labour hire licensing scheme, or whether a specific licensing authority should be

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<sup>25</sup> Economic Development, Jobs, Transport and Resources *Victorian Inquiry into the Labour Hire Industry and Insecure Work* June 2016.

<[http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf)> Victorian Inquiry into the Labour Hire Industry and Insecure Work>.

established. The Report further recommends developing a voluntary code to address practices that are not unlawful but 'might be considered unfair and/or which have the effect of labour hire workers being treated differently from other workers'. The Code, to be developed through a tripartite process, would establish best practice requirements that:

- ensure contractual arrangements do not include terms that prevent or hinder labour hire employees from obtaining direct employment with the host employer;
- adopt fair processes leading to dismissals of labour hire employees, and ensure that host employers do not use contractual relationships to defeat the rights of dismissed employees to seek a remedy;
- encourage the labour hire agency to manage rostering so that notice and planning of shifts work for the mutual benefit of all parties involved in labour hire relationships; and
- improve use of piece rates in sectors, including the horticulture and meat industries, so they are not a means to pay workers below the minimum time-based rate of pay.

In addition, the Report recommended that the Victorian Government develop or resource targeted data collection to investigate the prevalence and nature of labour hire employment, that the Victorian Government advocate for the FWO to focus more of its compliance activity on underpayment of award rates, advocate the Federal Government implement its 2016 election commitment to increase the FWO's investigatory powers and to increase penalty provisions under the FW Act.

On 27 October 2016, the Victorian Government announced that it will establish a labour hire licensing scheme and will consider the most effective and efficient structure of the scheme.<sup>26</sup> The Victorian Minister for Industrial Relations, Natalie Hutchins said that the Victorian Government 'will ensure these findings are used to stop this exploitation'.<sup>27</sup> The other recommendations are being closely examined in advance of a full response.<sup>28</sup>

## Fair Work Ombudsman Inquiries

### Inquiry into trolley collection services procurement by Woolworths Limited

In June 2014, the FWO commenced an Inquiry into Woolworths' procurement of trolley collection services.<sup>29</sup> The subsequent report found that of 130 Woolworths' sites examined by Fair Work inspectors, evidence of some form of non-compliance was found at almost 80% while nearly half presented multiple indicators of non-compliance with

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<sup>26</sup> Victorian Government 2016, *Victoria to Regulate Labour Hire Industry*, <<http://www.premier.vic.gov.au/victoria-to-regulate-labour-hire-industry/>> 27 October.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> James, N 2016, *Woolworths trolley collection services*, Fair Work Ombudsman, 25 June, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr>>.



workplace laws.<sup>30</sup> In some cases, the investigation found workers being paid rates as low as \$10 an hour.

The investigation also found cash payments which disguised the true identities of workers and the actual amounts paid to workers and that deficient governance arrangements contributed to a lack of knowledge of award wage and conditions and sub-standard record keeping. It was noted that many of the workers were from overseas and were vulnerable to exploitation and often complicit in acts of non-compliance.<sup>31</sup> The report states that Woolworths' approach to procurement and oversight was indicative of an entrenched culture of non-compliance.

Furthermore, the inquiry found instances where the contract price agreed between Woolworths and a principal labour hire contractor appeared too low to enable the relevant subcontractor to make a profit and/or enable workers to be paid correctly.<sup>32</sup> In this regard, the report found that Woolworths adopted a business strategy which sought to transfer capital risk to labour through its procurement practices and that contractors were using networks of corporate structures and intermediaries to facilitate cash payments, recruitment of vulnerable workers and production of false records.<sup>33</sup>

The FWO recommended that Woolworths publicly demonstrate its commitment to ensuring compliance with Australian workplace laws within its trolley collection services.<sup>34</sup> This was recommended to involve, among other things, Woolworths reviewing current contracting arrangements to ensure arrangements and contract prices permit employee entitlements to be met throughout the life of a contract and that tender processes give preference to contractors who demonstrate employees are paid via Electronic Funds Transfer or personal cheque, that Pay as You Go is remitted on behalf of employees to the ATO and superannuation payments are made.<sup>35</sup> It also recommended that Woolworths take direct responsibility for investigating and resolving all grievances relating to the employment of its trolley collectors and conduct regular and frequent audits of its contractors and subcontractors (verified by third party accounting, legal or workplace relations professionals).<sup>36</sup>

In commenting on the case, the FWO, Natalie James, made the observation that these multi-tiered subcontracting arrangements are creating a 'faceless workforce'. Ms James went on to warn that the community is tiring of established businesses, claiming they 'did not know' what was going on in their networks and labour supply chains, while at the same time failing to put adequate governance arrangements in place'.<sup>37</sup>

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<sup>30</sup> Fair Work Ombudsman 2016, *Inquiry into trolley collection services procurement by Woolworths Limited* <<https://www.fairwork.gov.au/ArticleDocuments/763/inquiry-into-trolley-collection-services-procurement-by-woolworths-limited.pdf.aspx>>.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid 20, 30.

<sup>33</sup> Ibid 40.

<sup>34</sup> Ibid 41.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid 6.

<sup>37</sup> James, N 2016, *You see no evil when you hold your hands over your eyes*, 25 June, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolliestcopeed>>.



## Baiada inquiry

On 4 May 2015, the ABC's *Four Corners* 'Slaving Away' reported on unscrupulous labour hire companies operating on vegetable farms and in chicken factories. It found that 417 workers were subject to long working hours, degrading living conditions and unpaid wages, and that women who came forward to make allegations were most at risk.

Among the findings, the ABC reported on two foreign workers that worked in the Baiada Adelaide chicken factory through a labour hire contractor named KC Fresh Choice. Baiada produces Lilydale Select and Steggles chicken brands for customers including Coles, Woolworths, Aldi, McDonalds, KFC and Pizza Hut and is Australia's largest poultry supplier, with revenue of \$1.3b annually. It was alleged that when KC Fresh Choice took over, the foreign workers' pay was reduced to \$18 an hour, considerably lower than the award wage, which is above \$25 an hour. Both workers were made to work up to 18 hours a day, 7 days a week, without a toilet or meal break. One worker kept a personal logbook which showed that he had been underpaid \$30,000, whilst the other worker was owed \$28,000 in unpaid wages.

Between November 2013 and June 2015, the FWO also investigated Baiada on a number of separate occasions. The FWO found:

- non-compliance with a range of Commonwealth workplace laws;
- very poor, or no governance arrangements, by all parties in the various labour supply chains;
- a web of sub-contracting labour hire companies in the Baiada labour supply chain liquidated or de-registered their companies upon investigation by the FWO in order to avoid potential penalties; and
- exploitation of a labour pool comprised predominantly of 417 workers in Australia.

In October 2015, Baiada Chicken agreed to a proactive compliance partnership with the FWO and declared it has a moral and ethical responsibility to stamp out contractors' unlawful practices. Baiada set aside \$500,000 to reimburse any workers found to have been underpaid from January 2015.

## Report into 417 visa holders

In October 2016, the FWO released a report into the experiences of 417 workers in Australia. The Inquiry sits alongside the FWO's Harvest Trail Inquiry focused on the horticulture sector, which commenced in August 2013. The Inquiry surveyed 4000 overseas workers who had been granted a second-year 417 visa after working in regional Australia. The Report found that only 38 per cent of the visa holders were positive about their experience. The Report also found 66 per cent of visa holders felt that employers take advantage of people on working holiday visas by underpaying them, and 59 per cent noted that workers are unlikely to complain about their working conditions in case their work is not signed off by the employer.

The Inquiry found concerning patterns of behaviour with respect to the treatment of 417 workers, including:

- underpayment and non-payment of wages;

- sexual harassment and workplace health and safety issues;
- exploitative workforce cultures and behaviours in isolated and remote workplaces;
- employers and hostels withholding passports without authority;
- employers engaging in sophisticated labour supply chains involving sham contracting, with visa-holders being engaged as contractors and not employees;
- employers making unlawful deductions from wages and unlawfully requiring visa-holders to spend part or all of their wages in an unreasonable manner;
- employers requiring visa-holders to do unpaid work in exchange for providing evidence that they had completed 88 days requisite paid work;
- visa-holders offering, or being induced to offer, payment to employers and third parties for assistance to gain a second-year 417 visa;
- employers recruiting workers by offering to assist them with second-year visa requirements if they agree to perform unpaid work;
- employers advertising jobs to overseas workers seeking a second-year 417 visa, but then imposing unlawful demands and conditions, such as requesting they pay for the job and for accommodation;
- visa-holders working for free in exchange for non-certified accommodation programs; and
- employers requiring visa-holders to pay money up-front for tools and equipment that the business was legally required to provide.

The report also found that most-second-year sign-offs are for visa holders who have worked in agriculture, forestry and fishing, and that most work is performed in Queensland. It was noted that labour is often sourced through labour hire arrangements. Consultations with unions highlighted that businesses at the top of the labour supply chain were, and are, turning a 'blind eye' to phoenixing patterns exercised by these labour hire companies that are involved in various contracting arrangements. Employers raised concerns about the widespread use of third party labour hire contractors and processing plants paying the correct rates to principal contractors however, these wage rates were being compromised as they moved down the labour supply chain. The workers were reluctant to complain in case their work was not signed off by their employer. The FWO highlighted that in 2011-12, only 23 per cent of visa holders who came to the FWO for assistance were 417 visa holders, and that by 2015-16 this figure had doubled to 44 per cent.

The Report recommended that academics and migration experts be enlisted to help research and solve labour force issues; ensuring that all existing laws and sanctions are fully utilised; collaboration between the FWO and the ATO and the Department of Immigration and Border Protection; and exploring opportunities to work with a broader range of stakeholders to extend the channels through which information and support is delivered.

## Harvest Trail Inquiry

In August 2013, the FWO commenced a three year campaign to help employers and employees working on the Harvest trail to understand their rights and obligations at work, including minimum wages and conditions, piece rates, record keeping and pay slips and labour hire and supply chain issues. The FWO's review has been widespread, ranging from the Western Australian wine industry to Katherine mango farms to Yarra Valley strawberry farms. Examples of infringements uncovered include:

- between March 28 and April 10, 2015, 6 workers were underpaid a total of \$2691 on a strawberry farm at Cottonvale, near Stanthorpe. The operators were penalised almost \$70,000;<sup>38</sup>
- underpayment of wages to 90 Korean backpacker workers amounting to \$16,000 between July 2015 to January 2016;<sup>39</sup>
- 26 seasonal workers were under paid more than \$14,700 dollars between September 2015 and January 2016, on a blueberry farm near Coffs Harbour in New South Wales. The investigation also uncovered that the workers were forced to work 36 days straight;<sup>40</sup>
- 107 casual employees were collectively short changed a total of \$15,892 between January 1, 2014, and July 30, 2015, on Story Fresh farms in the Darling Downs and Lockyer Valley in South-East Queensland;<sup>41</sup>
- operators of blueberry farms at Sandy Beach in New South Wales were found to have underpaid 140 seasonal workers a total of more than \$46,000 between July 2014 and January 2015;<sup>42</sup>
- two Yarra Valley strawberry farms had underpaid workers \$6000, while another four employers had record keeping and pay slip contraventions;<sup>43</sup>
- 52 workers were underpaid a total of \$92,381 between September 2013 and August 2014 on a mushroom farm in Singleton, New South Wales;<sup>44</sup> and

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<sup>38</sup> Fair Work Ombudsman, 2016 *Farmers penalised almost \$70,000 for short-changing 417 visa-holders \$2600*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160926-i-luv-penalty>>.

<sup>39</sup> Fair Work Ombudsman, 2016 *Labour-hire contractor signs workplace pact after underpaying Korean workers thousands of dollars*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160921-boonah-packing-eu-presser>>.

<sup>40</sup> Fair Work Ombudsman, 2016 *Pacific Islander visa-holders worked 36 consecutive days, short-changed \$14,700* <<https://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/august-2016/20160825-seasonal-labour-solutions-eu-presser>>.

<sup>41</sup> Fair Work Ombudsman, 2016 *Lettuce contractor signs workplace pact after short-changing almost 100 overseas workers*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160628-tsh-eu-presser>>.

<sup>42</sup> Fair Work Ombudsman, 2015 *Blueberry farm workers get \$461 back-pay*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/november-2015/20151130-benning-eu-presser>>.

<sup>43</sup> Fair Work Ombudsman, 2014 *Results of Yarra Valley strawberry farm visits*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/november-2014/20141110-yarra-valley-strawberry-farms>>.

<sup>44</sup> Fair Work Ombudsman, 2016 *Overseas workers short-changed \$92,000* <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/march-2016/20160302-gromer-tds-eu-presser>>.

- two New South Wales Mid-North Coast blueberry farm employers underpaid 13 seasonal workers almost \$10,000 in 2012/13.<sup>45</sup>

### FWO investigations

In a recent case brought by the FWO, a labour hire operator, Global Express Consultancy Pty Ltd, was penalised more than \$100,000 after underpaying young Asian working holiday visa holders. Appearing in the Federal Circuit Court, Sydney woman Yan Hu admitted to underpaying 19 employees from Taiwan and Hong Kong who worked at three factories which packed vitamins and supplied cheesecakes and muffins to Coles and Woolworths and patisserie products to schools and airlines.<sup>46</sup> Hu paid flat rates of \$16 to \$18 an hour – an underpayment of minimum hourly, casual, overtime and Saturday rates – and unlawfully deducted bonds of up to \$400 from employees' wages, to be returned if they stayed for at least six months and were not "lazy".

Judge Justin Smith found that Global 'deliberately sought to engage foreign nationals as employees because of Ms Hu's opinion ... that they were 'younger, cheaper and faster than locals who are old and slow'. Hu was penalised \$17,556 and her company Global Express Consultancy Pty Ltd \$87,783 after underpaying the employees more than \$45,000.

In commenting on this case, the FWO, Natalie James, admitted to being increasingly concerned by the number of cases of visa-holders being underpaid.<sup>47</sup> In 2015/16, 38 of the 50 litigations filed by the FWO involved a visa-holder, with 16 of those involving a 417 visa-holder. James reminded companies that they face potential reputational and legal risks if they source labour through a contractor and do not take any steps to ensure the contractor pays the workers correctly.<sup>48</sup>

### Summary

This case highlights the evidence of underpayment of wages, poor and unsafe working conditions and exploitation that is common across the various inquiries and investigations discussed in this Chapter. That evidence is widespread, not uncommon and ongoing with new cases reported on an almost daily basis. Although the reported incidences have tended to be concentrated in the horticultural and food processing industries and have often involved working holiday makers, the issue is much broader. These incidents of extreme exploitation are the tip of the iceberg of a growing problem, as labour hire arrangements continue to grow in size and spread across all industries. The nature of labour hire arrangements leaves workers with limited bargaining power in the employment relationship and vulnerable to exploitation. Where workers face language or cultural barriers or lack knowledge of their workplace rights, that vulnerability is heightened and results in the types of cases that have been reported in

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<sup>45</sup> Fair Work Ombudsman, 2014 *Mid-North Coast blueberry farms back in spotlight* <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/november-2014/20141106-blueberry-campaign>>.

<sup>46</sup> Fair Work Ombudsman, 2016 *Penalty for employer who viewed Asian workers as "younger, cheaper and faster" than locals*, <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/october-2016/20161021-global-express-penalty>>.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

the media and through a number of public inquiries. The nature of the labour hire arrangements also present particular challenges to effective monitoring and enforcement as they can be used as a way for a firm to avoid their obligations under workplace laws and lines of responsibility can become blurred. These are all factors that need to be considered in developing more effective regulation of the labour hire industry.

## Chapter 3 Overseas experience regulating the labour hire industry

This section reviews the experience of regulating labour hire in other countries. Direct comparisons are difficult to draw because of variations in the way in which labour hire, or temporary agency work is defined and regulated. However, what it does show is that other countries are prepared to regulate in a way that Australia has not done. The focus of the discussion here is on how licensing schemes operate in different contexts in order to better understand the benefits of alternative approaches. The discussion draws heavily on the work of Professor Underhill who published an extensive review of licensing arrangements for labour hire in 2013. A summary is given here with updates provided where available. The full paper is available at [http://economicdevelopment.vic.gov.au/\\_data/assets/word\\_doc/0004/1317244/Submission-Dr-Elsa-Underhill-Attachment-2.DOCX](http://economicdevelopment.vic.gov.au/_data/assets/word_doc/0004/1317244/Submission-Dr-Elsa-Underhill-Attachment-2.DOCX).

### Singapore

A licensing system for employment agencies has been in place in Singapore for several decades. As a small island country, Singapore faces severe limitations on its local labour supply and relies heavily on the importation of foreign workers. The licensing system is primarily intended to regulate agencies which import workers from overseas and to afford the Government control of temporary migration to ensure immigrant workers do not become long-term immigrants. The system does afford some protection from exorbitant fees for vulnerable workers, many of whom come from low wage countries in the region, and perform semi and unskilled work. The licensing system does not seek to promote compliance with minimum terms and conditions of employment.

The system requires agencies supplying workers to jobs in Singapore, and overseas to be licensed. Applicants for a licence must meet a number of requirements including completion of a training course, payment of a security deposit, a 'fit and proper person' test. The licence is required to be renewed every three years. All licensed agencies are listed on a public website, enabling hosts and workers to verify the licence status of the agency.

The Commissioner for Employment Agencies was created in 2011 to enforce the licensing system. The Commissioner has power to suspend, revoke and reinstate agencies. Licensees can also be fined, and their financial security deposit forfeited. Penalties for operating without a licence include fines and imprisonment. Penalties apply to both unlicensed agencies and licensed employment agencies which make 'employment-related applications on behalf of unlicensed employment agencies'. Unlicensed agencies can also be penalised for other breaches of the *Employment Agencies Act* and its regulations, such as providing false information regarding a job placement.

The justification for these penalties is that they are in proportion to the potential profits which unlicensed agencies could make from fees charged to workers. Penalties were introduced in 2011 for hosts that knowingly engage unlicensed employment agencies. Employers engaging employment agencies are required to exercise due diligence when checking whether an agency is licensed prior to contracting the agency.



The Singapore example illustrates that a licensing scheme can ensure that reputable and stable firms with appropriate experience and expertise are allowed to operate in the labour hire industry. The primary purpose of this approach is to improve the skills and professionalism of agencies and exclude dubious or dishonest operators.

## Japan

By contrast, the approach to licensing labour hire arrangements in Japan, as well as regulating entry to the industry, has sought to regulate the amount of labour hire employment and the conditions of that employment. Labour hire workers are referred to as 'dispatched workers' in Japan and are employed primarily under two arrangements; firstly as 'regularly employed/open-ended contract type' workers where they remain employed by the agency between placements with client and secondly as 'registration-type' workers where termination of employment occurs when the placement ends.

The *Law Concerning Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers, Law No. 88 of July 5, 1985* (1985 Act) provides that to gain a licence to operate, an agency must provide the following standard business details including:

- a business plan, including the number of dispatched workers, amount of the fee for worker dispatching, and other matters pertaining to worker dispatching, and
- the agency's ability to properly manage the employment of dispatched workers.

Licenses are initially granted for three years, and renewed every five years subject to the agency complying with licensing requirements.<sup>49</sup> Once licensed, the agency must keep detailed records of the number of workers placed, the working hours, matters relating to safety and health and complaints processes and who is responsible for the supervision of dispatched workers at the host workplace.

The grounds for disqualification of a licence include a prior conviction (within the previous 5 years) for breaches of laws relating to labour, organised crime groups, physical violence, immigration controls, various insurance laws including workers' compensation and pension insurances; being bankrupt; and being a minor.

Initially, the 1985 Act placed a limit on the occupations in which temporary agency work was allowed and the maximum period of placement of a dispatched worker. There has been successive lessening of these restrictions over time.

Temporary agency work was impacted significantly by the global financial crisis in Japan reflecting the high level of insecurity of these workers. Media attention to the negative aspects of temporary agency work and community concern led to a number of further changes to the legislation in 2015, including:<sup>50</sup>

- that the calculation of the term starts over if a new dispatch worker replaces a prior dispatch worker (previously if a dispatch worker worked for two years and

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<sup>49</sup> Underhill, E 2013, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work. <[http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF)>.

<sup>50</sup> Okunuki, H 2015 *Legal change will make temp purgatory permanent for many Japanese Workers*, The Japan Times, 27 Sep, Sutton, T 2015 *Japan: Amendment to Worker Dispatch Act*, Littler, 8 Dec.

was replaced by another dispatch worker for the third year, the three year term would be considered completed and the client company could no longer use dispatch workers for that position);

- that there is a limit of three years per position for dispatch workers, which can be renewed for another three years, subject to the consent of a majority labour union or a representative of the majority of employees. There is no limit to the number of times the term may be renewed;
- requires the agency to consider the wages and conditions of like workers at the client firm when determining wages; and
- staffing companies must take measures to secure employment opportunities for dispatch workers who finish their term.

Professor Underhill found that what has distinguished the approach to the regulation of labour hire in Japan is how very weak enforcement (in the form of guidance rather than penalties) does little to deter illegal practices.<sup>51</sup> Professor Underhill considers that the recent amendments which also capture the host company who knowingly accepts an illegally dispatched worker may lead to more effective regulation. Those changes allow that in the event that the client company does not adhere to the regulation, the employment relationship may be deemed to exist directly between the dispatch worker and the client company. The client company may also be subject to administrative orders and fines.

## South Korea

In South Korea, legislation is also directed to regulating the entrance of labour hire operators and the pay and conditions of employment of labour hire workers.

*The Act on the Protection etc. of Dispatched Workers 1998* sets out the requirements for agencies seeking a licence. Organisations must meet certain standards to obtain a licence including demonstrating that the applicant is not bankrupt, has not had convictions in the past two years that involved imprisonment, has not had convictions in the past three years for violating employment laws, and has not had their registration cancelled in the past three years. An applicant must be able to name a minimum number of host companies. The Act also imposes extensive requirements on the nature of placements including restrictions on the occupations and industries where placements are allowed, a two year limit on placements and that the contract between the agency and the host must include details of the pay and employment conditions, workplace health and safety, number of agency workers, details of their jobs, reasons for using agency workers and who will be responsible for managing the agency workers, etc.

There is a two year limit on the duration of placements (one year, and an additional year where there is agreement between the employer and the worker). The Act provides that agency workers are to become permanent employees of the host once the two year limit has been attained. The host must advise the agency of the pay and conditions of permanent workers and the dispatched workers must be paid the same wages and

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<sup>51</sup> Underhill, E 2013, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work. <[http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF)>.



conditions as the permanent employees. If any condition is breached in the contract, the contract is void and both parties are liable for unlawful treatment of workers.

A licence may be cancelled or suspended for failing to meet licensing requirements or for providing false information. If cancelled or suspended, the government may publicly advertise that the business is illegal. Penalties for operating without a licence or breaching the Act can amount to approximately AUD23,000 or up to three years imprisonment. This applies to both the agency and the host employer and if the contract is voided following actions by the agency, the host employer, with agreement from the dispatched worker, becomes the employer of the dispatched worker. Failure to do this can result in a fine up to AUD34,000.

Professor Underhill notes the extent of evasion practices has limited the effectiveness of regulation in South Korea.<sup>52</sup> In particular, the practice of using in-house contractors in large manufacturing plants (where use of agency workers is restricted) has been in existence for a number of years. Professor Underhill considers that the need for substantial documentation on contractual arrangements, as well as the minimum number of hosts, may deter unscrupulous operators from entering the industry but that the requirements for licensing are in practice readily met and enforcement needs to be more effective.

## United States

There is limited regulation of temporary employment agencies at either the federal or state level in the United States (US). This reflects the relatively unregulated nature of employment. Temporary agency work in the US is often called labour leasing, where the worker is leased to the host employer (for a period of less than 12 months). Closer to labour hire arrangements in Australia are 'pay-rolling' arrangements where an agency supplies employees to a host while remaining responsible for the payroll of those workers.

At the federal level, there are no licensing requirements for temporary agency employers and no specific regulations for the temporary agency industry. The limited regulation that does exist relates to agencies supplying migrant and seasonal workers and a general prohibition on government employment agencies referring workers to jobs where permanent workers are on strike. Federal regulations do exist which specify the rights or lack of rights of agency workers, for example, no access to collective bargaining or to voting for union representation.

Similarly, there is little evidence of regulation at the State level. An exemption is New Jersey where temporary employment agencies must be licensed and must pay a bond of USD1,000 (unless the business has a net worth of greater than USD100,000) and register the business premises. The agency must also be of good character, have prior experience in the personnel industry and have knowledge of licensing requirements. The focus on the regulation is on improving the safety of vehicles used to transport temporary

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<sup>52</sup> Underhill, E 2013, Attachment 2 Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work.  
<[http://economicdevelopment.vic.gov.au/\\_data/assets/word\\_doc/0004/1317244/Submission-Dr-Elsa-Underhill-Attachment-2.DOCX](http://economicdevelopment.vic.gov.au/_data/assets/word_doc/0004/1317244/Submission-Dr-Elsa-Underhill-Attachment-2.DOCX)> 24.

employees to or from a work site. Licenses may be revoked or suspended if licensing requirements are not met. Professor Underhill notes that the approach in New Jersey appears to be in response to specific transportation issues identified in the Health sector.<sup>53</sup>

## Countries in the European Union

The Directive on Temporary Agency Work (2008/104/EC) (EU Directive) defines a general framework applicable to the working conditions of temporary workers in the European Union.<sup>54</sup> The aim of the EU Directive is to guarantee minimum conditions to temporary workers and promote the temporary work sector as a flexible option for employers and workers.<sup>55</sup> The EU Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate.<sup>56</sup>

The EU Directive stipulates that temporary agency workers must be informed of any vacant permanent positions. It also provides that temporary workers should not be charged any recruitment fees, have equal access to amenities and collective services at work, and that Member States should facilitate training access for temporary workers.

In Belgium, for example, Belgian lawmakers seek to promote permanent work as a better and more secure endpoint of temporary work.<sup>57</sup>

Temporary work in Belgium is regulated by the Act of 24 July 1987 and a number of obligations have been implemented as a result of the EU Directive. The Act allows for temporary work to be performed for four well-defined specific reasons or motives including:

- replacement of a permanent employee;
- responding to a temporary increase of the workload;
- performing of exceptional work; and
- recruitment of the temporary worker.

Temporary work is able to be undertaken in a direct relationship between the employee and employer, or indirectly in the context of a triangular relationship involving a temporary work agency, a temporary worker/s, and a user.

A temporary work agency may recruit a temporary worker as replacement of a permanent worker, whose contract period has ended, for a maximum of six months, which may be extended by a further six months. Where a worker is recruited due to a temporary increase of workload, the user has to seek permission of the union delegates

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<sup>53</sup> Ibid 28.

<sup>54</sup> European Commission, *Working Conditions – Temporary Agency Workers*, <<http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=207>>.

<sup>55</sup> Ibid.

<sup>56</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. *Official Journal L* 327, 2008.

<sup>57</sup> Pecinovskiy, P & Van den Bergh, P 2014, *Comparative Labor Law Dossier Temporary Employment Contracts in Belgium*, IUSLabor, vol. 1, pp. 8.

or worker representatives. Where agreed, the engagement is valid for the maximum duration of one month.

There is no limit on the number of temporary workers a company can employ, however where the company has more temporary workers than permanent, there must be evidence of an increased workload or of specific or exceptional work, for example where an employee is hired for highly qualified work or in a managerial position. The Act also provides that the salary of a temporary agency worker is not to be less than had they been hired directly by the user as a permanent worker. It further allows the worker the right to make use of the same services of the company. Temporary workers for instance have the same right to parental leave as other workers, though no special rules exist to guarantee a new contract will be given after a temporary worker applies for parental leave.

Belgium, similarly to South Korea, has also introduced arrangements where the host becomes the employer and the employment contract becomes open-ended when an agency breaches employment laws. The agency worker can then seek compensation from the host employer.<sup>58</sup>

Temporary employment agencies in the Netherlands must also register with the Netherlands Chamber of Commerce in order to operate.<sup>59</sup> Agencies that do not register will be fined, along with users of the agencies. Tax authorities and labour inspectorates are also obliged to pass on information to the institutes responsible for certifying temporary employment agencies.<sup>60</sup> The Dutch Tax Authorities have adopted a proactive approach, whereby they send wage tax regulation forms to foreign employment and secondment companies that have registered with the Chamber of Commerce.<sup>61</sup> Companies supplying workers and users risk fines of up to approximately AUD108,700 for the first violation, AUD217,400 for the second violation and AUD326,100 for the third violation of the obligation to register, per worker.<sup>62</sup> However, in practice fine amount to more than approximately AUD17,100 for the first violation, AUD34,300 for the second violation and AUD51,500 for the third violation.<sup>63</sup>

### United Kingdom

The *Gangmasters (Licensing) Act 2004* (GL Act) was introduced in the United Kingdom following the deaths of twenty-three migrant cockle pickers hired through gangmasters.

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<sup>58</sup> Underhill, E 2013, Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work. <[http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0003/1314615/Submission-Dr-Elsa-Underhill.PDF)>.

<sup>59</sup> Eurofound, 2013, *Registration requirement for temporary agencies, the Netherlands*, <<http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/registration-requirement-for-temporary-agencies-the-netherlands>>.

<sup>60</sup> Ibid.

<sup>61</sup> Taxand, *Update: Dutch legislation supply of labour (WAADI Registration)*, <<http://www.taxand.nl/en/news/update-dutch-legislation-on-the-supply-of-labour-waadi-registration/>>.

<sup>62</sup> Ibid.

<sup>63</sup> Netherlands Chamber of Commerce, *Hiring or provision of workers in the Netherlands*, <<https://www.kvk.nl/english/how-to-register-deregister-and-report-changes/registering-with-the-chamber-of-commerce/hiring-or-provision-of-workers-in-the-netherlands/>>.

In the UK, a gangmaster is a person who supplies a worker to another person, or uses a worker, to carry out agricultural work, gathering shellfish, or processing or packaging any produce derived from these pursuits. The Gangmasters Licensing Authority (GLA) regulates the supply of workers to the agricultural, horticultural and shellfish industries.

Under the GL Act, someone is considered to be “using” labour if they employ the worker under a contract of employment or engage him or her under a contract for services, including requiring the worker to follow his or her instructions, determine where, when or how the worker carries out the work, or (for using workers to gather shellfish) requiring the worker to sell their gathered shellfish to them as the first link in the buying chain. This applies if the arrangements are made directly with the worker or the host company.

Annual fees and inspection fees are calculated according to gross annual turnover of a business. As of 2015 – 16 financial year a business is required to pay an application or renewal fee of:

- If annual turnover is £1 million or less; £400 and a mandatory once off inspection fee on application of £1850;
- If annual turnover is £1 million to £5 million; £1,200 and a mandatory once off inspection fee on application of £2,150
- If annual turnover is £5 million to £10 million; £2,000 and a mandatory once off inspection fee on application of £ 2,400
- If annual turnover is over £10 million; £2,600 and a mandatory once off inspection fee on application of £2,900

The Act contains 8 licensing standards that all gangmaster licence holders are required to maintain:

- *fit and proper test*; the GLA will consider, amongst other things whether the host company has an understanding of the GLA licensing standards and/or has sufficient management processes, been convicted or any criminal convictions, been an owner, director or partner of a business that has gone into insolvency, liquidation or administration;
- *pay and tax matters*; licence holder must be registered with Her Majesty’s Revenue and Customs and have a valid PAYE number and accurately calculate and deduct tax and National Insurance from all pays;
- *forced labour and mistreatment of workers*; must not subject workers to physical and mental mistreatment and threats must not be made to a worker or others.
- *accommodation*; if accommodation is provided, licence holder must ensure the property is safe to the occupants;
- *working conditions*; a worker must be able to take rest period, breaks and annual leave to which they are legally entitled;
- *health and safety*; managing day to day health and safety of workers must be agreed to and assigned, risk assessment must be completed and risk identified should be properly controlled;
- *recruiting workers and contractual arrangements*; must not charge a worker for any work-finding services, not make providing work-finding services conditional on the worker and the worker must be able to withdraw from any services without

penalty, subject to the worker providing 5 working days' notice or, for service relating to providing accommodation, 10 working day.

- *Sub-contracting and using other labour providers*; a licence holder must only use a sub-contractor and/or other labour provider who holds a current GLA licence.

In October 2015 the UK Government released a consultation paper on 'Tackling Exploitation in the Labor Market' proposing a reconsideration of 'the effectiveness of the way it tackles non-compliance with labour market regulation across the spectrum'.<sup>64</sup> The Government sought views on proposals to build on the effectiveness of the current regime. The proposals were: to reform the GLA to enable it to tackle serious exploitation wherever it is found in the economy, create a new director of labour market enforcement, create a new offence of aggravated breach of labour market legislation, and strengthen information sharing.

Following a two month consultation process, the government announced in January 2016 that it would proceed with the foreshadowed proposals (with the exception of the proposed new labour market offence). These changes formed part of the recently-passed *Immigration Act 2016* (UK), with the relevant provisions taking effect on 1 October 2016. The key overall changes to the GLA were to widen the remit, strengthen the powers, and change the name of the GLA to enable it to tackle serious exploitation across the economy as officers will be able to look into allegations of labour abuse in all aspects of UK business. Further, the creation of a new labour market undertaking and enforcement order regime, backed up by a criminal offence and custodial sentence enables the GLA to tackle labour exploitation effectively across any industry through civil and criminal sanctions,

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<sup>64</sup> BIS and Home Office (2015), 8; see also 18-20.

## Chapter 4 - Options to better regulate the labour hire industry

### Licensing and regulation in Queensland

A significant proportion of stakeholder submissions and testimony received during the FAC Inquiry supported the introduction of a licensing regime as an appropriate measure to improve the industry's performance. Approximately half of the submissions to the FAC supported regulation of the labour hire industry through a licensing scheme (QNU, the ADCQ, NUW, CFMEU Queensland, Australian Workers' Union, Australasian Meat Industry Employees' Union (Queensland Branch), United Voice, ETU, LVRC, Broadspectrum).

Evidence to the Inquiry, particularly from horticultural industry operators, strongly support a system of accreditation for labour hire contractors as a way of assisting those producers satisfy due diligence when engaging a labour hirer. The introduction of a licensing scheme, coupled with a public register of licence holders 'is likely to level the playing field amongst labour hirer operators and provide a degree of assurance to users of labour hire services that they are engaging with legitimate providers'.<sup>65</sup>

These benefits were summarised by the ADCQ in its submission:

'The benefits of licensing are that the workers receives fair treatment, the pay, benefits and conditions that they are entitled to. Labour providers are not undercut by those who pay less than the minimum wage or avoid tax. Industry standards are raised. Labour users can check their workers come from legitimate providers and are informed if their provider's licence is revoked. Consumers can be assured that their food has been picked and packed in an ethical environment. Illegal activities which lead to loss of public revenue – income and payroll tax are reduced.'

In March and May 2016, two separate Commonwealth Parliamentary Committees handed down recommendations to establish a licensing regime for labour hire providers. As part of such a licensing scheme, those Committees proposed 'a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax and superannuation laws in order to gain a licence'<sup>66</sup>.

The report of the South Australian parliamentary inquiry into the labour hire industry also recommended that the federal Government introduce a licensing scheme for the labour hire industry as recommended in the Senate Committee report. This is in recognition that the issues are national and that the jurisdiction for much of the parallel regulation of labour hirer operations are Commonwealth responsibilities, e.g. employment obligations, immigration, and taxation. In the absence of a federal Government licensing and registration scheme for labour hire providers, the report calls on the South Australian Government to institute a scheme. Most recently, the Victorian

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<sup>65</sup> Finance and Administration Committee, Report No 25, 55<sup>th</sup> Parliament, *Inquiry into the practices of the labour hire industry in Queensland*, June 2016, 55.

<sup>66</sup> *ibid*

inquiry into the labour hire sector has also recommended a licensing scheme be established.

To date, the response of the federal Government to the issues raised in the various inquiries and investigations of labour hire arrangements has been to announce the establishment of the Migrant Workers Taskforce that will target employers who exploit migrant workers; and following the working holiday maker visa review, that employers of working holiday makers will be required to undertake a once-off registration with the ATO and that employers who do not register will be required to withhold tax, at the 15 per cent rate (initially at the 32.5 per cent rate). It is proposed that working holiday makers will be made aware of registered employers via the publication of a list on the ABN Lookup.

These measures are targeted to working holiday makers and as such cannot be expected to influence the broader labour hire industry or the systemic features of labour hire arrangements which leave workers vulnerable to underpayment and exploitation. Furthermore, the taxing of working holiday makers (even at the 15 per cent rate) 1 January 2017 on earnings up to \$37,000 has created concern that this will create a black market for working holiday maker labour which will provide further regulation and compliance challenges.

More than six months since the Senate released its landmark report; *A National Disgrace: the exploitation of temporary visa holders*, the Commonwealth Government has still not made any response to the 33 recommendations in that report, including the development of a national labour hire licensing scheme.

In the absence of any Commonwealth action on this front, the Queensland Government is determined to do all it can to ensure the labour hire sector is properly regulated in the interests of workers and reputable providers alike.

Professor Underhill, in her submission to the FAC Inquiry identified the benefits of a licensing scheme including:

- to mitigate the risk of ‘malpractice and abuse of clients’;<sup>67</sup>
- to maintain records of agency businesses to enable targeting for training and information distribution. Requiring agencies to continually inform the licensing agency of changes in ownership structures, business addresses, opening of new branches and the like are commonly implemented to ensure effective monitoring;<sup>68</sup> and
- to maintain a public record of licensed agencies so that users (workers and hosts) can be assured they are using a legitimate agency to enable pre-screening of applicants for the relevant skills and capabilities, and their experience in job placement field.<sup>69</sup> Under some licensing arrangements, this extends to ensuring operators are of good character and without criminal record, thereby addressing emerging issues of violence associated with some labour supply in the horticultural sector.

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<sup>67</sup> ILO. 2007. *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement*, International Labour Office, Geneva.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

Business and occupational licensing schemes are a common feature of many industries to ensure integrity and professional standards are observed. Often business licensing schemes will have set standards and requirements applicants must meet and maintain to be eligible. Requirements can range from a standard police check to unique industry standards. Well known examples include licensing of builders in the construction industry, tattoo parlours, tow truck operators, property agents and auctioneers, motor dealers, security providers, second hand dealers and operators, introductions agents and inbound tour operators, to ensure integrity and that professional standards are observed. **Appendix 1** contains a list of licensing schemes in Queensland with some details of how they are structured and operate.

The Queensland Government website has an online register and free search tool which allows Queenslanders to 'check a licence' at <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/check-a-license-association-charity-or-register/check-a-license/>.

Licensing and regulation of the labour hire sector is also a common feature in many other countries, as the previous section of the paper highlighted.

Given the weight of evidence highlighting problems in the labour hire sector and the need for action in response, the Queensland Government considers there is a strong case for licensing and regulation of the sector. To that end, this final section of paper sets out the potential features of such a licensing scheme and seeks feedback in response.

*Question:*

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

### 'Fit and proper person' test

A 'fit and proper person' test could apply as a criteria to be allowed to operate as a labour hirer in Queensland. The test would prohibit persons from operating in the industry where, for example, they have been convicted of an offence, including fraud or dishonesty, intentional use of violence, breaches of workplace laws and breaches of occupational health and safety laws.

The 'fit and proper' person test could also provide that licensing is conditional upon ongoing compliance with:

- Fair Work legislation and associated employment conditions, including time and wage records and providing pay advice;
- WorkCover Insurance obligations;
- Workplace health and safety legislation;
- Anti-Discrimination and Immigration legislation;
- Accommodation standards;
- Taxation and Superannuation Guarantee legislation; and
- *Criminal Code Act 1889*.



A 'fit and proper' person test are features of the regulatory schemes for labour hire in Singapore and the United Kingdom. A 'fit and proper' person test was also a feature of the licensing scheme recommended by the Government members of the FAC Inquiry in their Statement of Reservation and featured in the licensing scheme proposed in the report of the South Australian and Victorian Inquiry into the Labour Hire Industry.

*Question:*

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

### Licensing fees to operate as a labour hire provider

Fees to be licensed are an essential part of a licence scheme. Licence fees are generally ongoing, typically payable annually, and are often designed to help fund the administration associated with establishing a register of licensed operators. The fees charged by business licensing schemes vary widely. Some examples are a Queensland tattoo operator licence currently costs \$1275 for one year or \$2,207 for three years, while a Queensland nightclub licence costs \$3507 per year. Other examples are provided in **Appendix 1**.

The setting of the amount of the licence fees can be determined as an offset to the estimated cost of administering a register, however, given the relatively small number of labour hire operators in Queensland the offset would only be partial. Alternatively, the fee could be calculated on an assessment of assets, revenue, cash flow or number of workers and so vary according to the size of the business. Most often, the cost of fees are reviewed regularly to ensure they keep in line with cost increases.

The application for a licence and the payment of licence fees are commonly facilitated through an online service. Often is also necessary to provide for application and payment to be made through the post for those organisations without internet access.

A licensing fee was also a feature of the licensing scheme recommended by the Victorian Inquiry into the Labour Hire Industry.

*Question:*

3. *What level of fee do you consider appropriate to licence a labour hire operator and how would it be collected?*

### Threshold capital requirement to operate in the labour hire industry

Threshold capital requirements are often used to ensure businesses operating in particular fields have the capital backing to ensure their capacity for ongoing operation. For example, advice of a builder's financial capacity is a part of the application process to obtain a licence with the Queensland Building and Construction Commission.

An amount of threshold capital could also be considered as a pre-requisite requirement to operate as a labour hire provider in Queensland. The threshold capital requirement could be determined by a variety of means, based on an assessment of assets, revenue or cash flow which is considered sufficient for the sustainable ongoing operation of a labour

hire business. This requirement is designed to ensure that only sufficiently capitalised employers set up business and that participants are able to fund the necessary costs of operation, including on-going licence fees, tax liabilities and employee wages and superannuation payments.

A threshold capital requirement was a feature of the recommendations for a licensing scheme proposed by the Government members of the FAC Inquiry in their Statement of Reservation and also featured in the licensing scheme proposed in the report of the South Australian Inquiry into the Labour Hire Industry.

*Question:*

4. *What do you consider to be an appropriate amount for the threshold capital requirement and how should it be calculated?*

### Payment of a bond to operate in the labour hire industry

An alternative or addition to the requirement for threshold capital is the requirement to pay a bond to operate in the labour hire industry. The bond would be refundable unless a labour hire operator was found to have breached their obligations. This would operate as a means of ensuring that the operator has sufficient capital to operate and the bond would serve as a guarantee of employee entitlements. The size of the bond or other security could be determined by a number of criteria related to business size or the number of workers on labour hire.

Internationally, labour hire authorities differ greatly in the bond amount required for a labour hire provider to operate. For example, in the United Kingdom, the Gangmasters Licensing Authority requires a labour hire company to pay a nonrefundable 'inspection fee' or bond which ranges from approximately \$2950 to \$4640 based on the provider's annual turnover. This is considerably less than the licensing requirements of Singapore, which requires payment of a 'security deposit' or bond ranging from \$19,100 to \$57,500, according to the provider's track record and volume of placements.<sup>70</sup>

A bond was part of the recommendations for a licensing scheme proposed by the Government members of the FAC Inquiry in their Statement of Reservation and was also part of the licensing scheme proposed in the report of the South Australian Inquiry.

*Question:*

5. *How should a bond for a labour hire operator to operate in Queensland be calculated and what would be an appropriate amount for the bond?*

### Provision of annual reports on compliance with industry standards

Monitoring of compliance with the requirements for maintaining a licence can be achieved, in part, by a requirement for licence holders to provide annual reports to a compliance unit on their compliance with industry standards. Reports could provide detail of relevant matters, including demographic information on labour hire workers

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<sup>70</sup> Singapore Ministry of Manpower, 2016 *Security bond requirements for employment agencies*, <<http://www.mom.gov.sg/employment-agencies/eligibility-and-requirements/security-bond-requirements>>.

and host employers, financial and business information on the labour hire provider, and evidence of compliance (or breach) of Commonwealth, State and local government laws.

Reports, or parts thereof, could be publicly available to inform users when making their decisions to engage a labour hire provider. Consideration should also be given to whether more regular reporting should be required on certain matters, rather than relying on annual reports. For example, it could be a requirement to report on major changes in business structure or ownership when they happen. It is important that reporting requirements strike the right balance between the need to provide sufficient information to allow an assessment of compliance with agreed industry standards and the need to minimise the administrative burden and red tape for participants.

Regular compliance reporting was part of the recommendations for a licensing scheme proposed by the Government members of the FAC Inquiry in their Statement of Reservation and featured in the licensing schemes proposed in the reports of the Commonwealth Inquiry into temporary work visa holders and of the South Australian Inquiry into the Labour Hire Industry.

#### *Question*

- 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?*

### **Mandatory workplace rights and entitlements training**

Evidence from a number of inquiries and reports has highlighted that labour hire workers, particularly temporary overseas visa workers, are often unaware of their rights and obligations. Workers in this situation should not be left to rely on their employer alone for information on their rights and entitlements. The FWO, for example, has recommended exploring opportunities to extend the channels through which information and support is delivered.

Lack of employee awareness of workplace rights and entitlements was common in a number of instances of exploitation that have been uncovered in the labour hire industry and the FWO has noted this in respect of a number of cases identified under the National Harvest investigation. To address this, a licensing scheme could require all employers to provide every new employee with a copy of the Fair Work Information Statement (the Statement) before, or as soon as possible after, they start their new job. The Statement provides new employees with information about their wages and conditions of employment under the National Employment Standards. Further information on relevant award or agreement conditions should also be provided, along with information and training about other standards and entitlements such as workplace health and safety, workers compensation, anti-discrimination and harassment laws (including sexual harassment) whether in legislation or company policies. Workers should be provided with information on where to go for help where a breach of these obligations is suspected, including information on relevant government bodies and unions that could provide assistance and representation. Such information would be routinely provided to permanent employees during an induction program.

### Question

7. *What additional information and training do you think labour hire firms should receive on their rights, entitlements and obligations and how should this be delivered?*

### Regulating the contractual employment relationship

While the employment relationship between the labour hire operator and the worker is regulated by the FW Act and other laws for workers' compensation, workplace health and safety and anti-discrimination, it has been noted that there is very little regulation to provide for the relationship between the labour hire employer and the host employer, and the host employer and the labour hire employee.

The Government's objective is for transparency between the parties involved in the labour hire transaction. The Government members on the FAC proposed that to ensure existing obligations for the payment of wages and other entitlements are protected that there be a further requirement for labour hire contracts used by registered labour hire employers to provide contractual obligations for:

- the payment of wages and conditions in accordance with the requirements of employment laws;
- where an employee is unable to seek recovery of unpaid wages from the labour hire employer due to administration, liquidation or an inability to locate the labour hire employer, the employee may recover unpaid wages from the host; and
- the employee can sue upon the terms of the contract.<sup>71</sup>

### Questions

8. *What information do you consider appropriate to be included in labour hire contracts to ensure that workplace regulations are met?*
9. *Do you think there are circumstances where a labour hire worker should be able to pursue the host employer for their entitlements in the event the labour hire employer does not meet its obligations e.g., if the host employer was using an unlicensed provider?*

### Compliance unit

A licensing scheme would require a dedicated compliance unit responsible for issuing licenses, ensuring compliance with licence requirements and monitoring the activities of licensees through regular audits and associated compliance activities. The compliance unit could enforce licence requirements such as a labour hire provider being required to hold a valid licence to operate, failing to provide the mandatory training to labour hire workers and providing false or misrepresentative information to the compliance unit.

A breach of a licence requirement could lead to a financial penalty to the offending labour hire provider and depending on the severity of the breach and/or if the labour hire provider is a repeat offender it could be appropriate to revoke or suspend the labour hire provider's licence. The compliance unit would also be responsible for maintaining a register of current licence holders that would be made publicly available.

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<sup>71</sup> Government Members – Statement of Reservation to the Finance and Administration Committee, Report No 25, 55<sup>th</sup> Parliament, Inquiry into the practices of the labour hire industry in Queensland. June 2016 p. 58

In industries where there is a large percentage of vulnerable workers, maintaining compliance is increasingly difficult. Workers who fear that raising issues about their employment, transport and accommodation may result in them being sent home or fired are less likely to report issues.

The compliance unit could also provide information to workers, labour hire providers and host employers on their rights and responsibilities under the relevant legislation and to refer identified problems and issues onto the relevant federal agency for action and investigation. These information and referral services could be provided by way of a 'one-stop-shop' (call centre/on-line service) to labour hire operators, workers and host employers. The compliance unit could also work co-operatively with unions to support the interests of workers in the sector.

The compliance unit could create a network of shared information with other state and federal units such as Workplace Health and Safety Queensland, FWO and the Fair Work Commission. This would further ensure minimum standards and workplace laws are complied with and could assist in determining if a licence holder or potential licence holder is to be authorised, denied, revoked or suspended.

The Queensland Government maintains a free search tool which can help users of particular industries in determining if a person has the appropriate licence to carry out their job. These industries include debt collectors, inbound tour operator, introduction agent, motor dealing, pawnbroker/second hand dealer, real estate and security provider. Authorised labour hire operators could be included in this list providing users a method to determine if services are legitimate.

The Victorian Inquiry recommended that the Victorian Government should consider if the Business Licensing Authority would be the appropriate body to administer the proposed labour hire licensing scheme, or whether a specific licensing authority should be established.

*Questions:*

- 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'?*
- 11. Are there any other issues you would like to raise that are relevant to the Queensland Government's consideration of the labour hire industry and ways to ensure that it operates ethically and meets its legal obligations for workers and the businesses it serves?*

## Appendix 1 – Business Licence Arrangements in Queensland

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
Qld Tattoo operator licence (also need Higher Risk Personal Appearance Service licence through BBC below)	\$1,275 for 1 year \$2,207 for 3 years.	✓	✓ May also be a permanent resident	✗	<ul style="list-style-type: none"> <li>• must not be subject to a control order (made by a court) because of a link to a declared criminal organisation</li> <li>• pass a Police security determination</li> <li>• submit a Close associate form for each close associate to either the business or yourself.</li> </ul>
Qld Tattooist Registration (also need Higher Risk Personal Appearance Service licence through BBC below)	\$388.10 for 1 year registration \$765.10 for 3 years registration (licence further fees apply)	✓	✓	✗	<ul style="list-style-type: none"> <li>• must not be subject to a control order (made by a court) because of a link to a declared criminal organisation</li> <li>• pass a Police security determination</li> <li>• submit a Close associate form for each close associate to either the business or yourself.</li> </ul>
<b>Brisbane City Council Qld Higher Risk Personal Appearance Services licence (e.g. body piercing, implanting natural or synthetic substances into a person's skin, scarring or cutting a person's skin using a sharp instrument to make a permanent mark, pattern or design, tattooing and tattoo removal.</b>	\$799.50 new licence  Transfer of existing licence \$453.05  Inspection fee for higher risk or non-higher risk service (mobile or fixed) \$374.15	✗ (note: see tattooist must be 18 years)		LG may have regard to an indictable offence, other than an indictable offence that is taken to be a simple offence under the <i>Criminal Code</i> .	
Blue Card application	\$84.25 for 1 year	✗ Note: volunteers under 18 exempt from	✗ Must have work rights under federal legislation	✓	

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
		requiring card (unless trainee student undertaking practical placement)			
Qld brothel licence	Differ depending on number of licences and number of rooms.  E.g. 1 brothel with 5 rooms for first year \$35,255 and \$32,465 per annum  \$1,040 Managers Certificate for 1 year, \$1,040 and \$778 annual fee	✓	✘  Must have visa that allows person to work	✘  Convictions will be considered when determining if person is suitable	Suitability consideration will be provided to: <ul style="list-style-type: none"> <li>• applicant's reputation, having regard to character, honesty and integrity</li> <li>• if applicant has been convicted of an offence against the Prostitution Act or a corresponding law</li> <li>• if applicant has been convicted of an indictable offence</li> <li>• if applicant has been convicted of an offence, the circumstances of which constitute the running of a brothel</li> <li>• if applicant has, or is or will be able to obtain financial resources that are adequate to ensure the financial viability of the brothel</li> <li>• if applicant will have in place arrangements to ensure safety of persons directly involved in providing prostitution and that otherwise comply with the requirements of the Prostitution Act.</li> </ul>
Tow truck vehicle licence	\$389.35 for 1 year, \$41.05 for criminal history check	✘	✘	Not specified	Must have markings on both sides of the tow truck that display the; name, business address and telephone number of the licence or towing permit holder, classification of the tow truck, licence or permit number of the tow truck and Tow Truck Number.
Nightclub licence	\$3,507 for 1 year	N/A	N/A	Not specified	meet a fit and proper/suitable person criteria.

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
					Licence types require an individual licensee or an approved manager to be on site or reasonably available during ordinary trading hours and extended trading hours between 7am and 10am, and individual applications (and/or an individual as approved manager) may need responsible management of licensed venues training.
Compliance for liquor license in Brisbane City Council area (post-1am trading)	\$7,310 Between 12am and 3am (weekends only) valid until 31 July 2017 \$9,740 between 12am and 3am (otherwise) valid until July 2017	✓	N/A		<ul style="list-style-type: none"> <li>• Lodge a Risk Assessed Management Plan</li> <li>• Provide details on the type of entertainment</li> <li>• Community Impact Statement</li> <li>• Keep an incident register</li> <li>• Responsibly promote alcohol and happy hours</li> <li>• Prevent irresponsible drinking games and competitions.</li> </ul> Provide and maintain video cameras located at each public entrance and exit. Demonstrate a community need.
Builder Licence (QBCC Licence)	Determined by financial information.  e.g \$260.75 for Builder/Trade Contractor Individual for 1 year licence fee and \$665.05 for 3 years (for maximum revenue up to \$200,000), \$341,55 application fee (for maximum revenue up to \$200,000)	✘	✘ Can be permanent resident or have visa that allows person to work	✓ Person must be a fit and proper conviction	<ul style="list-style-type: none"> <li>• 2 to 4 years' experience</li> <li>• Documents showing technical qualifications</li> <li>• Three written references</li> <li>• Financial information</li> <li>• Proof of identity</li> <li>• Details if contracting under a trading name</li> <li>• Details if contracting under a partnership</li> </ul>
Motor dealer licence	\$1,330.90 for 1 year or \$2,494.90 for 3 years	✓	✘	✓	Must pass required training courses



Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
	\$38.60 for a criminal history check.		Permanent resident or visa that allows person to work	Past 5 years, identified by QPS as participant in criminal organisation, consideration also given to criminal history	<p>Not suitable if insolvent under administration or disqualified from holding a licence or registration</p> <p>Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended from holding a licence or registration certificate, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.</p>
Corporate motor deal licence	\$757.30 for 1 year \$1,365.40 for 3 years  \$38.60 criminal history check fee.	N/A	N/A	✓ Serious offence punishable by 3 or more years within past 5 years	Not a suitable company if currently disqualified from holding a licence, has an unsuitable director or executive officer, if an executive officer has ever been an executive officer of a corporation, which was previously licensed, that has gone into receivership or liquidation, you must provide details.
Food Business Licence	\$733.90 for 1 year (less than 250 square metres) \$1002.45 for 1 year (250 – 1000 square metres)	N/A	N/A	N/A	<ul style="list-style-type: none"> <li>For new business locations a design assessment is required</li> <li>A food safety program accreditation is required</li> <li>The business must have a Food Safety Supervisor.</li> </ul>

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
Real estate agent licence	\$1,330.90 for 1 year \$2,494.90 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted within the past 5 years, criminal history considered	Must pass required training courses. Not be an insolvent under administration Not be currently disqualified from holding a licence or registration certificate.  Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended from holding a licence or registration certificate, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia. Must advise if person has been an executive officer of a corporation that was previously licensed or has gone into receivership or liquidation.
Real estate salesperson	\$312.10 for 1 year \$530.30 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted within the past 5 years, criminal history considered	Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended from holding a licence or registration certificate, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.
Corporate real estate agent licence	\$757.30 for 1 year \$1,365.90 for 3 years	N/A	N/A	✓	A company is not a suitable company if the person is currently disqualified from holding a

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
				Convicted within the past 5 years, criminal history considered	licence and has an unsuitable director or executive officer.
Business letting real estate agent licence	\$1,330.90 for 1 year \$2,494.90 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted within the past 5 years, criminal history considered	Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended from holding a licence or registration certificate, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.
Affordable housing real estate agent licence	\$1,330.90 for 1 year \$2,494.90 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted within the past 5 years, criminal history considered	Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended from holding a licence or registration certificate, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.
Business letting corporate real estate agent licence	\$757.30 for 1 year \$1,365.90 for 3 years	✓	✗ Permanent resident or visa that	✓ Convicted within the past 5 years,	A company is not a suitable company if the person is currently disqualified from holding a licence and has an unsuitable director or executive officer.

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
			allows person to work	criminal history considered	
Resident letting agent licence	\$1,330.90 for 1 year \$2,494.90 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted within the past 5 years, criminal history considered	Not suitable to hold a resident letting agent licence if the person is an insolvent under administration and is currently disqualified from holding a licence or registration. Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended or previously disqualified from holding a licence or registration certificate, disqualified from being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.
Corporate resident letting agent licence	\$757.30 for 1 year \$1,365.90 for 3 years	N/A	N/A	✓ Convicted within the past 5 years, criminal history considered.	A company is not a suitable company if the person is currently disqualified from holding a licence and has an unsuitable director or executive officer.
Auctioneer licence	\$1,330.90 for 1 year \$2,494.90 for 3 years	✓	✗ Permanent resident or visa that allows person to work		Not suitable to hold a resident letting agent licence if the person is an insolvent under administration and is currently disqualified from holding a licence or registration. Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, subject of a successful claim fund action, been cancelled or suspended or previously disqualified from holding a licence or registration certificate, disqualified from

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
					being a company director, previously been an insolvent under administration, incapable of satisfactorily doing the job of a licensee, is unsuitable because of your character or the character of your business associates and is allowed to work in Australia.
Corporate auctioneer licence	\$757.30 for 1 year \$1,365.90 for 3 years	N/A	N/A	✓ Convicted within the past 5 years, criminal history considered.	A company is not a suitable company if the person is currently disqualified from holding a licence and has an unsuitable director or executive officer.
Unarmed security officer licence, crowd controller licence, private investigator licence, bodyguard licence, cash transit officer licence, monitoring security officer licence, dog patrol security officer licence	\$292.70 for 1 year \$579.50 for 3 years	✓	✗ Must have work rights under federal legislation	✓ Convicted for disqualifying offence in past 10 years where conviction was recorded. Must advice unrecorded convictions.	Must not pose risk to public safety, and pass required training course.  May also be asked to provide further information so that it can be assessed if the person is a suitable person to hold a licence.
Security adviser licence, security equipment installer licence	\$177.90 for 1 year \$344.30 for 3 years	✓	✗ Must have work rights under federal legislation	✓ Convicted for disqualifying offence in past 10 years where conviction was recorded. Must advice unrecorded convictions.	Must not pose risk to public safety Staff must have licenses for the type of work they are performing.  May also be asked to provide further information so that it can be assessed if the person is a suitable person to hold a licence.

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
Security firm licence	<p>Class 1 licence (bodyguard, crowd controller, private investigator, security officer) \$1451 for 1 year, \$2921 for 3 years</p> <p>Class 2 licence (security adviser, security equipment installer) \$872 for 1 year, \$1749 for 3 years.</p> <p>Combined Class 1 and 2 licence (bodyguard, crowd controller, private investigator, security officer, security adviser, security equipment installer) \$1855 for 1 year, \$3740 for 3 years.</p>	✓	✓	<p>✓</p> <p>Convicted for disqualifying offence in past 10 years where conviction was recorded. Must advise unrecorded convictions.</p>	<p>Member of an approved industry association Must not pose risk to public safety Staff must have licenses for the type of work they are performing.</p> <p>May also be asked to provide further information so that it can be assessed if the person is a suitable person to hold a licence.</p>
Second-hand dealing or pawnbroking licence	\$705.80 for 1 year \$1,613 for 3 years	✓	<p>✗</p> <p>Must have work rights under federal legislation</p>	<p>✓</p> <p>Convicted of a disqualifying offence in last 5 years</p>	<p>Must have at least 1 place of business in Queensland Must not be insolvent or under administration or an externally administered body corporate</p>
Introduction agent licence	\$722.80 for 1 year \$1,291 for 2 years \$1,945 for 3 years	✓	<p>✗</p> <p>Must have work rights under federal legislation</p>	<p>✓</p> <p>Convicted of a disqualifying offence in last 5 years</p>	<p>Must not be insolvent or under administration.</p> <p>Must not be under external administration, must not be an associated person of the corporation.</p>

Licence	Fee	18 years	Australian citizen	No Criminal Conviction	Other
					Company does not need a licence if it is a community and non-profit organisation, or organises other public events such as dances, supply a published list of people looking for a relationship, as long as you charge less than \$100 and their clients do not contact the company directly to access the list or do not require your clients to use your service again and are a prostitution provider.
Inbound tourism operator licence	\$775.65 for 1 year \$2,187.25 for 3 years	✓	✗ Permanent resident or visa that allows person to work	✓ Convicted of a serious offence within part 5 years, consideration provided to criminal history	Must pass required training courses.  Person is not suitable to register if they are affected by bankruptcy action, are an externally administered body corporate, are currently disqualified from holding a licence or registration certificate,  Consideration is also given to if person is an executive officer of a corporation that has gone insolvent, previously disqualified from holding a licence or registration certificate, disqualified from being a company director, and is allowed to work in Australia.