



SUBMISSION BY THE  
Housing Industry Association

to the  
**Queensland Government**  
on the  
**Regulation of the Labour Hire Industry 2016 Issues  
Paper**

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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.





# 1. Background

HIA welcomes the opportunity to respond to the Issues Paper which is the Government's response to 2016 Parliament Finance and Administration Committee's Inquiry into the practices of the labour hire industry in Queensland.

The Issues Paper sets out a range of options the Government is considering to improve the labour hire industry – the majority of which are targeted at additional state regulation via a licensing scheme.

While the Issues Paper raises some valid issues, regrettably many of the options recommended are underpinned by broad and sweeping generalisations and false assumptions.

HIA acknowledges that the case studies mentioned in the Issues Papers and detailed in the Finance and Administration Committee's report reveal that some operators in the labour hire industry fail to meet with their various Commonwealth and State legal obligations as employers. However much of the evidence relied upon by the Committee was focused on alleged practices in the mining and horticultural (seasonal fruit and vegetable) industries and/or the use of migrant workers in breach of their visa requirements.

It is inappropriate to conclude that as a result of the poor practices by certain rogue operators, the entire labour hire industry across the state requires additional regulation.

Further, the Issues Paper is underpinned by a false premise that a licensing system will of its own remove poor practice from the labour hire industry. It is a truism that any regulatory system is only as good as its enforcement regime but the Issues Paper is very light on in addressing the enforcement question.

In its submission to the Committee's inquiry into labour hire, HIA went to some lengths to describe the complex array of regulations and legislation that govern employment practices and their current capacity to address the problems identified in the Issues Paper. The Issues paper has ignored totally the capacity for improvements in the current regulatory regime to improve outcomes for some labour hire employees, instead jumping to the erroneous conclusion that a Queensland based licensing system is the answer.

The Issues Paper also fails to properly quantify the cost of the various measures proposed.

For instance, while the Issues Paper contemplates the payment of fees for a labour hire business licence, it also makes no assessment of the costs to the Government of running an effective licensing regime for labour hire businesses or what the resultant extra compliance costs will mean for state wide productivity and efficiency.

## 2. Exempt Group Training

Another shortcoming in the Issues Paper is the absence of any reference to group training/ group apprenticeship schemes.

In its submission to the Committee's inquiry into labour hire, HIA went to some lengths to explain the important role that group training organisations, a form of labour hire, play in the development of skilled workers for the residential building industry in particular and the economy more broadly. The submission also noted the tight regulatory framework that currently applies to group training organisations like HIA.

The current regime for group training organisations already goes well beyond the type of licensing system canvassed in the issues paper. Accordingly HIA would strongly suggest that if the Government introduced a labour hire licensing system that group training companies should be exempt from any requirement to hold a licence. To require group training organisations to have



a labour hire licence would simply produce additional cost, duplication and complexity for zero gain to the effectiveness of the protections available to the employees of group training organisations.

### **3. Adequacy of Current Regulations**

As described in HIA's earlier submission employees of labour hire businesses already have protections available to them through:

- The Fair Work Act– Protection against underpayment of wages and other conditions of employment through the industrial awards;
- Corporations Law – Regulates the behaviour of companies and their directors;
- Incomes Tax Assessment Act(s) and Tax Administration Act (Cth) – Determines personal and business tax status of contractors and employees and superannuation guarantee status;
- Queensland Building and Construction Commission Act – Licenses contractors and has severe penalties for directors of “phoenix” companies;
- Payroll tax – Determines liability for payroll tax for employees and some classes of contractor;
- VET Act – Regulates the employment of apprentices and trainees, including through group training schemes;
- Workers Compensation – Ensures the payment of premiums and claims for employees;
- Portable Long Service Leave – Determines which employees and selected contractors are eligible for payments;
- Workplace Health and Safety – Imposes different obligations on employees and contractors.

Additionally, if they are working via temporary visa arrangements, labour hire workers have rights and obligations via the Department of Immigration.

The case studies mentioned in the Issues Papers reveal poor practices in the labour hire industry, but also serve to demonstrate that there is capacity in the current regulatory system, notably via the activities of the Fair Work Ombudsman, to identify and deal with the problems faced by employees. Whether the resourcing of the FWO is adequate to identify and deal with the issues faced by employees of labour hire businesses is an important consideration that is ignored in the Issues Paper.

It is crucial to any consideration of the suggested licensing system to know whether the resources that would be put into that endeavor would be more effectively used by the FWO (and the Department of Immigration to police exploitation of the visa conditions for foreign workers). Until that question can be answered through a thorough assessment of the costs and benefits of each approach, introducing a Queensland based licensing system would be premature at best and potentially a costly and ineffective mistake.

### **4. Licensing is not a Panacea**

There is no shortage of examples of where licensing regimes have not fixed the problem they were meant to address. Drivers licences do not stop individuals from speeding; gun licences have not eradicated the presence of unlicensed gun ownership or poor practices; and building contractor licensing has not eliminated issues with building quality or contractor payment. The reason that all of these and other licensing systems are not the whole answer is that there are limited resources available for enforcement.



The fee structures suggested in the Issues Paper for a labour hire business licence would provide little revenue for enforcement activity once the administration of the licensing system had been covered. In this environment those employees with complaints against a labour hire business would be likely to be left acting through one of the current complaint mechanisms, like the FWO: so why go to the trouble of introducing a licensing system just for Queensland with some arbitrary capital backing requirements.

The best that the kind of licensing system outlined in the Issues Paper could ever do, would be to provide a referral service for employees of labour hire businesses with grievances to other agencies.

## **5. Alternative Approach**

Notwithstanding the potential for the Federal Government to act in this policy arena, if the Queensland Government is committed to being seen to be doing something about labour hire businesses, HIA would suggest that consideration should be given to a registration system rather than an elaborate licensing regime.

Under a registration model (sometimes referred to as negative licensing) businesses would simply have to register with Government that they were in the labour hire business. There would be an associated requirement that only registered businesses could operate in the labour hire business in Queensland. Businesses that were found by other agencies like FWO to be not meeting their obligations to their employees could have their registration to operate removed.

Registration would be a far simpler and less costly system than the licensing model outlined in the Issues Paper. There would also be much less scope for confusion with the other agencies operating in the same area.

## **6. Recommendations**

- (i) Remove group training organisations from the scope of any activity to regulate further the labour hire industry;
- (ii) Undertake an analysis of the costs and benefits of putting more resources into enforcement by the current employment-related agencies as the benchmark for assessing the relative efficiency of a Queensland based licensing system;
- (iii) If something needs to be seen to be done in Queensland in advance of Federal action in this policy sphere, then consider a simpler registration approach.