

A large, thick orange circle that frames the central text.

**APSCo AUSTRALIA
SUBMISSION**

**REGULATION OF
LABOUR HIRE
INDUSTRY 2016**

**Issues Paper
Queensland
Government:**

Submitted: 6th February, 2017

By email to: labourhirereg@justice.qld.gov.au



The Association of Professional Staffing Companies in Australia (APSCo Australia) (formerly ITCRA) has been established to provide all companies involved in the recruitment and management of professional talent, the specialist support and distinctive voice the sector needs to ensure business success, recognition for excellence and immediate response to issues.

The Association provides candidates and employers an internationally recognised badge of quality. This is evidenced in the provision to member companies of an innovative range of business, compliance and education services designed by specialists with knowledge across multiple contracting and recruitment sectors.

APSCo Australia is now identified internationally as part of a distinctive voice for the professional recruitment and talent management sector across the United Kingdom, Germany, Singapore and Hong Kong.



APSCo Australia's ICT Staffing Trends provides an overview of the key movements and data that affects the ICT industry in terms of business conditions, human capital needs, recruitment activities, and expectations. SkillsMatch data is a major source of information for this Report, as is data from Burning Glass, Seek, and Live Salary.



SkillsMatch is a monthly reporting program of data from APSCo Australia member systems that includes: position title and requirements, available positions, salaries offered, placements made and time-to-fill for ICT contract and permanent roles.



iSafe sets a new benchmark for those who supply or manage white collar professional talent as it consolidates system and site assessments for companies who deliver recruitment, contract management, professional and management services as well as for their clients and contractors.



The Talent Engagement Standard (TES), in partnership with Certiex International and Service Excellence Consulting, sets best practice for organisations which recruit and manage workers. Created with reference to legislative requirements, existing industry standards and business best practice, the Talent Engagement Standard defines the critical compliance areas for employers.

Introduction

The Association of Professional Staffing Companies in Australia (APSCo Australia – formerly ITCRA) welcomes the opportunity to respond to this request for submissions into the regulation of the labour hire industry in Queensland. As ITCRA the Association has been an active respondent to the labour hire and licensing reviews and inquiries in all jurisdictions with a number of the recommendations of this Association being recognised in the final reports tabled in Parliaments across the country, and federally.

This response is on behalf of our strong Queensland Membership base but reflects the view of APSCo Australia in other jurisdictions both locally and internationally.

The Association of Professional Staffing Companies in Australia (APSCo Australia) represents companies involved in the recruitment and management of professional talent.

The Association provides candidates and employers an internationally recognised badge of quality evidenced in the provision to member companies of an innovative range of business, compliance and education services designed by specialists with knowledge across multiple contracting and recruitment sectors.

APSCo Australia is now identified internationally as part of a distinctive voice for the professional recruitment and talent management sector with a recognised badge of quality across the United Kingdom, Germany, Singapore and Hong Kong.

Our response in this submission is supported by our original submission to the Inquiry into the Practices of the Labour Hire Industry in Queensland and also our response to the Labour Hire Inquiry in Victoria, both of which are referenced in the Issues Paper. These are available [here](#)

Executive Summary

The key points expressed in this submission include:

- The imprecise nature of the term “labour hire” and the importance of clear parameters for what is being considered for licensing
- Queensland’s leadership in monitoring the quality of ICT suppliers (labour and resources) through the ICT accreditation QAssure provides an excellent exemplar – without creating another legislative overlay.
- The levels of legislative protections and statutory entitlements that regulate companies who supply and manage workers – which, even enforced, deliver the protections needed.
- The distinction between “labour hire” professionals and workers who are vulnerable to exploitation

For Consideration

Genuine on-hire and labour hire providers including professional contracting providers demonstrate high levels of compliance with workplace relations and Occupational Health and Safety (OHS) laws and regulations as well as other statutory obligations compared to direct hire employers. This is assisted largely by professional association standards and codes of conduct, such as those APSCo Australia has in place with its members.

APSCo Australia is not convinced of the need for a state based or nationwide licensing system as this would only serve to increase costs for already compliant labour hire/contracting providers and do little to deter unscrupulous providers. APSCo Australia Members are bound by a Code of Conduct which is the Professional Practice Standard for all its members as well as meeting requirements to participate in elements of the Talent Engagement Standard, relevant to their business.

National and international best practice indicates that streamlined regulation, together with industry association standards and education programs, are much more effective in ensuring legislative compliance. It is APSCo Australia's view that adding another layer of regulation would only exacerbate confusion and potentially lead to higher incidents of non-compliance and avoidance.

APSCo Australia reiterates its position that "labour hire" is used as an all-encompassing term and is both imprecise and commonly misused. APSCo does not use or support the term but recognises its ongoing occurrence in legislative and statutory policy across Australia – although it is pleasing to note it is slowly being replaced by the preferred term "on-hire" in some recent regulation.

APSCo Australia has, over the past 18 months promulgated, with the support of our international colleagues a descriptive suite of terminology that focusses attention on the clear separation between those professionals captured under the outdated "labour hire" misnomer and the vulnerable workers which these Inquiries and Issues Papers are so rightly motivated to protect. Attachment 1

The Issues Paper highlights Singapore and the Gangmasters Licensing Authority in the UK as two models worthy of consideration. In both instances our APSCo colleagues internationally participate in, or have been involved with, these models.

In the UK our international legal partners were instrumental in the discussions to establish this regulation while in Singapore APSCo is in ongoing dialogue with the Ministry of Manpower to have the Association's recruitment professional training program implemented as the assessment required by the Ministry – recognising the importance of training that is current and compliant with legislative requirements.

The feedback from those engaged directly in the Gangmasters Licensing Authority indicate that to mirror a whole of labour hire licensing or regulation on this model would be an overstatement, as this Authority aims to protect workers from exploitation by regulating

businesses that provide workers to agriculture, horticulture, shellfish gathering and food and drink processing and packaging only.

Whereas the Singapore requirement to have the principal of a recruitment company and nominated staff complete a recruitment qualification/examination is seen as a positive, if somewhat onerous expectation.

If a licensing/regulatory scheme were to be introduced into Queensland, and APSCo Australia does not believe that a further layer of regulation is necessary then perhaps an established Queensland model, which is of interest to other states, might provide the key.

QAssure

Queensland's leadership in monitoring the quality of ICT suppliers (labour and resources) through the QAssure ICT business accreditation is an exemplar of a program – without creating another legislative overlay.

The Managing Director of APSCo Australia has been an active participant, along with other industry partners in the evolution of the QAssure, which is focussed on an ICT supplier (goods and labour) industry accreditation process that evolved because business in Queensland, and especially Government, could not clearly identify reputable ICT supply – and this was seen as a huge risk.

In summary, ICT suppliers register their business details online, including their capabilities, financials and insurances – this could be considered to expand and capture other statutory requirements – including superannuation, workers' compensation, taxation, Right to Work etc.

After the checking and approvals process, accredited businesses are provided with a QAssure number and are listed for twelve months on the QAssure website. Any organisation seeking an ICT supplier (services or labour) – both public and private sector clients – can search the register. There is no fee to search the register, or to contact a company or individual listed.

At the end of twelve months, ICT suppliers are invited to revisit the accreditation process, or are withdrawn from the register. This way, details available at QAssure are up-to-date, and clients seeking ICT services are assured the information is relevant and of high quality. A model such as this puts the responsibility equally on all parties, the end user as well as the supplier, to ensure the company is “fit for purpose”.

By default, it operates as an education and information process (similarly to initial applications to APSCo Australia) where any of the required statutory elements that cannot be completed are followed up and resources and information supplied to ensure knowledge and understanding. More importantly it can easily become the one stop shop for a sector

that needs easy access to the correct tools and information to maintain compliant employment and business practices.

The QAssure model has been developed in partnership with various industry sectors, and industry standards, Codes of Conduct and other best practice models have all been discussed and incorporated into the resources and tools for those seeking information.

This program is a cost to the businesses applying to be accredited, has an annual review process so companies cannot easily slip under the radar and, most importantly recognises the importance of the efforts of multiple peak associations to provide standards, deliver education and support legislative compliance.

If a similar model was developed to capture multiple labour sectors, commencing with those sectors causing the most concern then APSCo would suggest – if end users of companies supplying labour were engaging suppliers outside the QAssure style framework – then the consequences of any exploitation or misrepresentation of obligations should be shared.

As the Register can also be searched by those seeking work, it could provide the necessary information and resource service, and discourage vulnerable workers from agreeing to work with companies not listed.

As the infrastructure is in place, and the program is already supported by Queensland Government with economies of scale this could be a less costly exercise for all parties and implementation would not be as prolonged.

“Fit and Proper” Person Test

The “fit and proper” person test is a challenging one as, in many instances, the person may pass all elements of the test but the business will not. The QAssure model certainly ensures that the business meets thresholds financially and that that all business compliance is established from a statutory perspective. Expanding this to ensure directorships and other personal information about an individual’s history will require additional levels of data collection – but are essential if the Register is to be indicative of a business that meets the qualifying criteria established in such a model.

In considering “labour hire” in any context there are companies who operate outside of Queensland, and internationally, that supply labour to Queensland companies and the “fit and proper” test can become a challenge if the company’s management structure is multi – layered – who does the “fit and proper” apply to – particularly if the business does not have a base in Queensland.

APSCo Australia completes a governance check on all Directors of companies applying to be Members and disallows the company membership of any organisation where the Director has defaulted in any way. There is a right of appeal process but this monitoring ensures the integrity of the membership and doesn’t assume “the fit and proper” test can be passed by one representative and be indicative of the business as a whole.

Fee Levels and Threshold Capital

As APSCo does not support a licensing program it would be inappropriate to recommend fee levels or thresholds and, as businesses in Queensland in this sector are quite often small businesses, it is imperative that any additional fee structure does not create a level of “avoidance” that drives businesses to operate outside whatever program is in place.

The fee needs to be seen to be more than a “collection of funds” and, more importantly it needs to be seen that end users do not engage with anyone outside whatever system is established. If this is not controlled then the value for being “licensed” is non-existent.

Regular Reporting

On boarding of workers is an expectation of all recognised APSCo Australia members as well as pre-placement inductions. Member companies are expected to undertake all requisite WHS due diligence, reference checks and right to work reviews among other more general employment due diligence. Companies are expected to have staff participate in regular updates including but not limited to: legislative and statutory requirements; employment law (in particular EEO and Discrimination); WHS obligations as a PCBU; workers’ compensation and insurance responsibilities; contract agreements and minimum entitlements including Modern Awards where applicable; immigration; privacy and data security; superannuation and taxation obligations.

These could form the basis of any regular reporting and online education program – supported by the Associations in the sector or through the regulators own services and or CCIQ.

Contracts

APSCo Australia has developed, in partnership with our international legal partners, comprehensive contract templates which address the obligations of both the end user and the professional staffing company towards the worker and towards each other. These are exemplars of best practice.

More importantly APSCo Australia has also established a Vulnerable Worker checklist to be referenced in any discussions to ensure there is an understanding of where a worker may be at risk if they are not in a position to understand the terms of engagement.

A Fair Engagement Checklist has also been developed to ensure an understanding of what protections need to be in place.

These can be shared, IN CONFIDENCE, to better explain the ability of contracts to deliver positive protections to all parties, including the worker.

Conclusion

APSCO Australia, as part of APSCO Global represents a global workforce that sees an increased demand for the right people at the right time. Freedom of contract is a fundamental tenet of our legal system, and the notion that individuals should be free to contract for the provision of their services in different ways is well established. Similarly, businesses should be able to adapt their workplaces to a rapidly changing technological and economic environment, and ensure they can attract, maintain and support the skilled workers they will rely on in the future.

If the Queensland Government does determine that there is a need for a licensing regime or additional regulatory protection for temporary workers, APSCO Australia respectfully submits that there should be some consideration of what constitutes “labour hire” that needs protection and also an understanding of the key touchpoints for vulnerable workers.

The workers that APSCO Australia members represent are highly skilled professionals, with the sophistication and knowledge to understand the relative advantages and disadvantages of the various methods of engagement, and to negotiate an individual decision based upon their own personal circumstances.

It follows that heightened protection should be afforded to those workers less able to understand the terms of any labour hire or contracting arrangement, or those who are less likely to be in a position to freely choose their mode of engagement, such as individuals under the age of 18, unskilled and migrant workers.

Focusing increased monitoring and protection on certain classes of vulnerable workers would protect those most at risk of exploitation. The Gangmasters Licensing Authority has had acceptance in the UK due to its clear identification of where the need is based and a comprehensive education program across the market sectors involved.

APSCO Australia believes that a simplified and streamlined system of business and individual accreditation (such as the QAssure program and the Singapore assessment and education program) will deliver productivity benefits, and better compliance outcomes due to an enhanced understanding of the rights and obligations of all parties.

The focus of the recommendations, in the view of APSCO Australia, should be on educational programs, recognised quality business standards and professional accreditation that will assist parties to identify compliant organisations and qualified consultants who know their responsibilities and understand the rights and obligations of workers, rather than introducing additional regulation in an already heavily regulated area.

While the exploitation of vulnerable workers is an appropriate target for enforcement, there is no need to target already compliant companies and individuals. More importantly, in identifying, protecting and supporting those at risk it is imperative that protection does not provide a pathway to the development of new regulatory avoidance strategies or a barrier to those enterprises and individuals who want to drive innovation and change and are well informed and qualified to do so.

APSCO Australia would be pleased to take the opportunity to discuss the points in this submission in more detail and, in particular, provide any additional information as required, particular the items referenced as in confidence.

Regards,

Julie Mills

Managing Director

APSCO Australia