

**ITCRA SUBMISSION TO THE
INQUIRY INTO THE
PRACTICES OF THE LABOUR
HIRE INDUSTRY
IN QUEENSLAND**

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By email to:

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ITCRA is the professional body for the ICT and professional contracting and recruitment sector in Australia and New Zealand. ITCRA Members supply and/or manage professional talent on behalf of their clients for permanent and flexible roles, especially contracting, across Australia and New Zealand as well as multiple international markets.



ITCRA's ICT Employment Trends Report 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 ITCRA Member systems that includes: position title and requirements, available positions, salaries offered, placements made and time-to-fill for ICT contract and permanent roles.



Developed by ITCRA, **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 **People & Talent Management Standard (PTM)**, in partnership with Certex International and Service Excellence Consulting, sets best practice for organisations that recruit and manage workers.

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Executive Summary

The Information Technology Contract & Recruitment Association (**ITCRA**) is the professional body for the Information Communication Technology (**ICT**) contracting and recruitment sector in Australia and New Zealand and has a significant number of Members based in Queensland. Our Members supply and manage white collar professionals for permanent and flexible employment, in particular contracting, across Australia and New Zealand as well as multiple international markets. The majority of these roles are in the ICT sector but there is also an increasing representation in other white collar professional sectors that have a strong need for contracting specialists such as accounting, engineering and architectural professionals.

ITCRA welcomes the opportunity to participate in the Inquiry into the Practices of the Labour Hire Industry in Queensland (**Inquiry**) on behalf of its Queensland Members. This submission focusses on ICT professionals but would in most instances translate easily to other white collar professions with a strong contracting base.

The key matters expressed in this submission include:

- Labour hire/contracting professionals enjoy comparative levels of legislative protection and entitlements as employees. The vast majority of these workers choose non-standard forms of work and have no desire to be permanent employees.
- 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 compared to direct hire employers. This is assisted largely by industry association standards and codes of conduct, such as those ITCRA has in place with its Members.
- ITCRA is not convinced of the need for a state based or nationwide licensing system or industry code, as this would only serve to increase costs for already compliant labour hire/contracting providers and do little to deter unscrupulous providers.. ITCRA Members are bound by a Code of Conduct which is the Professional Practice Standard for all its Members.
- 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. Adding another layer of regulation would only exacerbate confusion and potentially lead to higher incidents of non-compliance.
- There is a clear distinction between labour hire/contracting professionals and workers who are vulnerable to exploitation, and the Inquiry is asked to bear this in mind when making its recommendations. In the event the Inquiry recommends such a system of additional regulation, it should be with the exception of white collar industries.

1. The extent, nature and consequence of labour hire in the ICT industry

Consistent with an industry at the forefront of innovation, the ICT sector has adapted and responded to a rapidly changing and increasingly globalised sector, triggering an increase in demand for non-traditional employment arrangements.

ITCRA Members, for instance, may provide any number of the following services to the market:

Contracting service - A commercial service where an ITCRA Member, in return for a fee, completes a defined scope of work for a client. This work may be performed utilising individual or incorporated independent contractors engaged by the ITCRA Member and who may work under the instructions of the client.

Contractor management service - A commercial service where an ITCRA Member, in return for a fee, undertakes responsibility for the performance of any aspect of a contract for the performance of a contractor, without undertaking the direct employment or engagement of the contractor, or the direct performance of the work.

Payroll service - A commercial service to facilitate the payment of remuneration for contractors or employees of a contracting and recruitment services client, and can include, but is not limited to, services to remit statutory payments with respect to superannuation and taxation.

Placement Service - A commercial service where an ITCRA Member provides, in return for a fee, sourcing and presentation of candidates for permanent employment by a client.

Workforce Consulting Service - A commercial service where an ITCRA Member provides, in return for a fee, identification and response to a client's workforce issues and recommends or implements strategies designed to assist clients to achieve stated business outcomes.

A significant number of ICT workers are engaged as independent contractors, with ITCRA's most recent data from our Employment Trends Report¹ indicating that 92% of ICT roles filled in the Oct–Dec quarter, in Queensland, were contract based. This figure reflects the nature of the ICT infrastructure projects, coupled with ongoing changes in government tendering arrangements and the business models of clients partnering with ITCRA Members.

It is also important to note that these contractors are engaged across a broad range of industries, not just ICT, according to the Australian Digital Pulse 2015² by Deloitte for the Australian Computer Society (ACS). The data indicates that individuals engaged in ICT are in almost every industry with predominance in financial services (47.9%); ICT related industries (26%) and public administration (11.2%) and, with approximately 25% of ACS members representing contractors, this is definitely an engagement model that is part of the fabric of Australian and Queensland business.

The demand for contracting roles is evidenced in the regular data ITCRA receives and has independently validated as part of its Employment Trends Report. The statistics reflect the roles advertised and filled and clearly show the market driven preference for contractors, as illustrated below:

¹ITCRA Q4 (2015) *ICT Employment Trends Report* Melbourne, January 2016.

²*Australia's Digital Pulse* (2015) Deloitte Access Economics for the Australian Computer Society, Sydney.

State by State Ratios of Permanent to Contract ICT Roles				
	Q3 2015		Q4 2015	
	Permanent	Contract	Permanent	Contract
Australian Capital Territory	10%	90%	8%	92%
New South Wales	12%	88%	20%	80%
Queensland	14%	86%	8%	92%
South Australia	12%	88%	16%	84%
Victoria	19%	81%	19%	81%
Western Australia	10%	90%	8%	92%
Australia-wide	14%	86%	16%	84%

Average Days-to-Fill ICT Roles by Permanent or Contract and by State			
	Permanent	Contract	Contracts Require
Australian Capital Territory	42	45	7% more
New South Wales	46	26	43% less
Queensland	53	28	47% less
South Australia	30	28	7% less
Victoria	44	34	23% less
Western Australia	56	21	63% less

Hourly Rates ¹ in Australian Dollars for ICT Roles by Permanent or Contract and by State			
	Permanent	Contract	Contracts Require
Australian Capital Territory	\$75.31	\$94.95	26% more
New South Wales	\$69.57	\$93.30	34% more
Queensland	\$61.12	\$76.25	25% more
South Australia	\$50.84	\$60.67	19% more
Victoria	\$69.79	\$86.09	23% more
Western Australia	\$62.45	\$69.02	11% more

Comparative hourly rates are calculated by dividing permanent annual salaries by 1,672 hours, representing 44 weeks per year at 38 hours per week. This takes into account 52 weeks per year, less and approximated hourly earnings of permanent entitlements represented by four weeks of annual leave, two weeks of statutory holidays, one week of sick leave, and one week of long service leave.

Top Recruiter-Sourced ICT Roles by Permanent and Contract Placement	
Permanent	Contract
Software Developer/Engineer	ICT Project Manager
Systems Analyst	Systems Analyst
Helpdesk Officer	Helpdesk Officer
Computer Systems Engineer/Architect	Software Developer/Engineer
ICT Project Manager	Technology Consultant
	Computer Systems Engineer/Architect
	Software QA Engineer/Tester
	Computer Programmer
	Network/ Systems Administrator
	Network Engineer/Architect

BurningGlass Top Five Hiring Organisations for ICT Roles

2014	2015	2016
Western Australia Government	Accenture	New South Wales Government
Aged & Disability Services Care	Commonwealth Bank of Australia	Queensland Government
Queensland Government	Western Australia Government	NBN Co Ltd
ANZ Banking Group	Hewlett-Packard	Department of Defence
Price Waterhouse Coopers	Victorian Government	Westpac Banking Corporation

Workers are choosing non-standard forms of work

The prevalence of independent contracting in the ICT labour market is largely candidate driven with the vast majority of ICT professionals choosing to work as independent contractors because it affords them flexibility, recognition and diversity, whilst facilitating the maintenance of a current skill set in a rapidly changing profession.

The Productivity Commission Draft Report on the Workplace Relations Framework observed that workers value different forms of work and that the availability of alternative forms of work actually satisfies the wide variety of preferences of workers.³

ICT is a younger workforce, with a high proportion of ICT professionals aged between 25 and 44 years of age (67.8 per cent compared with 45.5 per cent for all occupations⁴). Amongst this demographic there is a relatively higher level of professional optimism and confidence in being able to attain work elsewhere; as a result, job security is often not considered a priority and the notion of insecure work is generally not a concern.

In ITCRA's experience, labour hire/contracting is predominantly used to fill a specific specialist function within a business. It is also commonly used as a longer-term supplement to a permanent workforce, with permanent and labour hire professionals working alongside each other performing the same work.

Economic impacts

The relationship between ICT and productivity is well established in overseas research and the flexible supply of quality labour/talent to facilitate the delivery of ICT solutions is critical.

A 2006 study from the Centre of Law and Economics at the ANU found that ICT investment and spill overs were major drivers of productivity growth in Australia and other OECD countries in recent years⁵. Similarly, Australian micro-economic studies have shown significant productivity impact from ICT at a firm or enterprise level, with ICT conferring informational, strategic, transactional and transformational benefits⁶.

³ Australian Government, Productivity Commission, *Workplace Relations Framework: Productivity Commission Draft Report* (August 2015).

⁴ Australian Workforce and Productivity Agency (2013), *ICT Workforce Study*, July.

⁵ Barker, G., Waverman, L., Fuss, L., and Tooth, R., (2006) *ICT Networks and Productivity: Australia in perspective*, a paper prepared for DCITA 2006.

⁶ Telstra 2009, *ICT as a Driver of Productivity*, Melbourne, January.

In order to capitalise on the significant productivity gains ICT has to offer to the Queensland economy, it is vital that policy development and regulation supports, rather than hinders, the industry and the talent that supports the industry.

2. Best practice regarding the treatment of labour hire workers

While acknowledging the importance of independent contracting as an alternative form of engagement in the modern workplace, ITCRA recognises that this model can be exploited by unscrupulous hirers, seeking to avoid the minimum benefits and protections afforded to employees under workplace legislation.

Contract and recruitment companies therefore have a pivotal role to play in ensuring that no party is exploited and workers receive entitlements that are equal to or exceed the statutory minimum for employees performing similar work. It is also vital that an individual understands and accepts their rights and obligations, and the options available to them before engaging under such models.

In order to establish a commitment to ethical and professional practices, ITCRA Members are bound by a Code of Conduct⁷ which specifically outlines the standards regarding key relationships with other contractors and employees that all classes of ITCRA Members must meet. Behaviour that breaches the Code of Conduct may result in the imposition of sanctions of the type provided by the rules that govern ITCRA as an incorporated entity under relevant state and Commonwealth laws.

ITCRA has partnered with Certex International and Service Excellence Consulting to deliver the People & Talent Management Standard⁸ (**Standard**) which sets best practice for organisations which recruit and manage workers. Certification in all six modules of the Standard indicates an organisation is meeting the highest standards for recruitment and worker management. This joint initiative was launched in November 2015 and currently 43 organisations are at various stages of the program.

The Standard takes people and talent management best practice to the heart of a company and puts the talent first and foremost by ensuring that essential protections and processes are in place throughout the relationship with the workers, no matter how they are engaged.

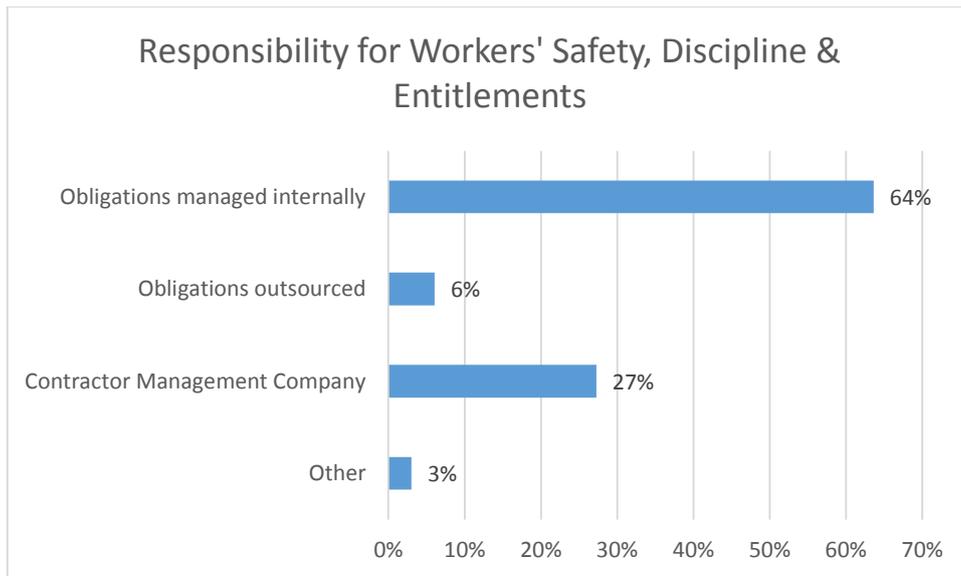
ITCRA has also partnered with top quality training providers to establish a number of programs that provide Member consultants, managers and contractors the opportunity to demonstrate their commitment to best practices and establish themselves as leaders in their field.

The role of labour hire providers in implementing best practice

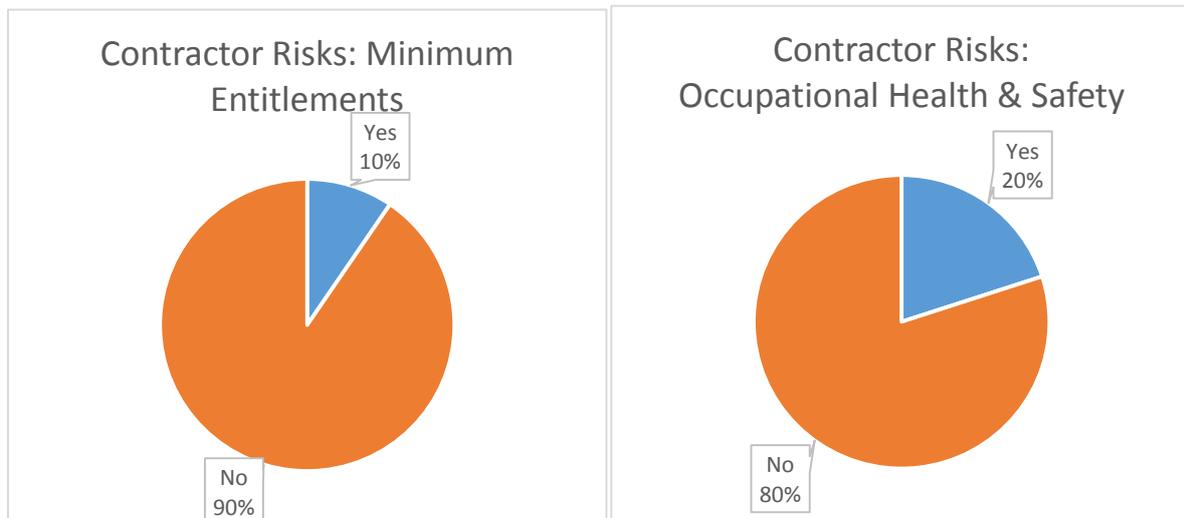
As part of preparing its response to the Inquiry, ITCRA conducted inquiries of its Queensland Members regarding what steps they take to ensure workers understand their rights and they reflect best practice. The results of that survey are as follows:

⁷ ITCRA (2010), *The Code of Conduct of the Information Technology Contract & Recruitment Association*.

⁸ Certex International (2015), *The People and Talent Management Standard*.

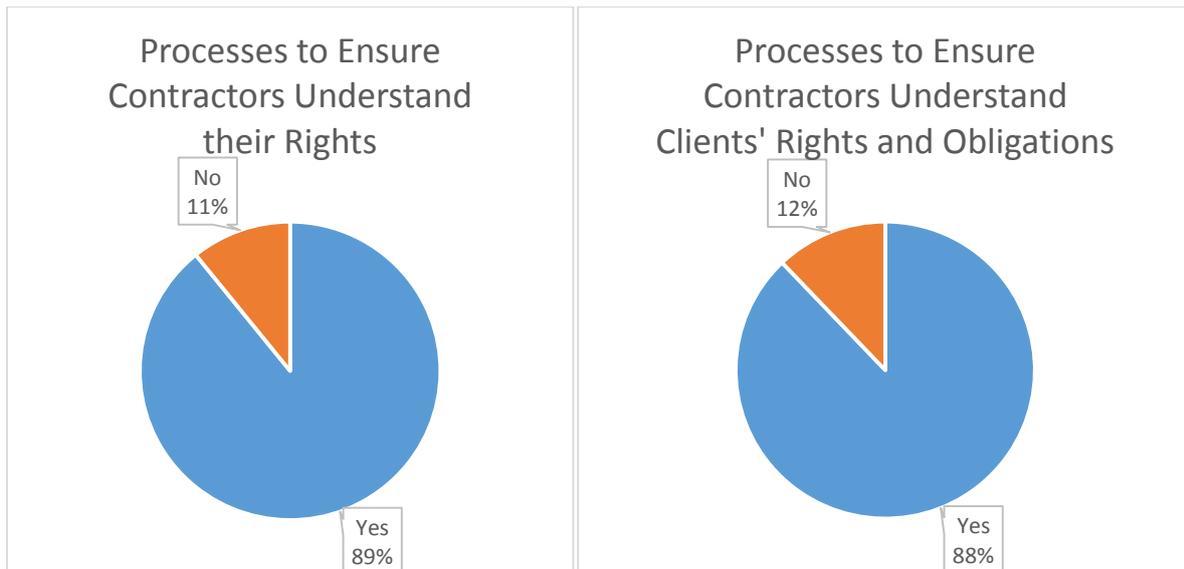


Respondents were asked “How does your company play a role in ensuring obligations such as superannuation, payroll tax, and WorkCover premiums are complied with for your contractor and on-hire workers?” and were able to nominate more than one method. 63 percent said they took internal responsibility for complying with workers’ safety, discipline, superannuation, payroll tax, and WorkCover premiums and other entitlements. Many respondents used multiple methods to ensure quality.

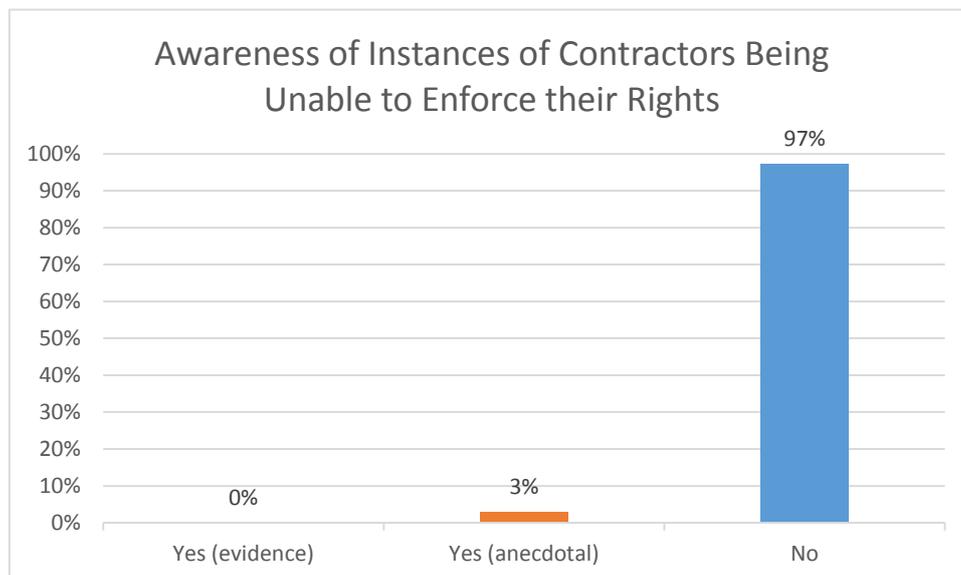


Only 9.5 percent of Members acknowledged that there are specific risks to workers’ in terms of minimum entitlements.

20 percent of Members claimed that OHS is a specific risk for workers. This is largely due to a lack of induction training with the contractor and client companies not understanding who is accountable/liable in the event of an incident. Some Members suggested that there be a minimum standard check for recruiters to perform prior to and during the engagement and a program such as iSafe and WorkPro should be mandatory in any organisation. Members also believe it is important that all parties understand their own obligations from an OHS perspective at all times.



89 percent of Members said they have clear processes in place to ensure workers understand their rights and the obligations of their employers. Induction and follow up training is conducted for all workers and information provided which references their rights and where further information can be sourced. Consultants are trained to know and understand workers' rights and entitlements and payroll teams ensure workers receive their entitlements. Rights and obligations of all parties are contained in agreements, policies and procedures.



The majority of Members surveyed did not identify any barriers to workers' enforcing their rights. Only one Member acknowledged that this may be an issue in the industry at large, but not amongst ITCRA Members in Queensland.

The above results clearly indicate that labour hire providers, and ITCRA's Members, follow best practice, have sophisticated mechanisms in place and are fully aware of their obligations to ensure that workers' rights are protected and supported.

3. Regulation of the labour hire industry and the effectiveness of enforcement

ITCRA is unaware of any conclusive evidence suggesting that labour hire providers are any less compliant with their regulatory obligations, no matter the form of engagement with workers.

In ITCRA's experience, the labour hire/contracting firms and client businesses operating within the professional contracting sector do not use contracting as a way of avoiding employment costs and obligations; rather it is used to supplement their workforce – to fill a short term niche skill requirement, or to add specific skills. In fact, ITCRA is unaware of any examples that demonstrate a lack of opportunity for contractors to negotiate fair terms or being engaged under less favourable pay and conditions.

Contracting professionals, especially those working with ITCRA Members, will have experienced good employment practices that comply with relevant laws and regulations, often providing superior wages and conditions. For instance, ITCRA's Q4 2015 (Oct-Dec) Employment Trends Report⁹ shows that the average hourly rate for ICT contractors in Queensland was \$76.25 per hour."

The views of on-hired workers were surveyed by RMIT University of Melbourne, which found that on-hired workers are generally treated similarly to the employees of the client companies and are generally paid award rates or higher. The on-hire workers involved in the study believed that they derived benefits from non-permanent employment such as work diversity and balanced lifestyles and did not believe they were significantly more likely to be injured than direct/permanent employees..¹⁰

An agency or host businesses' responsibilities to employees and other workers varies across state, territory and Commonwealth laws, industrial awards and agreements, common law and contracts of employment.¹¹ Therefore, industry associations like ITCRA play a prominent role in assisting Members to navigate and comply with workplace legislation to ensure high levels of compliance and minimise the health and safety risks to temporary/contract workers.

Compliance with OHS laws

Obligations under the *Work Health and Safety Act 2011* (Qld) (**WS Act**) mean that a labour hire agency cannot 'pass on' its legal duty relating to the safety of the workplace, regardless of whether the host employer may agree to this. As part of its commitment to OHS compliance for example, ITCRA has developed a unique site, system and document risk management review solution called iSafe that supports, in a practical way, the notion that everyone has a right to a safe work environment.

The iSafe program is designed to:

- ensure all OHS site and system reports and follow ups are managed to the same quality benchmark;
- deliver consultation, co-operation and co-ordination through a centralised team of qualified OHS practitioners;

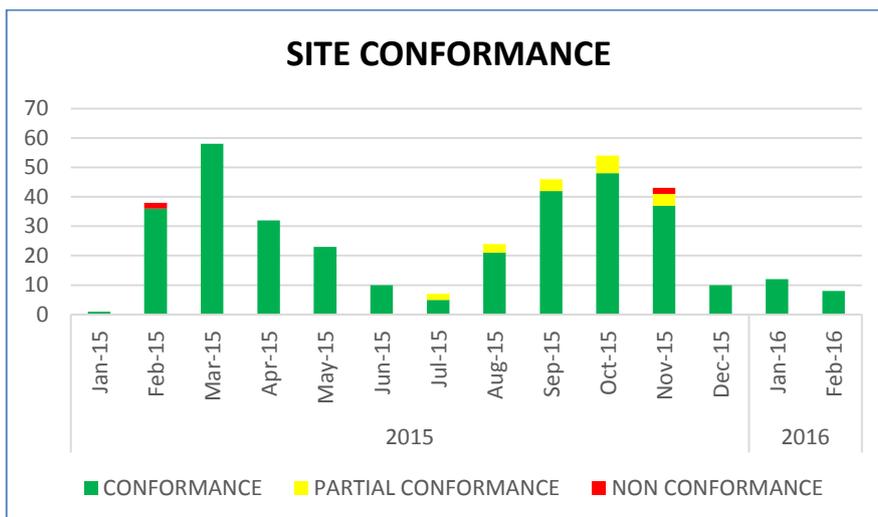
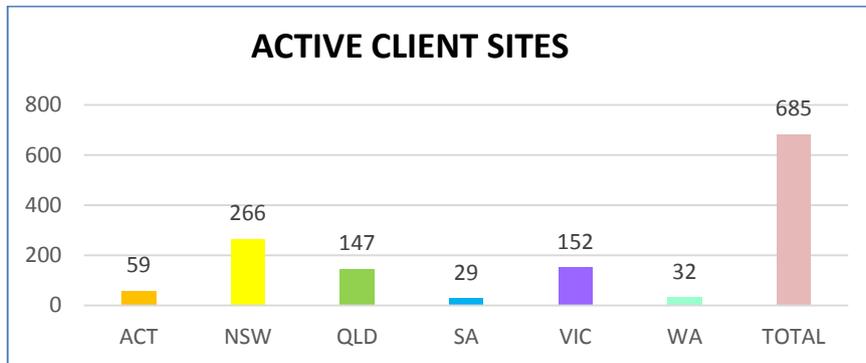
⁹ ITCRA Q4 (2015) *ICT Employment Trends Report*.

¹⁰ Brennan, L. Valos, M. and Hindle, K. (2003) *On-hired Workers in Australia: Motivations and Outcomes* RMIT Occasional Research Report. School of Applied Communication, RMIT University, Design and Social Context Portfolio Melbourne Australia.

¹¹ http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=wrwp/independentcontracting/report/chapter3.pdf

- document a process for OHS Risk Management, where there are multiple parties involved, that ensures stakeholder engagement; and
- provide an opportunity for a collaborative process for overall practice improvement.

The statistics from the program track OHS conformance on sites where professional contractors are engaged. ITCRA also partners with its insurers to compare this evidence against their claims history for the sector. The levels of compliance are illustrated below:



All reports are discussed with clients and the recruitment company and, where partial or non-conformances are identified, action is taken to:

- assist the client to develop on site solutions;
- support the contractors on site if the issue impacts them directly;
- educate the recruitment company to ensure they have support mechanisms and policies in place; and
- develop tools and resources to inform the wider market as part of an ongoing education campaign.

To support this specific data, ITCRA's insurers, Arthur J Gallagher (**AJG**), have noted that over the past twelve months claims related to ITCRA Members have been the lowest of all their clients across the contracting and recruitment client base. AJG believe this is, in some way, attributable to the iSafe program.

In relation to other entitlements, labour hire/contracting agencies in Queensland are not regulated by specific legislation but, as employers, they are regulated by the Commonwealth *Fair Work Act 2009* (Cth) (**FW Act**) and other laws that place obligations on employers. The sham contracting laws contained within the FW Act, for instance, are arguably one of the strongest set of laws relating to labour hire and are strongly enforced by the Fair Work Ombudsman (**FWO**).

The FWO is active in monitoring compliance and pursuing contraventions of the FW Act involving vulnerable workers. A key focus of the FWO is to work with lead businesses in building a culture of compliance and has pursued various strategies to achieve this including compliance partnerships, enforceable undertakings, as well as litigation. The FWO noted that compliance partnerships are 'increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws.'¹²

The FWO uses court action as a last resort, usually when an employer has deliberately exploited vulnerable workers and refuses to cooperate with the FWO.¹³ The FWO initiated six cases involving sham contracting in 2014-15, which saw significant penalties handed down. In one case decided, a Melbourne travel services' company was penalised \$228,000 for paying flat hourly rates of \$9-\$11 to a migrant worker who should have been paid as a casual employee. The underpayments totalled \$19 567 over eight months. In another case, the court found two travel businesses deliberately misclassified workers as independent contractors and underpaid more than \$25,000. As a result the businesses were penalised a total of almost \$138,000.¹⁴ Both of these cases related to direct hires rather than any labour hire arrangement.

4. Regulation of the labour hire industry – lessons for Queensland

As noted in the Issues Paper, there a number of concurrent reviews in other Australian jurisdictions.

The final report, *A National Disgrace: The Exploitation of Temporary Visa Holders*, from the Senate inquiry into the exploitation of temporary visa workers has just been released.

Although the report mainly focuses on the exploitation of temporary visa workers, there are some recommendations, which need consideration by ITCRA and its Members. In particular, the report recommends that a licensing regime for labour hire contractors be established along with a public

¹² Australian Government, Education and Employment References Committee, *A National Disgrace: The exploitation of temporary work visa holders*, March 2016, p290.

¹³ Ibid, p291.

¹⁴ Fair Work Ombudsman, Annual Report 2014-15, pp. 42-43.

register of all labour hire companies. In order to obtain a licence, contractors would have to meet and be able to demonstrate compliance with all workplace and industrial relations laws and ensure all subcontractors also hold a licence.

The Education and Employment References committee considers a significant benefit of licensing is the creation of a level playing field for legitimate labour hire companies and for businesses that use labour hire contractors to source labour. The committee is also of the view that a licensing regime is vital to disrupt current business models of unscrupulous labour hire contractors in Australia who supply vulnerable temporary visa workers.

In response to the report, ITCRA acknowledges that exploitation in workplaces across Australia should be eradicated; however we reject the overall recommendation. Licensing schemes in particular, have been in place for many years, and yet the exploitation of workers still remains the focus of a number of inquiries.

The Coalition minority on the inquiry said the recommendation “*would punish those labour hire firms which are already complying with relevant laws*”.¹⁵

It is important to note that the recommendations of the Senate Inquiry exclusively relate to migrant and unskilled workers in industries such as horticulture, food processing and convenience stores.

Considering a licensing scheme

Both the Senate and Victorian inquiries have been pointed to the example of the Gangmasters Licensing Authority in the UK that licenses and regulates labour hire companies. However, the Gangmasters Licensing Authority aims to protect workers from exploitation by regulating business that provide workers to agriculture, horticulture, forestry, shellfish gathering and food and drink processing and packaging.¹⁶

There is no conclusive evidence to suggest that labour hire agencies and host employers operating within the professional services sector are any less compliant with their regulatory obligations than the general employer population. As such, ITCRA is not convinced of the need for a licensing system in the labour hire industry, particularly in professional sectors. Complex laws and significant penalties are already in place to address non-compliance. There is no need to introduce a licensing scheme that would only increase costs for labour hire agencies that are already complying with their obligations as employers.

Of particular concern to ITCRA Members’ is that a state-based licensing scheme would not only be costly to implement but would cause significant compliance issues for those Members operating in more than one state and, even more significantly across global marketplaces.

¹⁵ Above n 12, March 2016.

¹⁶ United Kingdom government, Gangmasters Licensing Authority, <https://www.gov.uk/government/organisations/gangmasters-licensing-authority>

Defining ‘independent contractor’

During the Victorian Inquiry, much of the concern regarding labour hire seemed to stem from the difficulty in defining the relationships and responsibilities¹⁷ of the parties involved in labour hire arrangements. Many participants have argued for a simple and clear statutory definition, which “settles” the distinction between an employee and an independent contractor.

The only state in Australia to define the relationship that exists between the three parties is Queensland, through its *Industrial Relations Act 1999 (IR Act Qld)*. Under the IR Act Qld, ‘employer’ is specifically defined to include labour hire agencies.¹⁸

Queensland’s labour hire provisions in effect reinstate the common law position, that in the absence of a sham arrangement, a labour hire agency will be determined to be the employer, not the host business.¹⁹

The common law test for determining an employment relationship and whether a worker is an employee or an independent contractor is not always precise or straight forward. It does however provide the level of flexibility necessary for the courts to examine the true nature of varying employment relationships.

The development of a single statutory definition to accurately categorise all workers within the labour hire industry across all sectors in Australia is not feasible and would only lead to future complications as work arrangements continue to evolve. Of particular concern to ITCRA Members, is the likelihood that a narrowly drafted definition would adversely affect current genuine arrangements.

ITCRA submitted to the Victorian inquiry that a ‘one size fits all’ definition of independent contractor would prevent all the nuances of individual circumstances being fully considered. The development of a single statutory definition to accurately categorise all workers within the labour hire industry across all sectors in Australia is not feasible and would only lead to future complications as work arrangements continue to evolve. Of particular concern to ITCRA Members, is the likelihood that a narrowly drafted definition would adversely affect current genuine arrangements.

Considering a national code of practice

During the Senate and Victorian inquiries there has been much discussion about establishing a nationwide industry code of practice.

In June 2015, the RCSA released for public submissions a proposal for an Employment Services Industry Code that it claimed would provide a single national framework for the regulation of those involved in the provision of employment services and on-hire contracting.

The need for a national framework, together with national standardised statutory codes and standards certainly exists, however ITCRA Members generally consider it naive to believe it will eradicate unethical labour engagement practices.

¹⁷ Above n 10.

¹⁸ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IndustRelA99.pdf>

¹⁹ http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=erwrp/independentcontracting/report/chapter3.pdf

There are a number of key points that need to be considered before any overarching code or regulation for the contracting and recruitment sector would be effective. The fact that there are instances of non-compliance is not a sufficient reason to add another layer of compliance or regulation..

There is a recognised need for greater commitment to the training of “contract management & recruitment professionals” for consistency and uniformity of practice across the sector so that it behaves as a profession. This means recognition of consultants as professionals – a recognised program of qualifications with mandatory review and renewal (ITCRA Certification is a starting point). Clients and candidates will then recognise the standards of practice similar to a CPA.

With 70% of companies in this sector being small and medium enterprises, it is also important to ensure that any new compliance model does not, in its development and implementation, add another barrier to these companies in the marketplace due to increased costs and red tape.

Conclusion

The ICT industry engages 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 Inquiry results in the Queensland Government implementing regulatory protection for temporary workers, ITCRA respectfully submits that it should be limited to vulnerable workers and should not extend to professional white collar temporary workers.

These workers 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 any increased regulatory protection on certain classes of vulnerable workers would protect those most at risk of exploitation. This would also allow genuine independent contractors, and their hiring entities, to freely negotiate the terms of engagement without the fear of those terms unintentionally falling foul of sham contracting or other laws aimed at preventing exploitation of temporary workers, which could arise if there was a rigid and overly simplistic definition of independent contracting adopted.

ITCRA believes that a simplified and streamlined system of regulation/certification will deliver productivity benefits, and better compliance outcomes due to an enhanced understanding of the rights and obligations of both employers and employees.

The focus of the inquiry should be on educational programs, recognised quality business standards and professional accreditation that will assist parties to identify compliant contracting and recruitment companies 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.

ITCRA also proposes the development of a “Fair Engagement Checklist” to ensure the formation of genuine and non-coercive independent contracting relationships. The checklist would not only provide a useful tool for businesses to ensure compliance with legal obligations when engaging workers, it could also be relied upon as evidence of the willingness of parties to enter into an independent contracting arrangement. ITCRA has developed a work in progress checklist and would be prepared to discuss further.

It is important not to lose sight of the main objective of the *Independent Contractors Act 2006* (Cth) (**ICA Act**), which is to “protect the freedom” of contractors to enter into contracts to supply their services, to “recognise independent contracting as a legitimate form of work arrangement that is primarily commercial”, and to “prevent interference” with “genuine” contracting agreements (section 3 of the ICA Act).

While the exploitation of vulnerable workers is an appropriate target for enforcement agencies, there is no need to target already compliant companies and individuals capable of effectively and lawfully entering into alternative employment arrangements. It is important to recognise that many workers have no desire to become permanent employees and actually enjoy the freedom and financial incentives associated with self-employment and other alternatives. These genuine preferences should not be interfered with by another layer of regulation.

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.

ITCRA 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.



Julie Mills

ITCRA CEO

7 April 2016
