

Lockyer Valley Regional Council Submission
In response to the
Regulation of the labour hire industry in Queensland issues paper 2016

The Lockyer Valley Regional Council (LVRC) welcomes the opportunity to make a submission in response to the Queensland Regulation of the Labour Hire Industry in Queensland Issues Paper. The issues surrounding exploitation and regulation in the labour hire industry are complicated and interwoven with social factors such as lack of appropriate accommodation and transportation. A series of changes needs to happen in the landscape to protect vulnerable workers and their rights.

Whilst some farms manage their own recruitment and supervision of workers, “Labour Hire Contractors” referred to as “contractors or operators” have increasingly become more established as a source of seasonal labour. It is these relatively unregulated contractors/operators and their associated clients who have come under scrutiny of all levels of government and the media. Effective enforcement and compliance depends on a combination of factors such as adequate resourcing of the regulators and a sufficiently robust penalty regime to discourage unscrupulous activity from growers (hosts), contractors and accommodation suppliers. More resources dedicated to the compliance monitoring of bodies such as the Fair Work Ombudsman (FWO) and/or Workplace Health and Safety Queensland are needed to ensure that workers are protected and incidences of non-compliance at all three levels of government are reduced significantly.

Given that there are numerous pieces of legislation, regulations and standards aimed at protecting workers and their rights already in place, without sufficient resources to ensure effective policing, compliance, and enforcement of current penalties, there is little purpose in introducing further regulations. However a licencing regime that supports and augments the current resources of organisations tasked with upholding current legislation would go a long way to reducing the incidence of rogue labour hire contractors.

Our submission addresses the following questions specifically as it relates the local agricultural and horticultural industry; however there is scope to broaden the application of an accreditation and subsequent licencing regime to a range of industries:

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

A model of where states monitored and administered nationally standardised regulations can be found in the Heavy vehicle industry. Before the introduction of the Heavy Vehicle National Law (HVNL), compliance and enforcement activities on-road varied between states. The National Heavy Vehicle Regulator (NHVR) worked collaboratively with state and territory road transport authorities and police agencies to harmonise a range of these processes under the HVNL. This was aimed at delivering consistent on-road compliance and enforcement, ensuring the same outcome in the same circumstances on a national scale. Initially states issued accreditation to a nationally standardised system through state based roads and transport authorities. The system is now being managed at a national level.

There is no foreseeable reason that a state organisation such as Workplace Health and Safety Queensland, which has a compliance unit currently in place, could not also administer and enforce a nationally recognised standard and state level licencing for the labour hire industry in Queensland.

Any system implemented to regulate labour hire will require it to be cost effective for contractors so that smaller operators, who are complying with their responsibilities as employers are not disadvantaged. This would allow for revenue raised to contribute to the cost of resourcing compliance should this be necessary. A sliding scale of cost based on size of businesses involved in supply of labour would allow for smaller operators to compete with larger, better resourced organisations and not adversely affect local economies in rural areas. One percent (1%) of annual turnover would allow small operators to pay the minimum fee and larger operators to pay significantly more without prejudice to any specific operation.

A system based on annual, independent audits of compliance with clearly defined requirements for licencing accreditation and maintenance of a licence would enable enforcement agencies to identify and prosecute growers (hosts) and contractors/operators found in breach.

The system must have clearly defined roles and responsibilities for hosts, contractors, and enforcement agencies, as well as substantial penalties, with the monitoring body able to issue immediate infringement notices and subsequent delicensing with the aim of dis-incentivising noncompliance by rogue contractors and their host employers.

Host

There are several responsibilities that must fall to the host employer with penalties that are a strong disincentive to using unlicensed contractors. The ability to prove due diligence in selection of a labour hire contractor would provide the host some protection from prosecution, especially in circumstances where the contractor fails in their obligations to the worker. The ability for a host to access licencing details online, similar to the processes for an Australian Taxation Office ABN search, Queensland Government's 'Check a licence' webpage or the Queensland Building, and Construction Commission's builders licence search would be the first step in due diligence on behalf of the host. Alternately the governing body could provide a central point of contact that would provide this information.

The host would also be responsible for checking that general work ready training was provided to workers and that workers are given safety induction training for their specific property or worksite.

Due diligence in the selection of a labour hire contractor and OH&S training could be as simple as a document which is signed off by the contractor providing written evidence to the host of a current licence to operate and that workers have undergone induction. Hosts who cannot supply enforcement agencies with the appropriate documentation would be penalised on the spot, in the first instance. This documentation could be as simple as a one page checklist that is signed by both parties that states license number and declaration of OH&S work ready and induction training.

Contractor

As stated previously, the heavy transport industry is a model of national standards initially regulated and administered by states. As with this model the onus of proof is on the operator. Similarly, the contractor would ultimately be responsible for the provision of proof of compliance to conditions needed to apply for and maintain accreditation for a licence to operate as a labour hire provider.

Contractors would bear the cost of annual independent audits from a list of approved auditors supplied by the governing body. This would include, but not be limited to, the ongoing compliance with;

- A 'fit and proper person test'
- All workplace health and safety legislation including proof of;
 - undertaking of training in OH&S prior to gaining initial licence and

- subsequent delivery of appropriate OH&S training to staff and casual employees,
 - proof of regular updated training in OH&S.
- Maintenance of records to prove compliance with Work Cover legislation and that all payments are up to date or that there is sufficient capital coverage at time of audit,
- Proof that Taxation and Superannuation Guarantee legislation has been complied with and that all payments owed are up to date or that there is proof of the ability to pay at time of audit,
- Proof that due diligence has been taken in complying with Immigration legislation and Anti-Discrimination legislation. This would include, but not be limited to
 - A register of Visa Entitlement Verification Online (VEVO) checks (a report by organisation request might already be possible within Dept. of Immigration and Border Protection)
 - Form 1263 Working Holiday visa: Employment verification could be done online by the contractor/employer uploads payslip file as proof of employment
- Proof of compliance with all employment legislation and that due diligence has been executed in the dealings with awards and pay rates including sign off by the office of Fair Work Ombudsman on piece rate contracts.
- Proof of a suitable level of public liability insurance
- Engagement of an approved independent auditor and submission of annual audit report to governing body at the cost to the contractor.

A clear and enforceable separation of labour provided by employees to hosts from the provision of other services to contracted employees must exist. Specifically for those services pertaining to placement for employment, transport to and from work site and/or accommodation.

- Where provision of transport to and from the worksite is provided by the contractor, the contractor must provide proof of regular vehicle maintenance and compliance with legislation under the Queensland Department of Transport and Main Roads or other relevant bodies
- Restriction on housing provision i.e. if a labour hire contractor has interests or is in control of housing this must be declared. These houses can be inspected, without notice being given by enforcement agencies.

Currently there are no licensing regimes which apply to labour hire firms in Queensland. The introduction of a licensing regime similar to that of the Gangmasters Licencing Authority (GLA) in Britain, with adequate resourcing to enforce compliance and substantial penalties for non-compliance, would ensure that many cases of workplace exploitation and associated abuses of human rights would be reduced. For this process to be effective, as with the GLA, penalties must exist not only for labour hire contractors but also the hosts who use unaccredited, unlicensed providers. The lists above are by no means a complete indication of what would be required but rather a guide to level of detail required, as each responsible government agency would have to be consulted on what requirements would need to be verified for accreditation of a contractor to operate in compliance with all current employment laws.

Regardless of which agency is tasked with the implementation and monitoring of the regime, a collaborative, partnership model of enforcement and information sharing between agencies would have to be implemented.

A staged introduction of the system would be required so as to ensure that operators/contractors are able to undertake necessary training and collate required documentation in preparation for the application of a licence. Phasing in a licence regime on an industry level would ensure that the authority tasked with enforcing compliance would have time to upskill officers and institute internal processes and procedures for each industry sector.

A very simplistic example would be;

- the introduction of a licence accreditation program for agriculture/horticultural, meat industry and mining industries phased in by end of calendar year 2017
- hospitality, retail, construction and other trade industries phased in by end of financial year 2018
- implementation in health, education, clerical and administrative sectors thereafter.

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?

The GLA has eight standards to provide proof of a ‘fit and proper person’ and as a minimum these are the standards that would be required. The criteria listed below would also provide evidence that an applicant is a ‘fit and proper person’.

- Over the age of 18 years.
- No criminal convictions - Police check that applies to not only the contractor but also to onsite supervisors provided by the contractor. Must also provide advice of unrecorded convictions.
- All taxes and debts in order.
- Must not be insolvent or under administration.
 - consideration also taken if the person is an executive officer of a corporation that has become insolvent, subject of a successful claim, or has been disqualified from being a company director, previously been an insolvent under administration, or is incapable of satisfactorily doing the job of a licensee.
- Ethical business practices – if they are already in business, evidence of compliance with taxation and workplace legislation. This would include a statement by accountants or affidavit declaring records are kept in a proper manner.
- Must be Australian citizen or eligible to apply for citizenship.
- Stability in previous business holdings i.e. regular changes in company /business names could be an indication of regulatory compliance avoidance.
- Applicants must be of suitable character and have no links or business associations with those who have been found unsuitable to hold a licence. This would also entail a face to face interview process.
- Opportunity for third party comment on applications as often there is common knowledge within communities of noncompliant operators.
- Evidence of intended procedures and processes to be used by the contractor to ensure compliance with accreditation and relevant legislations.

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

As the accreditation/licencing of the labour hire industry is a new process for contractors and hosts there would need to be a ‘honeymoon’ phase in period for contractors to be given the opportunity to gain the required training in record keeping and OH&S that is needed to fulfil the criteria listed in question one. This would allow for accreditation/licence application as contractors become ready in the first year.

In discussions held with growers and labour hire contractors it was generally felt that smaller or new operators who have been compliant tend to have much smaller profit margins and may be blocked from entering the industry by excessive application fees. When a licencing fee was discussed general consensus was a minimal, non-refundable, fee of \$550.00 (five hundred and fifty dollars) would provide that even the smallest of operators would not be excluded in the initial phase in period. Fees thereafter would be scaled by size of operation as verified in the annual audit process. One percent (1%) of annual turnover would allow small operators to pay the minimum \$550 and larger operators to pay significantly more without prejudice to any specific operation.

The payment of an annual fee would be via online direct debit or in person at a state government office following notification from the governing body as to the rate required.

Contractors would bear the cost of annual independent audits from a list of approved auditors supplied by the governing body, payment to be negotiated between contractor and auditor.

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

Both questions 4 and 5 have linked requirements as smaller contractors and those wishing to start up a labour hire company would be substantially disadvantaged by the failure to scale either of these requirements.

As stated earlier, in the agriculture and horticultural industries there are some small labour hire contractors. These provide labour for only two or three of the smaller growers on a regular basis. Often these smaller growers have a brief harvest window for a specific crop and labour is needed for only a few weeks of the year. To have a threshold capital amount that requires more than the guarantee of taxation, superannuation, workers compensation cover and one weeks wages for workers would exclude these small, and often ethical, operators from being able enter the labour hire market. For this reason the threshold capital would need to be calculated on the peak period turnover of the given contractor. In the initial period of application these turnover levels could be self-assessed and thereafter calculated from the annual audited report and/or taxation lodgement declarations.

The wages requirement is based on providing surety to workers against the incidence of a grower not paying the contractor for labour provided.

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?

Similarly any bond required from contractors would need to be on a scale that enabled small operators or those entering the market to not be disadvantaged and yet, still be large enough to be a disincentive to unethical behaviour of operators.

If contractors have the threshold capital to pay one week, peak time wages per employee (not FTE) then this could be secured as a minimum bond amount. Again, a scale would need to be implemented depending on the size of the operation and the usual duration of labour hired e.g. some larger operators provide labour for a period of more than eight (8) weeks at a time, bond should be based on an eight week, peak period wage assurance.

Any bond payment would be automatically forfeited in the circumstance of a contractor being found in breach of compliance with workplace laws and regulations. Should a contractor address compliance breaches and reapply they would be required to lodge a new bond.

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?

Provision of an independently audited annual report would need to include at a minimum;

- Evidence and verification that an applicant is still a 'fit and proper person'
- Declaration of any change of business structure / name / partners etc
- Evidence of official accounting package and compliance with accepted financial accounting standards
- Evidence of Insurance – Business and Public Liability
- Evidence of Workers Compensation coverage for the entire period of operation for the given year for the number of workers employed

- Verified copy of company letter of offer given to each employee indicating the employer, employee, Workers Compensation, which farm/worksite they are working on, and who to contact in certain situations
- Declaration of where employees are sourced from and where they are accommodated
 - If accommodated by the contractor, host or other source of accommodation provider
 - Or if they have source4d their own accomodation
 - Contractor or host accommodations must have proof of compliance with appropriate authorities e.g. Local Government approvals, State Fire and Safety inspection and/or approvals.
- OH&S
 - Proof that OH&S training has been undertaken for accreditation and has been kept current
 - Sample documentation to prove that OH&S induction training has been delivered to employees and regular/supervisory staff
 - Sample documentation that confirms employees have undergone on site safety training
 - Sample documentation of OH&S incident reporting especially if any claims are made for workers compensation
 - Pre-employment check and induction completed to standard
- Verification of compliance with all employment legislation
 - Register of all supervisors used onsite and evidence they have undergone training in OH&S and anti-discrimination
 - Register of employees (this could also help to manage the time limitation of 6 months with one employer under the 457 visa category)
 - Number of workers by date range specifically targeting peak period of activity,
 - Confirmed details of workplaces where they are engaged
 - Verified, signed samples of contracts including type such as piece rates, hourly rates and just what those rates are
 - Proof of appropriate payments and deductions by provision of verified samples of payslips, timesheets and piece rate counts
 - Location/s of work undertaken
 - Details of method of payment of wages
- Evidence of compliance with all relevant taxation and superannuation legislation
 - Financial statements
 - Evidence of superannuation payments
 - Evidence of payments to employees and tax withholding e.g. copy of BAS
- Confirmation from Department of Immigration and Border Protection (DIBP) as evidence of compliance for second year visa sign offs
 - A register of VEVO checks report from DIBP

In instances where transport to and from the worksite is provided to workers by the contractor

- Evidence of vehicle registrations and insurances and compliance under the relevant transport authorities legislation including log book verification of registered drivers
- Declaration of cost of transport charged to employees and a copy of the agreement used for employees to agree to this deduction.

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?

As mentioned earlier there would need to be an initial 'honeymoon' or phase in period for each industry specific area. This would allow labour hire firms to gain the training and skills needed to comply with general legislative and specific reporting requirements.

Mandatory workplace rights and entitlements training would be part of the initial application process. To comply with the accreditation/licencing requirements as stated above, contractors would also be required to undergo OH&S training not only for their specific worksite but also to be fully cognisant with what is required for employee induction training to ensure work readiness. Sourcing of appropriate training would be up to the individual licence applicant. However, the applicant must meet Workplace Health and Safety minimum requirements for a health and safety representative. A plethora of safety training modules are available at relatively low cost across Queensland. These range from Certificate IV and Diploma levels via online or onsite training organisations to Health and Safety representative one day refresher training sourced through Worksafe Queensland website <https://www.worksafe.qld.gov.au/licensing-and-registrations/work-health-and-safety-training/health-and-safety-representative-training>.

Information sessions and training on preparation of initial application documentation for accreditation/licencing and subsequent reporting processes could be offered in key geographical areas, based on industry requirements e.g. agricultural/horticultural production areas of Stanthorpe, Lockyer Valley, Bundaberg, Bowen, Cairns and surrounding areas on a 'travelling roadshow' system during phase in periods.

A central online presence with information, guidelines and fact sheets on what is required, with examples of documentation would allow contractors a reference point during the process of collating information required for application and subsequent reporting.

Question 8. What information do you consider appropriate to be included in labour hire contracts to ensure that workplace regulations are met?

Should the accreditation and subsequent licencing be introduced, key industry bodies such as Growcom for horticulture, would be best placed to determine the information appropriate to be included in labour hire contracts for their specific industry. However, at a minimum the contract would include;

- Licencing and business details of the contractor/operator ABN/ACN and contact details
- Location of work site and contact details of host
- Term/duration of contract
- Agreed responsibility for staff amenities – access to water, toilets, first aid etc.
- Payment agreement between grower and contractor
- Payment agreement between contractor and worker
- Workers compensation insurance policy details
- Declaration of induction training.

Question 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?

A licencing scheme would require a dedicated compliance unit responsible for;

- issuing licenses
- ensuring compliance with licence requirements
- 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 through a series of spot checks on worksites.

In the case of an operator not meeting their obligations to the worker, and where the host has failed in doing due diligence (as cited in question one) or failed to comply by having written contracts and agreements in place there should be the option of hosts being held accountable for entitlements of workers. This would put an incentive in place for hosts to use accredited licenced contractors.

During the process to gauge local stakeholder responses to the question of labour hire in the Lockyer Valley as raised by the initial inquiry; Council officers were informed, by both growers and contractors, that without immediate and punitive repercussions for non-compliance the addition of any further regulation would be purely an academic exercise and an 'official lengthening of red tape' for those involved in the industry.

Workplace regulations are currently being ignored by unethical contractors and hosts as there is insufficient resourcing for effective enforcement and the risks or disincentives are not great enough to discourage non-compliance.

Many suggestions were made about penalty rates for non-compliance, from warnings to outrageous amounts of fines for first offences. Generally however, many of those consulted agreed that enforcement officers needed to be able to administer on the spot infringement notices. The infringement penalties for non-compliance that stakeholders were of the opinion where appropriate were;

- up to \$5000 in the first instance,
- \$20,000 in the second
- then a court order penalty of no less than \$50,000 - \$200,000 and/or incarceration in the third offence.

Lockyer Valley Regional Council notes fines of this scope would be difficult to implement, but more so indicate the level of frustration and concern held by some growers and contractors within the local area.

Question: 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'?

As the system for licencing would initially be administratively intensive and seen as onerous to the labour hire operator, a 'one-stop-shop' that provides a central point for information and support would make the process less taxing and more likely to be complied with.

Similarly, host employers would need somewhere to easily acquire information on their responsibilities and rights as host employers and be able to carry out their due diligence requirement.

An adequately resourced 'one-stop-shop' would also be in a position to provide information to workers and receive complaints of non-compliance of contractors and hosts, however there would be a need for the provision of the authority to act on such complaints.

A central point of contact would also enable positive engagement with all three parties (hosts, contractors and workers) during phasing in/rollout period and for new entities looking to enter the labour hire market.

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?

Employment is a complex area with many laws and regulations in place across a range of governing bodies. The potential for duplication of those regulations already in place is considerable, and without adequate resourcing and enforcement simply increasing the 'red-tape' would not have the desired outcome of having a compliant labour hire system.

As stated earlier there are already significant pieces of legislation, regulations and standards aimed at protecting the rights workers and businesses already in place, but without sufficient resources to ensure effective policing, compliance, and enforcement of current penalties. Without augmented powers of enforcement for the governing body there is little purpose in introducing further regulations. As with the model of the heavy haulage industry, compliance was initially monitored by a state agency already in existence. This would also need to be the case with licensing of the labour hire industry at a state level. An agency that already has compliance officers involved in the monitoring of employment or workplaces would be best positioned to be the lead agency for this new regime.