



# Gangmasters Licensing Authority

PO Box 10272  
Nottingham NG2 9PB  
[www.gla.gov.uk](http://www.gla.gov.uk)

t: 0115 959 7059  
f: 0345 602 5020  
e: [darryl.dixon@gla.gsi.gov.uk](mailto:darryl.dixon@gla.gsi.gov.uk)

Professor Anthony Forsyth, Chairperson  
Victorian Inquiry into the Labour Hire Industry  
and Insecure Work  
Industrial Relations Victoria,  
Department of Economic Development,  
Jobs, Transport and Resources  
GPO Box 4509,  
Melbourne, Victoria, 3001  
Australia

Your ref

[by email to:  
[labourhire.inquiry@ecodev.vic.gov.au](mailto:labourhire.inquiry@ecodev.vic.gov.au)]

24 November 2015

Dear Professor Forsyth

## **Re: Victorian Inquiry into the Labour Hire Industry and Insecure Work**

Thank you for the opportunity to comment on your current consultation, particularly as the Gangmasters Licensing Authority (GLA) is referenced in the consultation document as a potential model for comparison (page 24.). Before turning to the consultation questions I have set out below further information on the GLA. Throughout the response I have included hyperlinks to additional information where appropriate.

### **The Gangmasters Licensing Authority**

Originally established under the Gangmasters (Licensing) Act 2004, the GLA reported to the UK Government Department for the Environment, Food and Rural Affairs (Defra). In April 2014 it transferred to come under the responsibility of the Crime and Policing Directorate of the Home Office.

The GLA operates both a civil inspection as well as a criminal investigative response. The licensing standards, referred to in your consultation, provide a framework against which the GLA inspects to assist in consistent assessments of compliance. The inspection reports then lead to licence decisions which are either to grant, grant with conditions, or refuse a licence (for applications), and revoke, or impose conditions, where a compliance inspection identifies that a licence holder is in breach of the standards. The manner of those breaches determines whether the revocation is "without immediate effect", where a company is allowed to trade until a licence appeal is heard, or where a revocation is immediate where the health, welfare, and safety of the workers is at immediate risk. Information on typical breaches found can be seen here.

The GLA polices the offences of:

- Operating without a licence
- Using workers supplied by an unlicensed gangmaster, and
- Obstructing a GLA officer

The maximum sentence for operating without a licence is 10 years imprisonment. The highest sentence to date is a sentence of 7 years. The manner of control exerted over the workers, and the threats of violence were significant aggravating factors that led to that sentence. Operating without a licence is also an offence that can trigger financial investigations under the UK's Proceeds of Crime Act 2002 (see section 14(4) of the Gangmasters (Licensing) Act 2004).

In order for the GLA to be effective in both civil inspections and criminal investigations it requires information from other Government Departments, the police, and overseas labour inspectorates. Effective legal gateways, such as section 19 of the aforementioned Act enable this to occur.

It has the following additional powers and specialisms:

- Power of entry to premises, and to require the production of documents (section 16)
- Examine records in any form of media
- Enter under force to search and seize, with a court warrant, in criminal investigations (section 17)
- Power of arrest for those acting without a licence (in practice this is discharged through joint investigations with the police)
- Authority to conduct surveillance, control informants, and obtain specific telephone data from mobile service providers under the Regulation of Investigatory Powers Act 2000
- Initiate financial investigations
- Conduct IT forensic examinations

Companies based outside of the UK, providing workers to the UK, require a licence (see section 5 of the Act), and this requires increasing liaison with overseas labour inspectorates.

Whilst the GLA regulates the agricultural, shellfish, and associated processing and packaging activities, it does not have the authority to regulate the activity of labour providers who may operate in other industries. Currently any action necessary is the responsibility of the UK's Employment Agency Standards inspectors, and Her Majesty's Revenue and Customs National Minimum Wage Inspectorate.

In March 2015 the UK Parliament passed the Modern Slavery Act 2015. Section 55 of that Act committed the Government to a review of the role and responsibility of the GLA. That review has now commenced as part of a wider review of labour market enforcement following an immigration speech by the Prime Minister on 21 May 2015 (see the section entitled: "Immigration and labour market rules"). This has led to clauses 1- 3 in a new Immigration Bill before Parliament which proposes new structures and offences to tackle labour market enforcement, focusing on the prevention and investigation of labour exploitation. Linked to this a consultation was launched on "Tackling Exploitation in the Labour Market". It closes for responses on 9 December 2015. In summary the consultation seeks views on a range of issues including:

- establishing a statutory Director of Labour Market Enforcement
- creating a new offence of an aggravated breach of labour market legislation
- increasing intelligence and data sharing between the existing enforcement bodies
- widening the remit, increasing the powers of the Gangmasters Licensing Authority to enable it to deal with serious exploitation

The sections of the consultation regarding the GLA can be found on pages 32-44.

This consultation recognises that exploitation is now widespread in the UK economy:

"5 However, there has been a change in the nature of non-compliance with labour market regulation over the last ten years, with a shift from abuses of employment regulation towards increasingly organised criminal activity engaged in labour market exploitation. Feedback from enforcement officers suggests that serious and organised crime gangs are infiltrating legitimate labour supply chains across a number of sectors, and that the incidence of forced labour may be growing at a faster rate than other forms of exploitation.", (page 8).

The GLA believes that the ability to effectively tackle labour exploitation across any industry where it arises requires an effective combination of civil and criminal investigative powers and sanctions, without any regulatory restrictions to narrow industry sectors. Our licence holder data identifies that most, if not all, licence holders supply labour into other industry activities and do not restrict their economic endeavours to the agricultural sectors. Logically therefore, if an employer operates exploitative practices in agriculture they will operate them in any part of their business, and effective enforcement must be capable of tackling it wherever it is found.

You may therefore wish to follow the outcome of the current consultation, which may further assist comparative review.

### **Other information**

You may also wish to consider the manner in which the problems of labour exploitation are approached in the Netherlands and Belgium, where the inspectorates tasked with the investigation of labour exploitation also have the power to independently investigate such offences. There are also recent legislative changes introduced in the Workplace Relations Act 2015 in the Republic of Ireland for labour market regulation. If you wish to consider how those countries operate I will be happy to provide you with additional contacts.

The following recent reports, each of which reference the GLA, may also be of interest to the review:

ILO	<u>"Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities"</u>
ILO	<u>"Global labour recruitment in a supply chain context"</u>
UNODC	<u>"The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons"</u>
EU (FRA)	<u>"Severe labour exploitation: workers moving within or into the European Union"</u>
ICMPD	<u>"Stepping Up the Fight against Trafficking for Labour Exploitation"</u>

### **The Victorian Inquiry**

In considering the questions posed within the consultation I have limited my answers to the more general topics, as I cannot comment on the precise situation within Victoria. Therefore, the following questions have not been answered:

3.3 questions 1, 2 and 11

4.5 questions 1 – 4, and 6

The consultation responses below are in the order that the questions appear within the consultation document.

### **3.3**

#### **How are labour hire workers generally engaged? To what extent are they engaged as employees? Or as independent contractors?**

In the UK, within the areas of the economy, the GLA regulates, we encounter employees of temporary worker agencies, as well as those who may be self-employed. A particular issue is whether a worker is truly self-employed, which must be tested as part of the inspection process, to ensure compliance with the correct regulations. Workers may be provided under a contract for services rather than a contract of employment. In order to avoid nuances in whether our regulations apply, and therefore whether we are able to determine compliance by different employment models the legislation focuses on "worker", which is defined in section 26 of our Act. Section 4 of the Act defines those circumstances in which the supply of workers falls within our regulatory oversight.

#### **What working conditions do labour hire workers typically have? What differences are there, if any, between the conditions of direct employees of a host organisation and labour hire workers?**

In a current case it has been identified that UK workers are employees, but migrant workers have been classed as self-employed. This distinction creates a situation where migrant workers may not be aware of their rights, comparability with employees, or therefore receive the correct wages and conditions.

We are more likely to find migrant workers making up the temporary labour work force. Other issues that therefore arise relate to the accommodation or transport they are provided with to assist them in being located near to the work, or being transported to it. This leads to issues concerning whether the accommodation and transportation is safe,

and complies with accommodation and vehicle safety issues. It also raises issues concerning the charges levied against workers for the provision of such services, and whether such charges, and the method used, breaches national minimum wage rates. Similar issues may not arise with direct employees located in communities close to their place of work.

### **To what extent is accommodation provided by labour hire companies to workers, and what is its nature and cost?**

Historically there was a reduction in the provision of accommodation by temporary labour agencies, but this has again increased. The GLA regulates the provision of accommodation by those we licence. Therefore they have to declare whether they provide accommodation or "effectively provide accommodation". This means, for example, where they do not own or lease the accommodation provided themselves, but direct their workers to a single supplier of private accommodation with whom they may have a commercial arrangement, and receive payments for. They may also arrange to deduct the rent from the workers' wages to pay to the private landlord.

A key concern is the quality of the accommodation, and whether it is overcrowded. Accommodation should be checked and comply with gas and fire regulations. It may require review by the Fire Brigade. If it is classed as a "house of multiple occupation" it must also be licensed by the Local Authority where it is located.

Deductions can be made from a workers wage for accommodation but must not breach the national minimum wage, and comply with the "accommodation offset rules".

The nature of accommodation has varied. We have come across workers moved from one part of the country to another and housed in reasonable hotel accommodation, which they cannot afford, receive loans from the employer to cover, and are then moved back to the previous location where they are re-housed in sub-standard accommodation, and cannot afford due to the debt they are repaying.

In another instance, workers housed in a terraced house, who could not afford to pay gas charges regulated by a meter installed by the landlord, had diverted the gas supply so it could be accessed for free but had also created a gas explosion risk.

Workers have been identified to be living in tents, converted metal containers, and caravans on farms. Again fire hazards, as well as the appropriate level of washing and cooking facilities, if provided communally, are an issue.

### **In what ways do hosts typically use labour hire workers? Are they used to supplement or to replace ongoing workforces or direct employees?**

Temporary workers (Labour hire workers) are typically to supplement existing work forces. They should not be used to replace workers engaged in an industrial dispute. Some agricultural, and food processing pack houses may outsource all their labour needs to temporary agencies to reduce their overheads and ensure that those agencies can meet peaks and troughs of activity.

### **Does the use of labour hire impact the availability of apprenticeships and traineeships?**

In the UK there is an increasing drive to introduce apprenticeships. We have not seen temporary labour prevent apprenticeships, but we had dealt with one case in which the manner in which the workers were supplied included classing them as apprentices. This enabled lower wages to be applied without breaching the national minimum wage. But there was a significant absence of appropriate training for this to have been classed as a legitimate apprenticeship.

There is a new Enterprise Bill currently before the UK parliament. This Bill include a new apprenticeship offence – see [section 19](#) of the draft Bill.

### **To what extent do hosts inquire into the labour practices of labour hire suppliers? Should this occur?**

Some will, but others may not, and this is an area where a host may be satisfied that it is taking its supply of workers from a company licensed by the GLA, but not take further steps to exercise due diligence, which may identify non-compliance that had not been drawn to the attention of the GLA.

It is important that supply chains are aware of the signs of forced labour, and exercise the aforementioned due diligence. Prevention is a key to improved compliance in supply chains. The GLA has therefore engaged in raising awareness of the signs of forced labour, and providing guidance on what to review, how to spot signs of forced labour, ground rules for closer working with the supply chain, and an accredited training course for staff operating in supply chains. Further information can be found here:

[Supermarket and supply chain protocol](#)

[Labour user good practice guide](#)

[“Spotting the signs”](#)

[Notification of the new GLA accredited training course](#)

### **Is there evidence of labour hire being used to evade workplace laws and other legal obligations?**

Where we find evidence of breaches of our licensing standards we will revoke the licence. Information on those revocations, including all of the appeal hearing decisions, can be found on our website [here](#) (follow the year tabs for individual cases dealt with in that year). Please also check back to that page in the coming weeks as we will be adding an index spreadsheet that will assist in identifying which areas of our licensing standards were breached in each case.

### **What role do labour hire companies play in supply chains for the provision of goods and services? Do other actors in those supply chains have responsibilities towards labour hire workers, whom they do not directly engage?**

Labour hire companies play an increasing role in the UK economy to provide a flexible response to increase in demand for goods and services during periods of seasonal peak activity. They are a method of providing a responsive economy, and are necessary in today’s global markets. The fact that we encounter exploitation does not mean that all

temporary agencies are in breach of regulations, and in the main they provide a compliant and competitive response to the needs of industry.

Where workers are supplied the organisations in the supply chain have some specific responsibilities. Where they themselves provide accommodation or transport they will be responsible for its safety. They will also be responsible for negotiating with the labour hire company who provides the health and safety induction training at the site to which workers are provided, and agreeing who is responsible for the provision of personal protective equipment (PPE). Higher in the supply chain we would expect ethical auditors of the supermarkets, etc, to have an increasing awareness of the proper treatment of workers, so that they may identify any areas of concern and ensure they are referred to the appropriate authority for action.

## 4.5

### **What experience or evidence can you provide regarding the use of phoenix activity, supply chains or franchising arrangements contributing to insecure work, the exploitation of vulnerable workers or unfairness for competing businesses?**

Phoenix activity is a concern. It has been identified in some instances, and where this is identified licences have been refused or revoked. The GLA has experience of dealing with “start-up” companies, run by individuals with no real knowledge of providing temporary labour, who have all been identified as “fronts” for an individual whose licence was revoked.

Where a company or individual changes its legal status it must apply for a new licence in that legal status. If it operates without a licence in that new legal entity it commits a criminal offence. Where such changes occur it is essential that we review whether the old company is significantly in tax debt, and whether the change of status is an attempt to evade those responsibilities. Where this is confirmed a new licence may be refused.

We have also encountered the use of tax avoidance schemes by labour provider companies to reduce their tax exposure. However, such schemes also have an impact on the wages of workers immediately, and in relation to social security provision in the longer term. Whilst advertised as beneficial to workers to increase net pay they actually reduce workers’ wages in more deceptive ways. GLA guidance on such schemes can be found [here](#), and the first appeal case detailing the issues, which the GLA won, can be found [here](#).

### **Do workers experiencing insecure work desire more ongoing working arrangements, and if so, of what kind? What barriers do you encounter in obtaining more secure working arrangements?**

In general migrant workers (predominantly from the old East European states) come to the UK for a better standard of living/wages. Frequently they will wish to send wages back to family to improve their living conditions. Logically workers will seek more reliable work, without the likelihood of disruption or variable hours. In some case we uncover there are more workers on the records of a labour hire company than it needs to supply, and it may vary who works/what hours they work. This may also be used as a method of control.

Uncertainty may also play a part in workers remaining with the company that supplies them rather than risk moving, or experiencing periods of unemployment.

## 5.6

### **What regulatory options are available to address the issues raised by the Terms of Reference, within the limits of Victoria's legislative powers?**

The introduction of statutory licensing is one option. The development of industry-led self-regulation could be considered. The GLA has some experience of this, and would be happy to discuss this aspect further. However, in any such approach consideration needs to focus on how any such scheme would have teeth to prevent irregular conduct other than banning someone from the membership of a voluntary code.

A framework such as the GLA's licensing standards enables consistent benchmarking, and the standards, or something similar, could operate in other forms without licensing, if, for example, the organisation tasked with regulation was given the appropriate criminal and civil powers.

It is also important that the organisation assesses the reality of the employment status of individuals, to identify irregular self-employment, and this is not left to workers to bring claims themselves to Employment Tribunals, and similar judicial structures.

### **What models could operate for a national approach to regulation of the labour hire industry?**

If a form of licensing/regulation was introduced in Victoria, which did not operate elsewhere, it might encounter similar issues to where a labour hire company changes its approach, and only supplies labour outside of a regulated environment. Thus companies that provide labour across Australia could conceivably decide to only provide labour outside of Victoria. Any new regulation should therefore consider any unintended consequences outside its jurisdiction, and whether therefore a national approach can be adopted to avoid such risks.

Liaison with the ILO and CIETT, to consider models elsewhere may be beneficial to the eventual conclusions of the review. I can provide further contacts in both organisations if that may be of assistance.

### **What would be the impact of a statutory licensing scheme for labour hire operators in Victoria, including requirements for licensees to comply with minimum standards for the fair treatment of workers?**

In the UK there a requirement for any new regulations to take a balanced approach to ensure that no unnecessary burdens are imposed by regulators on those regulated. Any new licensing scheme is likely to introduce some burdens. However, using the GLA example, our standards encapsulate those areas of UK legislation that apply to the operation of a business. They therefore provide a framework for consistent regulation, but do not impose additional burdens in terms of new legislation to comply with, other than to demonstrate compliance and to hold a licence.



It may be perceived that such requirements may be a barrier to trading and growth for a company. They must be introduced in a manner that enables new business to enter the market place but enables regulators to keep out those who are identified as not “fit and proper” to operate, and who may represent significant risks to worker exploitation. It is also important to avoid differential regulation. In the UK licensing only applies in the sectors regulated by the GLA. However, most, if not all, of the companies licensed have reported over time that they provide workers in other industry sectors. This is necessary to ensure economic survival, and effective competition, by diversifying those industries to which workers may be offered. It may also lead to situations where companies alter those industries to which they offer labour, only offering it to those industries where there is less regulatory oversight. Therefore, in whatever form regulations may be introduced, it is important to consider how they can prevent problems holistically across the economy rather than potentially displace the problem elsewhere.

**What evidence or experience do you have of regulatory models in other jurisdictions for addressing the issues raised in the Terms of Reference?**

The response provided above is based on the GLA’s experience in operating a regulatory model in the UK. It also has experience and knowledge of other models that operate in the EU. The GLA would be happy to assist with any further questions in this area, or provide contacts in other EU regulators, or with its regular contacts in the ILO, and other international organisations (i.e. those responsible for the reports referred to above). This includes the International Office of Migration, with regard to its current IRIS project, to consider how to introduce ethical labour supply to consistent standards internationally.

I hope that this response has been of assistance, and would be happy to assist in responding to any supplementary questions, or clarifications, prompted by this response to the consultation.

Yours sincerely



**Darryl Dixon**  
*Director of Strategy*