

19 June 2017

Committee Secretary
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: FAC@parliament.qld.gov.au

Dear Sir/Madam

Re: Submission

Introduction

1. I refer to the *Labour Hire Licensing Bill 2017* (**the Bill**).
2. The Finance and Administration Committee (**the Committee**) has invited submissions from interested parties in respect of the Bill.
3. The _____ is a body corporate recognised as a Group Training Organisation (**GTO**) under Chapter 3 of the *Further Education and Training Act 2014*.
4. _____ currently employs approximately 510 apprentices who are placed with some 400 host employers and is one of the 34 GTOs operating in Queensland.
5. I am authorised to make this submission on behalf of _____ welcomes the opportunity to make a submission about the Bill insofar as it proposes to affect and regulate GTOs.

6. For the reasons given in this submission, submits that GTOs should not be the subject of the provisions of the Bill if it is passed by the Queensland Parliament.

Executive Summary

7. GTOs should not be the subject of the provisions of the Bill because:
- (a) GTOs have different functions to labour hire companies in that the principal function of a GTO is to train apprentices and trainees and not to operate commercially;
 - (b) GTOs are currently regulated by the *Further Education and Training Act* 2014 and must comply with the *National Standards for Group Training Organisations* to continue to be recognised and to operate as a GTO under the *Further Education and Training Act* 2014;
 - (c) the *National Standards for Group Training Organisations* provide detailed standards in respect of:
 - (a) the recruitment, employment and induction of apprentices and trainees;
 - (b) the monitoring and support of apprentices and trainees to completion of their apprenticeships or trainee contracts; and
 - (c) governance and administration;
 - (d) GTOs are subject to significant obligations under the *Further Education and Training Act* 2014 in respect to the training of apprentices and trainees and are subject to investigation by the Training Ombudsman of complaints made against them and are subject to the monitoring and enforcement provisions by inspectors appointed under in the *Further Education and Training Act* 2014; and
 - (e) there is no evidence or suggestion in the Committee's June 2016, Report No. 25 entitled "*Inquiry into the practices of the labour hire industry in*

Queensland” or in the issues paper entitled “*Regulation of the Labour Hire Industry 2016*” released by the Office of Industrial Relations of the Queensland Government that GTOs have been exploiting apprentices or trainees or engaging in sham contracting or other unethical or unlawful behaviour.

The function of GTOs in Queensland

8. GTOs are bodies corporate recognised under the *Further Education and Training Act 2014*.
9. The principal function of a GTO is, by agreement between the GTO and a host employer, to arrange for a host employer to train, under a training contract registered under the *Further Education and Training Act 2014*, an apprentice or trainee who is employed by the GTO.¹
10. In practical terms, GTOs employ apprentices and trainees and are responsible for ensuring that those apprentices and trainees receive suitable training and experience. That goal is achieved by the GTO finding a suitable host employer with whom the each apprentice or trainee can work with on a daily basis.
11. Employers who may not otherwise have been able to employ an apprentice or trainee, have, through GTOs, the opportunity to participate in a training system by hosting an apprentice or trainee for a nominated period of time.
12. GTOs are particularly important to small employers that lack the resources to effectively manage an apprenticeship, or which cannot provide all of the training and skills development required for an apprenticeship or traineeship.
13. GTOs also:

¹ Section 83 of the *Further Education and Training Act 2014* (**Function of group training organisation**) provides:

The main function of a group training organisation is, by agreement between the organisation and an entity, to arrange for the entity to train, under a training plan, an apprentice or trainee employed by the organisation.

- (a) provide access to apprenticeships and traineeships for those persons in the community who may be disadvantaged in the labour market; and
 - (b) provide services to the community through helping achieve vocational education and training particularly in rural and regional areas of Queensland.
14. In Queensland, GTOs are collectively the largest employer of apprentices and trainees. On the website of the Queensland Department of Education and Training, clear recognition is given to the service provided by GTOs. The website, in part, states of GTOs:
- ... They provide a service that is well-recognised and understood within the community, and the group training name is associated with quality services. Corporations that are recognised as GTOs in Queensland will have met both Queensland and National requirements, and are entitled to use the National Group Training logo within Queensland.²
15. GTOs are audited at least once every three years against the *National Standards for Group Training Organisations* (**the GTO National Standards**) to ensure that they are compliant with those Standards.
16. The role of GTOs in Queensland cannot be underestimated in terms of providing highly qualified and trained tradespersons and other workers following the completion of an apprenticeship or traineeship.
17. The goals of group training, generally, are to:
- (a) create additional employment opportunities for apprentices and trainees;
 - (b) provide for continuity of employment and training through to completion of the training; and
 - (c) improve the quality and range of training available to apprentices and trainees.
18. To achieve these goals, GTOs:
- (a) employ apprentices and trainees and place them with host employers;

² www.training.qld.gov.au/site/employers/Pages/gto/what.aspx

- (b) are responsible for meeting the employer obligations as outlined in the registered training contracts made under the *Further Education and Training Act 2014*;
 - (c) manage and monitor arrangements with host employers; and
 - (d) provide any necessary care and support for an individual apprentice or trainee throughout the apprenticeship and traineeship.
19. Furthermore, GTOs assist apprentices and trainees to make a successful transition into the skilled workforce at the completion of an apprenticeship or traineeship.
20. It is an undeniable fact that, when a person employed by a GTO as an apprentice or trainee and is placed with a host employer, the purpose of the instruction and training provided by the host employer is to ensure that the apprentice or trainee can meet the requirements of the registered training contract for the apprentice or trainee under the *Further Education and Training Act 2014*.
21. The placement by a GTO of an apprentice or trainee with a host employer is for the purposes of instruction and training, not only in relation to the chosen trade or vocation of the apprentice or trainee, but also in respect of all aspects of work, health and safety.

Labour hire companies

22. As is also apparent, there is another form of engagement by employers of persons who are hired out to work for other entities. This is colloquially known as “on hire arrangements” or “labour hire arrangements” conducted by labour hire companies.
23. The Queensland Government’s WorkSafe website provides the following definition of a labour hire agency:

The Queensland Industrial Gazette defines a labour hire agency as: An employer who is wholly or substantially engaged in supplying workers to another entity (the client business) on a fee or contract basis; and is not a separate service entity for the client business.

A labour hire agency is responsible for providing temporary staff to employers. Employees are paid by the labour hire agency for the work they conduct at the clients' site. Labour hire companies refer to these clients as the host employer.³

24. Clearly, a labour hire company and its employees have a different relationship to what could be described as traditional employers and employees. In the decision of the Industrial Relations Commission of New South Wales in Court Session in *Drake Personnel Limited t/a Drake Industrial v WorkCover Authority of New South Wales*,⁴ Justices Wright and Walton stated:

The relationship created between a labour hire company and its employees is distinguishable on a number of grounds from that existing between traditional employers and their employees. A labour hire agency does not employ people to work for itself but to work for a client, it does not directly on a day to day basis supervise the tasks carried out by the employee and it is not usually in control of the workplace where the work is done.⁵

The differences between GTOs and labour hire companies

The differences in the purpose of GTOs compared to labour hire companies

25. Labour hire companies, as opposed to GTOs, send their employees to third parties, and to third party premises, as work-ready. Labour hire firms, unlike GTOs, do not send apprentices or trainees to an employer, in respect of whom training is required to be provided under a registered training contract, to be trained in terms of the substantive skills relevant to the trade or vocation and to be trained on how to perform that work in a manner that is safe. A labour hire company places its employees with a host employer for the purposes of productive work and for profit.
26. Whilst, as set out above, there is a view that GTOs are involved in the labour hire industry, it is the purpose of the placement of apprentices and trainees by a GTO which distinguishes a GTO from a labour hire company. That difference is based in the fact that the whole reason for the existence of a GTO is one of training.

³ www.worksafe.qld.gov.au/labour-hire/resources/what-is-a-labour-hire-agency

⁴ (1999) 90 IR 432.

⁵ (1999) 90 IR 432 at 455.

27. Chapter 2 (**Apprentices and trainees**) Part 2 (**Training Contracts**) and Part 4 (**Training plans for Apprentices and trainees**) of the *Further Education and Training Act* 2014, place onerous obligations on employers of apprentices or trainees, such as GTOs, to ensure the proper training of their employed apprentices or trainees.
28. A GTO places its apprentices and trainees with host employers for the sole purpose of training. A GTO makes a placement with a host employer, in respect of one of its apprentices or employees, not for profit but for the sole purpose of training the apprentice or employee.
29. The continued placement of an employee with a host employer or host employers by a GTO is necessary for the apprentice or trainee so that their registered training contract under the *Further Education and Training Act* 2014 may be completed. The GTO is the employer, and is a party to the training contract. In this regard, a GTO has the responsibility to meet all of its obligations as an employer to the apprentice or trainee such as the payment of wages, provision of tools and other entitlements.
30. In addition to that however, a GTO is responsible for managing and co-ordinating the on and off job training for an apprentice or trainee. In managing that placement, the GTO may also provide a level of care and support to its apprentices and employees that is something not ordinarily recognised in the ordinary employer/employee relationship. In GTO parlance, that is known as “pastoral care” and is provided through field officers employed by GTOs. For that pastoral care is provided to some 510 apprentices by 14 field officers.

The differences in the current regulation of GTOs compared to labour hire companies

The recognition of corporations as GTOs

31. Under Chapter 3 of the *Further Education and Training Act* 2014, corporations may apply in the approved form to the chief executive of the Department of Education and Training (**the Department**) to be recognised as a GTO.⁶ The application must be accompanied by a report from an approved auditor that assesses the applicant's compliance with the GTO National Standards.⁷
32. Following on from that, the chief executive of the Department may grant the application only if the chief executive is reasonably satisfied the applicant complies with the GTO National Standards.⁸ If the chief executive decides to grant such an application, the chief executive must give the applicant a certificate, known as a certificate of recognition (**the GTO certificate of recognition**), stating that the applicant is recognised as a GTO.⁹
33. Attached to these submissions are the current GTO National Standards revised in January 2017.
34. It is clear that the GTO National Standards relate to three elements of the business of a GTO, namely:
- (a) recruitment, employment and induction;
 - (b) monitoring and supporting apprentices and trainees to completion of their training contract; and
 - (c) the governance and administration of GTOs.
35. Section 87 of the *Further Education and Training Act* 2014 (**Conditions applying to certificate of recognition as group training organisation**) then provides:
- (1) A group training organisation's certificate of recognition is subject to the following standard conditions-
 - (a) the organisation must comply with the GTO Standards;

⁶ Section 84(1) of the *Further Education and Training Act* 2014.

⁷ Section 84(2) of the *Further Education and Training Act* 2014.

⁸ Section 85 of the *Further Education and Training Act* 2014.

⁹ Section 85(3)(b) of the *Further Education and Training Act* 2014.

- (b) the organisation must undergo compliance audits at the times and in the way directed by the chief executive;
 - (c) the organisation must comply with its obligations under a registered training contract for an apprentice or trainee employed by the organisation.
 - (2) The chief executive-
 - (a) may, when the certificate of recognition is issued to the group training organisation or at any other time, impose further conditions the chief executive considers reasonably necessary to ensure the organisation complies with the GTO Standards; and
 - (b) may remove or change the further conditions imposed for the purpose mentioned in paragraph (a).
 - (3) If the chief executive changes the conditions for a certificate of recognition after its issue, the chief executive must give the group training organisation a new certificate containing the changed conditions.
36. Section 88 of the *Further Education and Training Act* 2014 provides that the chief executive may cancel a GTO certificate of recognition if reasonably satisfied of one or more of the following grounds:
- (a) the organisation has not complied with a condition applying to its certificate of recognition;
 - (b) the organisation has stopped operating as a GTO; or
 - (c) the organisation has provided false or misleading information –
 - (i) when applying to be recognised as a GTO; or
 - (ii) after the issue of its certificate of recognition.
37. Sections 89 and 90 of the *Further Education and Training Act* 2014 - which are similar to the show cause notice and cancellations provisions in Part 3, Division 3 of the Bill - provide a process of the issuing of a show cause notice before a decision is made about the cancellation of a GTO certificate of recognition.

The Training Ombudsman

38. Chapter 4A (**Training Ombudsman**) provides for the establishment of the office of a training ombudsman.
39. The functions of a Training Ombudsman are to receive complaints about any of the following matters, namely:

- (a) the provision of vocational education and training by a relevant training entity in Queensland;
- (b) the quality of vocational education and training provided by a relevant training entity in Queensland;
- (c) a matter relating to an apprenticeship or traineeship in Queensland, a compliance matter or a prescribed decision.¹⁰

40. A relevant training entity, for the purposes of Chapter 4A of the *Further Education and Training Act 2014* includes an employer employing an apprentice or trainee, such as a GTO.

41. By section 112E of the *Further Education and Training Act 2014*, the Training Ombudsman has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Training Ombudsman's functions including dealing with a complaint.

Monitoring and enforcement of obligations under the Further Education and Training Act 2014

42. Chapter 5 of the *Further Education and Training Act 2014* deals with monitoring and enforcement and provides for the functions and appointment of inspectors to investigate, monitor and enforce compliance with the *Further Education and Training Act 2014* including giving specific powers to such inspectors to enter places and conduct searches, make inspections, take documents and seize evidence.

43. These powers by the inspectors may, of course, be exercised in respect of the monitoring and enforcement of all the obligations of a GTO under Chapter 2, Parts 2 and 4 of the *Further Education and Training Act 2014* as referred to above.

¹⁰ Section 112D(1)(a) of the *Further Education and Training Act 2014*.

The Bill

44. On 25 May 2017, the Honourable Grace Grace, Minister for Employment and Industrial Relations, introduced the Bill into the Queensland Parliament.
45. Prior to the introduction of the Bill:
- (a) in June 2016, the Committee released Report No. 25 entitled “*Inquiry into the practices of the labour hire industry in Queensland*” (**the Committee’s report**); and, following on from the Committee’s report
 - (b) the Office of Industrial Relations of the Queensland Government released an issues paper entitled “*Regulation of the Labour Hire Industry 2016*” (**the Issues Paper**).
46. The introduction of the Bill followed on from the release of the Committee’s report and of the Issues Paper. In the second reading speech by upon the presentation of the Bill to the Queensland Parliament, the Minister for Employment and Industrial Relations, Minister stated:

The development of the Labour Hire Licensing Bill has been informed by evidence from numerous inquiries and from extensive consultation with the community, with users of labour hire arrangements, with the labour hire industry and with the unions who represent the interests of labour hire workers. Since responding to the Parliamentary committee’s report in September 2016, I had sought feedback from stakeholders on the components of a labour hire licensing scheme and other measures to stop the exploitation and mistreatment of workers, to stop unfair competition and provide minimum standards for operating as a labour hire provider.

The Government related an issues paper in December calling for public submissions over a seven week period. A total of forty submissions were received from labour hire businesses, workers, consumers, unions, industry peak bodies, academics and other community representatives. Since then I’ve personally met with a number of stakeholders across the labour hire industry. The advice from industry users, labour hire providers, community groups and worker representatives largely supports the introduction of a labour hire licensing scheme as a means to protect vulnerable labour hire workers from exploitation, to support ethical and responsible labour hire providers and also to provide confidence to host employers who utilise labour hire arrangements in good faith.

The Committee’s report

47. At pages 14 to 15 of the Committee’s report, the Committee stated (footnotes omitted):

Negative impacts of labour hire employment

A wide range of adverse consequences and risks are also associated with the use of labour hire employment. It has been identified that:

- Labour hire is underpinned by cutting labour costs and can be used to substitute an existing workforce with a cheaper workforce with lesser pay and conditions, and which is also more likely to be compliant due to the uncertain nature of their employment arrangements.
- While businesses may benefit from the reduced costs associated with labour hire employment, workers ultimately tend to receive lower hourly rates of pay and are unable to access entitlements available to permanent workers.⁸⁰ Inquiry submissions particularly pointed to increased use of enterprise bargaining agreements which fall outside typical award rates and may offer different standards of conditions. For example, labour hire workers at a particular site may be paid under a specific enterprise bargaining agreement, while their directly employed colleagues at the same site may be paid under a more recent, higher award or higher enterprise bargaining rate.
- The increasing use of labour hire arrangements with poorer conditions on average is widening the gap between standard and non-standard workers (cast as insiders versus outsiders), at a time when insecure work arrangements are becoming more common. The heavy reliance on casual rather than permanent workers – often over the long term – largely negates the protection of unfair dismissal afforded to other employees.⁸² Further, this may have the effect of displacing other legitimate sources of labour and eroding employment rights and conditions.⁸³ The Anti-Discrimination Commission Queensland (ADCQ) has reported that some local people or other permanent residents in regional areas have raised concerns that local people would not be considered for employment by many labour hire operators, and that often it was extremely difficult or impossible for local people or other permanent residents of Australia to obtain temporary work in horticultural areas. One reason for this put forward to the ADCQ was that permanent residents had a better awareness of their employment rights, and would not tolerate the working conditions that were being offered by labour hire contractors, and therefore they were being excluded from the opportunity to work.
- The growth of unstable, non-regular patterns of work that characterise labour hire has implications for the living standards of these workers and their families, including limiting their ability to access loans and credit or plan for their futures.
- Ambiguities in the employment relationship pose a potential threat to occupational health and safety standards, with a lack of clarity over parties' specific responsibilities potentially serving to degrade workplace conditions and reduce protections for employees. Studies have particularly identified that labour hire workers are more likely to be injured at work than direct hire workers, and their workplace injuries underreported, with the obligation and ability to rehabilitate injured workers often limited (labour hire workers are less likely to have a specific work site to which to return for rehabilitation and return-to-work duties).
- Labour hire firms are less likely to invest in the training and development of staff, with opportunities for career advancement often limited within labour hire arrangements.
- Labour hire workers may have less of a "workplace voice" in the host's workplace than directly employed workers, may find it harder to join a union and may be excluded from collective bargaining about the conditions which apply to their work.
- Employees of labour hire companies have considerably less bargaining power and may be disinclined to speak out about their conditions largely out of fear for their employment.
- Low barriers to entry into the labour hire sector allow opportunistic operators to easily enter and work in an industry. Some labour hire suppliers are driven by price considerations to the detriment of compliance with workplace laws, with labour hire structures linked to instances of "phoenix" activity – namely, the transfer of assets of an indebted company into a new company (such as an associated labour hire entity operated by the same director/s), to evade tax, employment and other legal obligations.

- Submissions to the inquiry highlighted the scope for sham independent contracting arrangements to be engaged in labour hire arrangements, whereby the labour hire contractor claims that a worker is an independent contractor when they are in fact an employee, usually in an effort to avoid the responsibilities associated with having employees.
- Anti-poaching agreements engaged by many labour hire companies mean that host employers are not able to transition a worker from temporary to permanent employment, limiting their opportunities for professional development or greater employment security.

48. At pages 18 to 26, the Committee referred to allegations of poor conduct of some labour hire companies, namely:

- (a) phoenixing, under-capitalisation and undercutting of conditions by labour hire companies and their impact on the labour market and business;
- (b) allegations that labour hire and sham contracting are being used to avoid workplace laws and other statutory obligations, such as:
 - (i) underpayment of wages and entitlements, including superannuation, and
 - (ii) avoidance of payroll tax and Workcover premiums;
- (c) whether tendering and employment practices create an uneven playing field for competing businesses; and
- (d) allegations of exploitation, harassment and other mistreatment of workers employed by companies.

49. GTOs were not identified, in the Committee's report as:

- (a) being a source of the negative impacts of labour hire employment referred to by the Committee; or
- (b) having allegedly engaged in the poor conduct referred to by the Committee.

The Issues Paper

50. Chapter 2 of the Issues Paper (**Recent inquiries**) traversed a number of inquiries about labour hire practices and temporary work practices conducted in

Australian in various jurisdictions and also refer to recent investigations brought about by the Fair Work Ombudsman.

51. After referring to these inquiries and investigations, the Issues Paper provided the following summary (footnotes omitted):

This case highlights the evidence of underpayment of wages, poor and unsafe working conditions and exploitation that is common across the various inquiries and investigations discussed in this Chapter. That evidence is widespread, not uncommon and ongoing with new cases reported on an almost daily basis. Although the reported incidences have tended to be concentrated in the horticultural and food processing industries and have often involved working holiday makers, the issue is much broader. These incidents of extreme exploitation are the tip of the iceberg of a growing problem, as labour hire arrangements continue to grow in size and spread across all industries. The nature of labour hire arrangements leaves workers with limited bargaining power in the employment relationship and vulnerable to exploitation. Where workers face language or cultural barriers or lack knowledge of their workplace rights, that vulnerability is heightened and results in the types of cases that have been reported in the media and through a number of public inquiries. The nature of the labour hire arrangements also present particular challenges to effective monitoring and enforcement as they can be used as a way for a firm to avoid their obligations under workplace laws and lines of responsibility can become blurred. These are all factors that need to be considered in developing more effective regulation of the labour hire industry.

52. Chapter 4 of the Issues Paper (**Options to better regulate the labour hire industry**), the relevantly stated:

Given the weight of evidence highlighting problems in the labour hire sector and the need for action in response, the Queensland Government considers there is a strong case for licensing and regulation of the sector. To that end, this final section of the paper sets out potential features of such a licensing scheme and seeks feedback in relation to the response.

53. There are no references in the Issues Paper that GTOs were a source of problems in the labour hire sector in respect of the exploitation and mistreatment of workers or that GTOs were in any way acting unethically or irresponsibly in an endeavour to avoid their obligations under workplace laws.

The relevant provisions of the Bill

The preliminary and interpretation provisions of the Bill

54. Clause 3 of the Bill (**Main purpose of Act**) provides that the main purposes of the Act are to:

- (a) protect workers from exploitation by providers of labour hire services; and
- (b) promote the integrity of the labour hire industry.

55. Section 3 goes on to provide that the main purposes are to be primarily achieved by establishing a licensing regime to regulate the provision of labour hire services.
56. Section 7 of the Act provides definitions of the meaning of “provider” and “labour hire services”.
57. Section 7(1) provides that a person (a provider) provides labour hire services if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.
58. One of the examples of such providers, in the second dot point to section 7(1) of the Bill, reads:

- A group training organisation or principal employer organisation under the *Further Education and Training Act 2014* that supplies an apprentice or trainee to an employer.

59. Section 8 of the Bill (**Meaning of worker**) relevantly provides:

- (1) An individual is a worker for a provider if the individual enters into an arrangement with the provider under which-
 - (a) the provider may supply, to another person, the individual to do work; and
 - (b) the provider is obliged to pay the worker, in whole or part, for the work.
- (2) However, an individual is not a worker if the individual is, or is of a class of individual, prescribed by a regulation.
- (3) To remove any doubt it is declared that a worker includes an apprentice or trainee under a training contract entered into with a provider who is a group training organisation or principal employer organisation under the *Further Education and Training Act 2014*.

60. Section 9 of the Bill (**When a worker is supplied**) provides:

For this Act, the supply of a worker to do work for a person happens when the worker first starts to do work for the person in relation to the supply.

The prohibited conduct provisions of the Bill

61. Part 2 of the Bill (**Prohibited conduct**) sets out the conduct which is prohibited.
62. Section 10 of the Bill (**License required to provide labour hire services**) provides:

- (1) A person must not provide labour hire services unless the person is the holder of a license.

63. The maximum penalty for a corporation is 3000 penalty units.¹¹
64. Section 10(2) of the Bill provides that a person must not advertise, or in any way hold out, that the person provides or is willing to provide labour hire services unless the person is the holder of a license. The maximum penalty is 200 penalty units.¹²
65. Section 11 of the Bill prohibits persons entering into arrangements with unlicensed labour hire service providers. Section 11(1) of the Bill provides:
- A person must not, without a reasonable excuse, enter into an arrangement with the provider for the provision of labour hire services to the person, unless the provider is the holder of a license.
66. The maximum penalty for a corporation is 3000 penalty units.
67. Section 11(2) provides a defence on the basis that it is a reasonable excuse for the person not to comply if, when the person entered into the arrangement, the provider was shown on the register as the holder of a license.
68. Section 12 of the Bill (**Person must not enter into avoidance arrangements**) provides:
- A person must not enter into an arrangement with another person (an avoidance arrangement) for the supply of a worker if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed by this Act, unless the person has a reasonable excuse.
69. Again, the maximum penalty for a corporation is 3000 penalty units.

The Bill regulates GTOs

70. Having regard to clause 7 to the Bill as to the meaning of “provider” and to clause 8 of the Bill as to the meaning of “worker” and the specific declaration in clause 3(8) of the Bill that a worker includes an apprentice or trainee under a training contract entered into with a provider who is a GTO under the *Further*

¹¹ The present value of a penalty unit under section 5 of the *Penalties and Sentences Act* 1992 is \$110.00. Therefore the maximum penalty for a corporation that provides labour hire services and is not the holder of a license is \$330,000.00.

¹² Which is multiplied by 5 for a corporation- see section 181(B)(3) of the *Penalties and Sentences Act* 1992

Education and Training Act 2014 in clause 8(3) of the Bill, there is no doubt that it is the intention that GTOs must be licensed under the Bill to trade.

GTOs should be excluded from the Bill

71. It is submitted that there is no sound or evidenced based reason why GTOs should be subject to the provisions of the Bill.
72. There are a number of particular reasons for this submission.

No evidence that GTOs are exploiting or mistreating their apprentices or trainees or that GTOs are acting unethically or irresponsibly

73. First, there is no evidence to suggest that GTOs have been engaging in the conduct referred to in the Committee's report or in the Issues Paper such as exploitation or mistreatment of workers or by acting unethically or irresponsibly to avoid their legal obligations.
74. Indeed, there was even no suggestion in the Committee's report or in the Issues Paper of GTOs exploiting or mistreating the apprentices or trainees they employ or that they have been acting unethically or irresponsibly in the apprenticeship or trainee market.
75. Certainly, in Committee's report and in the Issues Paper, there is reference to such activities allegedly being engaged in by some labour hire companies, however Committee's report or in the Issues Paper did not identify that conduct as being allegedly carried out by GTOs.

GTOs are regulated under the *Further Education and Training Act 2014*

76. Secondly, it is submitted that the reason for the lack of any such evidence or suggestion of any wrong doing by GTOs is because of the current regulation of GTOs.
77. GTOs are regulated under the *Further Education and Training Act 2014*. A company wishing to operate as a GTO, must apply to the chief executive of the

83. For these reasons, _____ submits, given the significant level of detailed regulation imposed under the *Further Education and Training Act* 2014 in respect of the establishment and operation of GTOs, and in the absence of any compelling evidence that the performance and conduct of GTOs is such that requires further legislative intervention, amendments should be made to the Bill to remove GTOs from the application of the Bill.

The Notional Agreements Preserving State Awards issue

84. _____ is at a loss to understand why the Queensland Government has proposed to include GTOs within the scope of the Bill.
85. If the reasoning for this has been in relation to the recent implications from the decision of the Full Bench of the Fair Work Commission in *All Trades Queensland Pty Ltd v Construction, Forestry, Mining and Energy Union & Ors*,¹⁴ then that is not a sound reason at all to include GTOs within the scope of the Bill.
86. In *All Trades Queensland Pty Ltd v Construction, Forestry, Mining and Energy Union & Ors*, a Full Bench of the Fair Work Commission made a decision, which, in effect, found that from 1 January 2014, Notional Agreements Preserving State Awards (NAPSAs) being, relevantly to apprentices employed in Queensland¹⁵ did not apply and that the relevant modern awards made by the Fair Work Commission applied from that time.
87. As is apparent from any perusal of that decision, and from the publicity surrounding that decision, both the Fair Work Ombudsman and the Queensland Government were of the view, prior to the decision of the Full Bench, that the NAPSAs continued to apply to organisations who were subject to the NAPSAs referred to above and the modern awards were yet to have lawful application.

¹⁴ [2017] FWCFB 132.

¹⁵ The *Order – Supply of Tools to Apprentices 1998* and the *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003 Order*.

and, to the best of its knowledge, other GTOs, followed the views of the Fair Work Ombudsman and the Queensland Government.

88. Any allegation that GTOs had been deliberately underpaying apprentices since 1 January 2014 is, for these reasons, clear unfounded and is not a sound or meritorious reason given the already high level of regulation under which GTOs operate, to include GTOs in the scope of the Bill.
89. A GTO cannot operate in Queensland if it does not comply with the GTO National Standards. As mentioned above, the GTO National Standards go to the issues of the recruitment, employment and induction of apprentices and trainees, the monitoring and support provided by GTOs to apprentices and trainees during their training and to the completion of their training contract, and, significantly, to the governance and administration of GTOs.
90. In particular, the third standard of the GTO National Standards provides:
- 3. **GTO Governance and Administration**
 - 3.1 The GTO complies with Commonwealth, State and Territory legislative and regulatory requirements and policies as they relate to the employment and training of apprentices and trainees in each State and Territory in which they operate.
 - 3.2 The GTO is incorporated in Australia, a government entity, or regulated by the Australian Charities and Not-for-profits Commission.
 - 3.3 The GTO develops, monitors and **continually improves** its performance and strategic directions using performance data, the results of audits, assessments and surveys plus any other relevant information.
 - 3.4 The GTO can demonstrate that it is financially viable and informs the registering body where early signs indicate issues associated with viability.
 - 3.5 The GTO holds appropriate insurances according to the size and scope of its operations.
 - 3.6 The GTO adheres to the principles of access and equity in all operations including marketing, recruitment, monitoring, support, governance and administration.
 - 3.7 Clear and accurate marketing, advertising materials and other information is provided by the GTO regarding GTO services, the role and responsibilities of the **host employer** and the requirements of the apprenticeship/traineeship.
 - 3.8 Complaints and appeals are dealt with by the GTO transparently in accordance with a documented complaints and appeals process, or referred to State/Territory dispute resolution mechanisms, where the completion of the **Training Contract** is at risk.
91. For these reasons, GTOs are currently and adequately regulated to ensure that:

- (a) they do not mistreat or exploit their apprentices or trainees; and
- (b) they act ethically and responsibly; and
- (c) they operate in a lawful and sustainable manner.

92. Put simply, there is no need for GTOs, which have been in existence since the 1980s, to be regulated together with other labour hire companies.
93. Not only do GTOs and labour hire companies perform different functions, GTOs, unlike labour hire firms that operate on a commercial basis, are directly regulated by an Act of the Queensland Parliament.

Other matters

94. There are two other matters in the Bill that submits require amendment, even if GTOs are not excluded from the application of the Bill.

Suspension of licence

95. Clause 22 of the Bill provides for the unilateral suspension of a licence by the chief executive for a period of not more than 90 days. While a licensee, under Part 8 of the Bill, may seek a review of such a decision to the Queensland Civil and Administrative Tribunal, an application for such a review does not stay the suspension decision.¹⁶
96. Such a decision will have a devastating effect on a GTO. It will mean a GTO cannot trade for up to 90 days and will mean all of a GTOs apprentices and trainees will be without employment and training for up to 90 days. This could be a very large number of apprentices and trainees depending on the size of the GTO.
97. The suspension of a licence may be undertaken without giving the licensee a right to natural justice. The Bill should be amended so that before a decision is

¹⁶ Clause 96(1) of the Bill.

made to suspend a licence by the chief executive, the chief executive should give the licensee a right to be heard, in accordance with the rules of natural justice.

Publication of locations of apprentices and trainees

98. The combined effect of clause 103(2)(i) and clause 103(3) of the Bill means that the labour hire website will publish the locations in Queensland where a GTO supplies an apprentice and trainee.
99. Most apprentices and trainees are young people. It is inappropriate, in these circumstances, for locations where a GTO supplies an apprentice and trainee to be so published. The protection of such young persons may be compromised by such a publication.

Conclusion

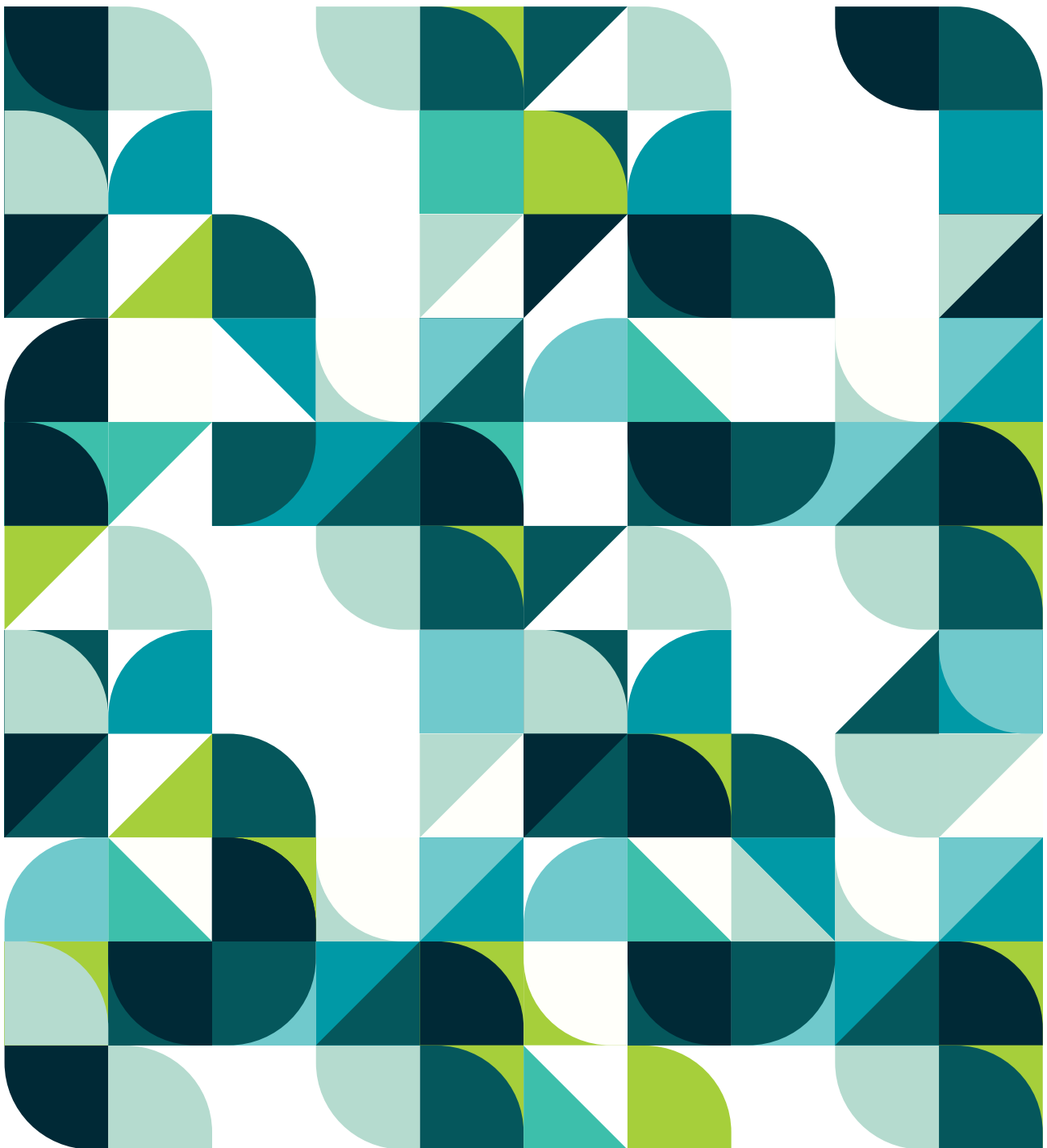
100. In conclusion, _____ urges the Committee to consider recommending amendments to the Bill to exclude GTOs from the operation of the Bill.
101. I am happy to meet with the Committee to provide any further information you may require in respect of our submission.

Yours faithfully

JANUARY

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17

Revised NATIONAL STANDARDS for Group Training Organisations



What are Group Training Organisations?

Group Training Organisations (GTOs) employ apprentices and trainees under a Training Contract and place them with host employers. They undertake the employer responsibilities for the quality and continuity of the apprentices' and trainees' employment and training. They also manage the additional care and support necessary to facilitate the successful completion of the Training Contract.

The purpose of the National Standards for Group Training Organisations

The purpose of the *National Standards for Group Training Organisations* is to ensure nationally consistent, high-quality services are provided by GTOs in carrying out their core role as outlined above. The Standards provide a framework to ensure GTOs operate ethically, with due consideration of apprentice, trainee and host employer needs, and enhance the reputation of group training as a model of employment and training within the apprenticeship and traineeship system.

The key outcome for a GTO is to develop an apprentice/trainee to become a skilled worker who has completed a recognised qualification. To achieve this quality outcome a GTO needs to focus on three key elements with the Standards structured to reflect these:

- recruitment, employment and induction;
- monitoring and supporting apprentices and trainees to completion;
- maintaining a sustainable GTO which is well governed and administered.

The Standards have been designed to ensure the quality assurance framework for Group Training Organisations is consistent with and complementary to the framework in place for Registered Training Organisations.

GTOs must comply with the *National Standards for Group Training Organisations* in order to be registered. Only registered GTOs are eligible to apply for Australian Government or State or Territory Government group training program funding. Registered GTOs are published on the Group Training National Register Website (www.australianapprenticeships.gov.au/group-training) and are entitled to use the Group Training logo.

The Standards

1. Recruitment, Employment and Induction

- 1.1 Before apprentices/trainees enter into an Employment Contract and a Training Contract, the GTO informs them about their employment conditions, the host employer arrangement, the training, the support services to be provided and the rights and obligations of the parties.
- 1.2 The GTO inducts apprentices and trainees to the apprenticeship/traineeship system, including explaining:
 - the apprentice/trainee's responsibilities under the **Training Contract**, to the **host employer**, the GTO, the **Registered Training Organisation** (RTO) and the school (if under School-based arrangements); as well as
 - the processes involved in accessing support and dealing with employment or training issues that may arise.
- 1.3 The GTO provides clear and accurate advice to **host employers** to:
 - take reasonable steps to ensure they understand the apprenticeship/traineeship system; and

- obtain their agreement, by means of a **Host Employer Agreement**, to their role and responsibilities in training and supporting the apprentice or trainee while in their workplace, in meeting their obligations to maintain a safe workplace and in working cooperatively with the GTO and RTO.
- The GTO actively participates in the RTO's development of the Training Plan, which is based on competency-based progression and completion principles and relevant to the qualification, the occupation, the host employer's workplace and the needs of the **apprentice/trainee**, in conjunction with the **apprentice/trainee**.

2. Monitoring and Supporting Apprentices and Trainees to Completion

- 2.1 The GTO provides services that meet the needs of apprentices and trainees to facilitate the continuity of the **Training Contract** to completion and the quality and breadth of the training experience, including:
 - support and mentoring throughout the **Training Contract**;
 - providing resources or advice or procuring any special equipment for the workplace in order to meet access and equity and Work Health and Safety requirements.
- 2.2 The GTO monitors each apprentice or trainee's progress against the **Training Plan** and:
 - facilitates the integration of the training and employment experiences, including arranging for workplace rotations if required;
 - requests that the RTO review the **Training Plan** when changes occur with the **apprentice/trainee** employment arrangements, including any workplace **rotations**, competency-based progressions or other changes.
- 2.3 The GTO has appropriate systems in place, based on the scale and scope of its operations, to manage and support apprentices and trainees in times of economic downturn or 'stand down' to facilitate the retention of the apprentice or trainee.
- 2.4 The GTO provides assistance, coordination and accurate advice to **host employers** for the duration of the **Host Employer Agreement**, and works with the **host employer** to provide appropriate on-the-job training, supervision, support and mentoring to the hosted **apprentice/trainee**.
- 2.5 Where there are any performance issues with an **apprentice/trainee**, the GTO manages these issues fairly¹, and records the outcome and the feedback provided to the apprentice or trainee.
- 2.6 The GTO complies with Commonwealth, State and Territory requirements for competency-based progression and completion and supports genuine efforts to achieve the qualification in an appropriate timeframe regardless of the nominal duration of the **Training Contract**.

3. GTO Governance and Administration

- 3.1 The GTO complies with Commonwealth, State and Territory legislative and regulatory requirements and policies as they relate to the employment and training of apprentices and trainees in each State and Territory in which they operate.
- 3.2 The GTO is incorporated in Australia, a government entity, or regulated by the Australian Charities and Not-for-profits Commission.
- 3.3 The GTO develops, monitors and **continually improves** its performance and strategic directions using performance data, the results of audits, assessments and surveys plus any other relevant information.
- 3.4 The GTO can demonstrate that it is financially viable and informs the registering body where early signs indicate issues associated with viability.

¹ The term 'fairly' refers to the need to ensure that provision for natural justice and procedural fairness are incorporated in the GTO processes associated with their assessment of an apprentice or trainee's performance.

- 3.5 The GTO holds appropriate insurances according to the size and scope of its operations.
- 3.6 The GTO adheres to the principles of access and equity in all operations including marketing, recruitment, monitoring, support, governance and administration.
- 3.7 Clear and accurate marketing, advertising materials and other information is provided by the GTO regarding GTO services, the role and responsibilities of the **host employer** and the requirements of the apprenticeship/traineeship.
- 3.8 Complaints and appeals are dealt with by the GTO transparently in accordance with a documented complaints and appeals process, or referred to State/Territory dispute resolution mechanisms, where the completion of the **Training Contract** is at risk.

Definitions

In these standards:

Access and equity means the policies and approaches that ensure that group training services and employment practices are responsive to the diverse needs of all host employers, apprentices and trainees, including those who experience disadvantage².

Apprentice/Trainee means a person employed by a GTO under an approved Training Contract that leads to a nationally recognised qualification.

Continuous improvement means a planned and ongoing process that enables a GTO to systematically review and improve its policies, procedures, products and services in order to generate better outcomes for clients and to meet changing needs.

Employment Contract is the contract between the apprentice/trainee and the GTO which clarifies their employment conditions, including 'stand down' support and processes to be followed by the GTO, where appropriate.

Host employer means an organisation that hosts, under a written host employer agreement, an apprentice or trainee employed at that time by a GTO, provides supervision and on-the-job training and pays the GTO for the apprentice/trainee services.

Host Employer Agreement means a written agreement between the GTO and the host employer that specifies the responsibilities of each party in relation to the training of the apprentice/trainee and the charge out rate payable.

Training Contract means the nationally agreed Training Contract for an apprenticeship/traineeship, made between an employer and an apprentice/trainee, which is registered with the appropriate state/territory government department or agency.

Registered Training Organisation (RTO) means an organisation that is registered to deliver and issue nationally recognised qualifications.

Rotation means an apprentice or trainee moving from one host employer to another as part of his/her apprenticeship or traineeship with the GTO.

Training Plan means a program of training and assessment that is developed by the RTO in accordance with the National Training Plan Principles and agreed to by the GTO as the employer and the apprentice or trainee.

² The following groups of learners have been identified as at risk of disadvantage in vocational education and training: people from low socio-economic backgrounds; Indigenous Australians; women; people from culturally and linguistically diverse backgrounds; people with a disability; people living in remote areas and people for whom VET may be seen as offering a 'second chance'. (National VET Equity Advisory Council, National Report on Social Equity in VET 2013. http://research.acer.edu.au/transitions_misc/17/).

