

Submission on the Labour Hire Licensing Bill 2017

Thank you for the opportunity to make a submission on the Labour Hire Licensing Bill 2017.

Growcom, as the peak industry body for Queensland horticulture, has a strong interest in ensuring that legitimate labour hire organisations can continue to provide workers for our growers.

The majority of the horticulture workforce is, by necessity, made up of casual, transient harvest workers, with large numbers of Working Holiday Makers (visa subclass 417 and visa subclass 462) making up the numbers required to get the harvest in. This is not a matter of choice – the seasonal nature of the horticulture industry means that growers often require large numbers of workers for short periods of time. Harvest work can be impacted by weather and even with the best of intentions, no grower can guarantee ongoing work or even certain work for any particular period.

While the industry is currently focussed on workforce planning and stabilising their workforces as a matter of good practice (via the implementation of the Production Horticulture Workforce Development Program), the reality is that, as a highly seasonal industry which is subject to the vagaries of nature as well as market conditions, our reliance on this temporary flexible workforce continues to be high.

Growers access their workers from a variety of sources including walk-ins, the harvest trail, the gumtree website and labour hire companies. Labour hire companies (LHC) play an important role in the horticulture industry, particularly in relation to accessing seasonal labour in a short timeframe. If a grower requires 200 workers to get the mango harvest in, there is a 4-6 week window to undertake that work but little hope of finding all those workers locally. This is a daily reality for growers. Turnover of backpacker employees is high and it becomes a daily challenge to find, induct and train workers who may decide to stay for a day or a week. The administration and management of workers is governed by a raft of laws, regulations and guidelines and the expectations and requirements on employers grows every year. With labour consisting of up to 50% of input costs, and the industry a “price-taking” industry, it is imperative to contain costs.

Using a reputable LHC can cut down on administration time for growers and make businesses more efficient. That said, it is clear that many LHCs are not treating their workers properly and are placing individual growers and the industry as a whole at reputational risk.

As an overarching statement, we do support better oversight of the labour hire industry but remain concerned that the Bill, as it is drafted, will not necessarily deal with some of the key issues and may potentially have unintended consequences. We will continue to push for a consistent national scheme and support the work done by the RCSA in developing a national accreditation for labour hire companies.

Specific provisions of the Bill

Section 7 – Meaning of provider and labour hire services

We are concerned that this very broad definition will result in confusion as to what exactly constitutes a labour hire arrangement and what requires a licence. Conversations with the Department clarified that the intention is to cover working arrangements whereby there is a triangular relationship between the worker, the LHC and the host employer. We request that greater clarity be provided to distinguish between service provision and labour hire.

Section 31 – Obligation to report to the Chief Executive

Whilst we appreciate the need to capture relevant information for the purpose of compliance and to ensure that renewals are not given to poor employers, we would like greater understanding of how and where this information will be used and what purpose this retrospective information serves. In particular we would like clarification of the following:

31 (g) – The locations in Queensland where work was carried out by the relevant workers.

We would be greatly concerned if the location information was able to identify an individual grower or farm, particularly if that information was available to third parties. We would like some assurance that the 'location' information collected will be by postcodes or local government areas. We are also unsure of the purpose for collecting such information as the location of the work has no impact on the criteria to obtain a licence.

31(e) – if the licensee is aware that accommodation was provided by another person to the relevant workers, to the best of the licensee's knowledge –

- i) Who provided the accommodation*
- ii) The address of the accommodation*
- iii) Whether the relevant workers paid a fee for the accommodation; and*
- iv) The number of relevant workers that used the accommodation*

Whilst we understand that there are some concerns about the interface between accommodation providers and labour hire companies, it is unclear what is meant by *accommodation provided by another person* as this could cover anything from a standard long-term tenancy arrangement to a single night in a campground. For LHCs to comply with this it would require invasion of the worker's privacy in terms of their living arrangements.

It would be our preference that this requirement covers those accommodation arrangements where there is a clear link between the accommodation provider and the LHC and where accommodation and other service arrangements can be used as a mechanism to deprive workers of their entitlements.

Section 90 – Avoidance arrangements

90 (b) – Persons must report avoidance arrangements if the other person (the client) is aware or ought reasonably to be aware the supply or intended supply by the non-complying person is an avoidance arrangement.

Once again we seek clarity as to the coverage intent of this Bill. We can foresee situations whereby traditional labour hire arrangements are abandoned for service type arrangements whereby a set fee is paid to 'pick a crop'. We would like some clarity as to whether that would constitute an avoidance arrangement as this type of approach is commonly used in some types of agriculture such as broadacre harvesting and contract spraying.

Section 93 – Reviews and Appeals

93 (2) – Application for review where an 'interested person' may apply for a review of a decision to grant a licence, suspend a licence or impose, vary or revoke a condition of a licensee's license under section 29.

*An **interested person** means a person or organisation, other than a licensee, who has an interest in the protection of workers or the integrity of the labour hire industry.*

It is our understanding that this provision gives third parties a much more powerful role than in other similar legislation such as the UK Gangmasters Bill and leaves this area open to abuse. We question the intent of this provision and argue that it opens up the door for malicious and vexatious applications to slow down approval of labour hire companies. Legitimate labour hire companies are vital to our industry. The state based licence scheme already presents a barrier to entry for Queensland compared with other States and the threat of being caught up in an appeals process triggered by a third party represents an additional and unnecessary barrier. We have no issue with a complaints process whereby the standard compliance activities can be triggered but we think there are inadequate safeguards for legitimate businesses and no real justification for such an unusual provision.

Yours sincerely,

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