



**APSCo AUSTRALIA
SUBMISSION**

**Submission to the Finance
and Administration
Committee inquiry into the
*Labour Hire Licensing Bill
2017* (QLD)**

Submitted: 19 June 2017

By email to: Committee Secretary
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Email - FAC@parliament.qld.gov.au



The Association of Professional Staffing Companies in Australia (APSCo Australia) (formerly ITCRA) has been established to provide all companies involved in the recruitment and management of professional talent, the specialist support and distinctive voice the sector needs to ensure business success, recognition for excellence and immediate response to issues.

The Association provides candidates and employers an internationally recognised badge of quality. This is evidenced in the provision to member companies of an innovative range of business, compliance and education services designed by specialists with knowledge across multiple contracting and recruitment sectors.

APSCo Australia is now identified internationally as part of a distinctive voice for the professional recruitment and talent management sector across the United Kingdom, Germany, Singapore and Hong Kong.



The Talent Engagement Standard (TES), in partnership with Certiex International and Service Excellence Consulting, sets best practice for organisations which recruit and manage workers.

Created with reference to legislative requirements, existing industry standards and business best practice, the Talent Engagement Standard defines the critical compliance areas for employers.

APSCo Australia Submissions on the Queensland Labour Hire Licensing Bill 2017

Executive Summary

The Association of Professional Staffing Companies of Australia (**APSCo Au**) represents the professional staffing sector in Australia and has a significant number of members with operations based in or supplying contractors or workers to the Queensland market.

APSCo Au welcomes the opportunity to make submissions in response to the *Labour Hire Licensing Bill 2017* (**Bill**) on behalf of its members and continues to rely on its submissions, under its previous name the Information Technology Contract & Recruitment Association (ITCRA), dated 7 April 2016 (**Previous Submission**) to the inquiry into the labour hire practices in Queensland (**Inquiry**).

APSCo Au's submissions, on behalf of its members, address the key issues of the Bill that, in APSCo Au's view, will cause an unnecessary and onerous administrative, financial and punitive burden on reputable contracting and recruitment companies providing services to host organisations in Queensland.

As previously submitted during the Inquiry, APSCo Au is not convinced of the need for a state-based or national licensing system across all sectors. The Bill, as drafted, will increase costs for already compliant professional staffing and contracting providers and do little to deter unscrupulous providers who currently flout existing workplace laws. Further, adding another layer of regulation will only exacerbate the disadvantage amongst small to medium providers who already spend significant time and resources ensuring they are compliant with relevant laws impacting the industry. The licensing schemes currently operating throughout Australia are not generally directed towards labour hire agencies, and a number expressly exclude labour hire (refer to Annexure A). Despite this, professional contracting and recruitment companies, including APSCo Au's members, follow best practice, have sophisticated mechanisms in place and are fully aware of their obligations to ensure that workers' rights are protected and supported.

APSCo Au respectfully submits that any form of labour hire licensing in Queensland should specifically exclude the white collar sector and the professional staffing and contracting sector that supplies talent. In support of this, APSCo Au notes that the reports following the labour hire inquiries in States such as Victoria recommended that labour hire licensing be limited to specific industries such as horticulture, meat and cleaning.

Further, the Inquiry report released in June 2016 (**Report**) uncovered evidence of phoenixing, sham contracting, exploitation and mistreatment of workers, and a range of other illegal practices predominantly in the agriculture and horticulture industries in Queensland.

The Report also stated that the Queensland Finance and Administration Committee (**FAC**) was unable to reach agreement on whether a licensing scheme should even be introduced. From the Report, we understand that Government members of the FAC supported the introduction of a licensing system while non-government members considered that the current regulatory framework is sufficient and could be more effective if it is better resourced. Accordingly, APSCo Au is surprised and disappointed that the Bill seeks to impose such a rigorous and unsupported licensing scheme across all sectors.

Submissions in respect of specific provisions of the Bill

The Bill's Explanatory Notes claim that the objectives of the Bill are to introduce a licensing scheme that balances the need to protect vulnerable workers while minimising the administrative burden on labour hire providers and their clients. However, APSCo Au submits that the Bill is unlikely to achieve this objective and set out below the particular provisions which it considers will in fact place an unreasonable burden on reputable providers and their clients.

Section 3 - Purpose

The Bill does not account for the fact that there are reputable providers in the contracting and recruitment sector who are already compliant with workplace laws and are not involved in the exploitation of workers. Further, it assumes all workers in the labour hire industry are vulnerable and/or subject to exploitation, which is certainly not the case with the professionals that APSCo Au's members engage with. The Bill casts a wide net and does not distinguish between reputable providers and unscrupulous providers. This means that APSCo Au members who have already incurred a great deal of time and expense in ensuring their practices are compliant, through other Queensland based supplier review programs such as QAssure, will now incur further cost in complying with a new onerous licensing scheme. This cost will not be borne by the end user clients and/or consulting companies who figure strongly in the supply and management of talent.

The Bill is not necessary to "promote integrity" for those reputable companies who are already compliant and should be limited to certain industries where exploitation occurs, such as agriculture and horticulture as identified in the Report. There are already credible alternatives to licensing in place, such as self-regulation (i.e. APSCo Au's business accreditation program, the Code of Conduct and QAssure, which APSCo Au actively supports), which are proven to monitor compliance and business stability amongst professional staffing service providers particularly in the white collar sector.

Further, the focus of the Advancing Small Business Queensland Strategy 2016-20 is to put programs in place that help small business grow and innovate. The Bill contradicts the Queensland Government's objective and will in fact make it more difficult for small to medium sized business (**SMEs**) to develop and thrive in the Queensland labour market.

Section 5 - Application

The Bill will apply to all labour hire providers operating in Queensland regardless of where their registered address might be. This fails to acknowledge the commercial reality of the recruitment and contracting sector whereby companies often have operations or provide talent (labour) across multiple Australian and international markets.

For example, if a worker provides work to a client in New South Wales and that client requires work to be performed in Queensland for a period of time for whatever reason, the labour hire provider will be required to obtain a licence even though it does not normally operate in Queensland or supply contractors to any clients in Queensland. Pursuant to the Bill, the 'provider' would be required to first apply for and be granted a licence before it could re-deploy that worker or provide services to that client in Queensland.

There is no indication in the Bill or Explanatory Notes regarding how long the application process will take in order to be able to assess the commercial impact on businesses faced with this situation. It may cause clients to cease arrangements with providers based outside of Queensland or mean that a worker who is ready and willing to perform work may not be given that opportunity. As APSCo Au submitted to the Inquiry, one of the primary reasons professionals choose contracting or non-permanent forms of work is the flexibility it provides and there is a significant trend towards such non-traditional models. Not only could this provision impact commercial relationships, it could also impact on a worker's freedom to choose when, where and how they work.

The Bill is specific to Queensland and is unlikely to be uniform or complementary to legislation of the Commonwealth or another State. The reports from the labour hire inquiries in Victoria and South Australia have recommended a state-based or national licensing system in some form. If other States introduce licensing schemes, providers who supply workers across Australia may be required to pay multiple licensing fees regardless of whether they are already compliant with the labour laws in those States. This places a further burden on national operators.

Section 7(1)-(3) - Definitions

The definition of 'labour hire' in the Bill is one where a person or business supplies workers to do work for another person, regardless of how the activity might be described. As APSCo Au submitted to the Inquiry, this terminology is not appropriate for most of APSCo Au's members and does not recognise the broad range of services that may be provided in Queensland. APSCo Au relies on, and does not propose to repeat, its Previous Submission which set out the descriptions which

reflect current and evolving industry practice and terminology. A copy of the definitions including in the Previous Submission is attached for ease of reference at Annexure B.

Inquiry stakeholders identified that labour hire arrangements can be difficult to define, taking in a diverse array of arrangements. However, labour hire arrangements typically involve a 'triangular relationship' in which a labour hire business supplies the labour of a worker to a third party (the host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships.

The use of the term "provider" is outdated and denotes a commoditisation of supplying labour which is not appropriate or consistent with current industry standards. Further, APSCo Au does not agree with the term "human labour" being used to describe the engagement of workers, particularly professionals in the contracting and recruitment sector. Even the term 'labour hire', as adopted in the Bill's title, denotes a blue collar industry engagement model and is not appropriate for APSCo Au's members.

There is also no clarity within the Bill or Explanatory Notes about how far the definition of "provider" will extend and what exceptions may be implemented (if any). For instance, APSCo Au members regularly engage individual independent contractors through the individual's own proprietary limited company (**Pty Ltd Contractor**). One member in particular, engages at least 25% Pty Ltd Contractors. In a Pty Ltd Contractor arrangement, the individual acts as a consultant of the company and provides services to a client of the APSCo Au member. As currently drafted, the Pty Ltd Contractor may also require a licence which surely goes beyond the Bill's objectives.

APSCo Au submits that a yearly financial and reporting obligation under the proposed licensing scheme would likely prove unsustainable for Pty Ltd Contractors and could force them to seek other forms of work, which may not suit their circumstances or preferences.

The broad definition of "provider" may also intentionally or unintentionally capture businesses such as consultancy companies who outsource IT professionals or companies (including professional services firms) that second workers to clients, as this could arguably satisfy the definition of "provider" as it is currently drafted in the Bill. APSCo Au respectfully submits that the term "provider" be carefully re-considered in order to acknowledge the different types of work arrangements and provide more certainty about which commercial and contractual relationships will be covered by the Bill.

Section 8(2)(a) and (b) of the Bill aim to capture all the various types of labour arrangements except those specifically excluded from the Bill. The proposed licensing scheme will not apply to a number of work arrangements including genuine subcontracting and other arrangements prescribed by regulation. It is not clear which providers will be excluded by the regulations but we suggest this should, as a minimum, carve out contract management and recruitment companies operating in the professional services sector. This would align with the current licensing scheme in South Australia.

Section 8(2) - Worker

In APSCo Au's view, the Bill does not recognise the complexity in defining labour hire and other services to ensure coverage does not capture or extend to unintended classes of workers. Most importantly, the Bill does not recognise the distinction between professionals who freely choose to enter these types of relationships and vulnerable workers. These professionals are fully aware of their workplace rights and entitlements and have the acumen to identify which work arrangements best suit them.

APSCo Au submitted to the Inquiry that a 'one size fits all' definition of independent contractor would prevent all the nuances of individual circumstances being fully considered and would only lead to future complications as work arrangements continue to evolve (i.e. labour hire providers and workers may not be able to easily ascertain whether their particular arrangement is covered by the Bill). Therefore, APSCo Au respectfully submits that the definition of worker should exclude those in the professional services sector who desire the freedom to structure their work arrangements as they see fit (i.e. Pty Ltd Contractors). These workers have, and will continue to, receive their full entitlements and protection under relevant workplace laws.

Section 10(1)-(2) - Prohibited conduct

The penalties for engaging in the prohibited conduct set out in the Bill are extremely high. Failure to hold a licence after 1 July 2017 would incur a maximum penalty of \$130,439.10 for an individual or 3 years imprisonment and \$378,450 for a corporation. Whilst such punitive action may be appropriate for those providers who engage in exploitative conduct in the blue collar sector, there is potential for a number of providers to be caught by this provision for minor compliance issues, for example being unable to apply for a licence within the 28 day transitional period (see below in relation to section 109).

These amounts are also disproportionate with penalties imposed by other laws, for example a breach of the National Employment Standards or a Modern Award currently carries a maximum penalty of \$10,800 for an individual and \$54,000 for a corporation.

Whilst the application fee and annual licence renewal fee will be structured according to the size of a business, it is not entirely clear which companies would be classified as either a small, medium or large provider and therefore businesses are unable to assess the annual financial burden the licensing requirement will impose.

These extra costs as well as the potential penalties will have a significant impact on businesses and are disproportionate for those businesses that are already compliant.

Section 11 and 12 - Arrangements with licence holders

Again, the penalties for clients and other parties entering into arrangements with unlicensed contract management and recruitment companies are potentially too onerous. For reasons already outlined in this submission, this provision could act as a deterrent for clients and have an adverse commercial impact on business. It was stated at the public briefing on 14 June 2017 (**Public Briefing**) that the objective of these anti-avoidance provisions is to make it difficult for unscrupulous companies to structure arrangements or conspire to avoid their obligations. However, this fails to appreciate the broader commercial impact on reputable providers.

In APSCo Au's experience, the labour hire/contracting firms and client businesses operating within the professional contracting sector do not use contracting as a way of avoiding employment costs and obligations; rather it is used to supplement their workforce – to fill a short term niche skill requirement, or to add specific skills. Businesses should be able to adapt their workplaces to a rapidly changing technological and economic environment, and ensure they can attract, maintain and support the skilled workers they will rely on in the future. The above provisions will add an additional administrative barrier on commercial arrangements and could potentially stifle the labour market if businesses are too caught up in red tape. Again, this contradicts the Queensland Government's objectives for SMEs as discussed above.

Section 13 - Licence applications

The licence application must be made by those persons who intend to carry on a business, which means the required information may need to be provided by several people within the business. This also means the application process will create an additional administrative burden that is unreasonably onerous on compliant providers.

It is also not clear what is needed to establish "financial viability" and this requirement may cause difficulties, particularly for smaller APSCo Au members and particularly for new enterprises. The recruitment services industry largely comprises of small to medium sized enterprises that may be unable to meet such a broad and unknown requirement.

For instance, there are an ever increasing number of start-up recruitment and contracting businesses in today's market. The Bill does not appear to consider that a lot of these start-up companies will not turnover a profit for at least several months even though their operations may be successful. There is no guidance in the Bill or Explanatory Notes on how these smaller or newer companies will prove their financial viability.

APSCo Au respectfully submits that the Bill should provide some concessions for start-up companies, similar to those introduced by the federal government's National Industry Innovation and Competitiveness Agenda, which included several reforms to employer sponsored visas which reduced the burden on start-up businesses,

including retaining the Temporary Skilled Migration Income Threshold at \$53,900 for two years.

The above requirements, along with the “fit and proper” person test in section 27, are too broad and subjective and may result in an application for a licence being refused, suspended or cancelled at any time. Again, this is an unreasonable burden to place on compliant providers that have already gone to great lengths to ensure they are compliant.

Section 15 - Licence criteria

As mentioned, the criteria relating to “fit and proper” and financial viability is too subjective and creates uncertainty for doing business in Queensland. There needs to be further clarification and objectivity in respect of this criteria, particularly what it means to be “financially viable” as this could potentially mean that smaller businesses are unable to continue operating.

Section 16(1)-(3) - Decision on licence

There is little guidance on what conditions may potentially be applied to licences being granted in order to be able to assess the financial and administrative burden on compliant providers. For example, it is not clear in what situations the Chief Executive will require a provider to take out certain insurances.

APSCo Au also understands from the Public Inquiry that an aggrieved third party may oppose the granting of a licence or apply for review of a decision. This is likely to create further uncertainty for companies and may unnecessarily impede businesses operating while a review process occurs.

Section 17-27 - Maintaining a licence

The process for renewal and restoration of licences in sections 18-21 is onerous and prescriptive. For example, the short timeframe and obligation to renew prior to the expiry of a licence will subject businesses to a regular and systematic administrative imposition that also impacts management time. If a licensee fails to report on time, their licence may be subject to suspension or cancellation in accordance with sections 22-26.

If other States were to introduce licensing schemes, providers who supply workers across Australia may be unnecessarily and constantly tied up in reporting or renewing licences regardless of whether they are already compliant with the labour laws in those States.

Section 27 - Fit and proper person

This test covers a broad range of matters and is extremely subjective and vague in parts (e.g. “any other matter the Chief Executive considers relevant”). It is not clear how the Chief Executive will conduct such an assessment or how matters such as “integrity and professionalism” will need to be demonstrated.

This provision does not take into account reputable providers who have continued to comply with relevant laws and will instead require companies to provide some form of proof of their compliance. This will add yet another unnecessary administrative burden on compliant companies, including APSCo Au's members.

Section 31(1)-(2) – Reporting

APSCo Au notes that all licence holders will be required to report on their performance, including any breaches of workplace laws, which will be published on a public register. There has been no indication of the level of detail the report will require and the concern is that this will create an additional administrative burden on compliant providers and publicly disclose unnecessary commercial information. Although section 102 provides that the Chief Executive may waive a relevant information requirement if satisfied that the applicant or licensee has complied with information requirements under another regulatory scheme or appropriate non-regulatory accreditation, again it is not clear in what circumstances this discretion will be exercised.

Based on comments made at the Public Inquiry, there appears to have been no assessment or calculation of the cost of the ongoing regulatory imposition to provide annual reports. It was raised at the Public Inquiry that the high turnover of labour in this industry means that the status of a business will change and new information will be available each reporting period. Based on this, the administrative burden is likely to be significant.

Further, if other States introduce licensing schemes, labour hire providers who supply workers across Australia may be required to produce multiple reports regardless of whether they are already compliant with the labour laws in those States.

Section 55 - Right of entry

The rights of entry provisions (which are also addressed in other sections) grant the relevant officer with a broad range of powers, including for the purposes of assessing the subjective 'fit and proper person' test and may place a further imposition on businesses.

Section 103 - Register of licences

The information required to be kept on a public register includes commercially sensitive information which will be freely available on the labour hire website and may be viewed by competitors and clients. APSCo Au submits that information which is sensitive and otherwise confidential should not be required to be disclosed.

Section 109 - Transition

28 days is not a sufficient transitional period for existing providers to ensure their compliance with the Bill and compile the necessary information to make an application. Members would need to be preparing their applications now and be

ready to submit within 28 days of the Bill being enacted or face having to cease their operations in Queensland. This period should be extended.

Conclusion

APSCo Au does not endorse the Bill and is seriously concerned about the impact on the professional contracting and recruitment sector which will unnecessarily impede reputable businesses and productivity in Queensland. The broad application of the Bill is too onerous and should be limited to those industry sectors where exploitation and lack of integrity has been identified.

As explained in these submissions, the Bill contains too many vague notions and obligations that are not properly particularised. As a result, it is difficult for APSCo Au and its members to respond to how the proposed licensing scheme may actually impact the professional staffing sector, until further particulars are provided. What we are certain of is that complex laws and significant penalties are already in place to address non-compliance within various workplaces, and APSCo Au is not convinced of the need to introduce a licensing scheme that would only increase costs for recruitment and staffing companies that are already complying with their obligations.

Of particular concern to APSCo Au members is that the licensing scheme proposed by the Bill would not only be costly to implement but would cause significant compliance issues for those members operating in more than one state and, even more significantly, across global marketplaces.

In these submissions, APSCo Au has addressed the key elements of the proposed scheme that, in its view, will cause an unnecessary administrative, financial and punitive burden on reputable providers. As such, APSCo Au respectfully submits that the Bill should be limited to vulnerable workers in industries where non-compliance has been identified and should not extend to professional white collar temporary workers and contractors.

Focusing any increased regulatory protection on certain classes of vulnerable workers would protect those most at risk of exploitation. This would also allow genuine independent contractors, and their hiring entities, to freely negotiate the terms of engagement without the fear of those terms unintentionally falling foul of the Bill.

APSCo Au believes that its members, including their clients and the workers they engage, will continue to benefit most from a simplified and streamlined system of self-regulation/certification which it currently has as part of its Standards program which includes the Code of Conduct. This delivers greater productivity benefits, and better compliance outcomes due to an enhanced understanding of the rights and obligations by all parties.

APSCo Au would be pleased to have the opportunity to discuss the points in this submission in more detail as part of the public hearings or otherwise and, in particular, provide any additional information as required.

Regards,

Julie Mills

Managing Director, APSCo Australia

Attachments:Annexure A

Annexure B

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ANNEXURE B

Comparison of Labour Hire Licensing in other Australian States/Territories

State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
Victoria (Vic)	<p>No current licensing scheme.</p> <p><u>Proposed</u></p> <p>Support from the Vic Government following the recommendation in the Vic labour hire inquiry report dated 27 October 2016.</p>	<p>The Vic government is yet to consider the proper scope and application of the scheme.</p>	<p>National sector-specific labour hire licensing scheme.</p> <p>Vic licensing scheme for labour hire agencies in the horticultural, meat and cleaning industries. Ability to expand to cover other industries or to be contracted in response to changing (improved) practices in the regulated industries.</p> <p>Develop voluntary code of practice for labour hire industry, establishing best practice requirements for labour hire employment arrangements.</p>	<p>To obtain a licence, the labour hire operator would need to provide identifying details of the business and meet certain criteria, which has not yet been published.</p> <p>Applicants to provide statutory declaration and information demonstrating their compliance (also at time of renewal).</p> <p>Company and its key personnel must pass an objective 'fit and proper person' test, which would include no past convictions for offences involving fraud, dishonesty or violence and no past involvement in insolvent businesses or breaches of workplace or OHS laws. Also provide information about visa holders.</p>	<p>Initial licence fee and annual renewal fee (amounts currently unknown).</p>	<ul style="list-style-type: none"> Hosts (i.e. clients) subject to legal obligation to use only a licensed provider. Public register of all licensed operators. 	<p>Civil liability provisions and/or criminal offences for:</p> <ul style="list-style-type: none"> labour hire provider operating in the regulated sectors without a licence; and host organisation (i.e. client) using the services of an unlicensed operator. <p>Liability provisions/offences for breaches of other provisions of the scheme.</p>
ACT	<p><u>Current</u></p> <p><i>Agents Act 2003</i> (ACT) requires persons carrying on business as an employment agent* to be licensed.</p>	<p>Applies to work carried out in or outside of the ACT.</p>	<p>Employment agent services include finding, or helping to find, a person to carry out work for a principal, whether or not the work or employment is to be carried out under a contract of employment or otherwise.</p> <p>*Note: the definition</p>	<p>To be eligible to hold a licence, corporation must have at least one director who also holds a licence and no directors who are disqualified from holding a licence.</p> <p>The factors which disqualify a person from holding a licence include:</p> <ul style="list-style-type: none"> bankruptcy, personal insolvency or involvement in management of a corporation in administration or subject to a winding up order; 	<p>Current fees upon application, and for the required annual payment, are \$762 for a one year licence and \$2,286 for a three year licence.</p>	<ul style="list-style-type: none"> ACT Administrative Tribunal to make occupational discipline orders in respect of agents who breach fair trading legislation or licensing requirements. Agents required to advise in writing of any change to their main place of business. Agents must not publish false or misleading advertisements. Must keep written records of a range of transactions for a five year period. 	<p>A person without a licence commits a strict liability offence, with a maximum penalty of \$15,000 for individual and \$75,000 for corporation and/or one year's imprisonment, if the person carries on business as an</p>

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State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
			does not appear to apply to labour hire providers although they are not expressly excluded from the Act. Does not apply to contracting or contract management.	<ul style="list-style-type: none"> • mental incapacity; • for a corporation, having a controller or administrator appointed or being the subject of a winding up order; or • contravening a licence condition or relevant provision of the Act. <p>Applications must be accompanied by police certificate, and state the place which will be the main place of business.</p> <p>Licence applicants must give public notice of their intention to apply.</p>		<ul style="list-style-type: none"> • Commissioner for Fair Trading must enter a series of information about the agent on a public register. • Specific prohibitions applicable to an employment agent in respect of fees. • <i>The Agents Regulations 2003</i> (ACT) contain a statutory code of conduct that applies to employment agents and other licensees under the Act. 	employment agent, or pretends to be a licensed employment agent.
	<u>Proposed</u> The ACT Government is currently receiving public submissions for the inquiry into insecure work in the ACT.						
South Australia	<u>Current</u> The <i>Employment Agents Registration Act 1993</i> and <i>Employment Agents Regulations 2010</i> establish a licensing system for employment agents and						

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State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
NSW	excludes labour hire arrangements.						
	<u>Proposed</u> Support from the SA Government following the recommendation in the SA labour hire inquiry report dated 18 October 2016.	Details not released yet.	State-based licensing scheme for labour hire providers.				
	No current or proposed licensing scheme. Part 4 Division 3 of <i>Fair Trading Act 1987</i> (NSW) regulates employment placement services and prohibits charging fees to job seekers.						
WA	No current or proposed licensing scheme. <i>Employment Agents Act 1976</i> (WA) expressly exempts labour hire arrangements						

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State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
	from licensing scheme.						
NT	No current or proposed licensing scheme.						

DEFINITIONS

Term	General meaning
Employees	Individuals who are directly employed under a contract of service to provide personal services to an employer generally on a permanent (full time / part time), temporary (casual) or fixed-term basis. Employers are directly responsible for all remuneration, superannuation, employment taxes and insurances.
Independent Contractor	An individual, business or corporation carrying on a business that provides services to a business client under a commercial contract <i>for service</i> rather than an employment agreement.
Labour Hire Contractor (AKA Flex worker)	An individual who is generally engaged directly by a recruitment services company and supplied or “on-hired” to an end user client. The recruitment services company is directly responsible for all remuneration, superannuation, employment taxes and any insurances (as applicable and agreed between the parties).
Pty Ltd Contractor	An independent contractor that is an incorporated company, being a distinct legal entity, which employs an individual to perform the services and supplies them to an end user client. A third party company may provide an incorporated entity structure. Responsible for their own superannuation, tax and any insurances (as applicable and agreed between the parties).
Freelance individual contractor (AKA PAYG Contractor)	An independent contractor that is a freelance individual conducting business in his/her own right who receives a rate which is all inclusive of their entitlements.

INDEPENDENT CONTRACTOR MATRIX

Indicator	Pty Ltd Contractor	Freelance individual (AKA PAYG contractor)	Labour hire contractor (AKA flex worker)
Engagement	Engaged through an interposed entity (i.e. own Pty Ltd company or third party company) or on an individual basis through a commercial contract	Engaged as an individual conducting their own business	Employed by a recruitment services company and supplied or “on-hired” to an end user client often on an ‘as required’ basis
Terms of contract	Identifies results to be completed, specific work and scope	Identifies a specified term of a project or piece of work to be delivered	Identifies hours of work and personal duties which may be subject to change over time
Degree of Control*	High level of control over the work and freedom to determine how, when and where services are performed	Some control over the work but generally supervised by the end-user client	Limited control over his/her work and usually works under employer’s supervision during fixed hours
Exclusivity*	Non-exclusive and free to engage in alternative business activities and provide services to others	Generally free to engage in alternative business activities and provide services to others. Will generally offer loyalty to clients that offer them regular work	During the specified hours, work performed exclusively by the employee and cannot provide services to others but otherwise free to work for others
Tools / Equipment	Where appropriate can supply own tools and equipment and cover own costs	Where appropriate can supply own tools and equipment and cover own costs	Employer generally provides tools and covers business expenses
Delegation*	Free to delegate and subcontract work to third parties – depending on client terms and conditions.	May be free to delegate work to third parties depending on the terms of the contract	Work must be performed by the employee and can only be subcontracted to third parties with consent from client
Entitlements	Not entitled to statutory entitlements	Any entitlements form part of their rate	Entitled to paid leave (i.e. annual personal/carers or long service leave) or a loading in lieu of leave for casuals

Tax / Superannuation	Submits GST invoices for work completed and pays own tax and superannuation (unless individual contractor)	Receives a rate which is inclusive of all of their entitlements	Recruitment services company directly responsible for all remuneration, superannuation and employment taxes
Goodwill / Risk*	Carries on a business which creates goodwill, ability to make a profit/loss. Exposed to commercial risk and has insurances (as applicable and agreed)	Carries on a business on their own right and an ability to make a profit/loss. Exposed to commercial risk and may have insurance (as applicable and agreed)	No ability to generate goodwill and recruitment services company and/or client assumes risk and any insurances (as applicable and agreed)