RECRUITMENT AND CONSULTING SERVICES ASSOCIATION
AUSTRALIA & NEW ZEALAND

Submission in response to

Queensland Government Finance and Administration Committee Inquiry into the Operation of Queensland's Worker's Compensation Scheme

Submission of

The Recruitment and Consulting Services Association (RCSA)

September 3rd, 2012

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Introduction to RCSA

The Recruitment and Consulting Services Association Australia & New Zealand (RCSA) is the leading industry and professional body for the recruitment and the human resources services sector in Australia and New Zealand. It represents over 4,500 company and individual Members.

RCSA members provide permanent full time, permanent part time, casual and on-hire workers to a range of businesses across almost all industries throughout Australia and New Zealand. On-hire workers are often referred to as 'labour hire workers', 'agency workers', 'temporary employees' and a range of other titles. The term on-hire has been incorporated into Modern Awards and will be used for the purpose of clarity.

Members of RCSA provide advice, information, support and guidance in relation to recruitment and employment matters to employers and workers from small and medium sized business to multinationals.

The RCSA membership is focused on ensuring the most positive outcomes for business, workers and workplace relations across Australia. The RCSA sets the benchmark for industry standards through representation, education, research and business advisory support so Members may concentrate on their core business. All RCSA Member organisations and Accredited Professionals agree to abide by the ACCC authorised RCSA Code for Professional Conduct.

RCSA members work first hand with the Fair Work Act and Modern Awards on a day to day basis. Their knowledge, understanding, interpretation and support of the aims of the Act are evident in dealings that they have with their clients and employees on a day to day basis.

RCSA strongly supports the notion that a progressive and pragmatic approach to on-hire worker service provision in Australia is, and will continue to be, a key element in the achievement of the right balance for the Australian economy and community.

According to the ABS Forms of Employment Survey, over 600,000 Australians found their job through an on-hire worker services firm or a recruitment agency in November 2011. This compares with 638,700 job seekers who could not find a job in the same month. Of these who found work through the support of employment services agencies, nearly a quarter were on-hire workers.

RCSA Code for Professional Conduct

The RCSA has a Code for Professional Conduct, authorised by the ACCC, which can be viewed at www.rcsa.com.au/RCSA Code In conjunction with the RCSA Constitution and By Laws, the Code sets the standards for relationships between Members, best practice with clients and candidates and general good order with respect to business management, including compliance. Acceptance of, and adherence to, the Code is a pre-requisite of Membership. The Code is supported by a comprehensive resource and education program and the process is overseen by the Professional Practice Council, appointed by the RCSA Board. The Ethics Registrar manages the complaint process and procedures with the support of a volunteer Ethics panel mentored by RCSA's Professional Practice barrister.

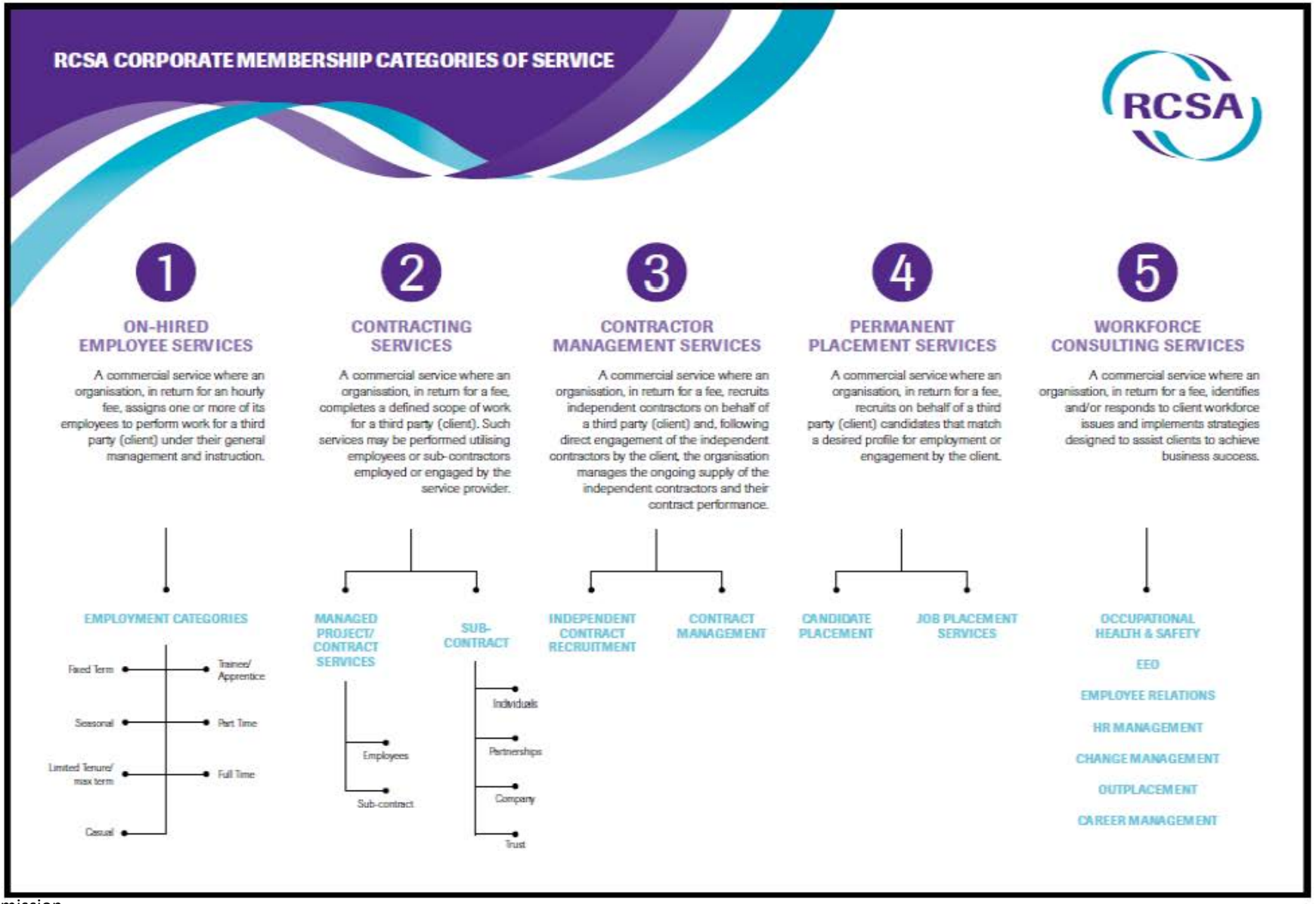
RCSA's objective is to promote the utilisation of the Code to achieve self-regulation of the on-hire worker services sector, wherever possible, rather than see the introduction of additional legislative regulation.

RCSA Member Service Categories and Terminology

RCSA believes that the absence of precise terminology is contributing to the confusion and lack of accountability amongst any non-compliant element of the industry. RCSA has been instrumental in developing and promoting the following categories of service and terminology, with a view to identifying the various forms of third party employment and contracting services.

Put simply, the term 'labour hire' is now used to describe most a-typical forms of employment and is no longer descriptive of genuine on-hire employee services, which results in misinformation, misrepresentation and ultimately harbours both intended and unintended non-compliance.

See the following diagram for RCSA definitions and service categories along with additional information, which provides some context around on-hire worker services.


RCSA CORPORATE MEMBERSHIP CATEGORIES OF SERVICE
RCSA
1
ON-HIRED EMPLOYEE SERVICES
A commercial service where an organisation, in return for an hourly fee, assigns one or more of its employees to perform work for a third party (client) under their general management and instruction.
EMPLOYMENT CATEGORIES
Fixed Term
Trainee/ Apprentice
Seasonal
Part Time
Limited Tenure/ max term
Full Time
Casual
2
CONTRACTING SERVICES
A commercial service where an organisation, in return for a fee, completes a defined scope of work for a third party (client). Such services may be performed utilising employees or sub-contractors employed or engaged by the service provider.
MANAGED PROJECT/ CONTRACT SERVICES
Employees
Sub-contract
SUB-CONTRACT
Individuals
Partnerships
Company
Trust
3
CONTRACTOR MANAGEMENT SERVICES
A commercial service where an organisation, in return for a fee, recruits independent contractors on behalf of a third party (client) and, following direct engagement of the independent contractors by the client, the organisation manages the ongoing supply of the independent contractors and their contract performance.
INDEPENDENT CONTRACT RECRUITMENT
CONTRACT MANAGEMENT
4
PERMANENT PLACEMENT SERVICES
A commercial service where an organisation, in return for a fee, recruits on behalf of a third party (client) candidates that match a desired profile for employment or engagement by the client.
CANDIDATE PLACEMENT
JOB PLACEMENT SERVICES
5
WORKFORCE CONSULTING SERVICES
A commercial service where an organisation, in return for a fee, identifies and/or responds to client workforce issues and implements strategies designed to assist clients to achieve business success.
OCCUPATIONAL HEALTH & SAFETY
EEO
EMPLOYEE RELATIONS
HR MANAGEMENT
CHANGE MANAGEMENT
OUTPLACEMENT
CAREER MANAGEMENT

On-Hire Work in Context

The on-hire employment industry is a significant contributor to the Australian economy

Research completed by the Australian Bureau of Statistics and IBIS World indicates that the on-hire services industry generates revenue in excess of $20 billion within Australia, more than that of accounting services and more than that of legal services.

Most on-hire employees employed by RCSA Members are either skilled or professional workers

RMIT University research[1] found the 61% of RCSA on-hire employees are skilled or professional workers with the remaining 39% being semi-skilled or unskilled.

An increasing number of on-hire employees are employed on a permanent basis

RMIT University research found that 16% of on-hire employees are now employed on a permanent basis.

Where on-hire employees are employed on a casual basis they have improved opportunities for ongoing work as they are supplied to alternative workplaces

RMIT University research found that half of all on-hire casual employees employed by RCSA Members are immediately placed in another assignment following the completion of their initial assignment; that is, they enjoy 'back to back' assignments without having to search for new work like those engaged in direct hire casual employment.

An overwhelming majority of people *choose* to work as an on-hire employee and the reasons for this choice are not what you may expect

RMIT University research found that 67% of on-hire employees chose to work as an on-hire employee and 34% prefer this form of work over permanent employment.

The most important reasons for choosing on-hire employment are diversity of work, to screen potential employers, recognition of contribution and the payment of overtime worked.

[1] *Brennan, L. Valos, M. and Hindle, K. (2003) On-hired Workers in Australia: Motivations and Outcomes RMIT Occasional Research Report. School of Applied Communication, RMIT University, Design and Social Context Portfolio Melbourne Australia*

Business uses on-hire employees to help with recruitment and urgent labour requirements, not to reduce cost or pay.

RMIT University research found that the main reason that organisations use on-hire employee services is to resource extra staff (30%), cover in-house employee absences (17%), reduce the administrative burden of employment (17%) and overcome skills shortage issues (9%). Only 2% of organisations surveyed indicated that the primary reason for using on-hired employees was related to pay.

Business is more productive and competitive because of the use of on-hire workers

RMIT University research found that 76% of organisations using on-hire workers were more productive and competitive as a result.

On-hire employment creates jobs and doesn't necessarily replace direct hire employment opportunities

RMIT University research found that 51% of organisations using on-hire employees would not necessarily employ an equivalent number of employees directly if they were unable to use on-hire employees. In fact 19% of organisations said they would rarely do so.

Furthermore, 19% of RCSA Member on-hire employees eventually become permanent employees of the host organisation they are assigned to work for, according to RMIT University research.

RCSA Submission

The RCSA is advocating the following positions to ensure the Worker's Compensation system delivers the appropriate level of benefits to injured workers and their families while maintaining a level of scheme financial stability and affordability to Queensland employers.

- On-hire wages and premiums to be linked to each client Workcover Industry Classification (WIC) rate rather than having independent on-hire industry rates being aggregated to each of the 19 primary classifications as was the case prior to 2009-10
- Common Law entitlements should contain a threshold impairment level of 10%
- Insurance arrangements should be amended as follows:
    - Competition should be introduced to the insurance arrangements
    - Self-insurance minimum employee levels should be set at no more than 200 employees
    - Options for Retro Paid Loss insurance arrangements
    - Principal's indemnity should be introduced for on-hire clients for injuries arising out of nature and conditions of employment
- Hold Harmless clauses to be null and void in the event of recovery of claims costs
- Introduce an obligation on host employers to assist their on-hire suppliers in the return to work actions for workers injured on their site
- Compulsory engagement of medical practitioners as independent medical providers and not advocates for their clients.

Comments on the performance of the Scheme in meeting its objectives under Section 5 of the Act.

S.5 (1) (a) While the scheme performance of WorkCover has improved in recent years, there is insufficient testing of the causal link between work and the injury by claims assessors. Changes to statutory benefits and RTW initiatives will not reduce claim costs or foster RTW if claims continue to be accepted when the causal link between work and the injury is not scrutinised by WorkCover. It is no coincidence that Self Insurers nationally outperform scheme agents such as WorkCover Queensland. The civil legal principle of an injury occurring "on the balance of probabilities" is absent in most deliberations by claims assessors.

S.5 (1) (b) The removal by WorkCover of on-hire claims costs out of the client's (host employer) industry claims costs has resulted in understated cost of claims in those industries that utilise on-hire workers. This means that those industries that cause injuries

to on-hire workers do not pay the true cost of injuries, while other industries in the same Primary category pay the same rate for using on-hire labour.

For example, a client of labour hire in one manufacturing industry classification that may be low risk will be charged the same worker's compensation on costs by the on-hire supplier as another client of the same company in a different manufacturing industry classification where the injury rate is much higher.

It is the RCSA's position that on-hire wages should return to the pre 2009 system and be linked to the WIC of the client, and not aggregated to the Primary groups listed in the ANZSIC classifications.

S.5 (2) (b) The reality is that there is no regulation of access to damages. Almost without exception every claimant who lodges a claim for damages receives damages regardless of level of incapacity. Plaintiff solicitors do not have any constraints placed on costs in the same way that WorkCover Panel Solicitors do, which means settlements of very minor claims (often with permanent impairment assessments of less than 5%) are frequently influenced disproportionately by the plaintiff solicitors costs.

Normally settlement outcomes are a function of risk management; however the incidence of common law claims is a result of the culture that has been allowed by WorkCover Qld to exist over a number of years. The misguided belief that, because the Qld statutory scheme was the lowest cost in Australia, Common Law claims were affordable has created an environment where claimants with minimal or no impairment have been encouraged in the knowledge that they will receive a significant settlement and plaintiff solicitors know that there is no risk in taking this action. The reluctance by WorkCover to litigate appropriate claims has sent a message to plaintiff solicitors that "every player wins a prize".

The RCSA strongly recommends the introduction of a threshold of 10% WPI for all common law claims.

S.5 (2) (e) There is only one Insurer for the majority of employers, due primarily to the minimum staff required (2,000) set by the Government, restricting access for medium sized employers to consider self-insurance. The RCSA would support the introduction of a claims agent model similar to other Schemes and underwritten States.

S.5 (2) (f) The emphasis on return to work of injured workers places unrealistic pressure on employers to provide suitable duties for injured workers who maintain an incapacity for work, when their period of recovery is considerably longer than for non-compensation related injuries of the same type. In the on-hire sector, these cases are heavily dependent on our client's ability and willingness to provide suitable duties. This is further prejudiced by the behaviour of injured workers, and it is not uncommon for non-compliant workers to damage client relationships.

The RCSA supports early return to work of injured workers, however in our experience, the amount of resources expended on the provision of suitable duties on claims where the worker should have recovered is considerable. Effective claims management does not seem to be working in concert with injury management.

S.5 (4) (c) In the on-hire industry it is a common practice for clients to be subject to common law claims by on-hire employees for injuries suffered while on the client's site. This occurs even though the client has been fully compliant with OHS legislation, and at times the injury has been caused by the worker's own non-compliance with the client safe work procedures. On-hire clients effectively pay a Worker's Compensation premium through their fees to the on-hire employer. It seems inequitable that the client then has to suffer additional increases in their public liability premium as a result of these claims, whereas if the injured worker was their own employee the client would be indemnified under their workers' compensation policy.

It is the RCSA position that this needs to be addressed, either under a Principal's Indemnity extension to the on-hire policy, or as a mechanism to apply the damages claims to the host employer's policy. The RCSA is prepared to participate in discussions in this regard.

S.5 (4) (e) Compared to other jurisdications, Queensland's insurance arrangements are quite rigid. With WorkCover Queensland as the only claims management option (other than self-insurance) there is no objective means of comparing its performance against any other claims manager in the scheme. There is no correlation between the premium rates in Queensland and effectiveness of WorkCover Queensland, and it is RCSA's view that the WorkCover scheme be opened up to competition.

Another area that should be reviewed is the eligibility criteria for Self Insurance (s.71(1)(a) of the Act). The 2,000 employee requirement for self insurance is a barrier to self insurance that cannot be justified by any objective measure, and is higher than any other Australian jurisdiction . In fact, many jurisdicitions have no statutory minimum level at all. The argument that an employer needs to have 2,000 employees to be sufficiently large to be able to carry the financial and organisational costs associated with self insurance is clearly not shared with other jurisdictions.

The criteria for eligibility should be established by the financial criteria, financial guarantees and catastrophe insurance that self insurers are required to meet.The RCSA recommends that the 2,000 level should be abolished in line with the majority of States, or set at no more than 200 employees.

Finally, both New South Wales and South Australia have recently introduced Retro Paid Loss (RPL) Insurance arrangements to their schemes, and RPL is also made available in underwritten States. These schemes provide a further option for employers who meet OHS

and RTW criteria to benefit from their efforts to achieve best practice in these areas. The RCSA recommends that this option should be made available in Queensland.

Other issues

Prohibition of hold harmless clauses in contracts between on-hire service providers and clients.

The Victorian Accident Compensation legislation was recently amended to prohibit host organisations from using 'hold harmless' clauses in contracts with on-hire worker service providers in relation to workers compensation claims.

The RCSA has identified a number of host organisations who engage on-hire workers to do what is termed 'the dirty jobs' with high exposure to injury. These companies have developed a culture of no care and no responsibility for the on-hire worker as a result of the inclusion of a hold harmless indemnity clause within the contractual provisions governing the supply arrangement. Such clauses hold the service provider responsible for any costs associated with injury, death or prosecution of an on-hire worker, regardless of fault.

While responsible on-hire organisations typically reject the hold harmless clauses in their contractual arrangements, not all companies are as legally astute, or choose to take the risk.

By prohibiting hold harmless clauses relative to injury, death and prosecution in contracts, we stand a chance to change the mindset of these host organisations who will, as a result, take much more care in providing a safe work environment.

The RCSA recommends that similar legislative amendments in Queensland be considered.

Obligation on host employers to co-operate with on-hire employers in return to work actions for injured workers

This obligation on host employers was also recently included in Victorian Worker's Compensation legislation amendments with the objective to improving return to work outcomes for on-hire workers.

It is recognised that the extent to which it is reasonable for the host organisation to cooperate will depend on the circumstances, including the length of time that the worker has been working at the workplace of the host at the time of the injury, the nature of the injury, the size of the host and the type of work being performed.

There is a penalty for non-compliance with the above, which now gives an incentive for host organisations to assist in the process of return to work of an injured labour hire employee at their site, enabling quicker return to work outcomes and reduce overall claims costs. This amendment to the Queensland legislation would clearly establish the role of host employers in reducing claims costs and improving the return to work outcomes for injured workers.