



26 February 2019

AUSVEG position on a national Labour Hire Licensing scheme

Discussion paper

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The need –

AUSVEG has been a long supporter of a National Labour Hire licensing scheme for the horticulture sector. Labour hire firms and workforce contracting firms play a pivotal role in the horticulture sector in supplying growers with a workforce, but there are numerous examples of exploitation and mistreatment of workers in this sector, which includes migrant workers working outside of their visa conditions.

In order for the horticulture industry to move forward with confidence in its workforce management, and to promote a 'level playing field' for growers, something needs to be done to address the issues in this area. Putting in place an effective licensing scheme for the horticulture sector would force those who are exploiting workers, and otherwise failing to comply with workplace laws, to either raise their standards or be forced out of business.

A National Labour Hire Licensing Scheme for the horticulture sector would help growers to check if a labour hire company was meeting minimum government expectations around compliance, as well as give the industry confidence that workers are being treated fairly and paid properly.

AUSVEG is supportive of a national scheme for the horticulture sector so long as the scheme is built with integrity, administered by truly independent government representatives, and is not used to promote the vested interests of industrial parties.

How it could look –

Given Queensland is the only current operational labour hire licence setup in the country, that is the only established Australian reference point that can be referred to in developing a national scheme. The GLAA scheme, which exists in the UK, is a good international reference point and one that is specific to issues within the agriculture and horticulture sectors in Australia, where the highest risk of non-compliance exists.

Some international schemes were used as reference points during the development of the Queensland scheme.

The Victorian model is still unclear and in development stages.

It is obvious the labour hire licencing model needs to have significant collaboration across a variety of departments. Feedback from the Queensland Government insisted that the sharing of data, information and often resources, has been paramount in the quality execution of the licencing



scheme. Commonwealth Government departments such as the ATO, Fair Work Ombudsman, Department of Agriculture and Water Resources, Department of Home Affairs, Department of Jobs and Small Business all have crucial roles to play in establishing the licence, as well as enforcing compliance.

Developing a licencing scheme which can then be legislated, and enforced by a National Coordinating Compliance Agency (NCCA), which can then coordinate with state government agencies to do on the ground compliance checks and enforcement.

It would require State Governments to sign up to the national scheme and work with the NCCA to conduct compliance checks and enforcement.

States could work under a fee for service arrangement under an MOU with the NCCA, or relevant department.

The alternative would be for a National Scheme to be truly national, self-sufficient and well-resourced to be able to ensure the scheme is enforced.

It is important to recognise that any licence scheme which is introduced, must be followed with a strong compliance arm which is co-badged with various departments.

In order for the NCCA to be efficient, it would need the ability to access various department information and have the ability to share that information with the relevant departments to investigate.

Linked with a real time online register with listings of labour hire companies with a national licence, which is simple and easy for growers to access and search. This is central to the scheme.

The development of a Government hotline for the anonymous reporting of potential dodgy labour hire contractors and growers would also be useful, and allow industry an opportunity to work with government to remove dodgy operators.

Linking the compliance checks and enforcement to industry awards, as well as unfair dismissal laws (which excludes income earners over \$138,900), also helps with keeping the focus on low income earners, who are generally a higher risk to exploitation.

The scheme would use agriculture, or horticulture, as a pilot project, which could then be rolled out into other high risk industries such as building and construction and cleaning.

This could be done by linking scope and coverage of the national licensing scheme to industry award coverage of labour hire firms and workforce contracting firms, such as the Horticulture Award.

Ongoing reporting and licence checks could be complete every 6 months by the NCCA, with a business who has shown good standing over a 3-year period to be reviewed every 12 months from then on. A licence is then valid for a 12-month period.

The costing model would also be full cost-recovery through the licence fees.

Mutual Recognition of Other Certification Programs

AUSVEG strongly support industry led initiatives to promote greater compliance across labour hire firms and workforce contracting firms. AUSVEG have supported the development of the StaffSure



Workforce Service Provider Certification Program, developed by the peak industry body for labour hire (RCSA) in consultation with unions, grower groups and government agencies.

AUSVEG believe that labour hire firms certified against the StaffSure standard should be entitled to be exempt from holding a license so long as they maintain certification. This will promote leadership from industry and ensure a non-political alternative to government licensing.

Licence Breaches -

Licences should be suspended when there is evidence of non-compliance with workplace legislation and/or migration requirements, as well as relevant laws.

The compliance actions available under the Queensland Act are to refuse, suspend, cancel or condition, and all are linked to failure to comply with a relevant law.

Prohibited conduct is operating without a licence or failure to notify/report within the allocated timeframe. As this is an area which is dealing with people and people who could be exposed to exploitation, it is important that any non-compliance which leaves people/workers exposed to mistreatment, not be tolerated.

Suspensions should also relate to any workers who abscond during their time working for a Labour Hire Contractor. It should be a Labour Hire Contractor's obligation to ensure that the worker does not breach their visa conditions, and penalties should apply to Labour Hire businesses in the shape of fines, or licence suspensions.

It is important to include all relevant laws as a clause as to include taxation laws, accommodation laws etc. This is necessary to deal with the entirety of the business model, as undercutting could also be because of the failure, for example to pay tax.

Any successful national labour hire licensing scheme must also place obligations on growers and other users of labour hire not to use unlicensed providers. It should be accepted that penalties should be considered for growers that knowingly, or negligently, use an unlicensed labour hire firm or workforce contracting firm.

Pilot project –

The scheme would use agriculture, or horticulture, as a pilot project, which could then be rolled out into other industries such as building and construction and cleaning.

It could be linked with businesses who employ under the Horticulture Award, and/or focus on specific regions such as the following –

1. Mildura
2. Robinvale/Swan Hill
3. Wanneroo
4. Orange
5. Lockyer Valley



Gangmasters & Labour Abuse Authority (GLAA) –

The UK currently has a licencing model which looks at 8 key areas to decide whether a labour hire contractor is 'fit and proper'.

There are 8 standards covering the following subject areas:

- Fit and Proper Test
- Pay and Tax matters - see link below for guidance
- Prevention of Forced Labour and Mistreatment of Workers
- Accommodation
- Working conditions
- Health and Safety
- Recruiting Workers and Contractual Arrangements
- Sub-Contracting and Using Other Labour Providers
- Labour providers must continue to comply with the licensing standards to keep their licence.

Information on how the GLAA conduct inspections can be found here -

<http://www.gla.gov.uk/media/3293/inspections-explained-2.pdf>

The GLAA is the best model to base an Australian national labour hire licensing scheme on.

The benefits -

Reduction, and the eventual removal, of exploitation of vulnerable workers is a key driver for industry, government, unions and individuals. While capturing much of the lost tax revenue which is in the black economy market is also a significant win for Government.

For industry, clearing out dodgy contractors and dodgy growers helps in a variety of ways including improving the image of the horticulture sector, which is one that has been struck with a number of media reports into exploitation over the years, and also levelling the playing field for those growers who are doing the right thing.

Allowing those growers who are obeying the law to be competitive in the market, and not be undercut by growers and labour hire contractors, is a significant step forward for the industry and would allow sector to grow with confidence.

Other aspects which could be implemented to assist with a National Labour Hire Licence Scheme –

- Visa holders with work rights should be issued with a Tax File Number (TFN) immediately upon their arrival. Allowing them to know immediately that they have tax obligations and it would help give government greater visibility of all wages paid to visa holders.
- Tourist or student visas should not be allowed to apply for an ABN.
- Providing incentives for small businesses which adopt non-cash business models.



- Backing the adoption of programs such as **Fair Farms and StaffSure** and pushing for all supermarkets to make the program mandatory in order to increase the integrity of the Horticulture Supply Chain.
- A time-limited amnesty with a bias towards people in a cash-economy, this should be followed by an enforcement blitz.
- Australian Business Number integrity reforms. The government to ban people on particular visas to be able to access an ABN.
- Stronger enforcement penalties for phoenixing, ABN fraud and sham contracting.
- Small business incentives. Small businesses which adopt an entirely non-cash business model should receive tax instalment timing relief, benefitting their cash flows. Small businesses which also show a set of core compliance activities should benefit from a regulatory 'safe-harbour' where they are treated as low-risk.

Issues which would need to be addressed/discussed –

Definition of labour hire?

Clear state obligations and state government buy-in? Or truly National?

The enforcement arm needs to look at compliance with all levels of the law.

How do we measure the success of this scheme?

Is this a workplace health and safety issue?