

RCSA Submission to the South Australian Labour Hire Licensing Reforms

Response to Draft Legislation and Discussion Paper

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Overview

The Recruitment, Consulting and Staffing Association (RCSA) welcomes the opportunity to provide feedback on both the *Labour Hire Licensing (Scope of Act) Amendment Bill 2025* and the *Labour Hire Licensing Reforms Discussion Paper* on behalf of our members.

RCSA is the peak industry body for the recruitment, consulting and staffing sectors, which includes the labour hire sector, across Australia and New Zealand. Across the country, and in almost every industry, our members source, place and manage workforces, supporting both private and public organisations and services with their professional, skills, and labour demands.

RCSA is a vocal advocate for stronger mechanisms to target and address worker exploitation across the Australian labour market. As representatives of an exceptional group of professional staffing operators, we are extremely frustrated when the significant achievements of our industry are undermined by the poor practices of a very small number of rogue operators in the labour supply chain.

That said however, we firmly believe that development of any new regulation must have its basis in evidence. For that reason, we are strong supporters of targeted regulatory approaches that apply to industries where there is evidence that workers are at higher risk of exploitation, and where outsourced labour is prevalent.

RCSA believes South Australia currently has the best designed Labour Hire Licensing Scheme in the country, with fit for purpose regulation that applies to on-hire activity occurring in industries where there is evidence of risk for worker exploitation. It is extremely disappointing to see moves to expand the breadth of the scheme in South Australia with no evidence to justify the need for additional regulation, and during a period when national harmonisation discussions are still underway.

In Australia, there have been 3 independent (non-parliamentary) inquiries into regulation for the labour hire industry. Every one of those inquiries recommended the introduction of a targeted approach to regulation where coverage applied to nominated industries, based on evidence and investigation, where additional regulation might support better outcomes for workers. Not one of those independent inquiries proposed a broad approach to labour hire regulation.

Broad-based schemes have been in operation in other States and Territories for many years in Australia and to date, prosecution and enforcement has been almost exclusively in industries already covered by the existing South Australian scheme. RCSA does not feel the Government has presented sufficient evidence to demonstrate how the targeted approach adopted in South Australia leaves vulnerable workers exposed compared to other schemes. After 8 years of operations, and substantial enforcement activity, there has been little to no concern raised around treatment of workers in industries other than those already covered by the South Australian scheme.

RCSA is a strong supporter of regulation that helps to identify and stop unscrupulous labour supply operators and protects genuinely vulnerable workers. To be most effective in those aims however, the structure of any scheme should:

- Target industries in which there is evidence of risk of vulnerable workers being exploited;
- Capture all workforce service providers within those industries; and
- Place greater responsibilities on users of these services (host employers) to ensure that they are only engaging licensed providers.

RCSA is concerned that moves to expand the breadth of South Australia's labour hire licensing scheme appear have their basis more in politics than they do in evidence. Regulation for regulation's sake, without evidence to support a need or address an identified issue, runs the risk of perverse outcomes and creates undue regulatory burden and cost for business.

Response to questions in discussion paper:

- 1. Should exemptions under section 46 continue to be issued by notice in the Gazette, or alternatively be prescribed by the regulations?**

RCSA supports the retention of section 46 to allow for administrative flexibility and the capacity to exempt activities as necessary under the scheme. We agree that administrative flexibility has been and will continue to be important as an effective way of addressing providing clarity around coverage of particular persons or activity in situations that constitute grey areas. We are supportive of exemptions under this section to continue to be issued by notice in the Gazette.

We also support the move provide better clarity and scope, and reduce the need to use the exemption provisions, through consideration of definitions of labour hire services and labour hire workers.

2. Do you agree with the proposed broadening of the labour hire licensing laws? Please provide reasons for your answer.

RCSA does not support the broadening of South Australia's labour hire licensing laws. The Government has cited the need to strengthen protections for workers as its rationale for the change, but RCSA does not believe it has presented sufficient evidence to suggest there is a need for additional protections for workers in industries not captured by the existing scheme.

The 2020 amendments deliberately narrowed the application of the scheme to industries identified as high risk, based on clear findings and recommendations of independent reports.

Independent inquiries have all recommended a targeted approach to Labour Hire regulation, while licensing schemes operating in other States have not identified evidence of systemic issues of concern in industries other than those already covered by the South Australian scheme.

Moreover, the fact that work is currently underway on a national approach is a strong reason to leave the scheme in place for now. Any progress on harmonisation will result in substantial change to South Australia's scheme. To make changes now that will just need to be changed again seems a waste of resources and activity for government and potential cause of significant confusion and unnecessary change administration for business.

Regulation must be evidence-based. Without demonstrable need, broadening the scheme risks imposing unnecessary administrative and financial burdens on legitimate operators, with little to no discernible benefit for workers.

Until Government can present industry with compelling evidence of need, RCSA cannot support moves to expand coverage of the scheme. Expanding the existing SA Labour Hire Licensing scheme now is premature, unnecessary and confusing, for the range of reasons outlined below:

Approach not supported by independent reports

There have been 3 independent inquiries relating to regulation for the labour hire industry in Australia, each of which has identified/recommended:

- 1) Regulatory approaches for labour hire should be sector specific, targeted at industries where there is evidence of risk of exploitation and where that risk might be associated with use of labour hire
- 2) Regulatory approaches should not unduly place burden on otherwise reputable operators who provide a vital service to the labour market, particularly where there is no evidence of risk or concern.
- 3) There is no evidence of workers being at risk of exploitation by labour hire operators outside industries identified as high risk.

There has been no evidence in any of these inquiries to suggest a need to regulate outside those key identified sectors to protect workers. Indeed, reports from independent inquiries have expressed a view that a broad-based regulatory approach would cause undue burden on the 'large proportion of reputable labour hire operators'

Specific findings of independent inquiries into labour hire:

Report of the Migrant Worker Taskforce – Federal (Alan Fels)

Recommendation:

- The Government establish a National Labour Hire Registration Scheme with the following elements:
 - a) focused on labour hire operators and hosts in four high risk industry sectors — horticulture, meat processing, cleaning and security — across Australia
 - b) mandatory for labour hire operators in those sectors to register with the scheme
 - c) a low regulatory burden on labour hire operators in those sectors to join the scheme, with the ability to have their registration cancelled if they contravene a relevant law
 - d) host employers in four industry sectors are required to use registered labour hire operators.

Other observations:

- Labour hire operators are already subject to existing Australian laws, including workplace relations, taxation, superannuation and migration law — just as for any employing business.
- Many businesses in Australia rely on labour hire operators to access a flexible workforce that can meet the seasonal demands for increased labour.
- Confusion in the community about the operation of labour hire may allow operators to more easily avoid legal obligations and take advantage of vulnerable workers in the process. Evidence suggests that the horticulture, cleaning, meat processing and security industries are particularly high risk for unscrupulous labour hire practice.
- A key objective of the Taskforce has been to explore measures that remove or reduce incentives to engage in unlawful or illegal practices. The measures aim to remove unscrupulous employers from the market while maintaining labour hire as a legitimate form of labour supply and minimising the impact on the majority of law-abiding labour hire operators.

Inquiry into the Labour Hire Industry and Insecure Work – Victoria (Anthony Forsythe)

Recommendation:

- That Victoria advocate, through COAG, for the national adoption of a sector-specific labour hire licensing scheme.
- As a national approach may take some time to develop – or may not eventuate at all – Victoria should lead the way in reforming the labour hire sector, through the introduction of its own sector-specific licensing scheme.
- That Victoria introduce a licensing scheme for labour hire agencies, that is initially targeted at those supplying labour in the following specific sectors: the horticultural industry (including the picking and packing of fresh fruit and vegetables), and the meat and cleaning industries.

- That capacity be provided within the framework to allow the scheme to be expanded to cover other industry sectors, or to be contracted in response to changing (improved) practices in the regulated industries.

Other observations:

- Labour hire is used most extensively in administrative and support services, mining and manufacturing
- In devising a regulatory scheme that will address the problem that has been identified by this Inquiry, I am concerned to ensure that the impact on the large proportion of reputable labour hire operators is minimised.

Inquiry into wage theft - Western Australia (Tony Beech, former chief commissioner of the WA IRC)

Recommendation:

That the State Government should:

- Introduce a licensing scheme in Western Australia for labour hire in the horticulture industry and, in consultation with stakeholders, give consideration to a licensing scheme for labour hire in other industries including the meat processing, cleaning, and security industries; and
- Consult with the Commonwealth Government about its commitment to establish a national labour hire registration scheme for horticulture, meat processing, cleaning and security and take it into account in considering whether the State Government should introduce a State-based scheme.

Other observations:

- Acknowledges the findings of the Migrant Workers' Taskforce that schemes in Victoria, Queensland and South Australia 'impose a significant regulatory burden on the entire labour hire industry and the host employers using them.'⁴¹⁸ The Migrant Workers' Taskforce also commented that it is 'unclear to what extent the laws as drafted will achieve their objective of protecting vulnerable workers.'

In addition to the independent reports into regulation and Labour Hire, there have also been 3 parliamentary inquiries;

- South Australian Economic and Finance Committee Inquiry into the Labour Hire industry,
- Senate Education and Employment References Committee Report
- Queensland Finance and Administration Committee inquiry into the practices of labour hire industry in Queensland

Those reports each fell along party lines, with Labor representatives recommending broad-based licensing schemes, and coalition representatives arguing that broad-based licensing would significantly (and in most cases, unnecessarily) increase the regulatory and financial burden for labour hire firms and the organisations that use them.

No evidence of need across operations in other jurisdictions

Labour Hire schemes have been operating at State level in Australia since 2017. Since that time there has been significant enforcement activity including prosecutions. To date, all prosecutions undertaken by labour hire authorities relate to industries already identified as high-risk, such as horticulture, which already has coverage under the South Australian Scheme.

RCSA does not have access to the full data of authorities' enforcement activity, which makes comprehensive assessment difficult. While authorities responsible for State-based schemes refer to the number of licences cancelled or suspended as evidence of the success of the schemes, the data is incomplete. While data on the number of refused, cancelled, and suspended licences is published, no data is provided on the reasons for such decisions. For example, it is not clear how many were cancelled because a labour hire provider failed to comply with relevant law, or how many were suspended because they failed to lodge the correct reports, or refused because the organisation was under the influence of a person who has a history of non-compliance with relevant laws. It is also unclear as to what industries the providers who had their licences impacted are operating in.

Without this information, there is no clarity—outside of the prosecutions—as to the effectiveness of the schemes in capturing dodgy operators and stemming exploitation.

In media releases and announcements however, RCSA could not identify prosecution activity that did not unrelated to high-risk industries since each scheme's inception. In Queensland, we could not identify any media statements about prosecution that did not relate to a high-risk industry. In Victoria, we found reference to licensing actions (cancellations/refusals/conditions) against providers in hospitality, however the reasons for those actions was not provided. Outside of that instance, references to enforcement, particularly prosecution, are again in identified high risk industries. There has been no enforcement activity relating to worker protection or concerns of that nature in the ACT.

There is no publicly available evidence from any of the schemes currently operating of systemic concern in any industries not already identified as high-risk by independent reports.

RCSA requests the government provide evidence it has seen from operation of broad-based schemes in other jurisdictions that would provide justification for the need to expand the scheme in South Australia.

Scheme likely to require further change in a short period

As the discussion paper notes, significant work is already underway at the Commonwealth level to develop a single, nationally harmonised labour hire licensing scheme. The Commonwealth Department of Employment and Workplace Relations has completed consultations on a proposed model, and Workplace Relations Ministers have agreed to progress a nationally consistent approach. Once implemented, the intent is that Victoria draft model law to inform other jurisdictions. That may very well mean further legislative change to Labour Hire Licensing legislation in South Australia.

Against this backdrop it is difficult to justify diverting resources into broadening a state-based scheme now, that is likely to require further change from work that is already underway. Such duplication risks causing confusion and creates an unnecessary compliance burden in managing change for the businesses impacted. Moreover, should harmonisation not succeed, the former Workplace Relations Minister indicated the Commonwealth may consider implementing a national scheme for labour hire licensing, which, if pursued, would make the South Australian scheme redundant. The government has not clearly articulated the reason that change is necessary now, while harmonisation activity continues.

Targeting leads to more effective schemes

A targeted approach allows for the design of far more effective regulation than is possible under a broad approach.

Targeting specific industries allows opportunities for regulators to more comprehensively scrutinise supply chains, contemplate other forms of labour provision and even set higher barriers to entry. Targeted measures can be designed to better address challenges in high-risk industries using design and structure that be unwieldy or unduly cumbersome, or bring in completely irrelevant activity, if applied broadly to all industries.

The licensing approach adopted by the State and Territory Governments in Queensland, Victoria, and the Australian Capital Territory (ACT) subjects the broadest possible elements of the sector to additional regulation, creating an unnecessary and unjustified burden for an industry that provides a vital support to business and economic growth. Sadly, in addition to creating undue regulation, the approach also spreads focus and resources thin and wide, which makes the schemes less effective at identifying and addressing cases of exploitation—the very stated purpose of their creation. The result has essentially created an expensive box ticking exercise for organisations already doing the right thing, whilst doing very little to address genuine exploitation.

The reality is that most organisations exploiting workers in identified high-risk industries are not professional labour hire operators. They are criminal syndicates who operate in the shadow economy, and who are often deliberate and systematic law breakers. Workers exploited by these operators are already protected by laws that these workforce supply operators simply disregard. The purpose of additional regulation should not be to create an additional layer of law that these perpetrators will simply avoid or break. Rather, the priority for regulation should be to implement structures that help better identify and stop the criminal behaviour that is already occurring. Limiting the breadth of any scheme's coverage would allow deeper interrogation of the full supply chain for outsourced labour in industries where workers are at higher risk of exploitation.

RCSA and its members have broad experience in the sectors where these operators are most active, and deep and direct experience with the schemes developed at the State-level to date. The last thing we or our members want is a 'box-ticking' exercise on regulation that captures operators that are already doing the right thing, but has little to impact for rogue operators who continue to operate outside of it. Nor would we want to see a scheme that is so broad in its coverage it provides no benefit in identifying where inappropriate behaviour is occurring, and therefore does nothing to help regulators enforce this new law or existing ones.

RCSA believes that all forms of labour supply should be considered within the context of regulation to protect workers. More fully interrogating the workforce supply chain in identified industries will reduce the capacity of unscrupulous operators to simply restructure their operations away from a 'labour hire' model to avoid the requirement of a licence and remain difficult for regulators to identify. Restricting the scheme's coverage to industries where there is evidence that workers are at risk of exploitation provides an opportunity for regulation to cover more forms of labour supply in those sectors, such as workforce contracting and subcontracting arrangements, and will significantly reduce the number of ways that unscrupulous organisations can continue to supply labour without regulation in those industries.

Indeed, if government is genuinely committed to stamping out rogue behaviour, perhaps a targeted scheme together with a higher barrier to entry, particularly in the areas of Work Health and Safety, governance, compliance and risk management, would be a more effective solution. Requiring firms to demonstrate proven safety and compliance capabilities before being granted a license, as opposed to heavy post-license policing seen in Victoria, would help prevent 'cowboy' operators from obtaining a license in the first place. At present, licensing requirements in all jurisdictions are heavily weighted towards financial checks and Director vetting only.

3. Do you agree with the proposed changes to the definition of 'labour hire services'? Please provide reasons for your answer.

RCSA broadly supports the proposed changes to the definition of 'labour hire services'. We agree that changes align with arrangements in other jurisdictions' schemes.

One area that has the potential to cause some confusion however, relates to the intention around the breadth with which the new definition might apply.

The proposed changes see drafting align more closely with wording in Victoria, because it mirrors Victoria's classification that labour hire applies regardless of employment status. While the wording broadly aligns with Victoria however, the policy rationale in the discussion paper however leans toward Queensland's broader interpretation around the capture of contract servicing arrangements under its scheme.

While RCSA is strongly supportive of capturing many forms of labour supply under a strictly targeted scheme, an expanded scheme creates challenges and scenarios for the types of workforce it might inadvertently cover under broader interpretation.

Queensland guidance, case law and regulator's interpretation clearly extends coverage of its scheme to contracts for service. That has captured a large number of businesses that would not traditionally be considered 'labour hire' under other arrangements.

In Victoria the law is narrower, focussing on whether workers are supplied "to perform work in and as part of the business or undertaking of the host". In that sense, it picks up some contract servicing but excludes genuine outsourcing.

RCSA recommends the government align with the Victorian scheme over Queensland in relation to the exclusion of genuine outsourcing from coverage. We also suggest the Government provide some clarity and clear direction around the intent of coverage of the new definition in relation to outsourcing and contract servicing, as it is likely to be of huge interest and relevance to large number of businesses who are not traditional labour hire firms and are currently captured differently by the different schemes.

4. Do you agree with the proposed changes to the definition of ‘labour hire worker’? Please provide reasons for your answer.

RCSA supports the proposed changes to the definition of ‘labour hire worker’. We agree that changes, including exclusions, align with arrangements in other jurisdictions’ schemes.

5. Are there any transitional provisions (i.e., specific to your industry) that may be required regarding the implementation of the proposed changes to South Australia’s labour hire licensing laws?

Yes. RCSA would welcome consideration of a range of transitional arrangements to support smoother implementation of the proposed changes. We suggest transitional provisions prioritise recognition for operators who have been through significant change in relation to labour hire licensing. Education will be paramount to avoiding confusion across the on-hire sector around changes and the implications for their businesses.

Streamlined application for businesses who have previously held a labour hire license in SA

Government will recall that although original South Australian Licensing Scheme commenced in March 2018, it was paused for new applications between September 2018 and June 2019 while the incoming Government attempted to repeal the legislation. When repeal was unsuccessful, applications under the original scheme recommenced from June 2019, with providers required to apply by 31 August that year. The scheme was later narrowed to cover only prescribed industries, a change which took effect from July 2020.

Because of the changes that occurred over that period, there were a large number of labour hire operators in South Australia who were required to go through the application and assessment process for labour hire licensing for a license they required for only a very short period.

RCSA asks government to consider whether there is a way to streamline application processes for those labour hire providers who had previously held a labour hire license between 2019 and 2020 but who were no longer required to hold a license after the scheme narrowed.

RCSA and its members would welcome consideration of ways to streamline process and recognise certification for those businesses who are operating under the same structure and with the same directors as existed at the time they first were approved for a South Australian Labour Hire License. It would be great if these businesses could be transitioned into the new framework with minimal additional administrative burden, exploring whether there might be ways to recognise elements of the investment they had previously made in meeting LHL application and requirements in South Australia.

Removal of Employment Agents License

RCSA strongly urges that any expansion of the labour hire licensing scheme be accompanied by the removal of the separate employment agent licensing requirement. The Employment Agents Licensing system overlaps significantly with the proposed expanded labour hire regime, particularly for staffing and recruitment firms. Maintaining both systems side-by-side would create costly duplication and administrative complexity, without improving protections for workers. Removal of the employment agent licensing scheme would streamline regulation, reduce compliance costs for business, and reinforce the Government's stated goal of ensuring consistency and proportionality in regulatory frameworks.

Future focus

Given work to develop a national approach on labour hire licensing is currently active, South Australia should ensure that any transitional provisions are designed with future alignment in mind. Transitional arrangements should be flexible enough to allow for a smooth move into the national framework once implemented, to prevent businesses being forced through multiple rounds of costly re-licensing.

Awareness and education

The amount of change in a short period for labour hire licensing in South Australia makes education and awareness campaign activity hugely important. RCSA recommends the Government invest significantly in a broad-reaching education and awareness campaign to ensure businesses are aware of the change and that it will introduce a new requirement for them to become licensed. That campaign will need to focus not just on labour hire firms, but also on anyone using a labour hire firm. The changes that have occurred already with the scheme have the potential to create confusion and make it harder to raise awareness of the licensing requirements than if the Government was just introducing a new licensing regime for the first time.

6. If you consider transitional provisions to be required, what proposed period of time should apply to those transitional provisions?

RCSA recommends a 12-month transitional period for the implementation of any expanded South Australian labour hire licensing scheme, for the staffing and recruitment industry.

A 12-month period strikes the right balance between allowing government to implement the expanded scheme in a timely manner, while giving industry sufficient time to adjust business practices, review compliance systems, and complete any additional application or reporting requirements. For staffing and recruitment firms, who operate across multiple jurisdictions, this period is particularly important to allow businesses to align their South Australian operations with other regulatory obligations and to budget for any additional compliance costs.

Importantly, a 12-month transitional period ensure sufficient time to ensure contract arrangements with clients accommodate costs associated with the licensing scheme.

Additional observations and feedback

Fit and Proper Person test

RCSA recommends reviewing requirements under the Fit and Proper Person test prior to any expansion across all industries. We had a couple of challenging situations arise in South Australia under the original scheme where highly qualified individuals with degrees from international universities including Stamford and Cambridge, were required to undergo local training because the SA Fit and Proper Person test required qualification from an Australian institution. This is an anomaly that we have not come across in other jurisdictions and one that, if it still exists, needs to be remedied prior to any expansion. Parochialisms like this that miss the point and purpose of the examination cause enormous administrative burden and red tape. This is something that should be addressed pre-emptively if the government is determined to expand the scheme.

Entity requiring a license

At present, the scheme in South Australia requires the entity employing the worker to apply for a licence. This is different to the requirements in Queensland, where it is the entity providing the service that requires the license.

Many labour hire firms have a large number of entities as part of their operation, not all of which are client/customer facing. In many scenarios, the firm will have a 'master contract' with their client through an entity that exists to provide the services, but they may supply workers from a number of different entities through that other business to deliver to the contract. Recognising the business that supplies the service, as opposed to the one employing the worker, is better aligned to the definition of labour hire services and worker in the changes proposed in this consultation.

RCSA recommends the Government change the entity requiring a license under its scheme from the employing entity to the entity providing the service. Doing so would align the scheme with both arrangements in place in Queensland as well as with the new definitions proposed to the Act. RCSA members have advised that licensed entity requirements in Queensland are more relevant and effective for the way their businesses operate, and reduce unnecessary additional cost and compliance burden.

Scheme administration

RCSA members have shared that they find the administration of the Queensland scheme far superior and less complex than what exists in Victoria. In particular, they have cited the fact that Queensland allows an authorised person to undertake administrative tasks on behalf of the organisation as a huge help in streamlining their administration of the license. In Victoria, they require those tasks are performed by a Director. RCSA recommends that any expanded scheme allow licensed companies to nominate an authorised person who can undertake administration associated with the license on behalf of their organisation, to streamline administration associated with the license.