

IT'S ABOUT **T I M E**

**Anniversary report of
Australia's first labour
hire licensing scheme**

Foreword

Australian-first mandatory labour hire laws helping Queensland workers

Queensland's pioneering labour hire licensing laws set minimum standards for labour hire providers, who must now show they are complying with their legal obligations. All providers in the state must be licensed, including operators based interstate or overseas who supply workers in Queensland.

The issues encountered by some workers in the labour hire industry have been well documented. There have been cases of workers being underpaid or unpaid, being sexually harassed, forced to work long hours, housed in crowded, sub-standard accommodation or exposed to serious risks to their safety. Queensland's labour hire licensing scheme is helping to protect vulnerable workers from exploitation and mistreatment, and is aimed squarely at protecting workers and promoting the integrity of the labour hire industry. It is about ensuring a level playing field so that ethical operators can compete fairly, without imposing any unnecessary administrative burdens.

Our new laws are backed by strong penalties including criminal prosecution for some offences.

In the first year since the *Labour Hire Licensing Act 2017* (the Act) commenced, the Office of Industrial Relations (OIR) received 3,344 applications for a labour hire licence and granted 3,132 licences. Ten applications were refused, nine given conditional licences, and 99 applications withdrawn for failing to provide compliance information. Two labour hire providers have had their licences cancelled and 68 have been suspended in the first year of the scheme's operation. The scheme is weeding out unscrupulous and unethical labour hire operators.

The Labour Hire Licensing Compliance Unit has made more than 1,700 desk enquiries and criminal history checks, as well as carrying out 360 audits and investigations – all aimed at helping workers get a fair go and a fair day's pay for a fair day's work in Queensland. These efforts are ensuring those businesses doing the right thing are not disadvantaged by rogue operators who undercut them.

Queensland is the first state to set minimum standards for labour hire providers, and we know the community is right behind these new laws. The Queensland Government will pursue any labour hire providers found not doing the right thing by their workers. The message is clear - nobody wants to see vulnerable workers exploited or mistreated here in this state.



Hon Grace Grace
Minister for Education and
Minister for Industrial Relations



Executive summary

Labour hire is an important part of the Australian economy and most labour hire providers do the right thing. However, multiple inquiries at state and national level have found significant evidence of underpayment of wages, sexual harassment and discrimination, workers housed in overcrowded and sub-standard accommodation, lack of proper safety equipment and appropriate training, other criminal exploitation of workers, systematic tax avoidance, sham contracting, and illegal phoenix activity.

Common themes also emerged about the circumstances which enabled this shocking behaviour—vulnerable workers (particularly young people and migrant workers), complex business arrangements and structures within a supply chain which limit transparency and operation within the cash or black economy. Industries such as agriculture, meat and poultry processing, security, and cleaning were found to have a higher risk of non-compliance.

The *Labour Hire Licensing Act 2017* is the first legislation of its kind to be operational in Australia, with the dual purposes of protecting workers from exploitation and promoting the integrity of the labour hire industry. It requires labour hire providers to be licensed and labour hire users to only use licensed labour hire providers. The Act commenced on 16 April 2018¹.

Along with assessing and granting over 3,000 licences in its first year, the Labour Hire Licensing Compliance Unit (LHLCU) has engaged closely with industry, stakeholders and communities throughout Queensland, influenced compliance

with relevant laws, conducted over 350 audits and investigations of complaints regarding labour hire arrangements and worked closely with other regulators to improve the performance of the labour hire industry.

While compliance activities have been conducted across all industries, there has been an initial focus on horticulture and meat and poultry processing labour hire arrangements in response to evidence of exploitation in these industries. Other industries, including security, cleaning and building and construction are being considered for similar attention over the next two years.

Compliance activities have resulted in:

- ninety-nine licence applications withdrawn for failing to provide compliance information required to assess their compliance with relevant laws
- ten licence applications refused, as the applicants were found not fit and proper persons to provide labour hire services in Queensland
- nine licences granted with conditions
- sixty-eight licences suspended for non-compliance
- two licences cancelled for non-compliance
- two hundred and seventy-two referrals to regulators of relevant laws.

The Act's unique requirements for compliance with a range of relevant laws (including employment, taxation and superannuation and health and safety laws) presents a picture of the labour hire provider's overall levels of compliance, encourages information sharing and joint activities between

regulators and leverages the compliance efforts of those regulators.

Requiring labour hire providers (including all participants in a labour supply chain) to hold a licence improves supply chain visibility for labour hire users, employees and regulators. The scheme and its compliance approach has also provided a level of transparency around the prevalence of cash transactions in particular industries.

There has been some initial success in dealing with phoenix behaviour as the requirement to await granting of a licence prior to operating a labour hire business pauses the ability to transition easily from one entity to another.

The focus will shift over the next 12 months from education and assistance to enforcement and to working with other regulators to improve compliance and performance across the labour hire sector.



¹ The Victorian *Labour Hire Licensing Act 2018* commenced on 29 April 2019, and a national scheme is contemplated.

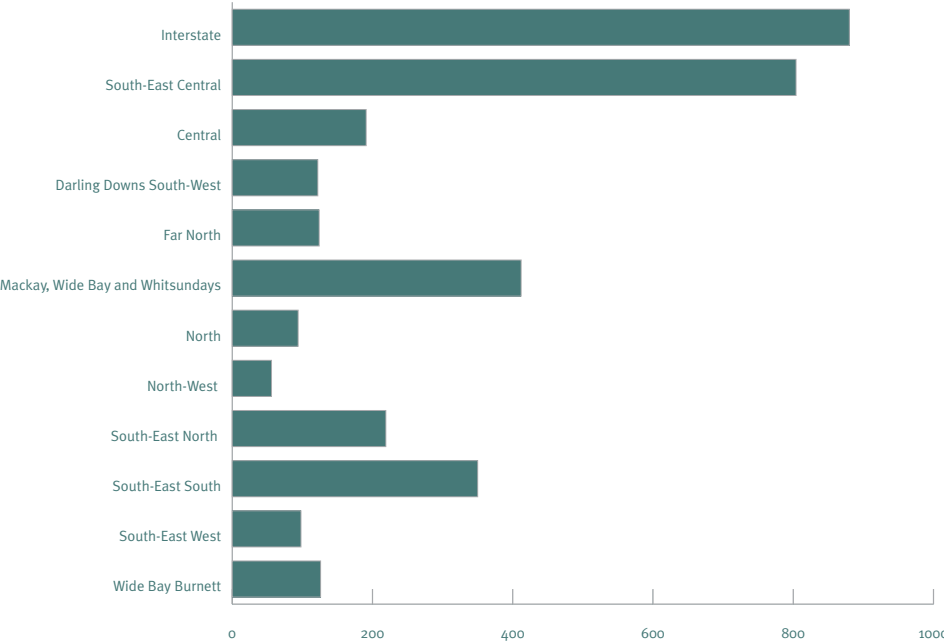
Administration of the Labour Hire Licensing Scheme - the first year

Figure 1: Headline statistics as at 16 April 2019



Profile of labour hire licensees

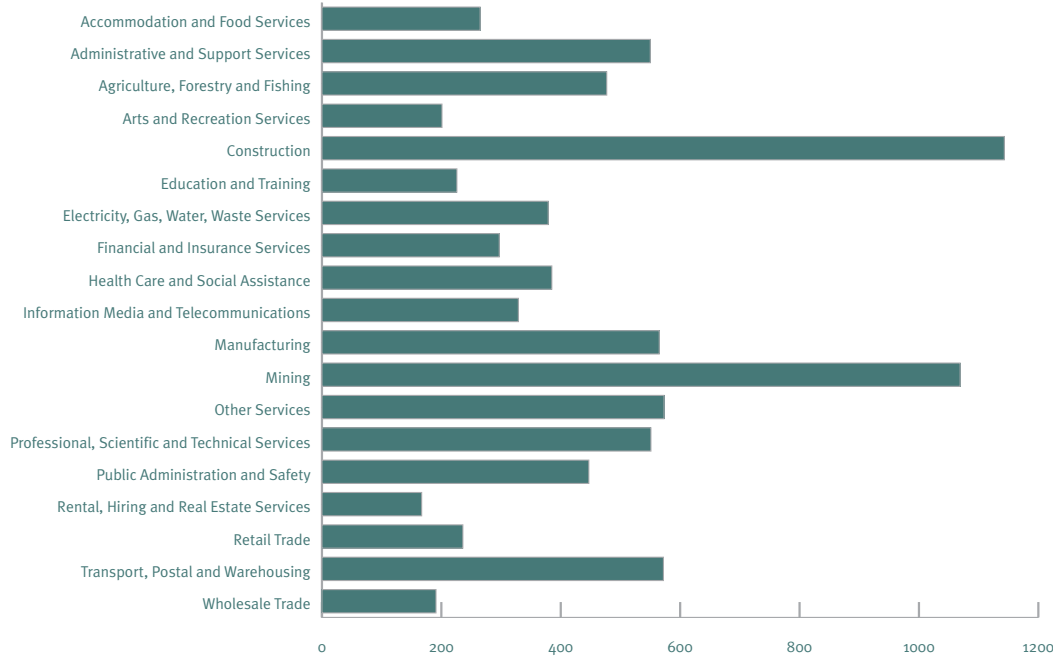
Figure 2: Profile of labour hire applicants/licensees by region



Labour hire applicants and licensees by region

Over 25 per cent of labour hire businesses have a principal place of business interstate, while over 40 percent have a principal place of business in South East Queensland.

Figure 3: Profile of labour hire applicants/licensees by industry



Labour hire applicants and licensees by industry

Many providers indicate that they supply in multiple or even all industries, so the total numbers in this graph exceed the total number of labour hire applications/licences.

Construction and mining are the largest industries by number of active labour hire applicants/licensees—both industries with over 1,000 labour hire providers. Other industries with over 500 labour hire providers include transport, postal and warehousing, professional scientific and technical services, other services, manufacturing, and administrative and support services.

³ Queensland Times, 13 June 2018 “Businesses to toe labour line”
⁴ Gatton Star, 25 July 2018, “Plenty of tourists looking for work in the Lockyer” Meg Bolton

Compliance strategy

The dual purposes of the Act (protecting vulnerable workers and raising standards in the labour hire industry) guide LHLCU's compliance strategy and activities. LHLCU has focussed attention on high risk industries where there has been significant evidence of worker exploitation and worked on strengthening compliance with relevant laws to level the playing field for labour hire providers who are doing the right thing.

Focussing at the industry level enables LHLCU to assist good operators by ensuring they are not undercut by non-compliant labour hire providers (lifting the bar, and ensuring all are complying with all obligations) and by driving out rogue operators who refuse to comply.

Some strategies have also been implemented across all industries in circumstances where risk is identified or a complaint is made.

The LHLCU has designed compliance approaches to detect and deter problematic business models in the labour hire industry and used strong interagency, stakeholder and community relationships to maximise the reach of compliance resources.

The LHLCU strategy has been to:

- provide education and engagement
- undertake risk assessment of all applications
- conduct desk audits seeking further information about any risks identified in the application (all industry sectors)
- investigate all complaints received through the report a problem portal, via telephone or

referral from other government agencies and stakeholders (all industry sectors)

- conduct field audits of all licence applications in the horticulture and meat and poultry processing industries, focussing on compliance with relevant laws and financial viability (specific industry focus)
- share intelligence and data and conduct joint activities with Commonwealth, state and local government regulators (all industry sectors)
- leverage users of labour hire and the community to ensure only licensed operators are engaged (all industry sectors)
- use intelligence gained through the above strategies to identify unlicensed labour hire providers and users and consider prosecutions.

Education and engagement

Continued education and regular community and stakeholder engagement has been critical to the scheme's successful implementation in Queensland and to ongoing compliance in conjunction with an active audit and investigation program.

It leverages others (including regulators, peak and professional bodies and the community) to increase awareness of obligations, gain intelligence about the operation of particular industries and its participants, build networks of community support and create greater pressure for compliance within industries and locations.

LHLCU has actively sought opportunities to establish relationships with and provide education and engagement services to (and through):

- trade unions and union peak bodies
- industry and employer peak bodies
- labour hire agencies
- employers (public and private sector)
- not-for-profit agencies and charities
- research and academic institutions
- community groups
- businesses and individuals
- accommodation providers and their representatives including caravan parks, hostels and backpacker accommodation (and their associations)
- general public.

Through its horticulture industry focus, LHLCU has provided education and built strong community links with regular attendance at Growcom's Workplace Essentials workshops, growers' association meetings, council, community and backpacker gatherings. Interagency collaboration has also been a feature of LHLCU's education and engagement approach.

Case study: Queensland Strawberry Growers Association (QSGA) forum

LHLCU presented an information session to the QSGA and its members in Caboolture about the scheme. LHLCU was accompanied by Australian Border Force, Australian Tax Office, the Department of Agriculture and Fisheries, Workplace Health and Safety Queensland Agricultural Inspectors, WorkCover Queensland and Queensland Fire and Emergency Services, who all provided overviews about their activities in relation to labour hire providers and users in the region and answered questions from the group.

Extremely positive feedback was received about the session, and comment from the floor on the day made special note that it was clear that the agencies are working together closely towards the common goal of improving the compliance of labour hire providers and supporting workers in their industry.

“...The other positive is the labour hire contractor registration which we think has quietened it [i.e. wage theft, exploitation etc] down a bit. We are not saying it has fixed the industry...but it has definitely quietened it...we are not hearing it day in day out...that has to be a positive.”

Cherry Emerick, Industry Development Officer, Bowen Gumlu Growers Association

“...The new laws are good for the kids (pickers) because they feel more secure being signed off.”

Julie Gordon, Gatton Caravan Park Assistant, Gatton Caravan Park ⁵

⁵Gatton Star, 25 July 2018, "Plenty of tourists looking for work in the Lockyer", Meg Bolton

Audits – obligations under relevant laws and financial viability

Pre-licensing audits, focussing on compliance with relevant laws and financial viability, have been conducted for all applicants in the agriculture and meat and poultry processing industries.

Along with considering any historical record of compliance with relevant laws and other evidence available about an applicant, the audits are designed to test the ongoing risk of non-compliance with relevant laws. They involve a detailed examination of:

- compliance with employment obligations (including time and wage records and evidence of payment)
- taxation compliance (including registration, lodgment, reporting and payment obligations for PAYG, GST, income tax and payroll tax)
- evidence of payment of superannuation guarantee
- workers' compensation (currency, adequacy of cover)
- migration law requirements (evidence of systems in place to check compliance and testing work rights of employees)
- work health and safety (evidence of systems to ensure health and safety of workers)
- accommodation (fire safety and rooming accommodation requirements, deductions authorised)
- financial viability (financial documents or other evidence of financial viability).

Inspectors speak to the applicant, advisors and workers to gain a full picture of the business and its risk of non-compliance. Further questions and documents are collected as required based on the information provided, including input about compliance from other regulators.

Some behavioural responses to the audit approach have been observed:

- some providers have disengaged and declined or have been unable to provide the relevant compliance information relating to relevant laws, resulting in withdrawal of their application (over 25 per cent of those audited).
- there has been some concern about the identity of the person who represents the business at the audit – LHLCU have been checking identity prior to proceeding.
- there are some concerns that corporations are being used by others where the director is no longer in the country.

Ninety-nine audited applications were withdrawn after failure to provide the relevant compliance information to demonstrate compliance with relevant laws. The businesses in these cases are not legitimate and their behaviour in disengaging is generally a response to not having the records required to demonstrate their capacity to comply with relevant laws.

Influencing compliance

As well as providing education, through audits and investigations, LHLCU has directly influenced over 50 providers to improve their level of compliance with relevant laws. Sometimes this is done informally through the audit process, but in other instances conditions have been imposed on the business. This approach has been used to bring providers into compliance with employment, state and Commonwealth taxation and superannuation and workers' compensation laws.



“We are very happy with the changes that the State Government has made in regard to the requirement to regulate, control and manage contractors who carry out the supply of labour to industry in particular and all industries.”

Joe Moro, President, Mareeba District Fruit and Vegetable Growers Association and chair of the FNQ Growers Association

“There have been no complaints about people being paid incorrectly or anything like that. We put some of that down to the fact that the Queensland State Government invested in labour hire contract licensing. I would not say it has eradicated the problem, but the standard has definitely lifted.”

Allan Mahony, Chair of the Bundaberg Fruit and Vegetable Growers said it was one of the positives for the industry



Case study: Queensland payroll tax obligations

LHLCU identified three providers who were grouped for payroll tax but did not pay payroll tax despite the group being above the payroll tax threshold. The labour hire providers were requested to register as a group for payroll tax, ensure compliance for any outstanding tax liabilities and provide evidence this action had been taken to the LHLCU. Education was provided about the need to continue to comply with these obligations.

The LHLCU also identified a provider who had paid wages exceeding the payroll tax threshold for the previous three years but who was unaware of their obligation to pay payroll tax. The labour hire provider was asked to register for payroll tax and the business subsequently entered into a payment arrangement for the outstanding payroll tax.

The business was granted a labour hire licence because it rectified its non-compliance for payroll tax and was compliant with all other relevant law obligations. Ongoing compliance will be monitored.

Joint compliance activity

Compliance with relevant laws must be considered when deciding whether to grant a licence. Providers are required to continue to comply with relevant laws as a condition of their licence, meaning that non-compliance with those laws can result in measures such as refusal, suspension and cancellation. The capacity to share intelligence and the outcomes of compliance activities about non-compliant labour hire providers between agencies is fundamental to the operation of the Act.

Local, state and Commonwealth agencies share compliance information about labour hire providers where permitted by relevant legislation. LHLCU has actively built and nurtured collaborative relationships, shared data and intelligence, participated in and led joint engagement, education, compliance and enforcement activities with a range of agencies, including:

- Australian Border Force (ABF) and Home Affairs
- Fair Work Ombudsman (FWO)
- Workplace Health and Safety Queensland (WHSQ)
- WorkCover Queensland (WCQ)
- Queensland Fire and Emergency Services (QFES)
- Australian Tax Office (ATO)
- Department of Jobs and Small Business
- Department of Transport and Main Roads
- Department of Agriculture and Fisheries (DAF)
- Office of State Revenue (OSR) (Qld)
- Office of Liquor and Gaming
- local councils.

Operating jointly and collaboratively is critical to disrupting unscrupulous labour hire providers and provides a significant positive message to the community about agencies working together to maximise compliance outcomes.

One of the enduring messages from LHLCU during engagement activities has been that the efforts of the whole community are needed to change attitudes and perceptions about seriously non-compliant behaviour in the labour hire industry. For example, programs for supporting and educating compliant providers and users of labour hire, such as Growcom's Fair Farms initiative are also vital agents for change in the horticulture industry, and sit alongside Government regulatory efforts. Equally, industry participants, including users of labour hire and competitors play a vital role in providing information about non-compliant businesses to regulators and in their community.

Further work is planned by regulators operating in the labour hire space to identify systemic drivers of non-compliance, and better coordinate activities with a focus on prevention as well as disruption.

Examples of interagency compliance work is outlined in this report. In all matters where it is mentioned that an unlicensed provider has been detected, prosecution is considered in line with the Compliance and Enforcement Policy.



“ I must congratulate your Government on finally addressing the problems that have plagued our Horticultural Industry for some time now. The response from my fellow Farmers has been overwhelmingly positive! ”

Gino Marcon, Marcon Family Farms

“ As Manager, Queensland Fire and Emergency Services (QFES) Compliance and Prosecution Unit, it has been a pleasure to work with such a dedicated and professional team at LHL scheme over the past 12 plus months.

(LHLCU) has been the main initiators and ongoing drivers of a reinvigorated, multi-agency approach to ensuring the workplace rights and increased personal safety of what is often a vulnerable workforce. With numerous agencies now having formed a strong network, where relevant information is shared (within the boundaries of legislation), enforcement of legislative requirements in each of our respective jurisdictional

areas has been significantly enhanced. From a QFES perspective, the opportunities that have arisen through this networking has allowed us to provide vital worker accommodation fire safety information and education across a far wider range of stakeholders than was previously occurring.

I look forward to the continuation of the excellent working relationship that QFES has developed with the entire team at LHL scheme and indeed the collaborative support group, across all three levels of government, which has formed since the inception of the Labour Hire Licensing legislation. ”

Mark Halverson, Manager Compliance and Prosecution Unit, Queensland Fire and Emergency Services

“We wish to advise that we found the online application to be easy and user friendly. The process was straight forward and particularly self-explanatory with plenty of information available online. We applied for the Labour Hire Licence on the 20th of April 2018 and have subsequently been advised it will likely be issued on the 31st of May 2018. Trident Trades and Labour Hire supports the implementation of the labour hire licence scheme. It’s great to see the Queensland Government taking a hard line against providers who aren’t doing the right thing by workers.”

Barry Hockings, Director,
Trident Trades and Labour Hire

“The Salvation Army commends the Queensland Government for introducing this legislation to protect fair employers from unethical competition and to protect workers both Australians and migrants from all forms of labour exploitation. We see this is a critical step to disrupting the business model built on exploiting vulnerable people and holding those who use it to account.”

Heather Moore, National Policy and Advocacy Coordinator,
The Salvation Army Freedom Partnership. September 2017.



“Before these laws it was easier to start a labour hire firm than getting your licence to drive, and that wasn’t right... The rest of Australia should follow the Queensland lead by creating a national labour hire licensing system.”

Ros McLennan, General Secretary, Queensland Council of Unions

Case study: Meat and poultry processing

WHSQ led a campaign examining work health and safety obligations in the meat and poultry processing industries. Inspections were conducted at processing plants throughout Queensland. Over the course of the inspections information about unlicensed labour hire providers operating in the plants has been gathered.

LHLCU is working with these providers to ensure they become licensed or are beginning prosecution processes where appropriate. This campaign is ongoing. In one matter where an unlicensed labour hire provider was detected, the labour hire user was given education about their obligations, immediately terminated their contract with that provider and engaged a licensed provider.

Case study: Queensland workers' compensation obligations

LHLCU conducted a joint compliance campaign with WorkCover Queensland (WCQ) to educate and enforce labour hire providers on their workers' compensation obligations. Thirty-four licence applicants whose insurance policies had lapsed or been cancelled for non-payment were identified. All applicants had been contacted by WCQ about failure to pay premiums prior to their policies lapsing or being cancelled.

LHLCU contacted each labour hire provider about their policy and provided information and education, including the requirement to comply with workers' compensation obligations to be granted a labour hire licence. As a direct result:

- fourteen licence applicants had their insurance policies reinstated after paying their premiums or arranging payment plans (closely monitored by WCQ going forward)
- fifteen labour hire licence applications were withdrawn for failure to provide compliance information necessary to decide the application
- four applicants were refused a licence because they failed to rectify their non-compliance with workers' compensation requirements and were therefore non-compliant with a relevant law
- one investigation is ongoing.

A second joint campaign focused on nine licensees with lapsed or cancelled insurance policies. The outcomes of this campaign were:

- four licensees had their policies reinstated after paying premiums and/or entering payment plans (closely monitored by WCQ going forward)
- three licensees had their licences suspended
- two licensees were found to not currently require a policy (labour was not supplied to Queensland – education was provided about the need to have a policy if the provider commenced supplying in Queensland).

As a result of the two campaigns a total of \$456,231 in premiums has been paid or is being paid through a payment plan.

The joint campaign is ongoing and future work is planned in relation to the sufficiency of wage declarations by providers. This program of work demonstrates the capacity of the labour hire scheme to leverage compliance outcomes for other regulators by encouraging compliance, and dealing with non-compliance.



“WorkCover Queensland has enjoyed a close and collaborative compliance effort with the Labour Hire Licensing Compliance Unit during its first year of operation. The combined activities have assisted in ensuring that labour hire businesses who employ workers in Queensland are holding and maintaining appropriate insurance policies to cover their workers in the event of workplace injuries.

The collaboration has also assisted WorkCover Queensland with premium collection. Through our joint program, we have seen over half a million dollars of overdue premium being paid in full or entered into flexible payment arrangements because of the requirement for applicants to have their policy in a current status.”

Adam Walshe, Manager, Customer Audit Unit

Case study: Phoenix Taskforce

LHLCU became a member of the Phoenix Taskforce in 2018. The Phoenix Taskforce is comprised of 34 Federal, state and territory government agencies, including the ATO, the FWO, state and territory revenue offices, workers' compensation authorities, and the Australian Securities and Investment Commission. The Phoenix Taskforce's objective is to act as a whole-of-government counterforce against illegal phoenixing activity.

Illegal phoenix activity is when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debt, including taxes, creditors and employee entitlements.

To date, with assistance through information sharing mechanisms available under the Taskforce, LHLCU has identified multiple licensees with phoenix characteristics, with investigations ongoing.

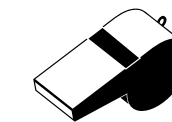
As a result of multiple complaints from members of the public, LHLCU investigated a large labour hire provider and identified several related entities that had liquidated owing workers and regulators (including the ATO and various WorkCover authorities) large amounts of money.

The matter was referred to the Phoenix Taskforce, and disclosures relating to non-compliance were obtained, which resulted in the licence being cancelled.



Case study: Licence cancellation

A labour hire provider in the Lockyer Valley had its licence cancelled after a joint investigation by LHLCU, FWO, ABF and QFES. RJP Contractor Services Pty Ltd provided false information on its application, declaring that it did not provide visa workers or other services such as accommodation and transport. The provider had breached the *Fair Work Act 2009* and was found to be under the influence of a person who was not fit and proper to provide labour hire services in Queensland due to recidivist offending in relation to the repeated provision of accommodation that did not comply with fire safety requirements.



Case study: Licence suspension

A labour hire provider in the Lockyer Valley had its licence suspended after a joint investigation by relevant agencies. The labour hire provider had provided false information on its application, declaring that it did not provide visa workers, or other services such as accommodation and transport. The provider also failed to respond to a notice to provide compliance information about its business activities and admitted that it provided workers without rights to work on farms and paid them cash below award wages. Referrals were made to ABF, FWO and the ATO.



Case study: Joint activities in Beerburrum

LHLCU received intelligence that a provider was not paying wages to its labour hire workers supplied to a farm in Beerburrum. The WHSQ Agriculture Unit and LHLCU attended the farm and interviewed workers.

Three providers were identified operating within a supply chain, two having applied for a labour hire licence during the transition period and the third not having made an application at all.

Investigations are ongoing in relation to the first-tier provider. The second-tier provider had their application for a licence withdrawn for failing to provide compliance information required to decide the application and can no longer operate in Queensland. The third labour hire provider was found to be operating without a licence. Warnings were provided to the labour hire user. Referrals were made to the FWO. Prosecutions are being considered.

Next steps

LHLCU will continue to build on the foundations established in the first year through continued improvement of its detection and compliance strategies and procedures and strengthened relationships with key stakeholders and regulatory agencies.

Several prosecutions are expected to come before the courts in the next 12 months following detection of unlicensed labour hire providers who had been warned not to provide labour in Queensland. It is expected these will act as a deterrent to those who consider that they can continue to provide or use unlicensed hired labour in Queensland.

While covering all industries through risk assessments, desk audits and complaint investigation, LHLCU has focussed more heavily on horticulture, agriculture and meat and poultry processing industries to gain industry wide support and impact for change. In the next 12 months, LHLCU will proactively audit a sample of providers from other industries to test the level of non-compliance and inform future compliance programs. Providers in the security, cleaning and building and construction industries will be sampled in 2019-20. LHLCU will also aim to audit some large labour hire providers in 2019-20.

IT'S ABOUT TIME

labourhire.qld.gov.au



Queensland
Government