

**Submission provided by: Queensland Fruit & Vegetable Growers (QFVG)**

**Fundamental beliefs**

- QFVG has zero tolerance for any ‘knowingly and willingly’ illegal operators within the entirety of the horticultural supply chain.
- It is the Governments responsibility, and obligation, to prosecute illegal operators and workers.
  - Regulation holds no power without prosecution.
  - Prosecution requires adequate resourcing.
- Further investigation of exploitation of the labour system by employees eg. employees choosing to leave a fully compliant employer to move to a non-compliant employer to avoid paying tax is also a concern and needs to be further investigated.

**Question 1.** Please provide any feedback on the objectives of the scheme, including any additional suggestions and/or clarifications.

In principle, QFVG supports the objectives of National Labour Hire Regulation however would encourage a fit for purpose scheme wherever possible.

1. Add ‘protect labour hire workers and host employers’ from exploitation.
2. Monitoring and enforcement of the compliance with the licensing requirements
3. Add training and education to Labour Hire License Holders, host employers, and workers.
4. Potentially endorse a third-party verification/certification system such as Fair Farms.
5. QFVG support the additional objective of NFF “to promote consumer and public confidence in the use of labour hire and the business which rely on it”

**Question 2.** Do you have any comments about the FWO holding the dual role of national workplace regulator and national labour hire licensing regulator, or the proposed oversight board?

1. As long as it is adequately resourced.
2. Also, potentially endorsing a third -party certification program like Fair Farms adds an additional monitoring and compliance mechanism that is already in existence for direct employers.

**Question 3.** Is there value in having a separate statutory role within the FWO with lead responsibility for the functioning of the national scheme?

Potentially, however independence as a regulator needs to be assured.

**Question 4.** How could a tripartite mechanism best be utilised to strengthen oversight of the operation of the scheme?

Not sure what is meant by a tripartite mechanism and oversight...but QFVG would have concerns about any proposal for unions or business interests to be able to control or influence the FWO.

**Question 5.** Do you have any comments about the scheme applying universally?

None.

Who would need a licence under the scheme?

**Question 6.** Are there any reasons why traditional triangular and workforce contracting arrangements should not be captured by the scheme? How can the scheme most effectively exclude genuine subcontracting arrangements?

*Are there any reasons why traditional triangular and workforce contracting arrangements should not be captured by the scheme?:*

We agree with Business Council of Australian submission, "Workforce contracting arrangements are not labour hire and should not be captured in the scheme. Genuine subcontracting should not be caught if the definition of a LHP is appropriately designed."

*How can the scheme most effectively exclude genuine subcontracting arrangements?*

See above.

**Question 7.** What, if any, other arrangements should be regulated by the national scheme, **and why?**

No other.

**Question 8.** If other arrangements should be regulated, should the regulation apply to all industries or only to specified industries that are high risk?

See Q 7.

**Question 9.** How can the scheme most effectively capture complex supply chain arrangements?

By seeking declarations of interest of associated entities/directorships held of other companies by the LHP applicant.

**Question 10.** Which, if any, further exclusions from the scheme should be considered?

Unsure.

Licensing requirements

**Question 11.** To what extent should a tripartite arrangement be involved in granting licences under the scheme?

None. Leave it to regulators with Tripartite arrangement providing meaningful strategic insights only.

**Question 12.** What mechanism would best be utilised to ensure that LHPs operating under the scheme have ready access to adequate workplace relations expertise?

The ability to ensure compliance with workplace laws is an obligation of all Australian employers. The way they ensure their compliance is an individual freedom. Demonstrated expertise is not a feature of any current state or territory schemes.

Education and support towards compliance, along with a third party, independently audited scheme already exists in Fair Farms.

**Question 13.** In addition to fit and proper person and financial viability requirements, are there any other key criteria that should be met for a licence to be granted?

Declarations of interest of associated entities/directorships held of other companies by the LHP applicant.

QFVG aligns with NFF submission response “As a base level consideration, the test should ensure that the LHP is a legitimate commercial undertaking...”

Membership/Certification with a scheme like Fair Farms.

**Question 14.** How should the scheme address LHPs’ engagement of migrant workers on temporary work visas?

They should be required to comply with the terms of those visas and migration law in respect of those workers as a condition of their license.

QFVG agree with the NFF submission “It would be perverse and an unfortunate outcome (for everyone) if legitimate labour hire were not able to offer them {migrant workers on temporary visas} work....”

**Question 15.** Who should be prohibited from applying for a licence or being a responsible officer (e.g. disqualified directors or persons convicted of certain criminal offences)?

Persons disqualified from being directors and persons convicted of relevant criminal offences should be prohibited from applying for a license or being a responsible officer.

**Question 16.** What timeframes should apply to any conduct prohibiting persons from applying for a licence or being a responsible officer (e.g. if conduct was in the last 5 years)?

QFVG agree with timeframes for prohibitions should be reasonable, proportionate, objective, transparent and consistent.

**Question 17.** What mechanisms should exist under the scheme for workers or other interested parties to make representations to the FWO concerning a LHP’s satisfaction of the application requirements?

QFVG agrees with NFF submission that:

1. Any mechanism does not unduly delay.
2. Interested parties should be welcome to make submissions.
3. A public website increasing transparency around submissions made.

**Question 18.** Should the FWO be required to publicise licence applications via its website?

Yes

Financial viability test

**Question 19.** Is the proposed financial viability test appropriate?

QFVG supports the Business Council of Australia submission “Applicants for LHLs should be required to certify that they have the financial capacity to meet their obligations, including in respect of wages, entitlements and tax as part of the Application process.

The BCA has concerns however with requesting the provision of substantial financial documents given confidentiality and sensitivity concerns. These concerns would be heightened if those applications were to be assessed using a tripartite mechanism.”

Fit and proper person test

**Question 20.** In addition to a police check, should a person be required to provide any other evidence when declaring they are a fit and proper person? If so, what should this information be?

Yes.

QFVG support the NFF submission, “The person should be required to make a binding disclosure of any occasions of which they are aware where they or a business which they have had control over have underpaid or denied employees or contractors lawful pay or entitlements, breached workplace or other relevant (e.g. tax, superannuation, consumer, health and safety, migration) laws, gone into liquidation or bankruptcy or traded while insolvent”

**Question 21.** In addition to checking Director IDs and compliance with workplace laws, should the FWO check compliance with fit and proper person requirements with other relevant regulators (such as the ATO)?

Yes

**Question 22.** How should the fit and proper person test be formulated to capture circumstances where another person may be ‘controlling’ or ‘influencing’ the applicant or responsible officers?

Statutory Declarations.

**Question 23.** Are there other matters which should be included in the fit and proper person test?

Any history and details of non-compliance with any Australian Workplace law.

Duration of licence and fees

**Question 24.** Is 12 months appropriate as the standard licence period?

Factors to consider when determining duration of licencing should include those factors considered during the licencing process, the burden and red tape on LHPs, Hosts and the FWO.

**Question 25.** Should a standard licence period apply to all LHPs, or should the scheme provide for extended licence periods for LHPs which have a demonstrated pattern of compliance and proactive measures?

A proactive measure of compliance such as Fair Farms could demonstrate a pattern of compliance.

**Question 26.** What evidence should LHPs be required to provide the FWO to support consideration of a renewal application?

1. Third Party certification
2. Records of payments
3. Superannuation lodgement
4. BAS activity
5. Verification by FWO of any complaints against the business

**Question 27.** How should fees be calculated? In considering this question, please outline your preferred approach (e.g. flat rate, consideration of the size of the business by number of employees or annual turnover, etc.) and the main advantages and disadvantages of this approach.

Although we don't have an opinion as to how fees should be calculated. QFVG is aware of the widespread practice of passing costs onto the grower which is of great concern.

#### Obligations for LHPs

**Question 28.** Should any additional obligations be imposed on LHPs under the scheme?

Potentially a third-party certification like Fair Farms.

**Question 29.** Are there any types of laws, or other obligations, that should be added or removed from the lists above?

None

**Question 30.** Should the scheme require LHPs to provide additional information to the FWO if the LHP intends to provide accommodation or transport?

It would be reasonable to require LHPs who provide accommodation to be assessed in the same manner as a direct employer. QFVG does not support any conflicting or contradictory commercial and compliance obligations.

#### Obligations for hosts

**Question 31.** Are there other obligations that should apply to hosts (e.g. providing access to amenities, training opportunities and job vacancies to third-party workers, or ensuring access to workplace injury management, including modified duties for injured labour hire workers)?

The hosts should have no further obligations than that of ensuring they have engaged a licensed labour hire provider.

**Question 32.** Should hosts be subject to accessorial liability under the scheme for workplace non compliance of the LHP or others in the supply chain?

Only if they are an active and participating party in the contravention of workplace law.

**Question 33.** Should the FWO be empowered to issue guidance in specific industries to assist entities to ensure compliance with the licensing scheme throughout their supply chains?

Yes, education and support towards compliance is necessary especially when the models are ever changing and used in complex workplace environments.

**Question 34.** Should special obligations apply to hosts in high-risk industries with respect to worker accommodation?

Accommodation must meet local laws.

#### Compliance and enforcement

**Question 35.** Are there any criteria that the FWO should be required to consider in deciding to suspend or cancel a licence?

The seriousness of the issue, whether the breach was deliberate or otherwise, the number of breaches, the actions taken by the provider in rectifying or mitigating the breach and steps taken by the provider to ensure future compliance.

**Question 36.** What is an appropriate exclusion period for re-applying for a licence, where a LHP has had their licence cancelled under the scheme?

See Question 16.

**Question 37.** Is there any additional conduct that should be subject to criminal offence under the scheme? Should a defence be available under any of the provisions?

No.

**Question 38.** Is there any other conduct that should be subject to a civil penalty? Should a defence be available under any of the proposed civil penalty provisions?

No.

#### Transitional arrangements

**Question 39.** What is the optimal method of transitioning from state and territory licensing schemes to the national scheme?

Start a new national licensing application with a phase out period for the state license with a declaration about any outstanding cases.