



IT'S ABOUT **TIME**

Third anniversary report
of Queensland's labour
hire licensing scheme

1. Executive summary

Queensland's *Labour Hire Licensing Act 2017* (the Act) continues to lead the way in achieving its purposes of protecting workers from exploitation and promoting the integrity of the labour hire industry. More than three years on, there are now over 3,400 licensed labour hire providers operating throughout Queensland across all industries.

The Labour Hire Licensing and Compliance Unit (LHLCU), within the Office of Industrial Relations, provides a full-service model for the administration of the Act, including the following:

- Client services, assisting applicants, licensees and members of the public through its call centre and website, and processing licence applications, renewals, reports and other notifications.
- Intelligence and risk assessment expertise, receiving intelligence from the public, exchanging information and data with other regulators as permitted by law, assessing applications and complaints and recommending the appropriate compliance treatments.
- Education and stakeholder engagement, providing education through digital channels and by attending seminars and events.
- Audit and investigations in high-risk industries, for identified high risk matters and complaints.
- Enforcement through detection, investigation and prosecution of offences under the Act.
- Collaborative joint field operations conducted with other regulators and aimed at disrupting the activities of egregious operators in the labour hire industry.

Compliance activities throughout the third year (1 May 2020 to 30 April 2021) have resulted in:

- 51 licence applications withdrawn for failing to provide information required to assess compliance with relevant laws
- 20 licence applications refused, as the applicants were found not fit and proper persons to provide labour hire services in Queensland
- 34 licences granted with conditions
- 69 licences suspended for non-compliance
- 31 licences cancelled for non-compliance
- 559 audits and investigations completed, and 183 complaints resolved
- four prosecutions of labour hire providers, with penalties totalling \$190,000
- three prosecutions of directors, as parties to the unlicensed providing or using offence, with penalties totalling \$80,000
- one prosecution of a labour hire user, with a penalty of \$100,000 imposed.



2. Administration of the Labour Hire Licensing Scheme - Year 3

All new applications are assessed for risk of non-compliance and the appropriate compliance treatment is selected. Assessments take into account the information provided by the applicant, relevant searches and independent compliance checking. Treatments can include gathering further information about particular risks, and audits and investigations to check compliance with all relevant laws and financial viability. Licensees must report on their activities every six months, renew their licences annually and provide information about changes to their operations within 28 days.

Headline statistics as at 30 April 2021 (for the period from 1 May 2020 to 30 April 2021)



2.1 Profile of labour hire licensees

As at 30 April 2021, there were 3,408 labour hire licensees in Queensland, up three per cent from the second year.

Around 28 per cent of Queensland labour hire licensees have a principal place of business interstate, while over 41 per cent have a principal place of business in South East Queensland.

Labour hire licensees by region

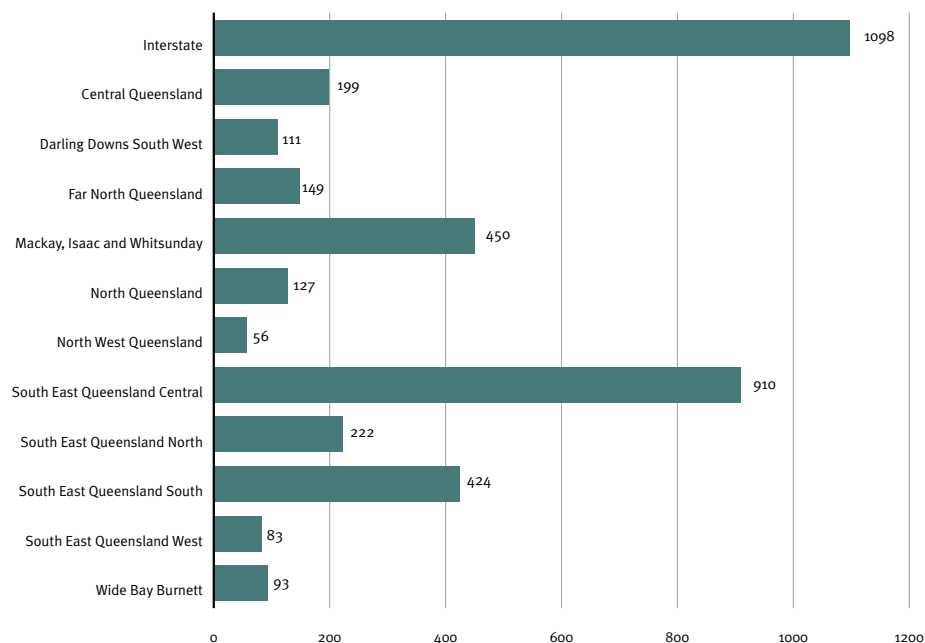


Figure 1: Profile of labour hire licensees by region for the period 1 May 2020 to 30 April 2021

Licensees by industry supplied to

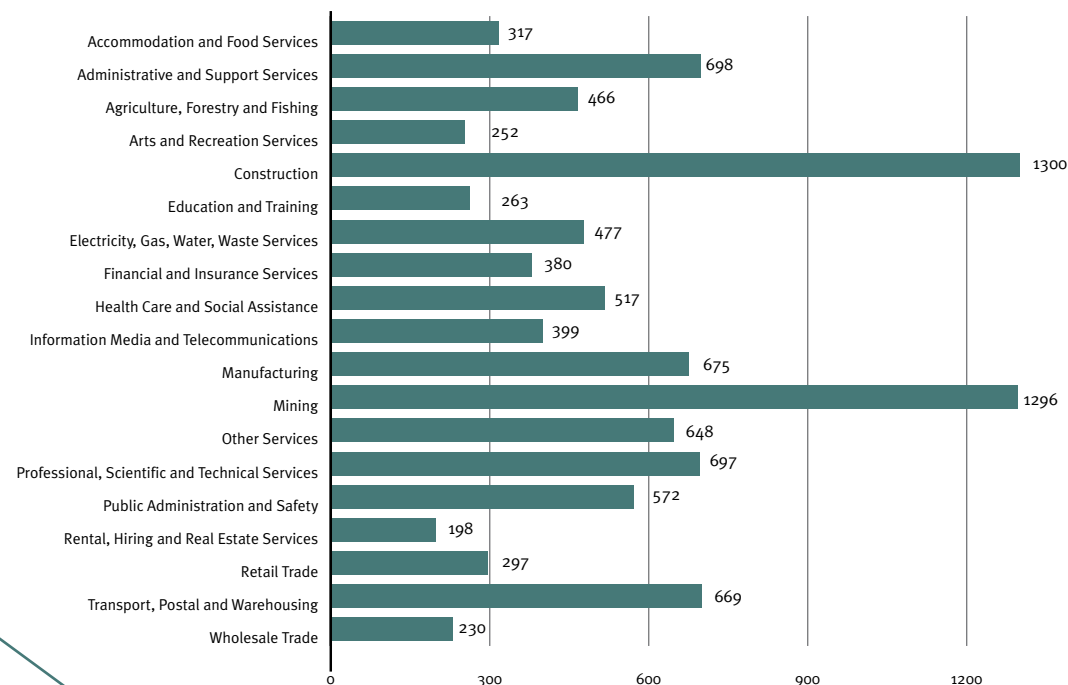


Figure 2: Profile of licensees by industries supplied to for the period of 1 May 2020 to 30 April 2021

Many providers indicate they supply in multiple or even all industries, therefore the totals shown in Figure 2 exceed the total number of active labour hire licences during the period.

Construction and mining still have the largest number of active applicants/ licensees - both industries with over 1,000 labour hire providers. Other industries with over 500 labour hire providers include administration and support services, manufacturing, public administration and safety, health care and social assistance, transport postal and warehousing, professional scientific and technical services and other services.

A different picture emerges when industry representation is examined according to the Australian and New Zealand Standard Industry Classification (ANZSIC) code nominated by the entity.

Figure 3 shows the percentage of labour hire providers in each ANZSIC division.

Industry divisions	Percent by nominated ANZSIC code
Manufacturing	3.6
Agriculture Forestry and Fishing	1.9
Mining	4.5
Electricity, Gas, Water and Waste Services	0.1
Construction	12.8
Wholesale Trade	1.1
Retail Trade	0.6
Accommodation and Food Services	0.5
Transport, Postal and Warehousing	1.5
Information Media and Telecommunications	0.6
Financial and Insurance Services	0.8
Rental, Hiring and Real Estate Services	1.2
Professional, Scientific and Technical Services	17.9
Administrative and Support Services	37.3
Public Administration and Safety	6.0
Education and Training	2.1
Health Care and Social Assistance	1.8
Arts and Recreation Services	0.2
Other Services	4.6

According to this data, administrative and support services has the largest number of labour hire providers at over 37 per cent of the base, followed by professional, scientific and technical services and construction.

In the third year of operation, application processes have been strengthened by leveraging data and information from public sources, other regulatory agencies and own source data to better identify compliance risks and select matters for audit and investigation. The approach also takes into account attempts to avoid detection by providing incorrect information, or more concerted attempts by some applicants to misrepresent matters such as the industry and location that workers are supplied to.

Figure 4: The effect of the reporting compliance program.

	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
	Total Population	Total compliant without further treatment	Total receiving treatment	Total compliant following treatment	Per cent who responded positively to treatment (Column D / Column C)	Per cent of total base compliant (with or without treatment) (Column B or D / 6154)	Per cent of total base non-compliant (Column C / 6154)	Per cent of total base untreated Column C / 6154
Total expected reports	6,154							
Total received on time – voluntary		5,200				84.50		
Treatment 1 – email reminder to report			938	881	93.92	14.32		
Treatment 2 – suspend licensee for failure to report			19	14	73.68	0.23		
Treatment 3 – cancel licence for failure to report			4	0	0.00		0.07	
Total with outstanding compliance treatment			54	0	0.00			0.88
TOTAL	6,152	5,200		895		99.05	0.07	0.88

A total of 5,200 six-monthly reports were received on time without the need to issue any manual reminders (such as calls and emails) in the third year. This represents 84.5 per cent of the total reports due, an increase from 72 per cent in the second year. The significant increase in voluntary compliance is attributable to process and communication redesign, ensuring that the system generated reminder emails are clearer and more instructive, and delivered just prior to the reporting due date.

Where reports are not received by the due date, licensees receive further manual email and call reminders. This treatment (Treatment 1) was applied to 938 reports and resulted in a further 881 or 14.32 percent of licensees becoming compliant¹. This means that in total 98.82 per cent of the base complied with their reporting obligations without the need for firmer compliance action, up almost two per cent from the second year.

When licensees do not rectify the reporting non-compliance following the reminder and telephone contact, it is likely to result in licence suspension. A total of 19 licences were suspended for failure to report as required during the year. In these cases, the suspension power is used to influence compliance. As a result of the suspension, 14 licensees (almost 74 per cent of those suspended) rectified their non-compliance with their reporting obligations by lodging the relevant report. This year, only four licensees had their licences cancelled for failing to comply with their reporting requirements, while a further 54 are in the process of having these compliance treatments applied to them without an outcome having yet been recorded.

The outcomes reflect a significant improvement in voluntary compliance with the obligation to report by labour hire licensees, with a significant reduction in the need to take firm compliance action (down 75 per cent from year two).

A total of 2,806 renewal applications were also processed during the year.

2.2 Audits and investigations

While compliance work is ongoing in high-risk industries such as horticulture and food processing, where there has been significant evidence of worker exploitation, an improved risk assessment approach has enabled further compliance activities in other industries by more accurately identifying high-risk matters for further inquiry. All complaints are triaged, assessed and investigated as appropriate.

In the third year of the scheme, the statistics demonstrate an improvement in compliance by applicants and licensees. While compliance activity (number of audits, investigations and complaints finalised) was up 33 per cent, resultant compliance actions were down from year two.

Refusals of licence applications were down 20 per cent, suspensions were down 47 per cent, and cancellations of licences were down 39 per cent. Overall, compliance actions as a percentage of compliance cases are down from 52 per cent in year one of the scheme, to 28 percent in year three of the scheme.

Intelligence and data sharing and joint activities with Commonwealth, state and local government regulators across all industry sectors has continued, with agencies such as the Australian Taxation Office (ATO), Australian Border Force, WorkCover Queensland, the Fair Work Ombudsman and the Victorian Labour Hire Licensing Authority regularly collaborating with

LHLCU. The unit shares data and intelligence as permitted by law, conducts joint activities, and plays a role in developing and implementing joint strategies to disrupt and deter egregious operators in the labour hire industry with these and other agencies.

Figure 5: Year on year comparison of compliance actions

Compliance actions	Year one	Year two	Year three
Refusals	10	25	20
Withdrawal (failure to provide compliance information)	99	51	51
Grant with condition	9	18	34
Suspension	68	130	69
Cancellation	2	51	31
Prosecutions	0	7	8
Number of compliance cases	360	556	742

¹Either by reporting as required, or surrendering the licence (15)

Case study – Joint activities in the Caboolture region

In August 2020, the LHLCU and WorkCover Queensland attended ten strawberry farm sites to deliver education to growers using labour hire in the region and conduct compliance checks on labour hire providers in the area.

Inspectors spoke to workers and gathered intelligence about labour hire providers active in the region. Following on from this, inspectors conducted significant complaint and intelligence gathering activities by phone, email and text. In total, the LHLCU received information from over 70 workers as a result of the activity.

Issues uncovered included:

- engagement of subcontractors with knowledge of growers
- alleged unlawful 'use' of labour hire licences by fraudsters
- failure to provide payslips to workers
- failure to pay taxation and superannuation relating to workers.

By working closely with WorkCover Queensland, Australian Border Force and the Queensland Police Service (QPS), as well as gathering

information directly from growers, workers and other sources of intelligence, within one month of the field activities:

- the licences of two providers were suspended whilst further investigations were conducted
- the licence application of a provider was refused.

Both suspensions eventually resulted in the cancellation of the licence after investigations were conducted.

These activities also resulted in the referral of over 30 reports regarding accommodation standards to Queensland Fire and Emergency Services, referral of a criminal complaint to QPS and referral of information to the Fair Work Ombudsman and the ATO regarding the payment of workers and the relevant taxation and superannuation obligations connected to those workers.





Case study – Department of Education, Skills and Employment and Australian Border Force

The Seasonal Worker Programme (SWP) is a Commonwealth Government scheme administered by the Department of Education, Skills and Employment (DESE), and is intended to offer employers in the agriculture sector access to a reliable, returning workforce when there is not enough local Australian labour to meet seasonal demand.

Only Approved Employers under the scheme can employ seasonal worker participants, and any change in employment must be approved by DESE.

In November 2020, the LHLCU received information alleging a licensed labour hire provider in Bundaberg was employing workers who held visas to work in Australia under the SWP. The licensee was not an Approved Employer under the SWP scheme, meaning that both the workers and the licensee were allegedly in breach of the Migration Act 1958 (Migration Act).

Communications were sent to all Queensland labour hire licensees providing clear guidance from the Department of Home Affairs that SWP workers must only work for Approved Employers and the potential consequences of non-compliance.

Direct education was provided to the labour hire provider in question, resulting in the provider working with DESE to ensure that the workers were engaged by Approved Employers as required by law. This result ensured the safety and welfare of the workers, while ensuring that all relevant laws were complied with.

Case study – Australian Taxation Office and WorkCover Queensland

Following investigations by the ATO, the Director of licensed labour hire providers, GHR Consolidated and Civil Personnel Consolidated, was arrested by Australian Federal Police regarding a major fraud syndicate which is reported to have defrauded the ATO of \$17 million by failing to remit Pay As You Go tax payments and Goods and Services Tax. Information was able to be disclosed to the LHLCU through the Phoenix Taskforce.

WorkCover Queensland also provided information as permitted by law about non-compliance by the relevant persons with the *Workers' Compensation and Rehabilitation Act 2003*.

As a consequence, GHR Consolidated's and Civil Personnel Consolidated's labour hire licences were cancelled on the basis of their lack of capacity to comply with relevant laws and because the director was not fit and proper to provide labour hire services in Queensland. The Act aims to protect vulnerable workers and promote the integrity of the labour hire industry, which is damaged when businesses intentionally disregard taxation laws.

Case study - Work with the Phoenix Taskforce

In October 2020, the LHLCU received information that a licensed labour hire provider, ADADN Pty Ltd, was providing workers to a formwork company in the building and construction industry. The information received indicated the labour hire provider was behind in its payments into its redundancy trust fund and further was possibly not paying superannuation to its workers.

Further investigation into the licensee identified links to an individual listed high on the Phoenix Taskforce risk register and that the licensee did not hold a current WorkCover policy. Information was received from the ATO in relation to the licensee's superannuation and tax liabilities following a request for information made to the Phoenix Taskforce.

Officers from the WorkCover Queensland Customer Audit and Intelligence Unit attended the worksite for the licensee and spoke to the builder who was engaging the formwork company. The building company was unaware that the contractor had engaged a labour hire provider to supply its workers.

Following information received from other agencies and a comprehensive investigation the licence was cancelled.

This joint activity resulted in the workers being directly employed by the formwork contractor.

Case study – Work with the Victorian Labour Hire Licensing Authority

An application for a licence was received from a new business. Numerous risk factors were identified during initial assessment, including high risk industry, a director with significant history of deregistered companies with short lifespans, no fixed address for the business or the directors and an online presence for the business that indicated that they were already licensed and able to provide labour hire services. Information of concern was provided to the Victorian Labour Hire Licensing Authority (VLHLA), as the applicant had also subsequently made application for a labour hire licence in Victoria.

Similarly, the VLHLA was able to disclose information that was important to progressing the investigation in Queensland. Through working cooperatively with VLHLA and analysing financial transactions, it was established that the applicant company was under the control of, or substantially influenced by, a person other than the named Directors who was not considered to be fit and proper. This ultimately resulted in the refusal of the application.

Identifying and preventing individuals and businesses who are not fit and proper persons from providing labour hire is a crucial task, given the potential for harm that can be caused to workers and legitimate businesses, even in a very short period. Workers have been left without entitlements such

as superannuation, and adequate employment records necessary to meet their own legal obligations after working for rogue operators who may appear legitimate at first instance but are in fact 'straw' directors operating under the direction of another person.

The LHLCU would like to acknowledge the contribution of the VLHLA to this and many other matters and looks forward to an ongoing relationship with our interstate partners to better protect vulnerable workers and promote the integrity of the labour hire industry across state and territory lines.





3. Prosecutions under the Act

The Compliance and Enforcement Policy is published on the [labour hire website](#). Prosecution is a discretionary action, which means not every breach of the laws is automatically prosecuted. Public interest is the dominant factor in the decision to prosecute or not.

By commencing a prosecution, the LHLCU aims to change the behavior of the wrongdoer and deter future wrongdoers. Prosecution in appropriate circumstances sends a message to the community that breaches of legislative obligations will be enforced through the courts. Several potential prosecution matters are currently under consideration.



Case study – B&E Poultry (Qld) prosecutions

In 2019, Workplace Health and Safety Queensland (WHSQ) conducted a compliance campaign aimed to reduce the risk of injury to workers in the poultry processing industry, including labour hire and visa workers. The key risks for workers in this industry are musculoskeletal disorders. The poultry processing industry has consistently higher workers' compensation claims rates when compared to overall manufacturing industry rates.

Campaign objectives included:

- helping poultry processing and labour hire companies identify gaps and improve their work health and safety management systems
- helping industry identify hazards and implement higher order risk controls
- ensuring labour hire providers comply with the Act
- ensuring 457 and 417 visa workers have fair and safe work conditions.

Where it was identified during audits that labour hire providers at worksites did not hold a labour hire licence, referrals were made to the LHLCU.

Because of these activities LHLCU identified several unlicensed labour hire providers were operating at the B&E Poultry (Qld) Pty Ltd factory at Ormeau.

The Beenleigh Magistrates Court issued a total of \$370,000 in fines because of the LHLCU investigation:

- B&E Poultry was convicted and fined \$100,000 on four counts of using unlicensed labour hire providers, with B&E Poultry's Director fined \$50,000 for aiding, counselling or procuring the offences.
- Fancey Pty Ltd was convicted and fined \$50,000 in the Beenleigh Magistrates Court for providing workers when not the holder of a labour hire licence to B&E Poultry.
- MK Sun Pty Ltd (MK Sun) was convicted and fined \$40,000 for providing labour to B&E Poultry without a licence, with MK Sun's Director fined \$15,000 for aiding, counselling or procuring that offence.
- GY Services Pty Ltd (GY Services) was convicted and fined \$40,000 for providing labour without a licence to B&E Poultry, with GY Services' Director fined \$15,000 for aiding, counselling or procuring that offence.
- K.T.D Poultry Pty Ltd was fined \$60,000 for providing labour without a licence to B&E Poultry.

The outcome has also resulted in other agencies such as Department of Home Affairs taking compliance action against B&E Poultry, including cancelling its standard business agreement and imposing a three-year bar preventing it from sponsoring further visa applicants.

A similar joint campaign with WHSQ is planned for the red meat processing sector during the next twelve months.

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