



IT'S ABOUT TIME

Second anniversary report
of Queensland's labour hire
licensing scheme

1. Executive summary

The *Labour Hire Licensing Act 2017* (the Act) is the first legislation of its kind to be operational in Australia. The Act has 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 2018.

More than two years on, there are over 3,300 licensed labour hire providers operating throughout Queensland across all industries, with 962 new applications and 2,608 renewal applications received during the second year of administration.

The Labour Hire Licensing Compliance Unit, part of the Queensland Government's Office of Industrial Relations, engages closely with industry, stakeholders and communities throughout Queensland. It ensures providers comply with relevant laws, conducts audits and investigations of complaints regarding labour hire arrangements and works closely with other regulators to improve compliance in the labour hire industry.

During its second year of operation, it has also:

- improved processes for application, renewal and reporting to make it easier for licensees to comply, while improving overall risk assessment and profiling of all applicants for a labour hire licence at the front end
- focused on high risk industries, including expanding compliance activities in the security industry after a large number of significant complaints about non-compliance
- worked closely with the Phoenix Taskforce in a coordinated and strategic approach to illegal phoenix activity

- collaborated with WorkCover Queensland to ensure labour hire providers have adequate workers' compensation policies in place to protect workers
- expanded engagement and cooperative administration with the Victorian Labour Hire Authority and Queensland Police Service
- shifted its focus to enforcement, successfully prosecuting several unlicensed labour hire providers and users.

Compliance activities throughout the second year (up to 30 April 2020) have resulted in:

- 51 licence applications withdrawn for failing to provide information required to assess their compliance with relevant laws
- 25 licence applications refused, as the applicants were found not fit and proper persons to provide labour hire services in Queensland
- 18 licences granted with conditions
- 130 licences suspended for non-compliance
- 51 licences cancelled for non-compliance
- 300 audits completed and 256 complaints resolved
- four prosecutions of labour hire providers, with penalties ranging from \$60,000 to \$120,000
- two prosecutions of directors of labour hire providers, as parties to the unlicensed providing offence, with penalties ranging from \$25,000 (and three months jail in default of payment) to \$60,000 (and six months jail in default of payment)
- one prosecution of labour hire user, with a penalty of \$50,000 imposed.



2. Administration of the labour hire licensing scheme – Year two

Applicants for a new licence or a renewal provide information that forms the basis for compliance activities and provides a valuable picture of the labour hire industry not previously available. Similarly, licensees are required to report on their activities every six months and provide information about changes to their operations within 28 days.

Figure 1: Headline statistics as at 30 April 2020 (for the period from 16 April 2019 to 30 April 2020)



In the last 12 months
we have achieved...

2.1 Licensing and reporting information

As at 30 April 2020, there were 3,303 labour hire licensees in Queensland. Figure 3 shows active labour hire licensees by region.

Figure 4 shows the profile of active labour hire licensees by industries supplied to.

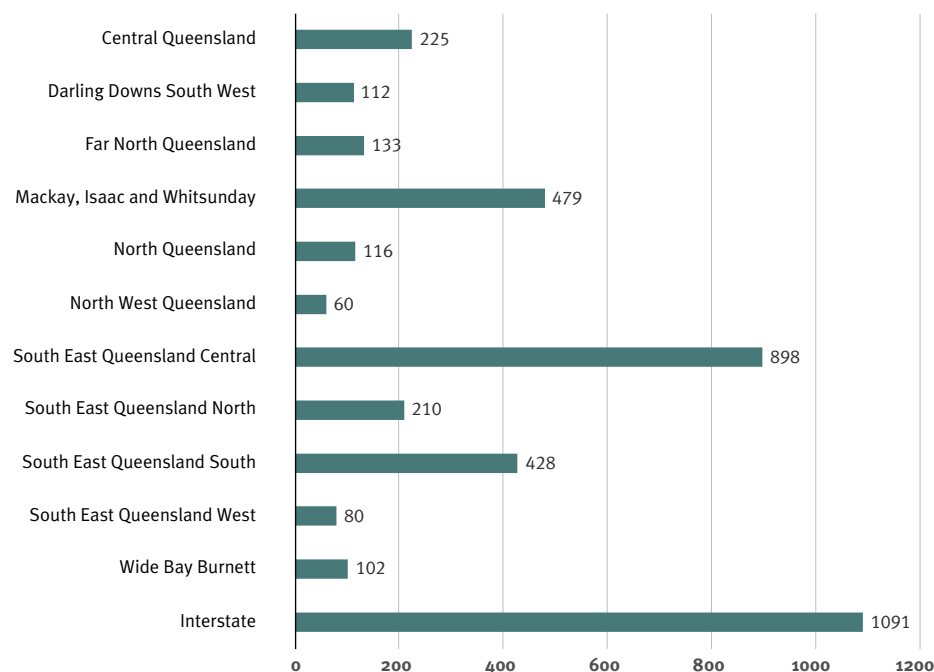


Figure 3: Profile of active licensees by region for the period 16 April 2019 to 30 April 2020

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

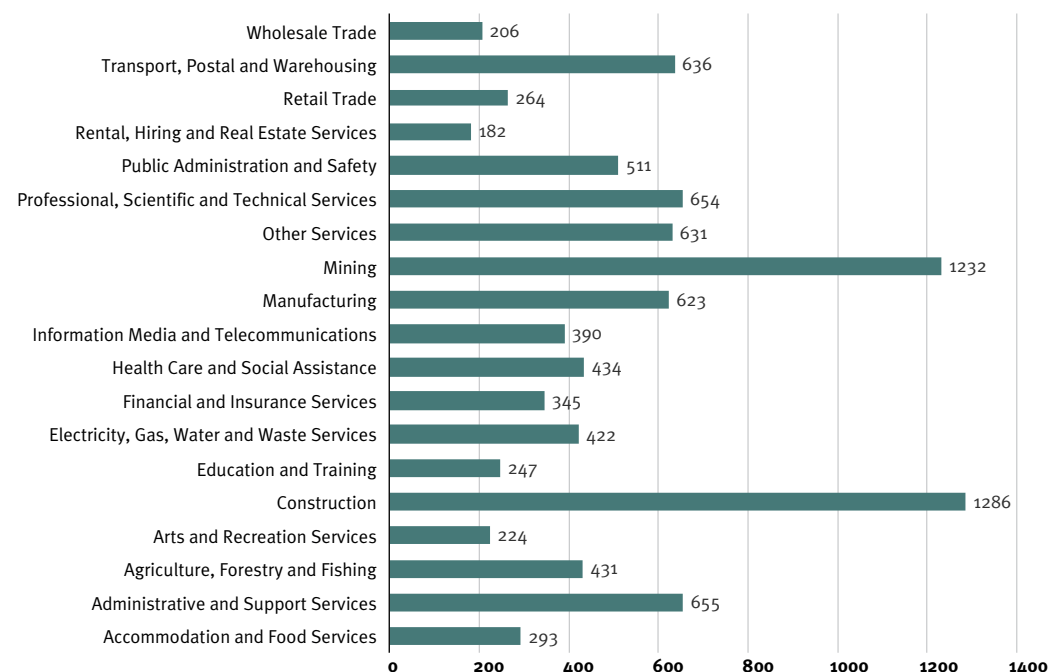


Figure 4: Profile of labour hire licensees by industries supplied to 16 April 2019 to 30 April 2020

Many providers supply in multiple or even all industries, therefore the totals shown in Figure 4 exceed the total number of active labour hire licences during the period.

Based on data provided by labour hire providers about the industries they supply to, construction, manufacturing and mining have the largest number of active applicants/licensees (each over a thousand). Other industries with over 500 labour hire providers include administration and support services, manufacturing, public administration and safety, 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 5 shows the percentage of labour hire providers in each ANZSIC division.

Industry divisions	Per cent by nominated ANZSIC code
Manufacturing	3.7
Agriculture, Forestry and Fishing	2.8
Mining	4.7
Electricity, Gas, Water and Waste Services	0.2
Construction	12.9
Wholesale Trade	1.1
Retail Trade	0.7
Accommodation and Food Services	0.6
Transport, Postal and Warehousing	1.6
Information Media and Telecommunications	0.7
Financial and Insurance Services	0.9
Rental, Hiring and Real Estate Services	1.5
Professional, Scientific and Technical Services	17.2
Administrative and Support Services	36.4
Public Administration and Safety	5.7
Education and Training	2.3
Health Care and Social Assistance	1.7
Arts and Recreation Services	0.2
Other Services	5.1
Total	100

According to this data, administrative and support services have the largest number of labour hire providers at over 36 per cent of the base, with professional, scientific and technical services and construction having slightly less than half that number.

In the second 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. A compliance program has been implemented to ensure on-time and accurate reporting by licensees every six months.

Figure 6 shows the effect of the reporting compliance program.

	Total population	Total compliant without further contact/action	Total receiving compliance action	Total compliant following compliance action	Per cent who responded positively to compliant contact/action (per cent) (Column D/Column C)	Per cent of total base compliant (with or without contact/action) (per cent)	Per cent of total base non-compliant (per cent) (Column C/5613)
	Column A	Column B	Column C	Column D	Column E	Column F	Column G
Total expected reports	5,613						
Total received on time – voluntary		4,048				72.12	
Treatment 1 – email reminder to report			1,565	1,390	88.82	24.76	
Treatment 2 – suspend licensee for failure to report			95	77	81.05	1.37	
Treatment 3 – cancel licence for failure to report			18	0¹	0.00		0.32
Total with outstanding compliance treatment			80	0	0.00		1.43
Total	5,613	4,048		1,467	87.43	98.25	1.75

A total of 4,048 six-monthly reports were received on time without the need to issue any reminders in the second year. This represents 72.12 per cent of the total reports due, an increase from 66.30 per cent in the first year.

Where reports are not received by the due date, licensees receive email reminders. This treatment (Treatment 1) was applied to the remaining 1,565 reports. Treatment 1 resulted in a further 1,390 licensees becoming compliant² (a further 24.76 per cent of the base). This means that in total 96.88 per cent of the base complied with their reporting obligations without the need for firmer compliance action.

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 95 licences were suspended for failure to report as required during the year. As a result of the suspension 77 licensees (81 per cent of those suspended) rectified their

¹ Cannot become compliant following cancellation

² Either by reporting as required, or surrendering the licence (15)

non-compliance with their reporting obligations by lodging their reports. The remainder either had their licences cancelled, are currently suspended (18), or are in the process of having these compliance treatments applied to them without an outcome having yet been recorded (80).

The outcomes reflect the effectiveness of the approach in first providing education and prompting compliance, followed by firmer action as required. A very small number of licensees (0.32 per cent) have failed to respond to the escalated compliance approach during the year. In many cases, these licensees have ceased trading and have failed to notify the Chief Executive.

Communications and business processes for reporting have been improved using behavioural insights to prompt licensees to report on time. Data is also being used to identify businesses that are no longer operating and to ensure those licences are surrendered or cancelled. The effectiveness of these improvements will be measured in the third year. It is expected the changes will improve the percentage of on time reporting without prompting, and fewer licences will be suspended or cancelled for failing to report. These will be indicators of improved process efficiency and improved compliance by licensees.

A total of 2,608 renewal applications were processed during the year.

2.2 Developments in other jurisdictions

Since the first anniversary report, both the Victorian and South Australian Labour Hire Licensing Schemes have commenced operation – Victoria’s transitional period for licensing ended on 30 October 2019 but was followed by an announcement that the Act would

not be enforced before 31 December 2019 where there was no evidence of non-compliance. This position was extended on 22 April 2020 with Victoria’s Labour Hire Authority advising it would not act against unlicensed providers where they had submitted an application before 30 June 2020.³

South Australian labour hire providers were required to apply for a licence by 1 November 2019. The South Australian Government has since introduced amendments which narrow the scope of the licensing scheme to high risk industries where particular types of work are undertaken. The changes became effective on 20 July 2020, limiting the scope of the labour hire licensing scheme to the horticulture processing, meat processing, seafood processing, cleaning and trolley collection industries.⁴

On 2 April 2019, the Australian Government announced measures in the 2019–20 Budget in response to the recommendations in the Migrant Workers’ Taskforce Report which includes the development of the National Labour Hire Registration Scheme. The Australian Government has also indicated that the scheme will take a ‘light touch’ approach and will be developed in consultation with stakeholders.⁵

On 9 December 2019, the Western Australia Government gave in principle support for a state-based labour hire licensing scheme as part of its response to its inquiry into wage theft in Western Australia. No further details about the scheme have been released as yet.⁶

On 22 May 2020, the Australian Capital Territory Government’s labour hire licensing laws were passed,

with a six month transition period commencing on 1 January 2021 for labour hire providers to apply for a licence. No enforcement activities will be applied during this transition period.⁷

2.3 Audits and investigations

The focus on high risk industries such as agriculture, meat and poultry processing, and security where there has been significant evidence of worker exploitation has continued; strengthening legislative compliance to protect vulnerable workers and level the playing field for labour hire providers who are doing the right thing.

Focussing at the industry level helps good operators by ensuring they are not undercut by non-compliant labour hire providers, driving out rogue operators who refuse to comply.

There has also been a focus on intelligence and data sharing and joint activities with Commonwealth, state and local government regulators across all industry sectors, including over 800 instances of referrals and intelligence sharing between regulators in relation to applicants and licensees. Data from the scheme is shared with the Australian Taxation Office, Australian Border Force, WorkCover Queensland, the Fair Work Ombudsman and the Victorian Labour Hire Licensing Authority as permitted by law.

The scheme continues to galvanise agencies to work together on serious non-compliance issues in the labour hire industry.

This has led to some significant compliance outcomes in the second year of the scheme.

³ <https://labourhireauthority.vic.gov.au/latest-news/labour-hire-licence-applications-received-before-30-june-2020/>

⁴ <https://www.sa.gov.au/topics/business-and-trade/licensing/labour-hire/apply>

⁵ <https://www.employment.gov.au/budget-2019-20#:~:text=A%20National%20Labour%20Hire%20Registration,as%20the%20scheme%20is%20developed>

⁶ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/12/McGowan-Government-announces-actions-to-combat-wage-theft.aspx>

⁷ https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/suzanne-orr-mla-media-releases/2020/labour-hire-licensing-scheme-passed-to-help-better-protect-workers

Case study 1 – Joint outcomes with the WorkCover Queensland compliance team

Each year, WorkCover Queensland (WCQ) and the Labour Hire Licensing Compliance Unit (LHLCU) conduct a campaign focusing on lapsed and cancelled workers' compensation policies resulting from non-payment of the premium to WCQ. Where the employer is a licensed labour hire provider, an inspector from the LHLCU contacts the employer to rectify the non-compliance with the *Workers' Compensation and Rehabilitation Act 2003*, and to demonstrate they have a valid policy in place covering their workers in Queensland. Failure to remedy the issue can result in suspension and cancellation of the licence. The second year campaign recovered approximately \$182,000 in premium from a single employer.

This year's focus was also ensuring labour hire providers are using the correct industry categorisation to calculate their premium. In one case, as a result of a joint investigation, it was identified that two labour hire providers in a food processing factory had identified their industry as account management services, and management advice and consulting services respectively. As a result, when properly classified in the poultry processing industry, their collective workers' compensation premiums increased from approximately \$6,800 to over \$75,000.

The compliance teams have also worked jointly on serious non-compliance cases in the security provider, horticulture and general recruitment industries, which have resulted in intelligence sharing to Commonwealth agencies for joint agency operations.

Case study 2 – Work with Workplace Health and Safety Queensland

Workplace Health and Safety Queensland (WHSQ) conducted a campaign for the poultry processing industry aimed at reducing the risk of injury to workers, including labour hire and visa workers. WHSQ inspectors visited 14 poultry processing workplaces, issuing 49 notices regarding unsafe processes, equipment and training of workers. During the workplace inspections, WHSQ inspectors obtained information about labour hire providers who were contracted by the facility.

Where those providers could not be verified as licensed labour hire providers, referrals were made to LHLCU, which provided education to the poultry processing businesses and contractors about their obligations under the Act. As a result, one poultry processor terminated its contract with an unlicensed labour hire provider and engaged a licensed provider. Additionally three poultry processors terminated their contracts with five unlicensed providers and directly employed the workers. Warnings were issued to all of the businesses about the need to only engage licensed labour hire providers in future.

Investigations into unlicensed providers are ongoing.



Case study 3 - Work with the Phoenix Taskforce

Data sharing and phoenix risk identification within the labour hire population

The Australian Taxation Office (ATO) has analysed the Queensland labour hire population and provided intelligence about phoenix risks within that population. The analysis will be used to profile risk and determine appropriate targets for investigation regarding compliance with relevant laws and financial viability. It will also enable joint approaches to managing phoenix risk to be developed with taskforce members.

Refusal of labour hire licence

An application was received from a labour hire provider which a complainant alleged was engaged in phoenix behaviour. The complaint was verified using publicly available information and information received from the ATO through the Phoenix Taskforce demonstrated significant non-compliance with taxation and superannuation laws relating to employees. As a result, the labour hire licence application was refused, and the provider is no longer permitted to provide workers in Queensland.

Fruit picking

The ATO, Australian Border Force (ABF), WCQ and the LHLCU shared intelligence and conducted joint operations in the fruit picking industry in Queensland. Compliance actions by LHLCU in relation to labour hire agencies connected to this operation included withdrawing or refusing 16 licence applications and cancelling three licences, ensuring those businesses are not permitted to provide labour in Queensland. The action demonstrates our joint commitment to ensuring a level playing field for all businesses by tackling illegal phoenix activity, tax evasion and the operation of the black economy.

Case study 4 – Work with Australian Border Force and Fair Work Ombudsman

Vegetable picking

Following a complaint that workers picking onions in the Southern Downs region were being mistreated, ABF, FWO and LHLCU officers attended the farm.

As a result of that activity and subsequent investigations, a range of issues regarding compliance with employment and migration laws were found. In addition, it was discovered that an unlicensed labour hire provider was fraudulently issuing invoices using the name of a licensed provider.

As a result:

- the licence of one labour hire provider was cancelled
- the unlicensed provider will be prosecuted
- referrals will be made to other relevant authorities in relation to alleged fraud by the unlicensed provider.



Case study 5 – Work with the Victorian Labour Hire Authority

As the Victorian Labour Hire Licensing Scheme has been implemented, the Queensland and Victorian Authorities have worked together to share data, intelligence and information about compliance risks. Around 22 per cent of labour hire providers in the Queensland base have also made a labour hire application in Victoria. There is significant crossover in the agriculture industry as labour hire providers travel between states to service the seasonal crops throughout the year. The two regulators have also started to work together through joint investigations and information sharing as permitted by law.

Non-compliance behaviours

The following compliance behaviours have continued, although to a lesser extent in the second year of the scheme:

- Disengagement and failure to provide the relevant compliance information relating to relevant laws resulting in withdrawal of labour hire application (17 per cent of those audited, compared to 25 per cent in the first year).
- Concerns about the identity of the person who represents the business and the practice of using corporations and their business trappings such as ABN and bank accounts, where the official director is no longer in the country, or rapid changes to ownership and directorship between temporary visa holders.

LHLCU also has observed unlicensed people purporting to ‘use’ another person’s labour hire licence to invoice users.

Licensed labour hire providers are warned that this practice is an offence under the Act, which is likely to lead to cancellation of their licence and prosecution.

It may also amount to fraud and unlawful use of another person’s ABN which will be referred to QPS and the ATO. The person ‘using’ the labour hire licence also commits an offence of unlicensed providing or use of an avoidance scheme under the Act and faces prosecution. Warnings have been issued generally about this practice to labour hire providers and through stakeholder groups.

A further behaviour observed has been to incorporate entities with names suggesting that they are in the administration or care sector, with declarations about industries supplied also reflective of administrative services, aged care or nursing. Two providers have subsequently been found to be supplying agricultural workers only on local farms. One of those matters has resulted in a licence being surrendered, while the other has resulted in cancellation of the licence. A further matter is still under investigation.

LHLCU continues to investigate all complaints and refer matters where appropriate to relevant agencies. Complaints relating to unlicensed providers under the Act are fully investigated, with a number currently being considered for prosecution.

A total of 256 complaints have been resolved in the second year. Often multiple complaints relate to the same provider, which helps inform the risk profile of that provider for work prioritisation. There has been significant continued support from the community, other regulators, competitors and users of labour hire to ensure that unlicensed labour hire providers and unscrupulous operators are reported to LHLCU.



3. Prosecutions under the Act

The LHLCU Compliance and Enforcement Policy is published on labourhire.qld.gov.au.

By commencing a prosecution, the LHLCU aims to change the behaviour of the offender and deter future offenders. Prosecution in appropriate circumstances sends a message to the community that breaches of legislative obligations will be enforced through the courts. Several successful prosecutions were finalised during the second year of the scheme, with other matters currently under consideration.



Case study 6 – A&J Group Services Pty Ltd

A&J Group Services Pty Ltd (A&J) was fined \$60,000 on 18 June 2019 in an Australian-first conviction of a company supplying workers to a business without a licence to do so.

A&J was found guilty and fined in the Stanthorpe Magistrates Court for operating without a licence under the Labour Hire Licensing Act 2017. Operating without a licence carried a maximum penalty for a corporation at that time of \$391,650.

A community member tipped off the LHLCU that A&J was still supplying workers after having its licence application withdrawn for failing to provide information about its compliance record.

A&J was warned in writing that its application had been withdrawn and that it was no longer permitted to provide labour hire services in Queensland.

However, for a period up to 15 January 2019, A&J supplied workers to a strawberry farm in Cottonvale.

In sentencing, the magistrate commented that although it was a first offence, the labour hire provider had pursued a deliberate course of conduct as it had been warned it was not permitted to provide labour hire services in Queensland.

He also noted the defendant had not cooperated with the investigation and his failure to appear in court was a continuation of that behaviour.

Case study 7 – J&Jub Harvest Pty Ltd, Kleen Holdings Pty Ltd and Hongsub Ji

On 16 October 2019, there were three successful prosecutions in the Caboolture Magistrates Court showing that unlicensed and unscrupulous operators will be caught and dealt with under labour hire licensing laws.

J&Jub Harvest Pty Ltd was convicted and fined \$75,000 for operating without a licence under the Labour Hire Licensing Act 2017.

Hongsub Ji, the sole Director of J&Jub Harvest Pty Ltd was also convicted and fined \$25,000 – with 180 days imprisonment in default of payment – for counselling, procuring or aiding the commission of the offence.

This was the first time a director has been prosecuted under the Act as a party to the offence, and also the first time a user has been prosecuted.

The court also found Kleen Holdings Pty Ltd guilty and fined the company \$50,000 for entering into an arrangement with the unlicensed J&Jub Harvest Pty Ltd to provide them workers.

Workers tipped off the LHLCU by making complaints that they were not being paid for their work picking berries.

J&Jub Harvest Pty Ltd did not apply for a labour hire licence and was warned in writing that it was not permitted to provide labour hire services in Queensland.

However, they continued to supply workers to Kleen Holdings Pty Ltd to work on a strawberry farm in Beerwah.



Case study 8 – Monstershield Pty Ltd

On 12 November 2019, Monstershield Pty Ltd was convicted in the Emerald Magistrates Court for providing unlicensed labour hire and was fined \$60,000. Monstershield was an applicant for a labour hire licence, but had its application withdrawn on 7 December 2018, and was warned in writing that it was not permitted to provide labour hire services in Queensland from that date.

However, it continued to supply workers to work on a table grape farm in Emerald after that date.

Case study 9 – Yellow Hoa Pty Ltd

Yellow Hoa Pty Ltd was convicted and fined \$120,000 in the Caboolture Magistrates Court on 25 March 2020 for operating without a licence under the Labour Hire Licensing Act 2017, the highest penalty imposed to date.

Director Thi Hoa Duong was also convicted of aiding, counselling or procuring that offence. She was fined \$60,000, with six months' imprisonment in default of payment.

The court action followed a raid on an Elimbah farm by officers from the LHLCU, ABF and WHSQ, who had been tipped off by a member of the public about the exploitation of workers at the property.

Investigations found workers were paid in cash at rates well below the award and weren't paid superannuation. WCQ confirmed that at the time, Yellow Hoa had no workers' compensation policy in place to safeguard employees. As a result, Yellow Hoa and its director benefitted financially from deliberately failing to comply with a range of laws.

Yellow Hoa did not apply for a labour hire licence in Queensland, but still illegally provided labour to the farm at Elimbah for a six-month period until 18 June 2019.

In sentencing, Magistrate James Blanch noted the behaviour of the defendant not paying workers properly or paying their superannuation or workers' compensation despite having received funds from the grower was blatantly fraudulent. Additionally, Ms Duong had not cooperated with inspectors and attempted to evade liability by deregistering the company as investigations started.

The significant fines totalling \$180,000 are a stark reminder that those businesses and individuals who exploit labour hire workers risk facing the full brunt of the law.



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