



/ JANUARY 2025

T H E M C K E L L I N S T I T U T E

Licensing Labour Hire

PROMOTING A NATIONAL LABOUR HIRE LICENSING
SCHEME WHICH PROTECTS AUSTRALIAN HORTICULTURE
WORKERS AND SUPPORTS BUSINESSES



The McKell Institute is an independent, not-for-profit research organisation dedicated to advancing practical policy solutions to contemporary issues.

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About the report

This report has been commissioned by **Woolworths** and the **Retail Supply Chain Alliance**.

About the authors

ED CAVANOUGH is the Chief Executive Officer at the McKell Institute

MAX DOUGLASS is a Policy Analyst at the McKell Institute.

Acknowledgement of country

This report was written on the lands of the Darug and the Eora Nations and on Ngunnawal Country. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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Foreword

Labour hire providers (LHPs), such as those across Australia's horticulture sector, play an important and legitimate role – allowing employers to access workers in a way that reflects the seasonal nature of horticultural work. But exploitation of labour hire workers at the hands of a minority of LHPs has necessitated the development of a National Labour Hire Licensing Scheme to ensure malpractice is rooted out of the industry.

Over recent years, a series of exposés into nefarious employment practices by a minority of LHPs have highlighted the inadequacies of current regulatory schemes. Major investigations such as the Migrant Worker Taskforce have cited misuse of labour hire employment models as a driver of exploitation in the horticulture industry.

The McKell Institute has previously explored this kind of exploitation firsthand. Our 2020 investigative report, *Blue Harvest*, documented extreme cases of exploitation in horticulture, and cited the malpractice of individual LHPs as one driver of exploitation.

Extreme exploitation is rare, and most horticulture employers and LHPs do not engage in malpractice. However, exploitation has been common enough to lead governments, unions and employers to agree that better regulation of the labour hire industry is required.

Ahead of its election in May 2022, the Albanese Government committed to establishing a national labour hire licensing framework in government.

In June 2023, Commonwealth, State and Territory Ministers with responsibility for industrial relations and workplace health and safety convened to develop a harmonised national labour hire licensing model.

In December 2023, the Commonwealth, and all states and territories except Tasmania and Northern Territory, agreed in principle to establish a NLHR. Throughout 2024, Ministers have continued to explore design details of the proposed regulator.

Four jurisdictions – Queensland, Victoria, the ACT and South Australia – already have some form of labour hire licensing scheme in place.

This report details the need for the NLHR, using the horticulture industry as a key research-backed example, along with tailored design attributes, sustainable funding, and ongoing review mechanisms to effectively regulate and protect labour hire workers, particularly in high-risk industries, ensuring the scheme best supports better protection for workers.



ED CAVANOUGH
CEO, MCKELL INSTITUTE

Executive Summary

This paper has been written to promote a National Labour Hire Regulator (**NLHR**) and Licensing Scheme which protects Australian labour hire workers and supports businesses, emphasising its significance in safeguarding the rights and well-being of workers while also providing essential support for businesses utilising labour hire services. By establishing such a scheme, it seeks to address prevalent issues of unfair labour practices and informal labour arrangements, while simultaneously fostering a conducive environment for sustainable growth and development within the horticulture industry.

At the end of 2023, the Federal Government struck an historic agreement to advance the establishment of a NLHR and Licensing Scheme.

The exact nature of the scheme is yet to be determined. But the agreement by almost all states, territories, and the Commonwealth to establish a scheme that would begin to protect workers engaged through labour hire services from exploitative behaviour, and clamp down on providers doing the wrong thing, is a welcome step.

As labour providers for a range of businesses, LHPs play a critical role in the economy. Many industries rely on short-term itinerant labour to meet labour demands, and LHPs can meet this employer demand while also providing opportunities to hundreds of thousands of Australian and migrant workers. Host enterprises frequently utilise labour hire arrangements, in preference to direct hiring, as a means to manage surges in labour demand.²

In recent years, however, low quality (and in some cases entirely absent) regulatory

frameworks within the labour hire industry have seen unscrupulous actors enter, taking advantage of loopholes to exploit workers.

This has been well documented in Australia's horticulture sector, which relies on LHPs due to its seasonal demands and regional and rural locations. The sector's LHP worker cohorts are often migrant workers, who may be more vulnerable to exploitation than other workers as they may be unaware of their working rights, or less able to claim them.

LHPs are bound by the same legal responsibilities as other businesses in Australia, encompassing workplace relations, taxation, superannuation, and migration laws. Despite the majority of LHPs adhering to these regulations and conducting their operations lawfully, various reports, inquiries, and investigations have uncovered instances where certain LHPs are failing in their duties as employers. This has resulted in the deprivation of workers' lawful entitlements, particularly in the horticulture industry.³

As a response to these contraventions in horticulture and in other industries,

governments began establishing labour hire licensing regimes at a state and territory level. Between 2018 and 2021, Queensland, Victoria, South Australia and the ACT established their own models. Upon its election in 2022, the Commonwealth Government committed to establishing a national scheme.

The vast majority of LHPs, as well as horticultural companies utilising their services, operate lawfully and with integrity. However, when labour hire operators or horticulture businesses violate workplace laws or standards, sometimes intentionally, it damages the reputation of both industries. This unfair reputational risk affects the majority of firms that abide by the law.

As all Australian governments now enter the design and implementation phase of the NLHR, this report advances considerations for governments with respect to the proposed scheme and how it should operate for the horticulture sector.

Part 1 of this report begins by briefly reiterating the rationale behind LHP licensing, highlighting the need exposed in horticulture through extensive research by the Mckell Institute. It notes the myriad of investigations that have found the industry lacking suitable regulatory protections, which have harmed both the interests of workers and those of most compliant LHPs and horticulture businesses. It also notes the effect that exploitation has on Australia's supply chain integrity, outlining how protections around LHPs themselves, and the engagement of LHPs by businesses across the horticultural supply chain can address this.

Part 2 then examines the status quo with regards to LHP licensing in Australia and documents the reform process that is currently underway. It notes the varying design differences between existing state and territory regimes and summarises the reform priorities the Commonwealth advanced in 2023, which state and territory governments have subsequently committed to furthering.

Finally, Part 3 of this report outlines various principles and design factors that state and territory governments should consider to ensure the national scheme is effective at meeting its objectives, with a particular focus on its applicability to the horticulture sector. The NLHR will issue licenses universally across all industries where LHPs are present. This is welcome. There are, however, specific attributes inherent to the horticulture sector that should be considered in the design of the NLHR. The remote geographic realities and seasonal nature of horticulture, as well as its interaction with migrant labour programs, require a bespoke implementation and enforcement approach to ensure licensing is effective.

A **National** Labour Hire Regulator and Licensing Scheme will soon be a reality for Australia in all industries. This will represent a major step towards eliminating exploitation in Australian workplaces. There remain, however, specific design considerations for the national scheme that governments must explore to best protect workers and businesses.

Key Recommendations

RECOMMENDATION 1

The Commonwealth should commit to having a National Labour Hire Regulator in place and operating by the end of 2025

The NLHR should be operational by the end of 2025, even if some states or territories choose to enter into it at a later time.

In December 2023, all states and territories agreed in principle to establish the scheme.

Despite reservations on the part of Tasmania and the Northern Territory, there is currently a remarkable degree of consensus across jurisdictions as to the need to establish the NLHR and Licensing Scheme, and this goodwill should be acted on.

Commonwealth, state and territory ministers should commit, at their first meeting, to a commencement date of the NLHR, with provision for later entry into the scheme for jurisdictions if needed. This date should be *no later than December 2025*.

RECOMMENDATION 2

The NLHR should consider a suite of horticulture-specific design attributes, as detailed in Part 3 of this report

A National Labour Hire Licensing Scheme should be applied universally to all industries in which labour hire services are present.

There are, however, specific challenges associated with the enforcement and

implementation of such a scheme in the horticulture sector. In Part 3, this report considers a suite of horticulture-specific design features that governments should consider as they move towards the establishment of a national scheme.

These specific features include inter-jurisdictional cooperation for cross-border growing areas, financial viability tests for horticultural licensees, and considerations tailored to the industry's migrant workforce.

RECOMMENDATION 3

Ensure a sustainable and specific funding stream for enforcement of the national labour hire licensing regulation in horticulture

Given challenges with labour rights enforcement in the horticulture industry's many remote and regional workplaces, a commitment of sufficient and long-term funding for proactive enforcement of the licensing framework is required.

This report recommends that labour hire licensing be universal, in that it covers all industries rather than just high-risk industries such as horticulture.

Although each industry will pose discrete enforcement requirements, the NLHR should be allocated sufficient resources to ensure enforcement efforts within horticulture, in particular, are sustainable, given the expected additional costs to enforcing the regulations in rural and remote horticulture settings.

RECOMMENDATION 4

Implement ongoing reviews of the efficacy of the NLHR and Licensing Scheme in Horticulture

Ministers should establish a process for ongoing reviews of the scheme's operation, both in general and specifically within the horticulture sector.

Reviews should begin 12 months after the commencement of the regime and should continuously assess the scheme's impact and compliance with its guiding principles.

Special attention should be given to identifying instances where firms circumvent the licensing regime or offer services similar to labour hire without proper licensing.

These ongoing reviews should draw insights from the experiences of horticulture workers and growers on the ground, particularly those participating in programs like the Pacific Australia Labour Mobility (**PALM**) Scheme and the Working Holiday Maker (**WHM**) program, who are frequently targeted by exploitative practices.

RECOMMENDATION 5

Emphasise the fundamental importance of Regulator and Scheme consistency across all states and territories

Ensure that all states and territories, including TAS and NT, are in agreement with the implementation of a NLHR and Licensing Scheme. TAS and NT are susceptible to the risks associated with unlawful labour hire practices.

Failure to achieve recognition and participation from TAS and NT would create loopholes in the regulatory framework, allowing unlawful labour LHPs to operate with impunity. This would not only undermine the effectiveness of the scheme but jeopardise the rights and protections of workers within these regions. Therefore, it is recommended that efforts be made to engage TAS and NT in discussions regarding the establishment of the National Scheme. This may involve addressing any concerns - in relation to scheme design, resourcing and otherwise - as well as providing information regarding the benefits and effectiveness of the scheme. Collaboration and consensus among all states and territories are essential to ensure a unified and robust approach to combating unlawful labour hire practices and protecting workers' rights across Australia's industries and regions.

Universal agreement would also mean the scheme is adequately funded, and may avoid unfairly penalising legitimate operators in the states that do the right thing and sign on upon the NLHR's establishment.

Key Recommendations *CONTINUED*

RECOMMENDATION 6

Ensure the Model Law for the NLHR includes an Objects Clause that specifies the key purpose of the scheme is to eliminate exploitation

Objects clauses are important legal statements within laws that carry both symbolic and practical importance with respect to the way in which that law is interpreted or implemented, helping to maintain its integrity and public confidence.

An Objects Clause is typically articulated at the commencement of an Act and outlines the underlying purposes of the legislation. It can be used to resolve uncertainty and ambiguity around how the Act is interpreted.

The establishment of a NLHR and Licensing Scheme will bring many benefits: it will streamline licensing across the country, create operational consistencies for firms across jurisdictions, and protect horticulture employers from engaging inadvertently with nefarious actors. It is critical that the Objects Clause specifies that an overarching objective of the law will be to eradicate exploitation and protect labour hire workers' rights.

An Objects Clause would serve to uphold a level playing field for businesses and promote transparency and accountability and encourage compliance through behavioural change. The specification of this intent will also provide practical benefits in terms of implementing the law, in the instance of legal dispute, and provide symbolic importance.

RECOMMENDATION 7

The NLHR should establish a team dedicated to horticultural enforcement within the regulator

This report advocates for the universal application of LHP licensing across all sectors, in all states and territories.

However, it also notes the distinct challenges evident within the horticulture sector in terms of enforcement and implementation, particularly in jurisdictions that currently have no labour hire licensing regime.

It also notes the heightened risk of exploitation inherent within the horticulture sector as a by-product of the seasonal and regional nature of the work.

Given these attributes, the NLHR should establish a dedicated team charged primarily with overseeing the implementation and compliance of the scheme within the horticulture sector, as well as performing the reviews of the Scheme's efficacy as outlined in Recommendation 4. Members of this dedicated team could serve as a point of contact for industry and workers in horticulture that are seeking specific information about the licensing regime with respect to the sector.



Part One:

The Role of Labour Hire in Horticulture and Its Exposure to Exploitation

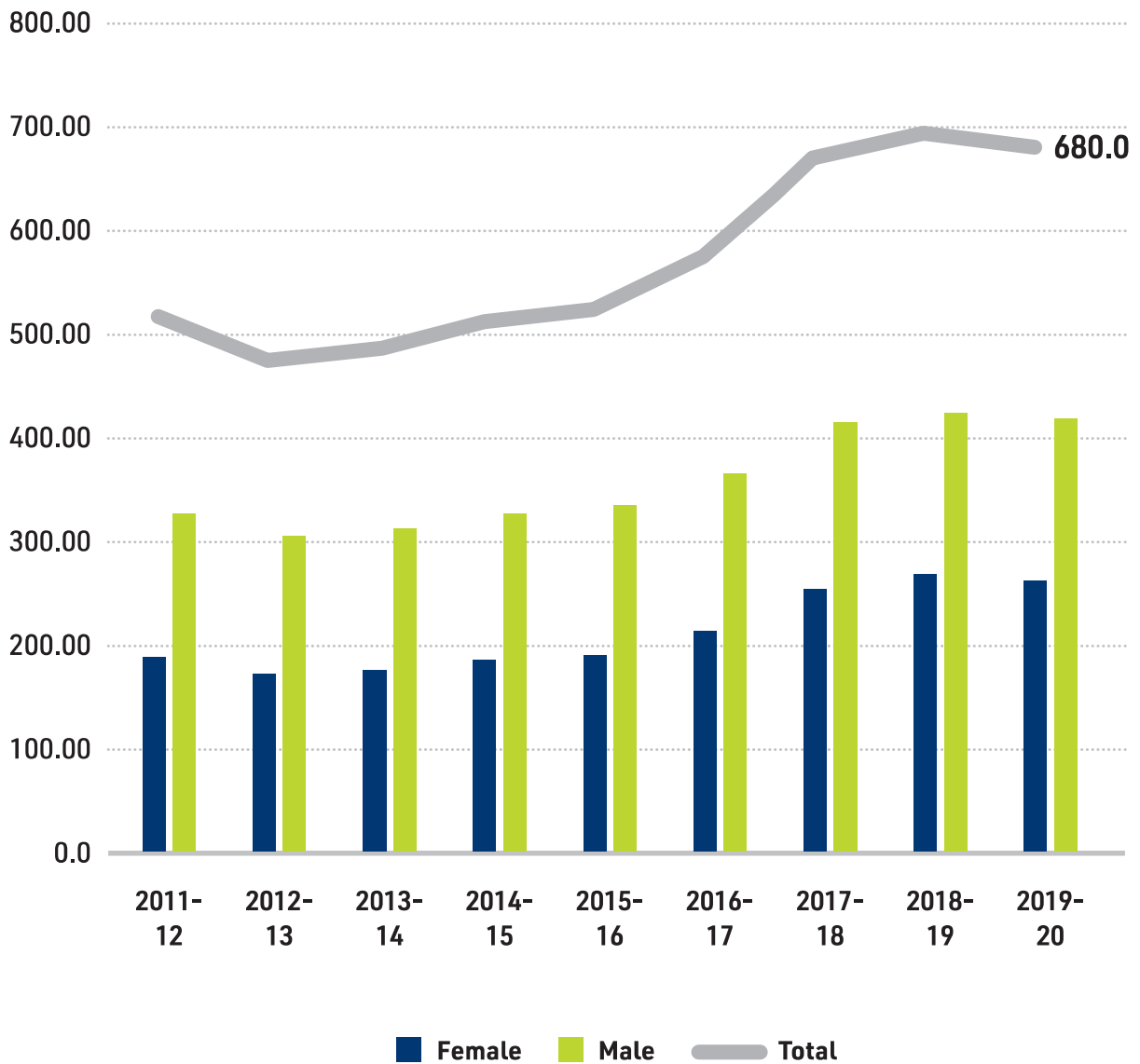
KEYPOINTS

- 1** LHPs play a critical role in Australian horticulture due to the seasonal nature of work and the need for rapid deployment of workers, including the ability for growers to flex their labour needs up and down according to weather conditions
- 2** Current domestic labour shortages in Australia, particularly in rural regions where farms are located, mean LHPs are even more important to horticulture than they have been in the past
- 3** Relatively lax regulations for LHPs have seen the model exploited by a minority of actors, prompting reforms at the state, territory and Commonwealth levels
- 4** Phoenixing and unethical behaviour by some actors in the labour hire industry have resulted in cases of wage theft and worker exploitation that have damaged the reputation of an otherwise reputable industry
- 5** Growers have also noted that smaller LHPs often lack awareness and understanding of relevant laws and regulations
- 6** Migrant workers are commonly engaged by LHPs; this cohort of workers may not be as wellversed in Australian labour laws, face language barriers, and encounter cultural differences and difficulties accessing support services - resulting in a lack of understanding of their working rights and a reluctance to voice concerns

LABOUR HIRE HAS A GROWING AND IMPORTANT ROLE IN AUSTRALIA'S LABOUR MARKET

LHPs have come to play a significant role in Australia's workforce over recent decades (see Figure 1). The number of workers in Australia employed via LHPs has grown over the past decade from slightly over 500,000 to 680,000 according to data released in 2022,⁴ which recorded labour hire participation until the COVID-19 pandemic.

FIGURE 1
TOTAL COUNT OF WORKERS AND GENDER BREAKDOWN IN LABOUR HIRE PROVIDERS, 2011-2020⁵



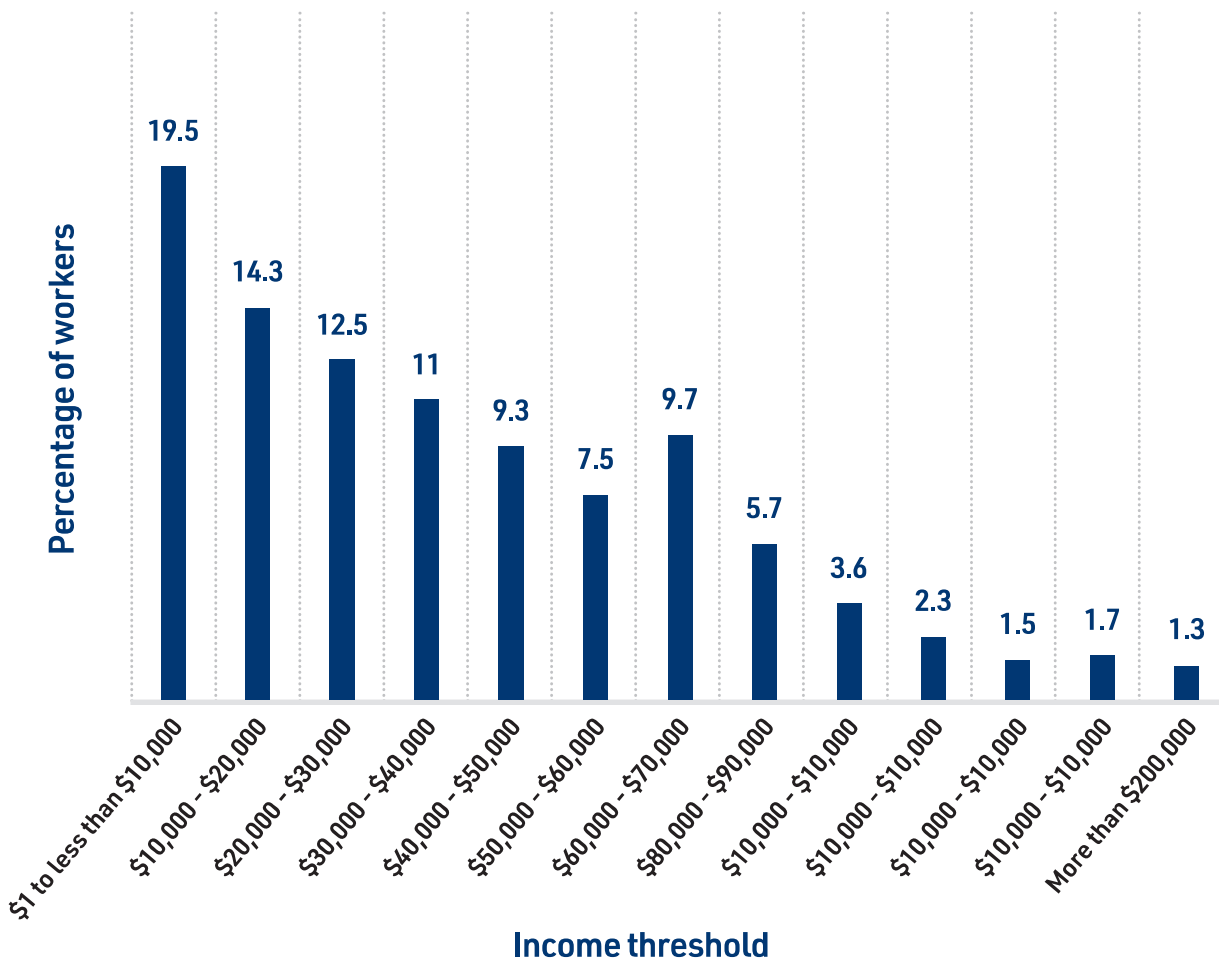
Despite several high-profile controversies, LHPs do have a genuine and critical role to play in meeting labour demand in various industries.⁶ This is particularly true for industries exposed to seasonal spikes in activity generating spikes in demand for labour. This is evident in sectors such as tourism, hospitality, entertainment (such as events and festivals) and especially horticulture, and agriculture more broadly.

Broadly, in June 2023, the labour supply services industry employed 327,100 individuals, with 270,500 (82.7 per cent) considering it their primary occupation. This figure represents 2.3 per cent of the total employed population. Australian Bureau of Statistics (ABS) data from August 2022 indicates that 81.2 per cent of

labour hire workers held full-time positions.⁷ However, a significant portion, 83.6 per cent, did not have access to paid leave entitlements, and 18 per cent expressed a preference for additional work hours during the same period. In terms of demographics, in the 2020-21 period, 62 per cent of those engaged in labour supply services were men, and 23.7 per cent worked as labourers.⁸

During 2020-21, the median annual earnings (from their primary job) for individuals working in labour supply services stood at \$35,337. About 18.2 per cent of those employed in this sector earned less than \$10,000 during the same period, while 10.4 per cent earned between \$60,000 and \$80,000 (see Figure 2).⁹

FIGURE 2 COMPOSITION OF LABOUR HIRE WORKFORCE BY ANNUAL EARNINGS OF WORKERS ENGAGED IN LABOUR HIRE¹⁰



What can be observed in Figure 2 is that a significant portion of labour hire workers fall into the lower income brackets. Further, 50 per cent of these labour hire workers earn less than \$50,000 per year.¹¹ This low rate of pay doesn't necessarily imply underpayment. Instead, it reflects the fact that many labourers are hired temporarily or seasonally and may only work for a LHP for a matter of months. This is especially true when it comes to the horticulture sector, where a glut in employment opportunities coincides with harvest and cannot be sustained year-round.

LABOUR HIRE PLAYS A CRITICAL ROLE IN HORTICULTURE

The horticulture sector is particularly dependent on labour sourced through labour hire providers. Due to the seasonal nature of crops and harvest deadlines that may evolve due to environmental factors, the horticulture industry relies heavily on short-term, itinerant surge labour. Peaks in labour demands are required typically around planting, pruning and harvest. Given the unique and inherent nature of this labour demand, as well as the difficulty of enticing local labour to participate in the sector, LHPs are essential for many farmers.

Some Australian horticulture businesses also rely on LHPs to manage practically every aspect of workers' employment – from recruitment and human resources to payments, superannuation and other responsibilities. LHPs that are Approved Employers deliver administrative services required to ensure farms are compliant with requirements under the Pacific Australia Labour Mobility (PALM) Scheme, in addition to Working Holiday Maker (WHM) Program and Australia's wider industrial relations and work health and safety frameworks.

Furthermore, for many horticulture businesses, the remote locations in which they operate see them required to provide accommodation, food, and transport to workers, in addition to employment. These ancillary offerings can be challenging for some employers to provide. To meet this need, they turn to LHPs offering a 'one-stop-shop'. LHPs have thereby come to play a critical and multifaceted role in meeting labour demand in agriculture, to the extent that labour hire has been described as a 'structural element of the horticultural industry'.¹²

LHP WORKERS WHO ARE MIGRANTS ARE INHERENTLY VULNERABLE

The majority of workers employed through LHPs in the horticulture sector are migrants. Migrant workers face inherent vulnerabilities to exploitation, such as a poorer familiarity with their rights at work, language barriers, and a reliance on visas that carry employment. Not only that, but migrant workers may also seek employment, whether through LHPs or with other employers, without acquiring the necessary legal status, which leaves them further open to exploitative practices.

Temporary migrant workers are in Australia on short-term visas with work rights, such as those possessing PALM or WHM visas. These workers may not only face many of the same barriers as other migrant workers, such as language and cultural barriers, racism, and difficulties accessing support services. They are also obliged to adhere to visa rules and conditions that can render them unduly dependent on their employer. These may include conditions that make it difficult to switch employers, that require employer approval to extend their visa, and that restrict the number of hours that can be worked in a fortnight.¹³

THE HORTICULTURE INDUSTRY HAS A PROBLEM WITH 'UNSCRUPULOUS' LABOUR HIRE PROVIDERS

Despite the largely positive role played by LHPs in Australian horticulture, recent years have seen multiple incidences unscrupulous activity, by LHPs who have employed workers at rates of pay contravening award conditions.¹⁴

For example, at the end of 2023, one LHP operating in the horticulture sector, was penalised with a fine exceeding \$600,000 due to its misconduct in underpaying and mistreating workers. AL Star Express was discovered to have also knowingly and repeatedly violated the Labour Hire Licensing Act in Victoria by providing workers to horticulture businesses without possessing a labour hire license. The international workers, some of whom had limited English proficiency, received wages as low as \$17 per hour.¹⁵

This fine was the largest penalty ever imposed in Australia under labour hire licensing regulations. Labour Hire Authority Commissioner Steve Dargavel emphasised that the labour hire company had taken advantage of workers who were vulnerable due to language barriers and visa status. He stressed the importance of rigorously vetting and licensing companies that employ labour hire workers involved in fruit and vegetable picking, as they are among the most vulnerable.¹⁶

Moreover, a minority of LHPs engage in unlawful activity such as phoenixing – where a company is liquidated, wound up, or abandoned to avoid paying debts, and a new company is started to continue the same business activities.

In 2019 the Migrant Workers' Taskforce noted

the problems associated with labour hire in the industries most vulnerable to exploitation, including horticulture. It argued that 'the main driver of unscrupulous labour hire operators is to lower labour costs and associated charges and gain a competitive advantage.

In high-risk sectors, the work is intensive and low-skilled, and labour costs are a significant part of the overall business costs. Reducing labour and operating costs is a way of increasing the labour hire operator's profit margin'.¹⁷ With regard to horticulture specifically, the taskforce highlighted that 'due to the nature of the work, its location, the high prevalence of working holiday visa holders and unlawful non-citizens, and the complex interplay with supply chains, many of the characteristics of unscrupulous labour hire business models can be found in this sector'.¹⁸

POOR LABOUR HIRE OVERSIGHT IN AUSTRALIA PRESENTS RISKS TO RETAIL SUPPLY CHAINS

Retail supply chains are complex, with many domestic and international entities involved. In this context, businesses attempting to mitigate supply chain risks and meet responsible sourcing objectives can face challenges.

The Commonwealth Parliament's *Modern Slavery Act 2018* (Cth) (The Act) came into force on 1 January 2019. The Act requires large companies that operate in Australia to report on how they are identifying, addressing, and remediating modern slavery risks in their operations and supply chains. Importantly, companies must also report on the effectiveness of their interventions and how they will address gaps identified and mediate evolving modern slavery risks.

The Act requires companies that have a consolidated revenue of \$100 million or more

to produce annual reports – known as a ‘Modern Slavery Statement’ – to the Minister for Home Affairs. These reports are made public, both through the Australian Border Force’s Modern Slavery Business Engagement Unit’s online repository and via companies themselves as a means of demonstrating compliance with the Act and a commitment to corporate social responsibility.

It is evident that retailers are conscious of the risks their business and supply chains are exposed to in relation to modern slavery, and there appears to be genuine and concerted effort to identify and mitigate these risks. In 2022 and 2023, Australian retailers were ranked among the top companies and retailers globally in external benchmarks assessing companies’ human rights programs and responses to forced labour.¹⁹

Modern slavery statements published by Australia’s largest retailers consistently call out the risks that labour hire presents in relation to modern slavery.²⁰ For example, Woolworths Group’s 2022 Modern Slavery Statement expressly details its efforts to ensure LHPs within their supply chains are legitimate operators and that workers are not facing exploitation.²¹

These modern slavery statements also identify retailers’ reliance on state licensing schemes to both identify and bar nefarious labour hire actors, and to highlight governance controls, education and partnerships formed with supply chain partners to prevent misconduct by LHPs. But retailers and their suppliers’ ability to combat undesirable practices in supply chains are increasingly undermined by inconsistency between jurisdictions with licensing schemes, and an outright lack of licensing in many jurisdictions.

Woolworths Group’s statement notes that its 2022 verification process had identified

257 unique LHPs operating in its horticulture supply chains – 15 of which were identified as having had their licence cancelled or refused, and 23 of which were unable to be verified as meeting requirements. Coles Group’s 2022 Modern Slavery Statement outlined the positive outcomes for workers and their employers that can be produced through the elimination of unscrupulous LHPs from the supply chain.²²

Small growers represent a sizable proportion of the horticulture industry, which is composed of over 12,100 businesses.²³ Australian Bureau of Agricultural and Resource Economics (ABARES) data on the output share of cropping farms – a relative measure of farm size and sophistication – indicates that the top 30 per cent of the farms accounts for almost 70 per cent of total crop output.²⁴ This suggests that a large portion of the industry is likely made up of smaller farm operations. Unscrupulous labour hire operators also impact the efforts of actors in the horticultural supply chain to meet obligations under the *Modern Slavery Act 2018* (Cth). The sector – and especially its many small operators – does not have sufficient resources or information to effectively deter unscrupulous operators, even with ongoing support from major retail partners.

In this context, inconsistent LHP licensing cannot satisfactorily address the serious risks nefarious LHPs present to vulnerable workers and business in Australia.

Part Two:

Existing Approaches to Labour Hire Regulation at State and Territory Levels and why a National Reform is supported

KEYPOINTS

- 1** A lack of Commonwealth legislation regulating labour hire saw four state and territory governments establish their own approaches in recent years. This has created a regulatory patchwork where some workers are arbitrarily more vulnerable to exploitation based purely on their state of residence.
- 2** To prevent labour hire regulation loopholes, all States and Territories need to participate in a uniform NLHR and Licensing Scheme
- 3** In December 2023, governments agreed in principle to the establishment of a NLHR, superseding existing state schemes, to be designed in 2024.
- 4** Having generally agreed to the establishment of a National Scheme, governments are now considering the design attributes of such a scheme.

The detrimental effects of non-compliance with legal obligations and of worker exploitation by some LHPs extend beyond individual workers, tarnishing public perceptions of the industry and adversely affecting compliant businesses.

Three key reports shed light on the challenges within the labour hire industry:

1. The Black Economy Taskforce report of October 2017 highlighted the growing complexity of the sector and instances of LHPs engaging in illicit practices, such as tax evasion, underpayment of wages, and links to criminal activities, especially in horticulture and security.²⁸
2. The Migrant Workers' Taskforce identified the exploitation of migrant workers by LHPs, driven by factors such as lower labour costs, competition, and the desire to circumvent regulatory requirements. Non-compliance took various forms, including wage underpayment, sham contracting, and illegal deductions.²⁹
3. The Select Committee on Job Security raised concerns about labour hire practices, including criminal activities, workplace safety issues, tax evasion, and exploitation of vulnerable groups. The committee recommended the implementation of a national licensing scheme covering all industries, mandating registration and ongoing compliance with legal obligations.³⁰

THE NEED TO LICENSE LABOUR HIRE PROVIDERS HAS BEEN RECOGNISED

Labour hire licensing has been established as a way to ensure that firms providing labour hire services are doing so in a way that meets a prescribed set of obligations and expectations.³¹ Requiring a licence to offer labour hire services helps ensure that the industry is not populated with entities that routinely contravene labour law or engage in exploitative practices as described in Part 1.

Queensland (2017), South Australia (2017), Victoria (2018) and the ACT (2020) all currently have labour hire licensing schemes. Western Australia has accepted in-principle the recommendation of its *Inquiry into Wage Theft in Western Australia* to establish a labour hire licensing scheme.³² The schemes require the LHP operating in the state or territory to apply for and maintain a licence to operate.

Each scheme broadly adopts the same approach—such as the overarching requirement that the holder be a ‘fit and proper person’—but there are differences in obligations, application requirements, licence durations, reporting requirements, and fees and penalties associated with non-compliance or contraventions.

The schemes established in Queensland, Victoria and the ACT apply across the entire labour hire industry. The South Australian scheme is currently limited only to the horticulture, cleaning, meat and seafood processing and trolley collection industries.

A REGULATORY PATCHWORK HAS EMERGED IN AUSTRALIA, NECESSITATING A NATIONAL APPROACH

The adoption of labour hire regulations by Queensland, South Australia, Victoria and the ACT are a welcome and significant step forward. But their existence has created a regulatory patchwork, which presents challenges as a national model is advanced.

As a result of the regulatory patchwork, LHPs operating across multiple jurisdictions face additional regulatory and financial burdens to both understand and ensure compliance

with the requirements of each jurisdiction in which they operate. This also involves paying licensing fees across each jurisdiction (all of which require an annual fee) and adhering to varying discordant reporting requirements and timelines.

Moreover, inconsistent and incomplete coverage creates operational loopholes and may incentivise unscrupulous behaviour. LHPs may seek to avoid licensing as a means of avoiding compliance costs, and instead seek to operate in states and territories where no or weaker licensing applies.

A comparison of each existing jurisdiction's labour hire licensing scheme has been compiled in *Appendix 1*.

PROGRESS TOWARDS A NATIONAL MODEL HAS BEEN GATHERING PACE AND SUPPORT

In 2022, the Commonwealth Government committed to advancing a national model for labour hire licensing. In recognising the challenges associated with merging existing schemes, and introducing labour hire licensing to schemes without any comparable regulations, the Commonwealth undertook a consultation process in early 2023.³³

Although the consultation process allowed for extensive feedback from respective parties, it also advanced certain Commonwealth preferences for the scheme. These included the universality of the licensing regime; a discussion around certain types of penalties (such as civil or criminal) that apply to differing contraventions; the way in which enforcement would be handled through the Fair Work Ombudsman (**FWO**); and a preference for 12-month licensing terms.

After this initial consultation phase, key employer groups and trade unions broadly offered support for the proposed establishment of a national scheme, furthering progress towards its establishment.³⁴

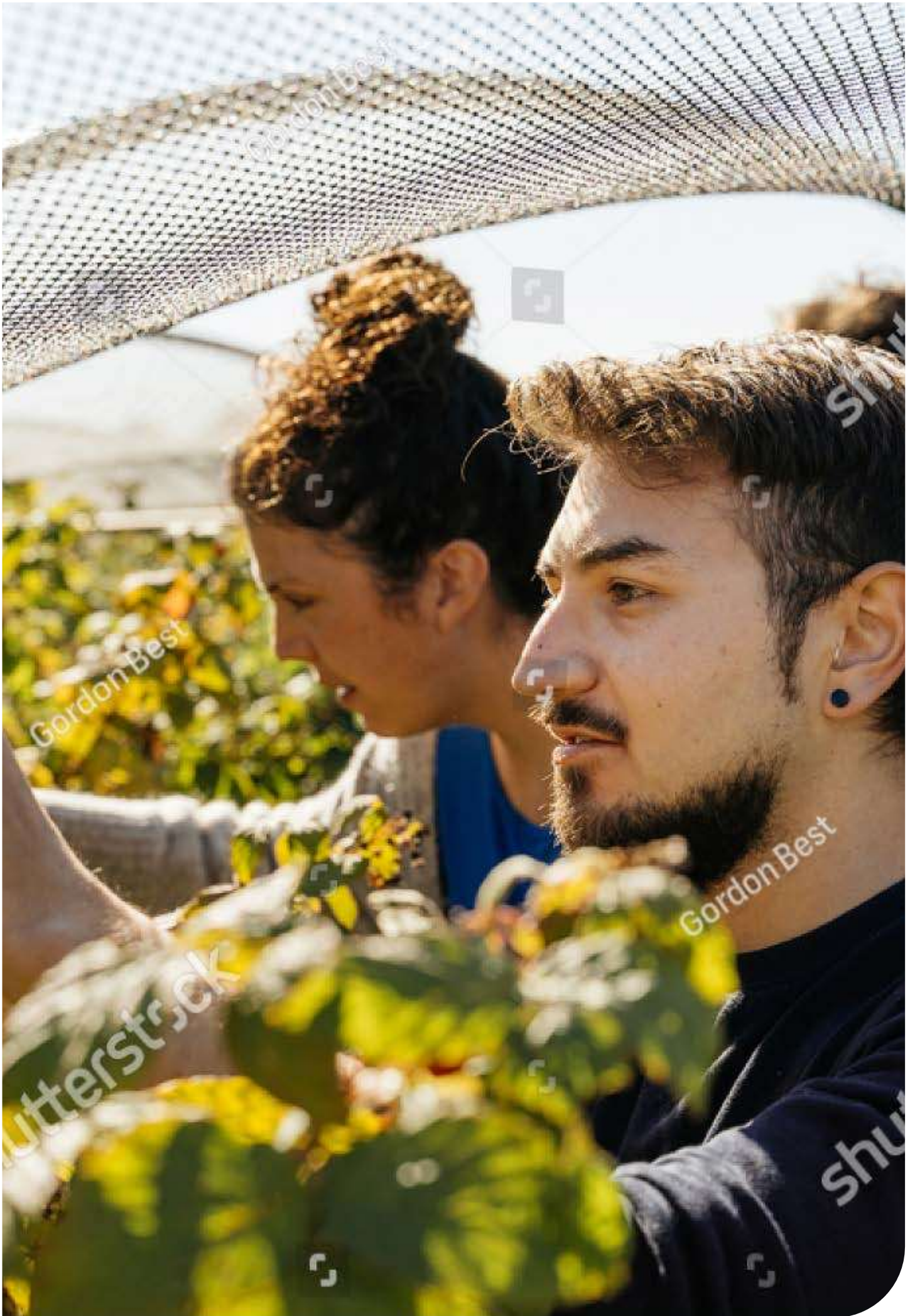
2023 MEETINGS OF IR MINISTERS CREATED PATH TOWARDS ESTABLISHMENT IN 2024

On 8 June 2023 Workplace Relations Ministers of Australian states and territories created the 'Labour Hire Harmonisation Working Group', led by Queensland and Victoria, to provide a model for harmonised labour hire regulation.³⁵

In December that year, the group delivered a proposed model aiming to 'meet Ministers' core objectives of ensuring protection of all workers and a level-playing field for business across the country'.³⁶ It advanced reforms that would ensure uniformity across state and territory laws and provide for mutual recognition of licenses – effectively superseding existing schemes and ending the regulatory patchwork. The proposed model was endorsed by all jurisdictions except Tasmania and the Northern Territory.

Also in December, Ministers agreed that Victoria would serve as the 'host' jurisdiction – responsible for the passage of the model law which would then be 'mirrored' by subscribing jurisdictions. As host, Victoria would also be tasked with establishing the NLHR.³⁷ Ministers further agreed to consult business, industry and unions and develop an Intergovernmental Agreement (**IGA**) to govern the proposed harmonised system.³⁸

On 20 June 2024, Workplace Relations Ministers convened for the second time in 2024, issuing a communique reflecting progress made towards the establishment of the labour hire regulator. That communique noted that the early work in establishing teams that will oversee the scheme's implementation was continuing, with progress to be discussed by the ministers at a subsequent meeting in December 2024.³⁹



Part Three:

Ensuring the NLHR and Licensing Scheme is effective and Works for Horticulture

KEY POINTS

- 1** The progress made so far by governments in agreeing to a national approach allows attention to now be turned to how the regulator can best be designed.
- 2** While universal coverage of the scheme is vital, there are also specific attributes of the horticulture industry that require tailored solutions.
- 3** This section details 18 attributes of the scheme that should be considered to ensure it is effectiveness for both horticulture employers and employees, to reduce exploitative practices, and decrease risks of modern slavery in Australia.

The progress governments have made in advancing a NLHR and Licensing Scheme is encouraging.

The 2023 commitments from most states and territories to advance the scheme now necessitates the conversation around labour hire licensing shift towards its specific design attributes.

This includes how governments can ensure a future national scheme is effective in protecting both workers from exploitation and businesses from engaging with unscrupulous labour hire operators.

Stakeholders must also make sure that the scheme is not so administratively burdensome as to be a handbrake on the labour hire and horticulture industries.

As Part 1 has detailed, there are specific considerations that need to be examined by regulators when it comes to ensuring the Licensing Scheme achieves its aims in horticulture.

This section considers a suite of design features, detailing how they could inform the establishment of a universal scheme that is also effective for horticulture.

These attributes support a framework incorporating verification audits of license holders against an established set of criteria or minimum standards. The overarching and resulting framework should prioritise worker protections at its foundation, as opposed to a system where LHPs merely obtain a license without prior screening checks and subsequent compliance audits.

DESIGN FEATURES FOR A UNIVERSAL SCHEME THAT APPLIES TO HORTICULTURE

1. *Worker-centred approach* — The scheme should openly specify its objective as protecting vulnerable workers

The widespread mistreatment of labour hire workers, as illustrated by the previous examples in Australia's horticulture industry, necessitates the incorporation of worker voices into the design process of the Licensing Scheme where possible.⁴⁰ This makes sense; worker protection is the primary goal of such a Scheme.

A governing principle should be adopted in the Model Law that specifically describes the purpose of the overall scheme is to protect vulnerable workers from exploitation and mistreatment. This could be achieved through the addition of a targeted Objects Clause at the beginning of the enabling Act.

While there are benefits to the majority of compliant LHPs in having a well regulated sector (for example, it will help remove nefarious actors from the industry who are both mistreating workers and undercutting legitimate firms), governments should ensure that the mission of the scheme remains, primarily, about protecting vulnerable workers' interests, drawing on the experience of the workers themselves.

It is further recommended that—as is typical with new regulatory bodies—the NLHR be subject to an in-built statutory review after its first few years of operation. Consistent with the purpose of the regime, this review should pay close attention to the experiences of workers under the regime in assessing its efficacy and considering prospects for reform and amendment.

2. Universality — The scheme should be universally applied to all industries, and all states and territories, while recognising the distinct challenges inherent to specific industries such as horticulture

LHP licensing should be applied to all industries, not just those where the risk of exploitation is highest. While this report has noted the distinct risks within horticulture, a principle of universality — i.e., labour hire licensing should be applied to all industries, not just those with the highest risk profile — should ultimately be adopted. This principle has been supported by the Commonwealth and is expected to be endorsed by all states and territories.⁴¹

3. Enforceability — The scheme must be appropriately enforced and supervised, especially when applied to industries like horticulture operating in rural and remote areas

Every jurisdiction must be able and willing to deploy adequate resources towards enforcing the minimum guidelines and ensuring both licensees and hosts (businesses who engage *LHPs* for workers) are fulfilling their obligations under a new scheme. The establishment of a national Licensing Scheme that covers all jurisdictions is essential, but will not alone prohibit unscrupulous activity in the labour hire industry, and particularly within horticulture.

All participating states and territories need to ensure that, once the Scheme is established, there are sufficient resources available to enforce licensing obligations on the ground in remote and rural communities where horticultural *LHPs* are operating. This will avoid the need for funding mechanisms whereby costs are passed on to growers.

Even with an established Licensing Scheme there remains the potential for certain actors to provide unlicensed labour hire-like intermediary services to hosts. Should such activity occur without being identified by authorities, the integrity and efficacy of a licensing scheme could be undermined. As such, the scheme itself should deal with how *LHPs* oversee and handle any subcontracting of services, as well as how they communicate this activity to the employer.

Enforceability is resource intensive, and governments should work towards establishing sustained funding streams to maximise enforcement of the scheme. The additional responsibilities that the FWO will undertake will likely further strain its already existing resources. FWO resources could therefore be augmented by state inspectors, or the NLHR could itself invest in proactive inspection capabilities.

4. Affordability — The scheme must not be too expensive to comply with for businesses

The costs of applying for a licence should not be prohibitively expensive so as to act as a deterrent for compliance or an unwarranted burden on the majority of *LHPs*. The NLHR will need to find a balance between setting licence fees that generate sufficient revenue which can then be reallocated into enforcing the licensing scheme, and ensuring licence fees are not punitive or a disincentive to entry into the industry and compliance overall. It is also critical that *LHPs* aren't able to simply pass on license costs to clients, and do so to multiple clients, as a means of revenue raising.

Some form of the tiered pricing structure seen in Victoria and Queensland (see Appendix 2) is recommended as a model

for the National Licensing Scheme. The application and annual/renewal fees are based on a business' payroll expenses and turnover respectively. This would mean that LHPs who are most frequently engaged for their services and/or those most able to pay, are those who are contributing the most to the NLHR and Licensing Scheme.

5. Renewability – Holding and renewing a license should be administratively simple for licensees that are compliant.

The process for compliant licensees should be as streamlined as practicable, minimising bureaucratic burden while maximising compliance. For licensees that have been compliant with all reporting obligations throughout the course of a license period, licenses could be automatically renewed upon payment of a renewed license, so long as key attributes of that licensee have not significantly changed over the license period. This would be consistent with the current South Australian approach, where a licence is granted indefinitely, subject only to an annual renewal fee.

6. Accountability – Licensees, should meet reasonable reporting requirements and host businesses engaging labour hire services conduct licence checks.

Licensees should meet reasonable reporting requirements, with significant penalties for providing false or misleading information. This information should include insurances, Director Identification Numbers, ABNs, the LHPs process regarding right-to-work checks, details of grievance mechanisms in place, the location and nature of accommodation and transport services provided, and a statement that they will not prohibit or discourage their workers from joining unions.

It is recommended that the NLHR and Licensing Scheme follow a combination of the Victorian and Australian Capital Territory (ACT) approach. This would require licensees, every 12 months or when their circumstances materially change, to provide information regarding the sites that workers have been provided to, the industries worked in, and to report any contraventions or incidents of workplace safety laws or accidents. When circumstances require it, like in the ACT model, the NLHR should be able to request information about matters relating to compliance with substantive obligations, and be granted auditing powers for suspected cases of severe breaches. LHPs should also be obligated to report to the NLHR any substantive changes to their operating structure, i.e., a change in their directors, nominated officers, business addresses, or other critical business information.

Ensuring accountability and compliance also requires buy-in from host businesses. Hosts who engage a non-licensed LHP when they know, or have failed to conduct checks to confirm that the LHP is licensed, should attract penalties from the NLHR including heavy fines and/or limited ability to contract with LHPs.

7. Transparency – Entities involved in serious contraventions of their obligations should be identifiable in order to protect workers and businesses

LHPs that have been shown to fail to adhere to the minimum standards expected of a licensee, or that have been found to be in serious contravention of their obligations of a licence, should be subject to restrictions on its ability to hold future licenses for a period of time.

To ensure hosts businesses are well-informed and do not inadvertently engage a LHP that has been found to be in contravention of its obligations, repeat-offenders (businesses and their directors) should be named in a searchable database. This would allow host businesses to search for a legitimate prospective LHP prior to engaging them, preventing phoenixing, and ensuring their licence remains valid and active. Businesses should also be able to register for updates and alerts, so that they can be aware of any breaches by prospective or current LHPs they are engaging. Such a search function could be as limited in information as is necessary, similar to the ABN Lookup search function provided by the Australian Business Register. Relevant information to be included in the database might include business name, address and ABN, licence application and expiry date, locations and industries operated in, number of employees, conditions imposed on the licence, directors (if body corporate) and their contacts, and relevant compliance reports submitted to the National Labour Hire Authority. A further feature should allow host employers to 'follow' certain providers, allowing host businesses to track breaches and/or changes to information of their LHP. This is broadly consistent with the current approach adopted by the Victorian Labour Hire Authority.⁴²

8. Remediability — Workers and host businesses should be able to seek redress if they are victims of licence breaches

Where potential licensing breaches are identified, remedies must be considered for impacted workers and growers, and corrective actions implemented to address root causes. Workers who have been subject to mistreatment at the hands of any LHP should be able to seek remedial action,

which may vary depending on the nature of the contravention. Such remediation details, such as the appropriate facilitator of the remediation, could be formalised in the Scheme's design and should be aligned to the United Nations Guiding Principles on Business and Human Rights (commonly known as the UNGPs) caused, contributed or directly linked framework.⁴³

Pathways for remediability might include ensuring that LHPs be required to compensate workers for unpaid wages and entitlements, provide access to healthcare services for any injuries sustained during employment, and offer training and skill-building opportunities for affected workers to enhance their future employability.

9. Access to grievance mechanisms and non-retaliation – Workers and host employers should be able to easily report licensee contraventions

All workers engaged by a licensed LHP must be able to approach an effective and accessible grievance channel to report actual or potential perceived breaches of licensing requirements. This mechanism should be easily accessible, yet robust enough to prevent misuse for false accusations. Ensuring a balance between accessibility and integrity is paramount. The channel must provide an option for anonymous and confidential reporting, and non-retaliation protections for those raising concerns. Fines or penalties for LHPs and host businesses found to have victimised whistle blowers or complainants should also be considered.

Governments and/or the NLHR must ensure that the monitoring of these enforcement channels are well resourced, so that complaints and grievances can be readily investigated by authorities. The duty should

also extend to the LHP and the host business. LHPs themselves should have an effective grievance mechanism for their employees, the existence of which may be conditional to a license. As part of their reporting responsibilities, they should divulge any complaints they receive, as well as outline the procedures undertaken to investigate and address the raised concerns. This information should be shared by the LHP upon license renewal. To prevent any duplication of efforts, the FWO's reporting mechanisms could be utilised.

Similar channels should be available for host businesses who suspect that they have engaged an unlicensed LHP, or a LHP that is not operating in line with law. While it is recommended that — consistent with existing schemes — knowingly engaging an unlicensed LHP be punishable by a fine, this may deter host businesses from coming forth and reporting. Accordingly, the enabling legislation should provide that host businesses who report supposedly unlicensed operators, after having engaged them, be subject to significantly reduced penalties.

Like other regulators with grievance channels, the NLHR should be required to proactively publish, every year, the number of complaints received, complaints resolved, and time required for each complaint received directly.

10. Sustainable resourcing — The scheme must be appropriately resourced, and not solely dependent on license fees

The licensing scheme must be sufficiently resourced to ensure it operates efficiently, and that the various obligations of licensed LHPs and host businesses are enforced. A funding model should be considered that looks beyond simply recouping the Licensing

Scheme's costs through license fees. License fees that are too high may deter compliance, or act as a disincentive for legitimate LHPs to enter the critical horticulture sector. Governments need to consider a sustainable funding model that maximises enforcement, compliance and is not too burdensome on licensees.

DESIGN FEATURES THAT SHOULD BE CONSIDERED FOR THE HORTICULTURE INDUSTRY SPECIFICALLY

11. Establish a dedicated team within the labour hire regulator focused on horticultural compliance

As the analysis in Part 1 and 2 has detailed, the horticulture industry has a unique dependence on LHPs. Horticultural labourers are almost exclusively found in regional and rural Australia. They are also disproportionately migrants from culturally and linguistically diverse backgrounds. It is therefore proposed that, from its inception, the NLHR maintains a dedicated focus on horticultural compliance to ensure that the distinct challenges of the horticulture industry are confronted by the Licensing Scheme.

12. Visa compliance — Licenses LHPs in horticulture must be able to demonstrate their compliance with the visa conditions, and protections, of their workforce

Workers in the horticultural sector are often disproportionately temporary and migrant workers. This poses unique challenges for the sector. Accordingly, it is recommended that LHPs be required—as is done in Victoria⁴⁴—to



report annually about their workers' visa status. There ought also to be obligations requiring that, particularly in the horticultural sector, LHPs take proactive steps to ensure that visa conditions with respect to employment are being met, and are otherwise not breached. This may include specific rules that LHPs are not permitted to obtain workers' physical passports, but only copies of their passports, for any visa and identification processes. If an employer is approved under the PALM scheme, they should also be obliged to report annually about their deed status.

13. *Spotlighting likely contraventions* — Mandatory reporting of known infringements for all host businesses should be considered

Cooperation with host employers will be crucial for the effectiveness of the Licensing Scheme. Accordingly, before engaging with a LHP, all hosts should have to be satisfied that the LHP maintains a current licence. The host businesses should also ensure that they have a process for monitoring the operations of a LHP and enter into a signed contract with the LHP before using their services. The contract should require the LHP to provide copies of payslips, permits and other related documents to the host businesses in a timely manner upon their request.

In cases where host businesses know that certain LHPs are operating without a licence (regardless of whether they engage them), they should be obliged to report to the NLHR. This provides crucial deterrence for unlicensed LHPs and is key to the effective operation of the scheme.

14. *Ensure rural and remote resourcing* — Adequate resourcing for enforcement in rural and remote Australia

The effectiveness of a regulatory regime depends on its enforcement, and capacity for enforcement depends on adequate resourcing.

The Regulator should therefore be provided with ample resources to both administer and enforce the licensing regime. This means enough staff to process and finalise applications, and enough

enforcement officers to ensure compliance and deterrence. Given the prominence of LHPs in the horticulture industry, and the horticulture industry's geographical dispersion, adequate resourcing would require the creation of regional offices and long-term placement of regional enforcement officers. These officers would not solely serve as enforcers; instead, they would serve an educative function by offering assistance to both LHPs and host businesses in staying abreast of legislation and fulfilling requirements.

Resourcing and associated enforcement capacity must be consistent between all jurisdictions according to the prevalence of their horticulture industry and regions. This means ample and proportional contributions must be made by each jurisdiction. Indeed, if this were not the case it would lead to unacceptable inefficiencies in which some jurisdictions might shirk their obligations.

15. *Overcome cross-border confusion* — Inter-agency and cross-jurisdictional cooperation, particularly in cross-border growing areas

Ensuring the effectiveness of a nationwide scheme, enacted through state legislation, will demand substantial collaboration between Commonwealth and state agencies. This necessity is especially pronounced in the realm of horticulture. For example, identification of at-risk geographical areas will require coordination between the NLHR and the primary industry authorities of each state and territory. Moreover, given the diverse visa statuses of many labour hire workers, ongoing dialogue between Commonwealth immigration authorities and the NLHR is imperative. To facilitate this cooperation, the NLHR must maintain open channels of communication with relevant Commonwealth and state industrial relations, especially those overseeing the PALM Scheme and WHM program, primary industries, and immigration authorities. This strategic alignment transcends the confines of horticulture and underscores the broader imperative for seamless coordination across regions and jurisdictions.

16. General protections and penalties
— Scaled and specified penalties related to the PALM and WHM schemes should be designed by the NLHR and be complimentary with existing DEWE regulations

Punishment and deterrence for both hosts and LHPs will be critical to the effective operation of the Licensing Scheme.

To facilitate the transition to the new licensing requirement, a phased approach should be adopted, emphasising education, application, and enforcement. Initially, an extensive announcement and education phase should be launched ahead of the enforcement date. Following the education phase, a designated application period should be established, providing firms with sufficient time to apply for the necessary license.

However after this period there should be harsh penalties for operating without a licence regardless of whether the firm operator had knowledge of the requirement. In other words, the offence should be ‘strict liability’.

LHPs found in breach of the licensing requirement should face a tiered system of penalties. Minor breaches may result in fines, while more severe breaches could lead to a temporary suspension of a license for up to 12 months. If a LHP remains non-compliant even after the suspension period, their licence should be permanently revoked. Specific penalties for individual directors should be considered as a means to prohibit phoenixing. LHPs and host businesses found in breach should not only be reported to the administrators of the PALM and WHM schemes in the Department of Employment and Workplace Relations, but listed publicly for easy access by workers seeking employment. Additionally, these LHPs should be restricted from the PALM and WHM programs. In addition, host businesses found to be engaging an unlicensed LHP after failing to make inquiries about its licence status should be fined.

17. Holistic labour hire coverage — The Model Law must specify ‘triangular’ labour hire services are licensed

It is proposed the definition of labour hire services under the scheme covers both traditional triangular arrangements (in which employers direct a third party who employs the workforce) and workforce contracting arrangements, and considers subcontracting arrangements. These triangular arrangements must be licensed. This is in line with a recommendation of the Migrant Workers’ Taskforce,⁴⁵ which argued for the need to address variations of the traditional triangular model used to disguise labour hire arrangements which is prevalent in horticulture.

18. Limiting bad actor access — A fit and proper person test, in addition to an LHP-specific financial viability test, should be considered as a precondition to attaining licenses

Fit and proper person tests are included across each of the existing legislative regimes, though the content of the tests differs. It is submitted that, generally, this should be retained in the national scheme. However, it is further submitted that an additional financial viability test be imposed for those seeking to obtain licences universally for all labour hire operators. This would enable an additional layer of protection in the horticulture industry. As an industry, horticulture is characterised by low barriers to entry, thin profit margins, phoenixing activity, and a vulnerable—often migrant—workforce. A financial viability test would ensure that only those LHPs that have the ongoing ability to meet their obligations to their workers are allowed to operate. Such a test should recognise the prevalence of small scale LHPs operating in the sector, and not set arbitrary thresholds that limit new entrants and smaller LHPs operating in the market.

Conclusion

Australia is on the cusp of establishing a National Labour Hire Regulator and Licensing Scheme

This report has reiterated the urgency behind the establishment of such a Scheme, and has detailed design and implementation recommendations for federal, state and territory governments to consider as they move towards a harmonised national model through the remainder of 2024.

The need for a national approach to labour hire licensing has never been clearer. In recent years, major government reviews and taskforce reports, as well as a plethora of independent research and advocacy, has exposed the degree of exploitation that had been occurring, often as a result of malicious employment practices by a minority of actors within the labour hire industry. Much of this exploitation has occurred to workers within Australia's horticulture sector — a critical industry for Australia's food supply and economy.

Labour hire is essential in the horticulture industry. Short-term and seasonal work characterises much of the labour demand in the industry. For this reason, labour hire plays a critical role.

But the inadequate and inconsistent regulation of labour hire throughout Australia has enabled bad actors to enter the industry, harming workers but also harming the majority of LHPs that are fully compliant with their obligations.

In late 2023, state governments agreed in principle to establish a national labour hire licensing scheme. The scheme would be housed in a single state and intends to be universally applied; that is, while its operation will cover horticulture, it will likely apply to all sectors.

This report has detailed why the labour hire licensing should be prioritised for horticulture, and some of the design features governments should consider as they move towards commencing the operation of a national scheme in 2025.

Appendix One

Methodology

This report investigates the landscape of labour hire by drawing on a combination of academic and non-academic sources.

A review of academic literature related to labour hire was conducted, though this was not exhaustive. The review involved searching databases such as Google Scholar, JSTOR, and relevant academic journals for peer-reviewed articles, research papers, and reviews.

In addition to academic literature, desktop research was conducted to gather information from reputable sources including government reports, policy documents, industry publications, and relevant organisations' websites. This involved exploring websites of labour regulatory bodies, industry associations, and research institutions to gather insights into labour hire practices, regulatory frameworks, and industry trends.

Grey literature, including reports, white papers, working papers, and unpublished studies from government agencies, NGOs, and industry stakeholders, was also examined. This involved searching online repositories, institutional websites, and databases specialised in grey literature to access relevant documents that might not be published in traditional academic channels.

Relevant information from the collected literature, research papers, and grey literature was extracted and analysed to identify common themes, trends, and patterns across different sources. This involved comparing and contrasting findings from various literature sources and critically evaluating the information to draw meaningful insights into labour hire practices, including issues of worker exploitation, regulatory gaps, and emerging trends.

It is important to acknowledge that this research relied solely on secondary data sources. While this approach offers an overview of the existing knowledge on labour hire, it does not include primary data collection.

Appendix Two

Labour Hire Licensing Schemes in Australia

TABLE 2 FEATURES OF EXISTING LABOUR HIRE LICENSING SCHEMES IN AUSTRALIA

| | QUEENSLAND | VICTORIA | SA | ACT |
|---|--|---|---|---|
| When did the scheme commence? | 2018 | 2019 | 2018 | 2021 |
| Who applies for and holds a licence? | Individual or company | Individual or company | Individual or company | Individual or company |
| Licence duration | 12 months, yearly renewal required ⁴⁶ | Up to 3 years, annual licence fees apply ⁴⁷ | Indefinitely, but with fee payable annually ⁴⁸ | 12 months ⁴⁹ |
| Licensing fee | <p>Three tiers of licensing fee based on total amount of wages and salaries paid to labour hire workers in previous financial year:⁵⁰</p> <p>Tier 1: \$1.5 million or less – \$1,120.42</p> <p>Tier 2: \$1.5 million and up to \$5 million – \$3,361.26</p> <p>Tier 3: Over \$5 million – \$5,602.10⁵¹</p> | <p>Payment of an application fee and annual licensing fee applies.</p> <p>Three tiers of application and licensing fee based on business turnover:⁵²</p> <p>Tier 1: \$2 million or less Application fee: \$1717.20 Annual fee: \$1,192.50</p> <p>Tier 2: \$2-10 million Application fee: \$4,579.20 Annual fee: \$3,180.00</p> <p>Tier 3: \$10 million or over Application fee: \$8,458.80 Annual fee: \$5,851.20</p> | <p>Payment of an application and annual fee differing based on whether applicant is a natural person or body corporate.⁵³</p> <p>Application fee:</p> <p>Natural person: \$916 Body corporate: \$2,082</p> <p>Annual fee:</p> <p>Natural person: \$262 Body corporate: \$1,428</p> | <p>Single fee for application and renewal of \$3,106⁵⁴</p> |

| | QUEENSLAND | VICTORIA | SA | ACT |
|---|---|--|--|--|
| Fit and proper person test? | <p>Yes –</p> <p>Considerations in making the determination include the person’s character, their compliance with ‘relevant laws’, whether they have had a previous licence suspended, whether they have been convicted of an offence affecting their suitability, as well as any other matter considered relevant⁵⁵</p> | <p>Yes –</p> <p>Person is deemed to be a fit and proper person to hold the licence <i>unless</i>, for example, they have been found guilty of certain indictable offences, contravened other specified workplace laws, had a labour hire licence revoked, been the officer of an insolvent or externally administered corporation, or been disqualified from managing corporations⁵⁶</p> | <p>Yes –</p> <p>In determining whether a person is fit and proper the Commissioner may have regard to matters including the person’s character, previous holding of a licence, compliance with relevant laws, information provided by the Commissioner of Police and whether the person has sufficient business knowledge, experience and skills.⁵⁷</p> <p>Person deemed not to be a fit and proper person if they have been found guilty or convicted of an offence prescribed in the regulations.⁵⁸</p> | <p>Yes –</p> <p>In determining whether the applicant is a ‘suitable person’ the Commissioner considers matters including the applicant’s character, compliance history, previous licence cancellations, regulatory action under labour hire law, convictions against workplace laws, and whether the applicant has been the director of an insolvent or externally administered corporation.⁵⁹</p> |
| Obligations for labour hire clients | <p>Obligation for clients, unless with reasonable excuse, not to enter into an arrangement with a provider unless licensed. Additional obligation not to enter into avoidance arrangement.⁶⁰</p> | <p>Obligation for clients, unless with reasonable excuse, not to enter into an arrangement with a provider unless licensed. Additional obligation not to enter into avoidance arrangement⁶¹</p> | <p>Obligation for clients, unless with reasonable excuse, not to enter into an arrangement with a provider unless licensed. Additional obligation not to enter into avoidance arrangement.⁶²</p> | <p>Obligation for clients, unless with reasonable excuse, not to enter into an arrangement with a provider unless licensed.⁶³ No antiavoidance provision.</p> |
| Maximum penalties for contravention of licence requirement | <p>Natural person: \$160,063</p> <p>Body corporate: \$464,400⁶⁴</p> | <p>Natural person: \$615,392</p> <p>Body corporate: \$153,848⁶⁵</p> | <p>Natural person: \$140,000</p> <p>Body corporate: \$400,000⁶⁶</p> | <p>Natural person: \$128,000</p> <p>Body corporate: \$480,000⁶⁷</p> |

| | QUEENSLAND | VICTORIA | SA | ACT |
|---|---|---|---|--|
| Reporting requirements for licensees | Every six months licensee must report on number of workers supplied, description of arrangements entered into between licensee and workers, details of type of work carried out, locations of work, whether accommodation provided, whether fringe benefits provided, disciplinary action, and WHS incidents. ⁶⁸ | Every 12 months the licensee must provide information on their ATO registration, WorkSafe Victoria registration, the number of workers supplied, industrial instruments covering employees during the period, the visa status of workers, industries workers are placed in, and the extent to which the licensee complies with other legal obligations. ⁶⁹ | Every 12 months the licensee must provide information on the number of workers provided, industries the work was carried out in, information about compliance, information about disciplinary action and WHS incidents. ⁷⁰ | No mandatory reporting obligations however the commissioner may request that the licensee give the commissioner information about the licensee's compliance within a stated reasonable period either on receiving a compliant or on the commissioner's own initiative. ⁷¹ |
| Recognition of other schemes | No, but licence granting authority has stated that licences from other jurisdictions may be considered in assessing an application. ⁷² | Yes, interstate licences may be registered in Victoria. ⁷³ | Yes, labour hire service providers are listed as occupations covered by mutual recognition. ⁷⁴ | Yes, a person is deemed to be a 'suitable person' for the purposes of their ACT licence application if they hold a licence under another labour hire law and the licence is not the subject of any regulatory action under that law. ⁷⁵ |

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Contact The Mckell Institute

M 0423 422 948 E mckell@mckellinstitute.org.au

PO BOX 21552 World Square NSW 2002

mckellinstitute.org.au