

**Submission to**

**Finance and Administration Committee**

**Inquiry into the practices of the Labour Hire Industry in Queensland**

**By**

**Anti-Discrimination Commission Queensland**

**23 March 2016**

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# Introduction

1. The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland Anti-Discrimination Act 1991.
2. The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland, and dealing with complaints alleging contraventions of the Anti-Discrimination Act 1991 and of whistle-blower reprisal. Complaints that are not resolved through conciliation can be referred to the Queensland Civil and Administrative Tribunal for hearing and determination.
3. The Commission has been dealing with complaints of discrimination and sexual harassment for twenty five years. Our work also includes engaging with stakeholder groups, providing training, and receiving feedback on human rights issues such as discrimination in workplaces and applying for work.
4. This submission is based on our experiences and knowledge acquired in carrying out our functions, and focuses on allegations of exploitation, harassment and other mistreatment of workers employed by contractors, particularly in the horticultural regions of Queensland;
5. Since 2013, the ADCQ has worked intensively in the region of Lockyer Valley in a Community Engagement Strategy. The ADCQ’s aim is to facilitate relationship building and to empower the community to act together to address local human rights issues. Lockyer Valley community members have often raised concerns with ADCQ officers about poor working and living conditions for seasonal farmworkers, including specific issues that could constitute unlawful discrimination and sexual harassment. Very often these concerns have been associated with unscrupulous labour hire contractors who are employing working holiday visa holders (417 visas), refugees and other temporary visa holders.
6. Working holiday (417) visa holders have a right to extend their visa by an extra year, providing they work for 88 days during the first year doing regional work, mainly in agriculture. These visa holders are mainly young people under the age of 30. Most are from the UK, Korea, Ireland, Taiwan and France.
7. Sometimes persons who have overstayed their visas or who are working in breach of their visas are employed in the fruit and vegetable industry. These workers are often referred to as ‘undocumented’ workers.
8. Many of these people are very susceptible to exploitation. Young people who are away from their usual support networks, and who are unfamiliar with local laws and labour rules, and who are wishing to extend the visa- are vulnerable to exploitation by unscrupulous individuals. Individuals who are working in breach of their visa (undocumented workers) are also highly unlikely to complain about their working conditions. Many are unaware of Australia’s labour, workplace health and safety and other laws and are not familiar with what constitutes a law abiding employer and workplace under Australian or Queensland laws.

# The extent of labour hire employment in industries and/or regions

1. Significant anecdotal evidence suggests that unscrupulous labour hire contractors are operating in and affecting many Harvest Trail regions in Australia. Seasonal farmworkers are posting stories of poor treatment on social media and websites. These reports are damaging to Australia’s international reputation as a safe and friendly place to visit and work.
2. In Queensland, some of the harvest trail/horticultural areas where the ADCQ has become aware of issues with labour hire contractors are Lockyer Valley, Caboolture/Sunshine Coast, Stanthorpe and the Southern Downs region, Bundaberg and the Burnett region, the Burdekin region, and in FNQ including Cairns and the Tablelands. Attached are some examples of social media stories about the experiences of horticultural workers in the Lockyer region.

# Issues of exploitation of workers employed by labour hire contractors in regional communities

1. A community forum was convened by the ADCQ and the Fair Work Ombudsman in Gatton in September 2014 to identify concerns and ideas for solutions. Thirty two forum participants attended the forum including elected representatives, Council officers, representatives of Queensland Police, local farms, labour contractors, workers’ groups, and community organisations.
2. Issues arising from the Gatton forum included allegations of exploitation, harassment and other mistreatment of workers employed by labour hire contractors.

Some of the issues raised were:

**Non-compliance with workplace laws:**

Some contractors consistently flout workplace laws; for example:

* by paying cash in hand with no payslips;
* not paying tax/superannuation;
* not adhering to awards, or not passing on all wages to workers;
* not meeting Occupational Health & Safety obligations (no training for workers, no first aid, not enough water, no WorkCover or proper injuries process.)

**Lack of Regulation or Control:**

* Contractors are not required to be licensed or trained;
* Farmers find it difficult to monitor whether workers are being dealt with correctly;
* Records are not kept correctly (or at all) by some contractors:
* There is a concern that no penalties seem to exist or to be enforced for those doing the wrong thing.

**Wages:**

* Workers are being paid well below the required hourly rate, or being paid less than they were originally quoted for ‘piece work’.
* Workers are not being advised on how much they’re supposed to be paid.
* Lack of clear and fair ‘piece work’ agreement prior to commencing work.

**Accommodation and transport:**

* Workers are often obliged to use employer (often contractor) provided, costly accommodation/transport in exchange for work hours.
* Accommodation is often overcrowded and unsafe and unhygienic (no smoke alarms, increasing fire hazard, overflowing sewers etc)
* Contractors are sometimes providing transport with unregistered or uninsured vehicles and unlicensed drivers.
* Workers are often not earning enough to pay for rent/transport.

**Sexual exploitation:**

* Some contractors are asking for sexual favours in return for wages, facilities or signing visa extension forms (sexual harassment).
* Some reports of sexual assault or rape;
* There is no criminal investigation of charges or complaints to Qld Police Service or to ADCQ due to fear, cultural issues, or lack of education about complaints processes.

**Other types of exploitation:**

* Passports are often being held and workers having to pay for them to be returned.
* Workers are often being charged a fee to commence work.

**Lack of short term accommodation in the local area:**

* Means it is easy to exploit workers with high rents in overcrowded facilities.
* Means it is easy to oblige workers to rent employer provided accommodation.
* Illegal subletting of multiple houses is occurring (i.e. non council approved buildings are used for budget accommodation of large groups of workers in contravention of local government laws).
* It is difficult for farmers to provide accommodation as it is only rentable for part of the year.

**Vulnerable workforce:**

* Many workers are non-English speaking, non-residents who are not educated on their rights, and culturally are not inclined to complain about mistreatment.
* Some illegal workers fear deportation if they report their concerns to relevant authorities, making them highly vulnerable to exploitation.
* Some reports of ‘human trafficking’.

**Bad for business:**

* Skyrocketing costs are occurring for growers. Some growers are being undercut by others tempted to take on contractors offering illegal low labour hire rates.
* The reputation of the whole horticultural district is at risk due to some contractors manipulating, overworking and underpaying workers.

# The consequences of labour hire employment in industries and/or regions

1. An issue that was often raised with the ADCQ in the Lockyer Valley was that local people would not be considered for employment by many labour hire contractors, and that often it was extremely difficult or impossible for local people or other permanent residents of Australia to obtain temporary work in horticultural areas. One reason for this put forward to the ADCQ was that permanent residents had a better awareness of their employment rights, and would not tolerate the working conditions that were being offered by labour hire contractors, and therefore they were being excluded from the opportunity to work.
2. Another view expressed to the ADCQ was that there are not enough local workers/ permanent residents interested in performing temporary horticultural work and that those who were interested did not have the stamina or interest in continuing to work in the industry after actually working in the field.
3. It has also been suggested that some labour hire contractors prefer to source all their employees from visa holders of a particular nationality (sometimes the same as the nationality of origin of the contractor). Such employment practices do not generally align with anti-discrimination principles, where all workers of whatever race or nationality should have the same opportunity for employment.
4. It would appear that some local people or other permanent residents of Australia who do have an interest in performing horticultural work are no longer able to obtain employment in some areas of Australia due to the employment practices of some labour hire contractors.
5. There are also some suggestions that undocumented workers are displacing working holiday visa (417) holders as a source of labour. One consequence is this erodes employment rights of individuals as well as employer obligations such as the payment of tax, and superannuation.

# Undercutting of conditions by labour hire contractors and their impact on the labour market and business

1. The ADCQ heard from a number of growers in the Lockyer Valley that they were being undercut by other growers who were prepared to deal with contractors offering low/under award labour hire rates to their workers. It was also expressed that the demands of large industry supply chains for the cheapest price possible for produce encouraged this type of behaviour. It made it much more difficult for ethical contractors and for farmers concerned to see the payment of proper award wages to workers to compete with those that did not concern themselves with fair work conditions. These employment practices create an uneven playing field for competing businesses.
2. The practice of using labour hire contractors is attractive to many farmers because they are not the employer, and they therefore have reduced paperwork and responsibilities.
3. The ADCQ heard many allegations that many labour hire contractors were avoiding workplace laws and other statutory obligations, such as underpaying wages and entitlements, including superannuation, and avoiding the payment of payroll tax and WorkCover premiums. Workers are also often being charged a fee to commence work.
4. Workers are often paid by cash in hand with no payslips and often the labour hire contractor would be paying no tax or superannuation. The ADCQ commonly heard that contractors were not adhering to awards, or not passing on all wages to workers. Allegations were that workers were being paid less than they were originally quoted for ‘piece work’. Workers were not being advised on how much they were supposed to be paid, and there was often a lack of clear, fair and legal ‘piece work’ agreement prior to commencing work.
5. The ADCQ was also informed that some growers who were abiding by all workplace laws, and attempting to source labour other than through unethical contractors had felt threatened and were fearful of repercussions from certain contractors for not going along with unethical practices.

# Occupational health and safety obligations

1. The ADCQ has been informed that many labour hire contractors were not meeting their occupational health and safety obligations. Frequently there was no training for workers, no first aid, not enough water in the field for workers to drink, and there was no WorkCover or proper injuries process. The ADCQ was told of instances of where seriously injured workers without their own transport, would have to find their own way into the local town for hospital/medical treatment for injuries sustained at work.
2. In 2009, German backpacker Jessica Perra died of dehydration on her second day of picking tomatoes in Queensland. Her employer was fined $25,000 for failing to supply drinking water.

# Effectiveness of enforcing current relevant laws

1. The ADCQ has become aware of the challenges of enforcing current industrial relations laws and instruments, occupational health and safety laws and workers’ compensation laws in the labour hire industry, particularly in rural horticultural areas of Queensland. Seasonal work means that both the contractors and the temporary workers employed to perform horticultural work are mobile and transient. Locating work crews in the field can be problematic, and keeping track of particular contractors who have no regular business address can also be very difficult.
2. This is compounded when many workers are non-English speaking, non-residents who are not educated on their rights. A number of non-resident groups are also culturally not inclined to complain about mistreatment.

# Sexual Harassment of workers employed by contractors

1. The ADCQ has been informed that some contractors are asking for sexual favours in return for wages, facilities or the signing of visa extension forms. This form of unwelcome sexual behaviour comes within the definition of sexual harassment under the *Anti-Discrimination Act 1991.*
2. The ADCQ has also heard allegations of sexual assault or rape involving women working in the horticultural industry for labour hire contractors. It is very rare for complaints to be made to the Queensland Police Service or to the ADCQ due to fear, cultural issues, and lack of knowledge about available complaints processes.
3. Horticultural workers need to be able to obtain relevant and easily accessible information about their rights when working in Australia. Various stakeholders have recommended that one state government agency be tasked with responsibility for developing ongoing communication activities such as a smartphone app, social media communications and coordinating the development of appropriate information from relevant state and federal government agencies for incorporating into the resources. For example, the attached one page ADCQ factsheet containing relevant information about sexual harassment for this contains the type of relevant information that needs to be readily available to this group of workers. Ideally succinct fact sheets would be made available in the four or five most commonly spoken languages amongst these workers, including Chinese, Korean, Japanese and Vietnamese.

# Other forms of mistreatment of workers employed by contractors

1. Another form of mistreatment of horticultural workers is also occurring in the provision of accommodation. Accommodation is often organised by the labour hire contractors. They are often exploiting workers with high rents in overcrowded and unsafe facilities. Workers are often obliged to rent employer provided accommodation in order to maintain their work supply from the contractor.
2. Workers are often required to pay rent in advance, with no rent receipts being provided. If they cease working for the contractor, they lose their accommodation in spite of paying rent in advance. They rarely recover the monies they have paid for services or accommodation they have not received. Illegal subletting of multiple houses is occurring (i.e. non council approved buildings are used for budget accommodation of large groups of workers in contravention of local government laws).
3. In August 2015 the ADCQ held a forum on the issue of safety in budget accommodation for non-resident farmworkers with a number of relevant stakeholders.

A number of ideas and suggestions for improving the current situation in regard to accommodation have been suggested by attendees, including law reform. The ADCQ suggest this issue needs further examination and action by government. The ADCQ would be pleased to provide further information on this issue to the committee if required.

1. The ADCQ has also been told that passports are often being held by contractors and workers having to pay for them to be returned.

# The regulation of labour hire in Australia and internationally

1. The regulation of labour hire contractors in the horticultural and other industries in Britain has occurred since 2004. The *Gangmasters (Licensing) Act 2004* established the Gangmasters Licensing Authority to set up and operate the licensing scheme for labour providers operating in the regulated sectors.
2. This legislation was passed in Britain after the drowning deaths of a number of workers employed by labour hire contractors to collect shellfish in tidal areas.
3. The licensing scheme under the legislation regulates businesses that provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.
4. An employment agency, labour provider or gangmaster who provides workers to the agriculture, horticulture, shellfish gathering and any associated processing and packaging sectors requires a GLA license.
5. Labour providers are assessed to check they meet the GLA licensing standards which cover health and safety, accommodation, pay, transport and training. Checks are made to ensure labour providers are fit to hold a licence and that tax, workers compensation insurance and other regulations are met.
6. A labour provider must have a GLA licence to work in the regulated sectors, it is a criminal offence to supply workers without a licence or use an unlicensed labour provider.
7. In particular the emphasis is on workers being treated fairly, being paid properly, having safe working conditions, being allowed proper breaks, being provided with appropriate equipment to do the job, being housed in hygienic and safe accommodation, being transported in safe vehicles, and not being threatened with, or subjected to violence or harassment.
8. **The benefits of licensing are that worker** receives fair treatment, the pay, benefits and conditions they are entitled to. Labour providers are not undercut by those who pay less than the minimum wage or avoid tax. Industry standards are raised. Labour users can check their workers come from a legitimate provider and are informed if their labour provider’s licence is revoked. Consumers can be assured that their food has been picked and packed in an ethical environment. Illegal activities which lead to a loss of public revenue – income and payroll tax are reduced.
9. The ADCQ understands that Victoria is currently considering enacting laws similar to the UK *Gangmasters (Licensing) Act 2004.*

# Recommendations

The ADCQ makes the following recommendations to the committee. That -

1. Horticultural workers are able to obtain relevant and easily accessible information about their rights when working in Australia. One state government agency be tasked with responsibility for developing an ongoing communication strategy including a smartphone app, and/or other social media communications and with coordinating the development of appropriate information from relevant state and federal government agencies for incorporation into the resource.
2. Further examination by the government be taken on what actions can improve the current unsatisfactory situation in regard to accommodation for many horticultural workers, including law reform.
3. That Queensland implement a system for the regulation of labour hire contractors in the horticultural sector based upon the model created by the UK by the *Gangmasters (Licensing) Act 2004*. This should include the establishment of contractor licensing authority to set up and operate a licensing scheme for labour providers operating in regulated sectors.