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APSCO AUSTRALIA

**Submission to the Standing
Committee on Education,
Employment and Youth
Affairs**

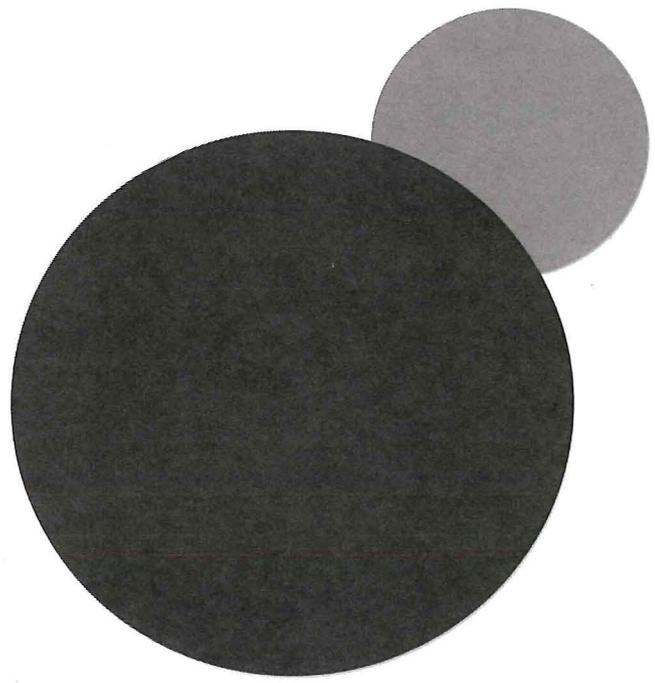
**Inquiry into insecure
employment in the ACT**

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The Association of Professional Staffing Companies in Australia (APSCo Australia) (formerly ITCRA) has been established to provide all companies involved in the recruitment and management of professional talent, the specialist support and distinctive voice the sector needs to ensure business success, recognition for excellence and immediate response to issues.

The Association provides candidates and employers an internationally recognised badge of quality. This is evidenced in the provision to member companies of an innovative range of business, compliance and education services designed by specialists with knowledge across multiple contracting and recruitment sectors. Some of these companies and services are listed below.

APSCo Australia is now identified internationally as part of a distinctive voice for the professional recruitment and talent management sector across the United Kingdom, Germany, Singapore and Hong Kong.



Burning Glass' tools and data are playing a growing role in informing conversations on workforce and education. By using an advanced analytic application recruiters, researchers, policy makers, educators and employers can have a real time awareness into labour market demand that highlights skills, knowledge, experience, and education in demand as well as industries and occupations. <http://burning-glass.com/>



The Talent Engagement Standard (TES), in partnership with Certex International and Service Excellence Consulting, sets best practice for organisations which recruit and manage workers.

Created with reference to legislative requirements, existing industry standards and business best practice, the Talent Engagement Standard defines the critical compliance areas for employers.



iSafe sets a new benchmark for organisations that supply or manage professional talent as it consolidates system, procedures and site assessments for companies that deliver recruitment, contracting, professional and management services as well as for their clients and contractors.



SkillsMatch is a monthly reporting program of data from APSCo Australia member systems that includes: position title and requirements, available positions, salaries offered, placements made and time-to-fill for contract and permanent roles.



The Professional Staffing Trends Reports provide an overview of the key movements and data that affects the professional staffing industry in terms of business conditions, human capital needs, recruitment activities, and expectations. SkillsMatch data is a major source of information for this report, as is data from Burning Glass and Seek..

1. Introduction

The Association of Professional Staffing Companies of Australia (**APSCo Au**) represents the professional contracting and staffing sector in Australia. Our members supply and manage skilled white collar professionals for permanent and flexible work engagements across Australia and multiple international markets.

APSCo Au has 46 member companies based in the ACT representing thousands of professionals in the information and communication technology, accounting, legal, media and digital, engineering, finance, banking and insurance sectors, as well as education.

APSCo Au welcomes the opportunity to make submissions on behalf of its members to the Committee on Education, Employment and Youth Affairs (**Committee**) inquiry into the extent, nature and consequence of insecure work in the ACT (**Inquiry**).

2. Summary of APSCo Australia's submission

Set out below is a summary of the fundamental points of APSCo Au's submissions:

- In APSCo Au's experience, genuine professional contracting and staffing service companies demonstrate high levels of compliance with workplace relations, workplace health and safety laws and regulations, workers' compensation legislation and other legal obligations. APSCo AU is not aware of any evidence of sham contracting or other unlawful conduct in the particular industries its clients provide services to in the ACT.
- The client organisations, which are mostly Government departments, that use the services of APSCo Au's members in the ACT, use contracting to supplement their workforce rather than as a way of avoiding employment costs and obligations. In the ACT, these requirements and engagement models are driven and requested by Government departments and other clients who do not have the budget or imprimatur to employ permanent staff.
- The professionals supplied and managed by APSCo Au's members are highly paid and are not considered to be a class of vulnerable workers. They are not subject to exploitation, harassment or other forms of mistreatment and enjoy comparative levels of legislative protection and entitlements as direct employees. In fact, the vast majority of these workers prefer and seek non-standard forms of work and have no desire to become permanent employees as in many cases they negotiate superior conditions. As such, they do not consider themselves to be engaged in insecure work, nor is there an adverse impact on their families or the community.
- In addition to the above, compliance amongst providers in the professional contracting and staffing sector is informed and supported largely by industry association standards and accreditation schemes (i.e. APSCo Au's business accreditation program and Code of Conduct). These significant resources monitor professional and business best practice standards amongst APSCo Au members and instil confidence in end user clients and contracting professionals that APSCo Au members operate in an ethical and professional manner.

APSCo Au recommends that streamlined and nationally consistent regulation, together with recognised industry association standards and education programs will be most effective in ensuring legislative compliance.

There is a clear distinction between contracting professionals and workers who may be vulnerable to exploitation, and we ask the Inquiry to bear this in mind when making any recommendations.

3. Extent and nature of insecure work

Consistent with industries at the forefront of innovation, the sectors that attract skilled contracting professionals have adapted and responded to a rapidly changing and increasingly globalised talent pool, triggering an increase in demand for non-traditional working arrangements. APSCo Au members, for instance, may provide any number of the following services to the market:

- **Contracting service** - A commercial service where an APSCo Au member, in return for a fee, completes a defined scope of work for a client. This work may be performed utilising individual or incorporated independent contractors engaged by the member but who often work under the instructions of the client.
- **Contractor management service** - A commercial service where an APSCo Au member, in return for a fee, undertakes responsibility for the performance of any aspect of a contract by a contractor, without undertaking the direct employment or engagement of the contractor, or the direct performance of the work.
- **Payroll service** - A commercial service to facilitate the payment of remuneration for contractors or employees of a client, and can include, but is not limited to, services to remit statutory payments with respect to superannuation and taxation.
- **Placement Service** - A commercial service where an APSCo Au member provides, in return for a fee, sourcing and presentation of candidates for permanent employment with a client.
- **Workforce Consulting Service** - A commercial service where an APSCo Au member provides, in return for a fee, identification and response to a client's workforce issues and recommends or implements strategies designed to assist the client to achieve stated business outcomes.

APSCo Au members do not include 'group training organisations' and, as such, we do not propose to provide commentary or evidence in respect of such organisations. APSCo Au members also do not define themselves as labour hire companies, although they accept the legislation and the legal responsibilities that this implies.

APSCo Au's most recent data from its Professional Staffing Trends resources¹, which are collected by APSCo Au and independently analysed, indicates that 93% of ICT roles filled in the January- March 2017 quarter, in the ACT, were contract based. This figure reflects the nature of the ICT infrastructure projects, coupled with ongoing changes in government tendering arrangements and the business models of clients partnering with APSCo Au members.

The demand for contracting roles is evidenced in the regular data APSCo Au receives and has independently validated as part of its Employment Trends Report. The statistics reflect the roles advertised and filled and clearly show the market driven preference for contractors, as illustrated below:

¹ SkillsMatch Data: analysis conducted June 2017.

State by State Ratios of Permanent to Contract ICT Roles ⁱ				
	Q1 2016		Q1 2017	
	Permanent	Contract	Permanent	Contract
Australian Capital Territory	9%	91%	7%	93%
New South Wales	13%	87%	10%	90%
Queensland	10%	90%	8%	92%
South Australia	28%	72%	12%	88%
Victoria	15%	85%	10%	90%
Western Australia	11%	89%	5%	95%
Australia-wide	13%	87%	10%	90%

As the Committee will see, the demand for contracting roles is the highest in ACT and also evinces a clear demand for contract over permanent 'secure' employment.

Average Days-to-Fill ICT Roles by Permanent or Contract and by State- Q1 2017 ⁱ			
	Permanent	Contract	Contracts Require
Australian Capital Territory	58	62	7% more
New South Wales	53	41	22% less
Queensland	44	40	9% less
South Australia	55	56	2% more
Victoria	44	64	46% more
Western Australia	44	64	46% more

Hourly Rates in Australian Dollars for ICT Roles by Permanent or Contract and by State- Q1 2017 ⁱ			
	Permanent	Contract	Contracts Require
Australian Capital Territory	\$89.71	\$109.08	22% more
New South Wales	\$73.30	\$101.97	39% more
Queensland	\$59.94	\$80.33	34% more
South Australia	\$66.79	\$56.50	15% less
Victoria	\$74.09	\$101.58	37% more
Western Australia	\$66.06	\$69.19	5% more

Comparative hourly rates are calculated by dividing permanent annual salaries by 1,672 hours, representing 44 weeks per year at 38 hours per week. This takes into account 52 weeks per year and approximated hourly earnings of permanent entitlements represented by four weeks of annual leave, two weeks of statutory holidays, one week of sick leave, and one week of long service leave.

ⁱ SkillsMatch data: analysis conducted June 2017

As the Committee will see, the above rates for contractors are significantly higher in ACT and far exceed the rates of pay for permanent roles, the national minimum wage and any applicable Modern Award rates. Whilst limited to ICT, these rates are also reflective of other highly skilled professional roles. As such, any allegations or incidents of exploitation, underpayment or financial hardship for the professionals that APSCo Au's members represent are without any foundation

Top Recruiter-Sourced ICT Roles by Permanent and Contract Placement- Q1 2017 ⁱ	
Permanent	Contract
Developer Programmer	ICT Business Analyst
Computer Network and Systems Engineer	ICT Project Manager
ICT Project Manager	Computer Network and Systems Engineer
ICT Business Analyst	ICT Customer Support Officer
ICT Managers nec & Sales Representatives nec	Developer Programmer

Further data, collected by APSCO Au, and independently validated, as part of the Professional Staffing Trends Report confirmed the following:

	Occupation Level ⁱⁱ							
Mean Averages	Manager	Professional	Clerical	Sales	Community	Technical	Machinist	Labour
2014	\$75,151	\$92,847	\$70,042	\$68,900	\$63,312	\$69,492	\$58,594	\$60,948
2015	\$91,499	\$92,762	\$72,654	\$83,769	\$74,814	\$72,459	\$63,974	\$65,245
2016	\$98,979	\$92,602	\$73,971	\$81,888	\$75,664	\$72,976	\$71,282	\$75,507
YTD 2017	\$98,196	\$93,625	\$75,321	\$79,750	\$74,542	\$75,815	\$53,405	\$58,913

	Employment Status ⁱⁱ							
Mean Averages	Full Time	Part Time	Permanent	Temporary	FT Perm	FT Temp	PT Perm	PT Temp
2014	\$82,971	\$65,257	\$77,527	\$90,458	\$78,571	\$91,022	\$63,721	\$73,069
2015	\$86,082	\$75,453	\$83,800	\$88,263	\$84,244	\$88,583	\$76,079	\$72,451
2016	\$88,240	\$74,999	\$87,557	\$87,995	\$88,156	\$88,349	\$74,789	\$75,579
YTD 2017	\$89,661	\$76,884	\$87,566	\$91,032	\$88,087	\$91,545	\$77,921	\$73,221

Demand ⁱⁱ					
	Perm Full Time	Perm Part Time	Temp Full Time	Temp Part Time	Total
2014	17,424	1,893	16,526	168	36,011
2015	21,510	2,015	20,304	262	44,091
2016	24,694	2,106	24,950	347	52,097
YTD 2017	73,61	837	9,099	190	17,487
					149,686
<i>NOTE: YTD 2017 is data inclusive of months Jan to May only</i>					

Demand Percentages ⁱⁱ				
	Perm Full Time	Perm Part Time	Temp Full Time	Temp Part Time
2014	48%	5%	46%	0%
2015	49%	5%	46%	1%
2016	47%	4%	48%	1%
YTD 2017	42%	5%	52%	1%

Counts of sub-\$50k pa roles from main public areas of advertising ⁱⁱ				
	Employer Sites	Job Boards	Recruiters	Total
Q1 2014	19	56	245	320
Q2 2014	7	71	273	351
Q3 2014	11	110	343	464
Q4 2014	17	73	176	266
Q1 2015	17	26	74	117
Q2 2015	22	24	81	127
Q3 2015	20	39	100	159
Q4 2015	21	45	83	149
Q1 2016	20	51	63	134

Q2 2016	10	52	71	133
Q3 2016	23	52	74	149
Q4 2016	36	71	47	154
Q1 2017	15	45	49	109
				2,632

*NOTE: Low paid roles defined as roles offering FTE remuneration of \$35,000 to \$49,999 pa.
li Labour Insight, BurningGlass data analysis conducted June 2017*

The above Professional Staffing Trends resources also show that in the ACT:

- Remuneration
 - Advertised remuneration is fairly stable at top-tier, with Professionals the highest paid.
 - The lowest paid groups tend to be blue-collar
 - Full Time Temporary workers tend to be the highest paid
- Demand
 - Full time work is vastly more in demand than part time
 - All forms of work are growing in number; but the proportions tend to only make minor adjustments to their overall standing
- Low Paid Advertising
 - Low paid work tends to be a small fraction of the overall market—3.9% in 2014, crashing to 1.3% in 2015 and 1.1% in 2016
 - Recruiters appear to be slowly pulling away from this unprofitable area of the market

Based on this data, it appears that if there is an undercurrent of poorly-paid workers in the ACT, that it is ad-hoc, opportunistic, or predatory; it is not making it into the formal marketplace in any real observable way, and that what poorly-remunerated roles are around, do not simplistically fall into one particular industry or one particular engagement model.

APSCo Au contends that the nature of insecure work as defined in the Victorian Inquiry into the Labour Hire Industry and Insecure Work (**Victorian Inquiry**) (as referred to in the Discussion Paper²) does not exist in the industry sectors APSCo AU's members provide services to. These professionals have higher pay and control of their working lives, which was recognised in paragraph 2.13 of the Discussion Paper.

4. Form of working arrangements

A common and major theme during the inquiries in Victoria, Queensland and South Australia seemed to stem from the difficulty in defining the relationships and responsibilities of the parties involved in labour hire arrangements. Many stakeholders have argued for a simple and clear statutory definition, which “settles” the distinction between an employee and an independent contractor. However, labour hire arrangements typically involve a ‘triangular relationship’ in which a labour hire business supplies the labour of a worker to a third party (the host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships.

The use of the term ‘labour hire’, as adopted in the Discussion Paper to this inquiry, denotes a blue collar industry engagement model and is not appropriate, and is simply outdated, for APSCo Au's members and the professional contracting sector.

² Inquiry into Insecure Employment in the ACT, Discussion Paper, May 2017, para 2.7.

APSCo Au submits that a 'one size fits all' definition of independent contractor would prevent all the nuances of individual circumstances being fully considered. APSCo Au members, for instance, will supply or manage any number of the following classes of worker in addition to recruiting employees:

Labour Hire Contractor (Flex Worker)

An individual who is generally engaged directly by a recruitment services company and supplied or "on-hired" to an end user client. The recruitment services company is directly responsible for all remuneration, superannuation, employment taxes and any insurances (as applicable and agreed between the parties).

Independent Contractor

An individual, business or corporation that provides services to a client under a commercial contract for service rather than an employment agreement in one of the following ways:

- **Pty Ltd Contractor**
An independent contractor that is an incorporated company, which employs an individual to perform services and supplies them to an end user client. Alternatively, a third party company may act as the incorporated entity structure (i.e. payroll service provider). The company is responsible for the individual's superannuation, tax and any insurances (as applicable and agreed between the parties).
- **Freelance Individual Contractor**
An independent contractor that is a freelance individual conducting business in his/her own right who receives a rate which is all inclusive of their statutory and other entitlements.

The development of a single statutory definition to categorise all workers within the labour hire industry across all sectors in Australia is not feasible and would only lead to future complications as work arrangements continue to evolve. Of particular concern to APSCo Au members, is the likelihood that a narrowly drafted definition would adversely affect the current genuine arrangements set out above.

The above terms were developed in consultation with APSCo members in Australia and globally through a series of forums across Australia in 2016 to ensure the engagement models and terminology is consistent with industry standards and that the correct classification of workers is occurring in line with legal obligations.

5. Treatment of workers

APSCo Au is also not aware of any incidents of exploitation, harassment, non-payment or underpayment of entitlements in the professional contracting and staffing sector in the ACT. APSCo Au ACT (and other) members are recognised corporate citizens who comply with their obligations in respect of superannuation, workers' compensation premiums, taxation and other entitlements and have the added advantage of APSCo Au's multiple avenues of compliance support provided by recognised advisors.

In APSCo Au's experience, the host organisations who engage professional staffing/contracting (labour hire) firms to provide professional contractors and other workers do not use contracting as a way of avoiding employment costs and obligations. Instead it is used to supplement their permanent workforce, with permanent and contracting professionals working alongside each other – to fill a short term niche skill requirement, to add specific skills or to complete finite projects.

In the ACT, the vast majority of clients who use the services of APSCo Au members are Government departments who do not have the budget or the imprimatur to employ permanent staff. As such, the

engagement of contracting or 'insecure work' is client driven and not used to avoid workplace laws or statutory obligations.

The vast majority of professionals who choose to work as independent contractors do so because it affords them flexibility, recognition and diversity, whilst facilitating the maintenance of a current skill set in rapidly changing professions. In fact, contracting professionals, especially those working with APSCo Au members, will have experienced good employment practices that comply with relevant laws and regulations, and are often provided superior wages and conditions. As such, they do not consider themselves to be engaged in insecure work, nor is there an adverse impact on their families or the community.

Professional contractors have a greater opportunity to negotiate and receive increased remuneration levels and more favourable conditions than other employees as they are often filling roles that have proven hard to fill so are in demand and/or are project driven. As the Committee will see from the above data, ICT contractors in ACT, in particular, are generally the most highly paid with workers earning above \$100 per hour. If they were classed as employees on the same income, they could be excluded from Modern Award coverage, through a Guarantee of Annual Earnings.

6. Working visas

Due to the onerous pre-requisite of being required to have a 457 on-hire labour agreement before engaging with global talent only a limited number of APSCo Au's members in the ACT, or anywhere else in Australia, are engaging with working visas. The requirements (including minimum salary and conditions), regulation and cost of the Agreement ensure that compliance with any legislation are always met and, in most cases, any engagement with overseas talent is driven by client needs and the APSCo Au member is a facilitator to support the process.

7. Conduct and regulation of insecure work

While acknowledging the importance of independent contracting as an alternative form of engagement in the modern workplace, APSCo Au recognises that this model can be exploited by unscrupulous hirers, seeking to avoid minimum benefits and protections afforded to employees under workplace legislation.

APSCo Au submits that there are sufficient statutory and regulatory protections in place in the ACT to protect the rights of any vulnerable workers and prevent exploitation, harassment or mistreatment of workers including (without limitation):

- sham contracting provisions in the *Fair Work Act 2009* (Cth) (**FW Act**);
- discrimination laws which apply to temporary workers and contractors under Commonwealth discrimination legislation, the FW Act and the *Discrimination Act 1991* (ACT);
- the *Agents Act 2003* (ACT) which requires persons carrying on business as an employment agent to be licensed and the statutory Code of Conduct in the *Agents Regulations 2003* (ACT);
- Modern Awards which apply to certain "on-hire" workers and impose minimum terms and conditions; and
- workplace health and safety obligations in the *Workplace Health and Safety Act 2001* (Cth).

Entitlements and protections for employees and other workers vary across State, Territory and Commonwealth laws, industrial awards and agreements, common law and contracts of employment. Therefore, industry associations like APSCo Au play a prominent role in assisting members to navigate and comply with workplace legislation to ensure they work with their clients to achieve high levels of compliance and minimise the health and safety risks to temporary/contract workers when performing services at their offices.

In order to establish a commitment to ethical and professional practices, APSCo Au members are bound by a Code of Conduct (**Code**)³, which specifically outlines the standards regarding key relationships with other contractors and employees that all APSCo Au members must meet. The Code instils confidence in contracting professionals that APSCo Au members operate in an ethical and professional manner, and require the same of their clients.

APSCo Au has also partnered with Certex International to recently deliver a business and accreditation program called the Talent Engagement Standard (**TES**), which sets best practice for organisations which recruit and manage workers. 20% of APSCo Au's ACT members are currently working through the TES. Certification in all six modules of the program indicates an organisation is meeting the highest standards for recruitment practice and talent management, including employment responsibility, immigration, privacy, safety and quality management. This joint initiative was launched in November 2015 and currently 43 organisations are at various stages of the program.

APSCo Au also provides HR and support services for contractors who are engaged through our members via HR anywhere. In particular, APSCo Au's superannuation, insurance, immigration and workplace induction advisers all offer immediate advice and support regarding employment, safety, redundancy, workforce transitioning and insurance requirements⁴.

As part of APSCo Au's commitment to ensuring the highest standards of compliance by its members, it has developed a suite of compliance materials for the education and training of recruitment consultants and to provide accreditation as APSCo Certified Recruitment Professionals – again ensuring understanding of compliance and best practice in the engagement of workers is assessed at a company level and an individual level. These eight e-Booklets cover:

- Contract templates & Modern Awards Guides;
- Regulation & the APSCo Au Code of Conduct;
- Employment Legislation;
- Visas and immigration;
- Privacy;
- Equal Employment Opportunity and anti-Discrimination;
- Work Health & Safety; and
- Reference Checking.

As part of its commitment to WHS compliance, APSCo Au developed a unique site, system and document risk management review solution called iSafe⁵ that supports, in a practical way, the notion that everyone has a right to a safe work environment.

The iSafe program is designed to:

- ensure all WHS site and system reports and follow ups are managed to the same quality benchmark;
- deliver consultation, co-operation and co-ordination through a centralised team of qualified WHS practitioners;
- document a process for WHS Risk Management, where there are multiple parties involved, that ensures stakeholder engagement; and
- provide an opportunity for a collaborative process for overall practice improvement.

APSCo Au currently has 172 client sites in the ACT that have been assessed on behalf of the members – these assessments include systems and procedures checks as well as site assessments. We have identified sites with partial and non-conformance assessments and worked with clients, members and contractors to improve safety in these workplaces.

³ <http://www.apsco.org/about-us/global-code-of-conduct-for-members.aspx>

⁴ <https://www.apscoau.org/training/contractor-resources>

⁵ <https://www.apscoau.org/servicessupporters/whs-risk-management-2/isafe>

115 of the sites listed have been in the program since its inception and are reviewed on a bi annual basis, more often if issues are identified.

APSCo Au has identified 6,897 contractors whose workplace health and safety risk management has been mitigated through the involvement of their professional staffing company in the iSafe program and/or the WorkPro pre-placement induction modules. These modules ensure contractors have completed the following induction before going on site while iSafe ensures the site is safe and the requisite policies and procedures are in place.

The WorkPro modules for professional staffing contractors include:

- The workers and employers role and responsibility in work health and safety;
- Typical risks associated with IT work in an office environment;
- Risk management, consultation and issue resolution;
- Safety and health expectations in the working environment;
- Emergency Planning and Management;
- Workplace stress, including a definition, common causes, how to identify and manage workplace stress and some helpful tips;
- Bullying and how to manage and address bullying, including details of the new bullying provisions as of 1 January 2014;
- Slips, trips and falls;
- Electrical safety;
- Manual Tasks and safe lifting technique;
- Occupational Overuse; and
- Workstation ergonomics.

A client business' responsibilities to professional contractors and other workers are also not absolved by engaging professional staffing/contracting (labour hire) firms. Such businesses have strict responsibilities under workplace and WHS laws which must be complied with and cannot be contracted out of. This was recently shown in the recent case of *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45.

Professional staffing/contracting (labour hire) agencies in the ACT may also be regulated by the Commonwealth FW Act and other laws that place obligations on employers. The sham contracting laws contained within the FW Act are arguably one of the strongest set of laws relating to labour hire and are strongly enforced by the Fair Work Ombudsman (**FWO**).

The FWO is active in monitoring compliance and pursuing contraventions of the FW Act involving vulnerable workers. A key focus of the FWO is to work with lead businesses in building a culture of compliance and has pursued various strategies to achieve this including compliance partnerships, enforceable undertakings, as well as litigation. The FWO noted that compliance partnerships are 'increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws.'⁶

The FWO uses court action as a last resort, usually when an employer has deliberately exploited vulnerable workers and refuses to cooperate with the FWO.⁷ The FWO initiated three cases involving sham contracting in 2015-16, which saw significant penalties handed down. In one case that went all the way to the High Court, a company that owned serviced apartments in Perth was penalised almost \$60,000 for attempting to change employees into independent contractors through a third party to avoid its statutory obligations.⁸

⁶ Australian Government, Education and Employment References Committee, *A National Disgrace: The exploitation of temporary work visa holders*, March 2016, p290.

⁷ *Ibid*, p291.

⁸ *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45.

8. Matters the inquiry should have regard to

Contracting in the ACT is very much client driven. The market is unique in the ACT as the ACT and Federal Government are the major clients in most contracting sectors. As Governments are not stable entities, there is an inability to engage workers in permanent employment positions due to the unpredictability of funding. APSCo Au members, along with other providers, are simply meeting this unique labour demand in the ACT. They are not using contracting as a way to avoid their obligations or exploit workers. In fact, due to the unpredictable nature of the labour market in the ACT, contracting actually provides a form of protection for workers as they have the autonomy to decide when and where they will work and are not tied to permanent placements.

Operation of procurement arrangements

APSCo Au has been liaising closely with ACT Procurement and the Office of Prime Minister and Cabinet to discuss procurement practices and the building of stronger relationships and longer term planning to ensure more strategic engagement with contracting and recruitment agencies and their talent.

Regulation in other Australian jurisdictions and countries

In addition to the comments above regarding regulation across Australia, the Committee may be aware, or have regard to, the current and proposed licensing schemes in other States and Territories in Australia.

The licensing requirements for professional staffing/contracting (labour hire) providers and employment agents in Australia differ from State to State (refer to Annexure A). Currently, licences are required in Western Australia, South Australia and the ACT for employment agents. Although it is unclear whether this requirement extends to all types of providers, they are not generally directed towards labour hire agencies with a number expressly excluding labour hire.

The position in South Australia is more onerous than in other states. Safe Work South Australia (which is responsible for licensing) takes the view that an employment agent operating in another state will require a South Australian licence to lawfully do business with South Australian customers/clients, even though the business might not have a physical presence in South Australia.

Although the Queensland Inquiry did not make any recommendations for a licensing scheme⁹, the Queensland Government recently proposed a similar but broader scheme to capture all providers of labour under the *Labour Hire Licensing Bill 2017* (Qld) (**Bill**) which would also impact any labour hire providers and APSCo members who have operations in or supply workers to Queensland. Despite evidence of exploitation and mistreatment only being identified in the agriculture and horticulture industries, the Bill will impose licensing requirements across all sectors, including white collar industries/professions. APSCo Au has some serious concerns in respect of the implications of the Bill, if passed, which were discussed in its submissions dated 19 June 2017¹⁰.

Whilst the Victorian Inquiry recommended a licensing scheme, this was limited to the horticulture, cleaning and meat industries where evidence of exploitation was found.¹¹ However, the Victorian Government indicated its support for a broader scheme across all industries which APSCo Au will oppose due to the absence of such conduct occurring in other sectors.

APSCo Au respectfully submits that if the ACT Government were to introduce a new and additional regulatory scheme, it should be strictly limited to industries where evidence of exploitation or other mistreatment was been identified as a result of this Inquiry. Given the content of its submission,

⁹ <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I5-LabourHire/I5-rpt-30June2016.pdf>.

¹⁰ <http://www.parliament.qld.gov.au/documents/committees/FAC/2017/B19-LabourHireLicenseBill2017/submissions/029.pdf>

¹¹ Victorian Inquiry into the Labour Hire Industry and Insecure Work, Final Report 31 August 2016, page 23.

APSCo Au strongly advocates that such a scheme should not apply to professional white collar staffing/contracting providers.

Any scheme would also need to be harmonised with pre-existing legislation in the ACT and other States in order to avoid an unreasonable regulatory burden being placed on small to medium enterprises who are already complying with their obligations under current laws. In APSCo Au's experience, state-based licensing schemes are not only costly to implement but also cause significant compliance issues for our members operating in more than one State and, even more significantly across global marketplaces.

The reports following the inquiries in Victoria, Queensland and South Australia all recommended licensing for labour hire providers in some form. The main impetus behind these recommendations was the view that a licensing regime is vital to disrupt current business models of unscrupulous labour hire providers in Australia who supply vulnerable temporary visa workers. It is important to note that these recommendations exclusively relate to migrant and unskilled workers in industries such as horticulture, food processing and convenience stores. In addition, the Commonwealth Government has so far indicated that it does not support a national licensing scheme which should have a significant influence on any recommendations the Committee makes in respect of such regulation.

Further, these inquiries have been pointed to the example of the Gangmasters Licensing Authority in the UK that licenses and regulates labour hire companies. However, the Gangmasters Licensing Authority aims to protect workers from exploitation by regulating business that provide workers to agriculture, horticulture, forestry, shellfish gathering and food and drink processing and packaging, where workers are most vulnerable.¹²

In response to the various reports, APSCo Au acknowledges and agrees that exploitation in workplaces across Australia should be eradicated; however we reject any recommendation for a licensing scheme, particularly in the professional staffing and contracting sector. There is no conclusive evidence to suggest that professional staffing/contracting (labour hire) agencies and client employers operating within the professional services sector are any less compliant with their obligations than the general employer population. Complex laws and significant penalties are already in place to address non-compliance. Therefore it is unreasonable to introduce any additional form of regulation that would only increase costs for professional staffing/contracting (labour hire) agencies that are already complying with their obligations.

Self-regulation

Professional staffing/contracting (labour hire) companies, including APSCo Au's members, follow best practice, have sophisticated mechanisms in place and are fully aware of their obligations to ensure that workers' rights are protected and supported.

APSCo Au respectfully submits that the focus of the Inquiry, and any recommendations made, should be on educational programs, recognised quality business standards and professional accreditation that will assist parties to identify compliant professional staffing, contracting and recruitment companies and qualified consultants who know their responsibilities and understand the rights and obligations of workers, rather than introducing additional regulation in an already heavily regulated area.

APSCo Au also proposes the consideration of a "Fair Engagement Checklist" to ensure the formation of genuine and non-coercive independent contracting relationships. The checklist would not only provide a useful tool for businesses to ensure compliance with legal obligations when engaging workers, it could also be relied upon as evidence of the willingness of parties to enter into an independent contracting arrangement. APSCo Au has developed a checklist (refer to Annexure B) and would be prepared to discuss this further.

¹² United Kingdom government, Gangmasters Licensing Authority, <https://www.gov.uk/government/organisations/gangmasters-licensing-authority>

9. Conclusion

The professional staffing and contracting sector engages a global workforce that sees an increased demand for the right people at the right time. Freedom of contract is a fundamental tenet of our legal system, and the notion that individuals should be free to contract for the provision of their services in different ways is well established. Similarly, businesses should be able to adapt their workplaces to a rapidly changing technological and economic environment, and ensure they can attract, maintain and support the skilled workers they will rely on in the future.

The commercial reality of the professional staffing, recruitment and contracting sector is that companies often have operations or provide talent (labour) across multiple Australian and international markets. One of the primary reasons professionals choose contracting or non-permanent forms of work is the flexibility it provides and there is a significant trend towards such non-traditional models.

There are reputable providers in the professional staffing, contracting and recruitment sector who are already compliant with workplace laws and are not involved in the exploitation of workers. Further, not all workers in the sector are vulnerable and/or subject to exploitation. For example, the professionals that APSCo Au's members engage with who freely choose to enter these types of relationships are fully aware of their workplace rights and entitlements and have the acumen to identify which work arrangements best suit them.

Heightened protections should be afforded to those workers less able to understand the terms of any labour hire or contracting arrangement, or those who are less likely to be in a position to freely choose their mode of engagement, such as individuals under the age of 18, unskilled and migrant workers in particular industries where exploitation has been found to exist.

This would also allow genuine independent contractors, and their hiring entities, to freely negotiate the terms of engagement without the fear of those terms unintentionally falling foul of sham contracting or other laws aimed at preventing exploitation of temporary workers.

APSCo Au believes that its members, including their clients and the workers they engage, will continue to benefit most from a simplified and streamlined system of self-regulation/certification which it currently has as part of its TES and Certified Recruitment Professional programs, which includes the Code of Conduct. This delivers greater productivity benefits, and better compliance outcomes due to an enhanced understanding of the rights and obligations by all parties and an agile response to workplace legislation reforms as they occur.

APSCo Au would be pleased to have the opportunity to discuss the points in this submission in more detail as part of the public hearings or otherwise and, in particular, provide any additional information as required.



Regards,

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Encl: Annexure A
Annexure B

Comparison of Labour Hire Licensing Across Australia

State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
Qld	<u>Current</u> <i>Private Employment Agent Act 2005 (Qld)</i>	Regulates agents who find work or workers for persons but expressly excludes a labour hire employment arrangement.					
	<u>Proposed</u> <i>Labour Hire Licensing Bill 2017 (Bill)</i> introduced on 25 May 2017 to regulate the provision of labour hire services.	Labour hire providers based in Qld or supplying workers to Qld.	Labour hire providers to have a licence in place which applies to all industries and is renewed annually.	Application for a licence must be in the approved form. Each applicant, proposed nominated officer, and each executive officer of the corporation must satisfy a "fit and proper" person test. Business must be financially viable.	Application fee and annual renewal fees. <ul style="list-style-type: none"> \$1,000 for small labour hire provider \$3,000 for medium provider \$5,000 for large provider 	<ul style="list-style-type: none"> Must not provide labour hire services unless they hold a licence. Must not advertise, or hold out, that they provide labour hire services unless authorised. Must not, without reasonable excuse, enter an arrangement with a provider, unless the provider holds a licence (i.e. this applies to clients). Prevents persons from entering arrangements to supply workers where they know, or ought to know, that the arrangements are intended to avoid/circumvent application of the Bill. If a license is granted, the chief executive can attach conditions, including onerous requirements Licensee to provide report within 28 days after a reporting period ends. Right of entry for inspectors Public register of certain particulars for each license, potentially exposing sensitive 	Once the Bill is enacted, failure to hold a license after 1 July 2017 would incur a maximum penalty of \$130,439.10 for an individual or 3 years imprisonment and \$378,450 for a corporation.

State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
						commercial information	
Vic	<p>No current licensing scheme.</p> <p><u>Proposed</u></p> <p>Support from the Vic Government following the recommendation in the Vic labour hire inquiry report dated 27 October 2016.</p>	<p>The Vic government is yet to consider the proper scope and application of the scheme.</p>	<p>National sector-specific labour hire licensing scheme.</p> <p>Victoria licensing scheme for labour hire agencies in the horticultural, meat and cleaning industries. Ability to expand to cover other industries or to be contracted in response to changing (improved) practices in the regulated industries.</p> <p>Develop voluntary code of practice for labour hire industry, establishing best practice requirements for labour hire employment arrangements.</p>	<p>To obtain a licence, the labour hire operator would need to provide identifying details of the business and meet certain criteria, which has not yet been published.</p> <p>Applicants to provide statutory declaration and information demonstrating their compliance (also at time of renewal).</p> <p>Company and its key personnel must pass an objective 'fit and proper person' test, which would include no past convictions for offences involving fraud, dishonesty or violence and no past involvement in insolvent businesses or breaches of workplace or OHS laws. Also provide information about visa holders.</p>	<p>Initial licence fee and annual renewal fee (amounts currently unknown).</p>	<ul style="list-style-type: none"> Hosts (i.e. clients) subject to legal obligation to use only a licensed provider. Public register of all licensed operators. 	<p>Civil liability provisions and/or criminal offences for:</p> <ul style="list-style-type: none"> labour hire provider operating in the regulated sectors without a licence; and host organisation (i.e. client) using the services of an unlicensed operator. <p>Liability provisions/offences for breaches of other provisions of the scheme.</p>
ACT	<p><u>Current</u></p> <p><i>Agents Act 2003</i> (ACT) requires persons carrying on business as an employment agent* to be licensed.</p>	<p>Applies to work carried out in or outside of the ACT.</p>	<p>Employment agent services include finding, or helping to find, a person to carry out work for a principal, whether or not the work or employment is to be carried out under a contract of employment or otherwise.</p> <p>*Note: the definition does not appear to</p>	<p>To be eligible to hold a licence, corporation must have at least one director who also holds a licence and no directors who are disqualified from holding a licence.</p> <p>The factors which disqualify a person from holding a licence include:</p> <ul style="list-style-type: none"> bankruptcy, personal insolvency or involvement in management of a corporation in administration or subject to a winding up order; 	<p>Current fees upon application, and for the required annual payment, are \$762 for a one year licence and \$2,286 for a three year licence.</p>	<ul style="list-style-type: none"> ACT Administrative Tribunal to make occupational discipline orders in respect of agents who breach fair trading legislation or licensing requirements. Agents required to advise in writing of any change to their main place of business. Agents must not publish false or misleading advertisements. Must keep written records of a range of transactions for a five year period. Commissioner for Fair Trading 	<p>A person without a licence commits a strict liability offence, with a maximum penalty of \$15,000 for individual and \$75,000 for corporation and/or one year's imprisonment, if the person carries on business as an employment agent,</p>

State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
			apply to labour hire providers although they are not expressly excluded from the Act. Does not apply to contracting or contract management.	<ul style="list-style-type: none"> • mental incapacity; • for a corporation, having a controller or administrator appointed or being the subject of a winding up order; or • contravening a licence condition or relevant provision of the Act. <p>Applications must be accompanied by police certificate, and state place which will be the main place of business.</p> <p>Licence applicants must give public notice of their intention to apply.</p>		<p>must enter a series of information about the agent on a public register.</p> <ul style="list-style-type: none"> • Specific prohibitions applicable to an employment agent in respect of fees. • <i>The Agents Regulations 2003</i> (ACT) contain a statutory code of conduct that applies to employment agents and other licensees under the Act. 	or pretends to be a licensed employment agent.
	<u>Proposed</u>						
	The ACT Government is currently receiving public submissions for the inquiry into insecure work in the ACT.						
SA	<u>Current</u> The <i>Employment Agents Registration Act 1993</i> and <i>Employment Agents Registration Regulations 2010</i> establish a licensing system for employment agents and exclude labour hire						

State	Status	Application	Scope	Requirements	Costs	Regulation	Penalties
	arrangements.						
	<u>Proposed</u> Recommended labour licensing scheme.	Details not released yet.	National licensing scheme for labour hire providers. State-based licensing scheme for labour hire providers.				
NSW	No current or proposed licensing scheme. Part 4 Division 3 of <i>Fair Trading Act 1987</i> (NSW) regulates employment placement services and prohibits charging fees to job seekers.	n/a	n/a	n/a	n/a	n/a	n/a
WA	No current or proposed licensing scheme. <i>Employment Agents Act 1976</i> (WA) expressly exempts labour hire arrangements from licensing scheme.	n/a	n/a	n/a	n/a	n/a	n/a
NT	No current or proposed licensing scheme.	n/a	n/a	n/a	n/a	n/a	n/a

APSCo Au – Vulnerable Worker Checklist

Name of worker: _____ Date checklist completed: _____

No	Documents	Yes / No	Comments
1	Have they provided certificates of qualifications, CVs (if relevant)?		
2	Have satisfactory references been provided?		
3	Do they have the right to work in Australia? <ul style="list-style-type: none"> • Copy of passport and visa sighted (if relevant) • VEVO check (if relevant) 		
4	Is the worker being paid above the national minimum wage?		
5	Is the worker (if an employee) covered by a Modern Award? (If no, move to Question 7)		
6	If the answer to question 5 is yes, are they receiving at least the minimum wages for their classification and other entitlements pursuant to the Modern Award.		
7	If the worker is an employee, has the Fair Work Information Statement been issued?		
8	Has the relevant employment or contractor agreement been provided and signed?		
9	Does the employment or contractor agreement accurately reflect the nature of the engagement?		
10	Based on the nature of the engagement, is the worker receiving their correct entitlements?		

11	Are there adequate protections in place i.e. harassment and discrimination policies, WHS policy, workers' compensation, superannuation etc?		
12	Is English as a Second Language a consideration and if so what steps have been taken to ensure full understanding of employment/contractual agreements?		
13	Are there any disabilities that need to be considered in any agreement and work conditions ie hearing, sight, physical?		
14	Is the worker entering the agreement voluntarily and with a complete understanding of their rights and entitlements?		