



Submission to Queensland Labour Hire Licensing Bill 2017

June 2017

Contact:
Heather Moore
National Policy & Advocacy Coordinator

The Salvation Army National Secretariat PO
Box 4256 Manuka ACT 2603



Introduction

The Salvation Army welcomes the opportunity to make a submission to the Queensland Labour Hire Licensing Bill 2017. We strongly support this legislation and have provided some recommendations herein to encourage the Queensland government to pass and strengthen the proposed bill.

The Freedom Partnership to End Modern Slavery is a special program of The Salvation Army dedicated to building a national movement to end human trafficking, forced labour, and other slavery-like practices in Australia. The Salvation Army promotes policies that uphold protections for individuals most vulnerable to severe forms of exploitation in the global economy, particularly migrant workers.

The Salvation Army's interest in this space stems from our experience with migrant workers we encounter through our welfare centres and those we assist through our program for victims of modern slavery, which includes forced labour, human trafficking, deceptive recruitment for labour or services, and debt bondage, amongst other "slavery crimes" in Australian Criminal Code sections 270 and 271. The Salvation Army operates the only dedicated refuge in the country for women who have experienced modern slavery and has assisted individuals who have experienced severe exploitation whilst working on student, skilled, seasonal worker and other temporary work visas. We also provide prevention and outreach services to women, men, youth and children who are being exploited and are at risk of slavery or related conditions across the country, including in Queensland. More information on The Salvation Army's anti-trafficking work is provided in the [appendix](#).

There is substantial domestic and international evidence that migrant workers are more vulnerable to exploitation for a variety of reasons, including limited language skill, limited understanding of rights, and limited social networks that could empower them to advocate for themselves.¹ There is also a growing body of evidence that there are many employers in Australia who are well aware of these vulnerabilities and are deliberately employing visa holders to avoid their obligations under Australian employment laws. The lack of licensing and regulation of the labour hire industry, as well as weak enforcement of existing penalties for unlawful conduct, are resulting in a pervasive and systemic culture of exploitation with impunity.

Research from the Australian Institute of Criminology and our own experience demonstrates that exploitation of migrant workers occurs in the same context where contemporary forms of slavery occur.² The International Labour Organisation's Special Action Programme on Forced Labour has stated that ending forced labour requires robust monitoring of the labour market and strong enforcement of labour laws. As such, we strongly argue that the integrity of Australia's anti-slavery framework relies on robust protections for migrant workers; otherwise, we risk undermining our domestic anti-slavery response, our position as a leader in the region, and potentially our international human rights obligations.

¹ International Labour Organisation. (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office; Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report No 76* (30 November 2015). Senate Committee on Education and Employment Inquiry into Temporary Work Programs, *A National Disgrace* (2015); Fair Work Ombudsman, Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (2016); The Salvation Army Submission to Joint Standing Committee into establishing a Modern Slavery Act, (2017) (awaiting publication).

² David, F. (2010). Labour Trafficking. Research and Public Policy Series no. 108. Canberra: Australian Institute of Criminology.



In addition to the impacts on migrants, failing to effectively address illegal conduct against workers carries negative impacts on business and communities, where employers using exploited labour are undercutting honest competitors and placing downward pressure on wages. Exploitation most commonly occurs toward the bottom end of the supply chain, typically below one or more layers of sub-contracting. Indeed, the role of labour hire companies in committing and facilitating exploitation and forced labour of migrant workers was a primary reason why the ILO established a global program on fair recruitment, the Fair Recruitment Initiative (FAIR).³

Thank you again for the opportunity to make this submission and we would be pleased to provide further information as needed.

³ The ILO-FAIR is built on four prongs: (1) Enhancing global knowledge on national and international recruitment practices; (2) Improving laws, policies and enforcement mechanisms to promote fair recruitment practices; (3) Promoting fair business practices; and (4) Empowering and protecting workers. Its primary goals are to help prevent human trafficking; protect workers from abusive and fraudulent recruitment practices; and reduce the costs of labour migration and enhance development gains. <http://www.ilo.org/global/topics/fair-recruitment/lang-en/index.htm>



Recommendations

The Salvation Army supports this legislation and provides the following recommendations to particular sections of the bill.

Part 3 Division 4 s 27 Fit and Proper Persons

The Salvation Army supports this section and recommends the Queensland Government consider the feasibility of incorporating national Labor's recent policy commitment of a 100-point identity test and unique ID number for company directors to further strengthen this provision.⁴ Supported by the Productivity Commission, a unique identification number for directors would reduce corporate avoidance of tax, employment and other laws. The measure would have the benefit of not only preventing directors from obtaining a license under the Queensland scheme, but it would also prevent them from managing corporations as ASIC would be better positioned to track and disqualify repeat offenders.

Part 4 Division 1 License Conditions

s 28 Condition—compliance with relevant laws reads: *It is a condition of a licence that the licensee must comply with all relevant laws applying to the licensee.* The Salvation Army supports this section in principle; however, it is important to recognise the extent and nature of unethical conduct being carried out against vulnerable workers that is not necessarily a breach of Australian law. As the following photos illustrate, workers are being overcharged for overcrowded and unsanitary accommodation at inflated rates that do not reflect the local rental market.

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	30.00		\$0.00	\$0.00	Wages
Hr rate @ 22.13	29.50	\$22.13	\$652.84	\$7,762.10	Wages
Tomato buckets - Other			\$0.00	\$659.02	Wages
Deduct Accom p/w			-\$150.00	-\$1,620.00	Deduction
Deduct Health Ins p/w			-\$22.70	-\$227.00	Deduction
Deduct Equipment Bond			-\$10.00	-\$60.00	Deduction
Deduct Accommodation Bond			-\$10.00	-\$80.00	Deduction
Deduct Airfares p/w			\$0.00	-\$642.67	Deduction
Deduct Visa Fees p/w			\$0.00	-\$284.00	Deduction
Deduct Cash advance p/w			\$0.00	-\$166.75	Deduction
PAYG Withholding			-\$98.04	-\$1,263.25	Tax
WorkCover			\$18.61	\$240.00	Expenses
Superannuation Guarantee			\$62.02	\$900.01	Superannuation Expenses

In this example from Queensland, The Salvation Army has directly observed that workers are being charged \$150/week each, to live 4-6 to a caravan where local rental rates indicate \$300-350/week for three and four-bedroom houses.



Exterior of a caravan with potentially hazardous wiring. Windows in some caravans are taped shut or do not open, preventing adequate ventilation.

⁴ <http://www.smh.com.au/federal-politics/political-news/labor-targets-dodgy-company-directors-with-crackdown-on-phoenix-schemes-20170523-gwb3ka.html>



A caravan annex sleeping four workers in double bunks.



The caravan park has only two, single ring gas burners in a one-walled hut, with no eating/sitting area. These are the only cooking facilities for many of the workers living here.



Food preparation areas within some caravans are untidy and unsanitary.

Because it can be extremely difficult for a temporary foreign worker to obtain a short-term private lease, workers are in many situations fundamentally reliant on their employer for accommodation. It is therefore, not an acceptable argument that some workers, such as those on the Seasonal Worker Program, have agreed to accept such accommodation. They simply have no viable alternatives.

Conversely, for workers on working holiday visas, work is often explicitly contingent on accepting accommodation offered through the labour hire service. As with the seasonal worker example, it is not an acceptable argument to say that such workers have willingly accepted the terms as they are reliant on the employer; in the working holiday makers, it is to obtain the sign off for the 88 days for a visa extension; for seasonal workers, it is the right of return. There is extensive available evidence through



recent state and federal inquiries that where workers complain about their conditions, they are not only not paid for their work, but many employers wield their power to deny workers future opportunities, which discourages others from complaining and reinforces the power dynamic.

The Salvation Army therefore recommends that conditions of a license not only require lawful conduct, but ethical conduct as well. In other words, in the above situations, accommodation should be considered an extension of the work place to which all the same standards of work, health and safety apply.

Additionally, to inform what constitutes ethical conduct, the Queensland Government should consider adopting similar guidelines as those in the UK Guidance on provision of caravan accommodation for temporary workers.⁵ Developed by expert group of growers, suppliers and retailers, led by the Food and Produce Consortium UK, the introduction reads:

“The Fresh Produce Consortium recognises the need to provide guidance to members on the provision of caravan accommodation for temporary workers in the UK. Whilst some aspects of worker accommodation may be covered adequately by legislative requirements, there are significant elements which are not, and where the industry could benefit from sharing good practice to ensure that workers employed in our industry live not only in a safe environment, but in one which is acceptable in terms of comfort and security.”

Finally, The Salvation Army recommends the Queensland Government make it an offence to fail to comply with the conditions of the license.

Part 4 Division 2 s 31 Obligation to report to chief executive (2)(h) if the licensee provided accommodation to the relevant workers in connection with the provision of labour hire services—

The Salvation Army recommends that under subsection (2)(h), licensees should be required to report on whether work is contingent on taking up accommodation with the labour hire provider, as described above regarding working holiday visa holders fulfilling the 88-days regional work requirement; and include in that report information demonstrating that accommodation rates accurately reflect current market rates for comparable accommodation in the respective area.

The same reporting obligations should apply under subsection (2)(i), with regard to accommodation provided by another person to the relevant workers, to the best of the licensee’s knowledge. This is particularly relevant as we are aware of many examples where the labour hire provider is directly or indirectly linked with the accommodation provider and stands to benefit from the arrangement.

Part 6 Division 2 Subdivision 1, s55 General power to enter places

In accordance with the above recommendation regarding accommodation, where accommodation is directly linked with employment by a labour hire provider or connection of the labour hire provider, The Salvation Army recommends that an inspector should be able to enter an accommodation premises in accordance with the respective authority to enter the workplace as delineated under this section.

⁵ <http://www.freshproduce.org.uk/newsdesk/fpc-updates/2017/apr/industry-guidance-on-caravan-accommodation/>



Part 10 s103(3) Register of Licenses

The Salvation Army strongly supports the provision to make the list of licenses publicly available as an effective means to increase transparency across the industry and to better inform potential job seekers.

Background information on The Salvation Army Freedom Partnership

Collectively, The Freedom Partnership team has over 35 years of experience working in the anti-trafficking sector in the United States and Australia as supported accommodation providers, case workers, community organisers, trainers, policy advocates and research consultants.

Our team have provided professional consultation to the International Labour Organisation, US State Department Office to Monitor and Combat Trafficking in Persons and United Nations Office on Drugs and Crime in countries as diverse as Jordan, Myanmar and Fiji to name a few.

The Freedom Partnership supports people who experience human trafficking, slavery and forced marriage by operating the only refuge in Australia for women and through outreach case management services to men, women, young people and families living in the community.

In addition to our direct service work, The Freedom Partnership raises general awareness of trafficking and slavery by providing education, training and capacity-building to community and government agencies.

At the policy level, The Freedom Partnership advocates for evidence-based policy and practice across the core elements of protection, prevention, prosecution and partnership and we are a member of the Australian Governments National Roundtable on People Trafficking and Slavery.

The Freedom Partnership has developed the country's only survivor advocates program – the Freedom Advocates -- which utilises a framework for ethical engagement of survivors so they can contribute to positive social change.

The Freedom Partnership chairs the Australian Freedom Network an anti-slavery collaboration between 18 faiths in Australia. A major focus for this network has been to bring about a Modern Slavery Act for Australia similar to legislation in the UK and US and to encourage the business community to assess for the risk of slavery in their supply chains.

We acknowledge the forced labour, servitude and enslavement of Aboriginal and Torres Strait Island peoples AND Pacific Island peoples in Australia's history and to note the trauma and impact those injustices have had on individuals, their families and communities.