

## **RCSA comments to the Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021**

**16 August 2021.**

RCSA welcomes the opportunity to make a submission to Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill. RCSA is the peak industry body for the recruitment and staffing industry in Australia, representing more than 1200 individuals and businesses in recruitment and staffing, which includes the labour and on-hire sectors.

We herald the stated intent of these changes which is to send a strong message to unscrupulous employers that the exploitation of migrant workers as cheap labour is not acceptable.

RCSA has long been a strong advocate for improving mechanisms to stamp worker exploitation and has lent its unwavering support to the Migrant Worker Taskforce process and to the recommendations it made for measures designed to better target and tackle worker exploitation.

Indeed, at the time the Taskforce released its recommendations, RCSA was fast to welcome stronger legal deterrents and greater resources to enforce compliance with workplace laws.

While we may have unconditionally welcomed recommendations for additional resources and measures to enforce existing workplace relations law, we have argued the need for caution in the approach on stronger sanctions and penalties to ensure that measures don't unintentionally catch honest errors in their nets.

The regulatory environment governing workplace relations in Australia is extremely complex and can change rapidly. This is especially the case in industries such as horticulture where complex piece rate arrangements exist.

Examples of businesses following a structured process and actively working to ensure they meet their obligations to workers, but still making honest errors around entitlements, are not uncommon.

While RCSA welcomes stronger legal deterrents and greater resources to enforce compliance with workplace laws, we believe that government needs to work extremely closely with industry around development implementation of those recommendations to avoid concerning unintended consequences.

We echo the concerns expressed by the Australian Chamber of Commerce and Industry (ACCI) in its submission that the time to assess this Bill and provide input to Government has been extremely brief.

As a member association of ACCI, RCSA shares and endorses the detailed concerns raised in its submission. In addition to our support of the detailed issues and concerns raised that submission, RCSA would also take the opportunity to make some high-level observations in relation to the labour hire sector in particular.

While we understand why there is repeated references to 'labour hire intermediaries' throughout the Bill, their inclusion as something separate to 'employers' is a continued source of frustration.

As representatives of an exceptional group of professional labour hire operators, we are sick of the enormous achievements of our industry being tarred by the brush of rogue operators who are as akin to criminal syndicates as they are to labour hire operations.

Our members will all be subject to the measures proposed in this Bill as employers and will not be captured by the measures any further by the additional references to 'labour hire intermediaries'.

In addition to this being a source of general semantic frustration, it hints at potentially more concerning implications from a sector perspective. It reinforces our concern that policy approaches for the sector are often developed with a simplistic 'branding' lens rather than with a sophisticated understanding of the nuances and issues that exist in the structure and design of worker engagement and deployment, particularly in sectors where there is evidence of risk of worker exploitation.

We have seen this reflected in the development of labour hire licensing schemes at the State Government level, where decisions in Queensland and Victoria to subject the broadest possible elements of the sector to licensing spreads resources and focus wide and thin, with an end result being the creation of a box ticking exercise for organisations already doing the right thing and doing very little to genuinely address exploitation.

It is because of the nuanced and subtle challenges posed by triangular relationships that RCSA developed StaffSure, an industry led certification mechanism designed to address key integrity and risk elements within contemporary workforce services.

Because it has been developed by the industry, StaffSure uses market intelligence and specific sector knowledge to understand supply chains and effectively assess them. The scheme recognises that businesses may hire and assign workers to work directly for clients or they may manage their own workers to deliver the services as a contractor and the scheme's application covers labour hire providers, contracting firms, employment agencies, payroll agencies and recruitment firms.

Intimate sector knowledge and understanding of the nuances that exist in engagement and deployment arrangements in areas where exploitation is occurring is vital to the development of successful and appropriately targeted responses.

As observed by ACCI in its submission, the opportunity for engagement and consultation with industry on these measures has been limited. RCSA would welcome the opportunity to work more closely with Government to support the ambitions it has for this legislation and to provide the specialist knowledge and understanding of our members in helping ensure that measures are both appropriately targeting the issues they are designed to address but are not causing unintended consequences for operators who are doing the right thing.

This is not about trying to subvert the ambitions of the Taskforce or of this legislation, it's about balance and effectiveness.

First, we need to make sure that the measures in this Bill are designed in a sophisticated enough way to effectively capture the many forms and shapes that exploitative operations can take in the labour market. Secondly, we need to ensure our labour market has the adaptability and flexibility to meet the demands of Australian business in a competitive global economy, whilst working to ensure that doesn't come at the expense of migrant workers, who can be some of our most vulnerable.

RCSA would welcome an opportunity to make itself and its members available to work closely with the government in further discussion and development of specific measures designed to cover and capture the many different and nuanced forms of worker engagement in areas where exploitation occurs, structures that are often changing and evolving to avoid coverage from bluntly designed regulatory mechanisms.

Should you wish to make time for further discussion and engagement with RCSA on both this Exposure Draft Bill and on other government responses to the Migrant Worker Taskforce Report please get in touch with Brooke Lord in our advocacy team at [blord@rcsa.com.au](mailto:blord@rcsa.com.au).

## **About Staffsure**

StaffSure is an independently audited certification scheme which provides robust assurances about the way staffing businesses source and supply workers to their clients. It is an outstanding example of an established industry-led scheme that offers an effective, thorough and comprehensive approach to providing certainty around labour in supply chains.

StaffSure was developed by RCSA, the peak industry body for recruitment, consulting and staffing sector, to address key integrity and risk elements within contemporary workforce services. RCSA and its members are proud drivers of professional practice, setting benchmarks through standards, education, research and business advisory and support.

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StaffSure recognises that all such forms of labour supply are relevant in relation to the ethical treatment of workers and must be interrogated and explored as part of addressing worker exploitation. In that sense, its application is more comprehensive and covers more forms of labour engagement than do the labour hire specific licensing schemes that exist in some State and Territories.

The key components of the StaffSure Certification process are aligned with those contained in State-based labour hire licensing schemes and include a fit and proper person check, a financial assurance check and an ability to comply check. StaffSure certification is recognised by the Queensland Labour Hire Licensing scheme, with certified providers able to access a streamlined application process for labour hire licensing.

The StaffSure standard was developed in consultation with industries that use workforce services providers, governments that regulate them and unions that represent workers employed by them. The certification is subject to an independent audit against the standard, providing confidence and surety around the treatment of workers throughout the supply chain.

StaffSure makes it simple for business, government and workers to find and partner with reputable Workforce Service Providers such as labour hire companies, professional contracting firms and private employment agencies. It also recognises the power of the market in driving solutions, encouraging and supporting businesses to demonstrate supply chain leadership.

## **About RCSA**

RCSA is the peak industry body for recruitment, staffing and workforce solutions in Australia and New Zealand representing over 3,000 Corporate and Individual Members.

RCSA promotes and facilitates professional practice within the recruitment and staffing industry. It sets the benchmark for industry standards through representation, education, research and business advisory support to our member organisations and accredited professionals who are bound by the ACCC authorised RCSA Code for Professional Conduct through membership.

RCSA is a proud member of the World Employment Confederation, the voice of the recruitment and staffing industry across 50 countries, and the Australian Chamber of Commerce and Industry, Australia's largest and most representative business network.