

## **RCSA submission on Automatic Mutual Recognition (AMR) of Occupational Registrations and Licenses.**

**12 February 2021**

RCSA welcomes the opportunity to make a submission regarding the Automatic Mutual Recognition (AMR) of Occupational Registrations and Licenses Consultation Paper circulated in December 2020.

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.

The two largest employment services provided across our membership base are permanent placement recruitment and labour or on-hire services. Permanent placement recruitment involves staffing firms sourcing and screening candidates on behalf of a client before that client employs the candidate directly.

Labour hire or staffing agencies employ people directly and assign them out to work for clients in almost every industry. They are specialist employers and workforce managers who are critical to Australia's economy.

Job agencies employ around 360,000 Australians in professional, trades, skilled and semi-skilled roles, assigning them to work across hundreds of different industries, ranging from IT and engineering through to health and manufacturing.

For the majority of staffing firms, even the smaller businesses, the bulk of both permanent placement and on-hire placement activity is oblivious to State borders, occurring nationally and sometimes even globally.

While AMR of the specified occupational registrations and licenses is a positive step in the direction towards greater mobility of Australia's workforce; for our industry, the capacity to place people in work is hindered by factors beyond the current framework of mutual recognition, such as the Private Employment Agents Licence, State and Territory labour-hire licensing schemes and border closures and restrictions occurring in response to COVID-19.

### **Automatic Mutual Recognition of Occupational Registrations and Licenses**

Many RCSA members employ and on-hire workers who are subject to occupational registrations and licenses. Feedback from members indicates that cross-jurisdictional licensing considerations is more prominent in blue collar sectors, such as construction and electrical trades.

As the impact of COVID-19 on the economy and jobs is felt more directly, particularly after the JobKeeper scheme has concluded, we anticipate there will be more interest and willingness from workers to travel for jobs while the economy is still recovering.

There is no question that AMR will provide greater workforce mobility at a time that workforce mobility will be vital to supporting economic recovery. Beyond mobilising workforce however, it will provide a boost for workers and the jobs they are able to take as well.

A good example exists in the construction and electrical trades sector. Presently, construction workers are usually permitted to work interstate while they await mutual recognition of their registration or licence, but must do so under another tradesperson's license as a trainee. What this means is that often a fully qualified worker will have to accept pay at a lower rate – for working as a trainee - until their license is recognised or approved in the State in which they are working. In addition to absorbing a temporary pay cut, they will also need to fund the cost of applying for recognition a license in State in which they have been on-hired. We understand that the wait time for mutual recognition of an electrical license is around four weeks.

Work is becoming increasingly mobile and State or Territory-specific occupational licensing is becoming less relevant within that context. It often only serves as a dampener to mobility which comes at a cost for both business and workers. RCSA strongly supports recognition across State and Territory borders for all occupational licenses in the discussion paper and for many beyond.

### Further Mutual Recognition considerations within the context of the staffing sector.

While AMR of occupational licensing in the areas outlined in the discussion paper would provide significant direct benefit for affected workers and the businesses they support, the changes would have limited direct impact for the staffing industry. At most it might streamline administration for placements in industries subject to the identified occupational registrations and licences and in industries in which interstate placements are common.

The staffing sector is currently subject to a range of ad-hoc and inconsistent State and Territory-based licensing and regulatory regimes which were not identified as part of the discussion paper but which are, for our industry, a far more significant impediment to workforce mobility.

### *Private Employment Agents License and The Private Employment Agents Code of Conduct*

The vast variation in rules and application of regulation around Private Employment Agents – which essentially relates to permanent placement recruiters – creates significant challenge for compliance and worker mobility. In addition to being ad-hoc and confusing, the regulation that exists in this space appears to have been developed decades ago to address concerns about potential challenge in the sector as it was emerging in this country. The legacy regulation that exists in the small number of States that have not rolled their schemes back appears to have little impact or implication for operation in the sector, acting instead as regulation for regulation sake. RCSA believes that there are better options available to government here that would streamline compliance, reduce costs and red tape and significantly enhance worker mobility.

While this is an occupational regulation is not something that was specifically considered by the discussion paper, because of the nature of our industry's role in placing workers and mobilising

workforce, the Employment Agents regulation creates a significant barrier to labour mobility and for that reason, RCSA believes it is relevant for consideration within the context of this process.

Private Employment Agents Licensing Schemes currently operate in Western Australia, South Australia and the ACT. These schemes require an individual who is in the business of finding workers for employers and finding work for people seeking employment to obtain a license (with the exception of labour-hire companies). In NSW and Queensland, old Private Employment Agents licensing schemes have been removed and replaced with legislation governing the behavioural and ethical conduct of Private Employment Agents.

Outside of Government contracts, our members have reported that their clients are largely unaware of the existence of the Private Employment Agents Licence. Advice from members is that with the exception of government tender checklists and processes, none of their clients have ever inquired about nor requested information about whether they hold a Private Employment Agents license.

Indeed, in most cases, our members advise that membership of a professional industry body, such as RCSA, is far more relevant for clients as an assurance of professional behaviour than an occupational licence. Clients tend to be more that membership of RCSA binds staffing firms by a Code of Professional Conduct, which is endorsed by the Australian Competition and Consumer Commissioner (ACCC). RCSA's Code ensures that all members adhere to a high standard of ethical conduct and professional behaviour. It also means that RCSA has the means to arbitrate issues relating to ethical conduct when they are brought to our attention.

Advice we receive from our members is that there is little focus or resourcing of the assessment and administration of the Private Employment Agents Licensing regime in the States in which it exists. Any individual can apply - no qualifications are required, most applicants are granted one, few businesses engaging staffing firms are aware of its existence and enforcement of the terms of the licenses, if it happens, is poorly resourced.

The application process and costs associated with the scheme are vastly different and tend to have parochial inclusions that require significant State-specific administration and attention. A license in South Australia costs \$16, while a license in Western Australia costs \$900.

In South Australia, an individual is required to post a notice of intent to apply for a license in the local newspaper. That requirement comes at a significantly greater cost than the license itself. Moreover, the act itself feels a somewhat historic and irrelevant requirement given the disparate nature of news consumption and multiple distribution channels available for distributing information in the modern context. This outdated approach achieves little in relation of investigation or communication around licence applicants and in practice has little to no influence over the assessment process.

Information on how to apply for an Employment Agents Licence is difficult to access and certainly not publicised widely. For our members, these licences have become little more than a box ticking exercise in both concept and application, simply an administrative requirement which outlines the way operators in the market behave already and does not set any standards or requirement that exceed common practice. Certainly, advice to RCSA is that it seems to offer little value to our members or their clients in the marketplace or in relation to their operations.

It also does not sit comfortably in a modern and more mobile world of work, at times presenting an identifiable obstacle to labour mobility. For example, a staffing firm based in NSW who advertises a job on seek will regularly receive calls of inquiry about the role from all over the country. Technically

speaking, that same recruiter will be in breach of SA Employment Agents licensing restrictions if they unwittingly take a call from someone in South Australia who may inquire about said role.

One staffing firm shared an example of the difficulties they faced obtaining licences in other States. This firm had identified a likely candidate for a NSW-based role in South Australia, but realised they would need to obtain an Employment Agents Licence there in order to progress them for the role. Because the staffing firm did not have a physical presence (ie: a brick and mortar office) in South Australia however, they were required to write to the relevant Government Minister to explain their situation and apply for an exemption. Unfortunately, there was only one person allocated to assess and process this particular license type within the relevant government department and they happened to be on leave for three weeks at the time they applied, which delayed the application process. Not only was this time consuming, it placed the client contract at risk for the staffing firm in question.

In addition to demonstrating the resourcing challenges that exist with what has become an obscure licensing scheme in the States which have it, these examples also highlight the way the schemes have failed to keep up with technology and operational developments in the industry they are licensing.

Technological developments in the 20-30 years since these schemes were established have contributed to our industry today having fewer barriers or borders. Gone are the days when the only form of advertising for job opportunities was in a State-based news publication, or when engagement and connection with people outside of that State was expensive and difficult. Our members source and place people in work across many states, territories and countries. Many have offices in multiple locations around Australia and the world, but other, smaller firms, conduct national placement activity from a single office base. Increasingly, smaller national operations will structure as a single physical office but with workers based in multiple locations across the country.

RCSA member recruitment consultants and staffing firms adhere to the regulations that govern them and ensure they have for licenses in the States and Territories where they are required. The administrative burden of meeting the requirements of some of the more obscure, less relevant and less enforced historic licensing schemes, such as this one, requires greater energy than the value it delivers in market or worse still, can place them at risk of losing business to recruiters who may be unaware of the schemes or choose to ignore them.

Employment Agents Licensing Schemes have been in place in WA since 1976, in South Australia since 1993, and in the ACT since 2003. Licensing schemes established in NSW in 1996 and in Queensland in 1983 were removed in 2003 and 2005 respectively and replaced with legislation that regulates code of behavioural conduct for the industry.

The introduction of the schemes in the late 1990s and early 2000s aligns with the closure of the Commonwealth Employment Service in 1998 and the contracting out of the services it had previously provided. During that period there were a number of new employment agents entering the market and significant change in the composition in the industry.

It was also a period during which candidates reliance on recruitment agents in finding and being placed into work was significantly more substantial.

Advancements in technology and e-commerce over the past 20 years has supported significant evolution in the recruitment and staffing sector. In addition to activity becoming less constrained by geographic boundaries, candidates now have more control over the hiring process. They are able to

seek employment opportunities far more easily and more directly, including via a broad range of accessible and well-subscribed online advertising and matching platforms. It is easy for candidates to apply for a range of jobs that are accessible at their fingertips, as well as to review potential employers on online forums. Candidates are now less reliant on recruitment agents and staffing firms to connect them with work than they were 20-30 years ago.

This same technology has itself evolved beyond the regulatory boundaries established 20 years ago through these licensing schemes. Many online job-matching boards will not be licenced in States where a regime exists as they argue the services they provide are matching rather than recruitment services. Instead, the licensing schemes end up as little more than bureaucratic red tape for professional recruiters and staffing firms already behaving in line with the ambitions set out by that very regulation. In many cases, those recruiters and staffing firms operate in market as competitors to job matching services that are unregulated.

### Recommendation

In a modern context, these licensing schemes offer little benefit to candidates or to the industry they govern. For that reason RCSA proposes that all State and Territory Private Employment Agents licensing schemes be removed and replaced with legislation for a national code of conduct in line with those that exist already in NSW and Queensland. Schemes in those States have been adjusted to reflect the fact that the industry broadly operates in the manner that the licensing schemes were originally developed to foster, and that a mechanism that enables enforcement action against those operating outside of those bounds is more relevant, effective and efficient than a licensing scheme.

We feel that an enforceable national regulatory approach to those who operate outside of employment agents behavioural conduct expectations, rather than ad-hoc State and Territory licensing regimes, would be go a long way to supporting enhanced workforce mobility across nearly every sector in the economy.

If the removal of these schemes is not something that is achievable through this review process, at very least RCSA recommends that the government include the Private Employment Agent's License becomes in its considerations around AMR.

### *Labour-hire licencing*

Although the Commonwealth Government has confirmed its intention to establish a national labour-hire registration scheme a significant number of States and Territories have already established, or are in the process of establishing, their own licensing schemes for the labour hire industry.

The establishment of State and Territory specific licensing schemes for the labour hire sector has caused an enormous regulatory burden for the industry, most of it avoidable through a national approach.

While RCSA our members are not opposed to regulation for the labour hire sector, multiple and varied approaches, bureaucracies and application have given rise to enormous administrative and regulatory burden that is solely the result of the lack of national approach.

The existence of multiple schemes has caused enormous confusion, administrative burden and cost for our members. The different schemes all vary in terms of approach, coverage, application, timing and reporting. In addition to the significant regulatory impost this creates for the sector, it also requires the industry to fund multiple different regulatory bureaucracies who are doing essentially the same thing.

In the staffing sector, unlike some other industries, Unlike some industries, it is not just the larger businesses who tend to operate at a national level. Indeed, a large number of small staffing businesses, such as sole traders or those employing maybe two or three recruitment staff, tend to operate nationally or across multiple States and Territories.

The complexity and variation of State and Territory Licensing Schemes creates a huge administrative task for the larger business we represent. For the huge numbers of small and medium organisations that also have to navigate the schemes, the regulatory burden is enormous.

Labour-hire licensing requirements currently exist in Victoria, Queensland and South Australia. Following the passage of legislation last year, the ACT is currently in the process of establishing its own scheme, which is set to commence in the second quarter of 2021.

Schemes in Victoria and Queensland are broad in their approach, requiring anyone who places a worker to do work as part of a business or undertaking of another person to be licensed to perform that activity.

In South Australia, Labour Hire Licensing applies only to businesses who supply staffing services into industries identified as high risk, including horticulture, cleaning, meat-processing, security and trolley collection. The ACT is currently in the process of determining exemptions under its scheme, although it is expected the scheme will be broad in its implementation, more similar to that in Victoria and Queensland.

In Queensland, licenses are valid for one year with a 6 monthly reporting requirement. In South Australia members have annual licences and annual reporting, while in Victoria, the licence is 3 years in duration with annual reporting requirements and annual license fees. Fees vary from state to state, but for a labour hire business operating in Victoria, Queensland and South Australia, the annual cost will be around \$3,500 across the 3 schemes for the smallest business and around \$16,000 for larger organisations. The introduction of a scheme in the ACT will increase costs further for firms who also operate there.

The cost of the licensing scheme in Victoria, where license fees are based upon a firm's national rather than State turnover, has acted as a disincentive for many businesses to grow or to offer services in that State. Indeed, we are aware of a number of RCSA members who ceased providing services in Victoria as their fledgling operation in that State did not warrant the significant expense of a top tier licence, the price of which was based almost solely on their activity in other jurisdictions. The ultimate impact for business is a reduction of accessibility to staffing services, while for workers it may reduce the ability to connect multiple work assignments through a single firm, reducing mobility and opportunity.

Job agencies and labour hire have been vital drivers of employment for Australia throughout COVID-19, moving displaced workers from impacted sectors into areas of demand with speed and efficiency. RCSA members alone connected more than 150,000 people with work between March and July 2020, during the height of the pandemic.

The agility of the sector in mobilising labour not only connects displaced workers with jobs, but also provides governments and businesses with access to a vital workforce during critical periods of need.

RCSA partnered with the Queensland Government to deliver the Jobs Finder Queensland program, which connected people looking for work in Queensland with agency job search assistance. We also partnered with the Federal Department of Health to deliver vital surge staffing services in the aged care sector to supplement staff stood down as a result of COVID-19. Between June and August last year, job agencies were able to deliver workers across more than 20,000 shifts to ensure vital continuity of care for vulnerable aged care residents.

The value of this industry in moving workforce with speed and efficiency goes beyond just mobility however, it drives job creation and boosts economic recovery.

A report released by FTI consulting in May last year found that labour hire and job agencies will be vital to creating jobs and supporting business to accelerate economic recovery post COVID-19. It estimated that the effectiveness of job agencies in mobilising Australia's labour market would boost the nation's economic recovery by almost \$1 billion and deliver around \$200 million for government in jobseeker savings and additional tax revenue from the extra jobs created.

The report found that businesses who draw on agency workers during challenging times are likely to accelerate more quickly out of downturn than their competitors. It highlighted the importance of flexibility for business, especially small and medium businesses, in any decision to invest and employ after an economic shock.

The effect of unnecessary regulatory cost and burden for this industry should be considered in the context of economic recovery and job creation. Now more than ever, flexibility for business – especially small and medium enterprises – will be the deciding factor in whether and when they decide to invest after this economic shock. The agency workforce will be vital in providing this support for business and business confidence as the Australian economy emerges from the impact of COVID-19.

The alternative for business will be to put employment on hold until things are looking more certain, which will simply extend the period of downturn and stifle job creation at a time when it is most vital.

In addition to reducing cost and regulatory burden, a single national regulatory approach for labour hire would enhance the ability of staffing firms to support and enhance workforce mobility, support business to grow and create jobs.

### Recommendation

RCSA is aware that activity is currently underway in relation to the establishment of a licensing regime for the labour hire sector nationally. We would like to take this opportunity however, to highlight the inconsistent and disjointed approach to labour hire licensing across States and Territories as perhaps the single largest barrier to labour mobility to the staffing services provided by our industry, as well as creating an enormous regulatory burden that could easily be streamlined and addressed through a national approach.

RCSA appreciates that the Government has committed to establishing a national regulatory regime for labour hire and that the Attorney General and Minister for Industrial Relations has commenced consultation with States and Territory Governments and key stakeholders.

Nonetheless, due to the focus of this taskforce on reducing unnecessary red tape and enhancing labour mobility, RCSA recommends the taskforce monitor the progress of work to establish a national regulatory regime for the industry – and the impact of that work on reducing regulation at the State and Territory level - within the context of the work currently being undertaken.

In the absence of the achievement of a single national regulatory system, RCSA strongly advocates that the Deregulation Taskforce explore ways to enable Automatic Mutual Recognition across State and Territory labour hire licensing regimes as a priority. Any consideration of mutual recognition must also include a single license fee as opposed to multiple fees across multiple jurisdictions.

RCSA does not believe it is reasonable nor appropriate for an industry that is so vital to job creation, employment growth and labour mobility, to be required to pay for multiple different bureaucracies multiple times across multiple different locations who are all doing exactly the same thing. An agreed and established national approach to application and assessment should negate the requirement to pay across multiple jurisdictions.

#### *Border closures and COVID-19 restrictions impact on occupational mobility*

If the objective of AMR is to support and enhance the ability of displaced and underemployed registered workers to take up job opportunities wherever they arise, border closures and COVID-19 restrictions should also be considered within that context.

The impact of volatile and unanticipated changes to border restrictions is a significant hurdle to the movement of workers around and across the country. While we understand the reasons that they are occurring, the unpredictability and variation of responses to outbreak by different States and Territories is further adding to what would otherwise be an uncertain and challenging period for worker mobility.

For businesses, it creates huge uncertainty around access to skills that might be in short supply in their own State or Territory. It also makes workers themselves increasingly wary of travelling interstate for work should they be unable to return to their homes and families if things change suddenly while they are there.

While we appreciate that governments are all understandably struggling to navigate a new and constantly changing post COVID world, RCSA supports any and all efforts the Commonwealth can make in working with State and Territory governments to attempt to establish some degree of consistency and approach in protocols and border control responses on COVID outbreaks.

We understand that it is a particularly challenging problem, and that it is extremely difficult to have a uniform response to a challenge that is not uniform or predictable in its impact. Nonetheless, we believe that any ability to create some predictability around likely protocols and timing of response measures following the emergence of outbreaks would provide a significant support to enhancing labour mobility and support economic recovery.

## 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.