

Consultation Paper 1: Development of Operational Regulations

Please Note: All responses will be treated as confidential and will not be published.

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1: Application - Financial Viability (section 13(3)(c)(ii))

Please provide comments on:

- The suitability of the definition of financial viability.
- The list of proposed documents.
- The suitability of a high/low weighted document approach.
- The number of documents to be provided.
- The proposed approach for new businesses.

Suitability

The test for financial viability should be the same as the **solvency test** in Corporations Law and for personal insolvency – *able to meet payment obligations as they fall due*. The test would allow the Labour Hire Licensing (LHL) laws to link to existing jurisprudence without risk to “legal coherence”.

Workers can be paid promptly

The timeliness of payment obligations is already established by legislation and industrial instrument.

Selected obligations – e.g. tax and super

There is no value in highlighting specific obligations. The risk in doing so is that attention will be diverted from obligations that are not highlighted.

Proposed Documents

Approach to Information Gathering

RCSA supports the principle that the Government should not require personal or commercial information unless it can be clear about **why** it needs the information; **how** it proposes to handle it; and **what** it proposes to do with it.

RCSA would be concerned to know more about what **confidentiality** measures and **third-party access** restrictions would apply to personal and commercial information provided under the proposed regulations.

Agencies, who have had experience of keeping the registers and demographic information required by Queensland’s *Private Employment Agents (Code of Conduct) Regulation*, without ever having been required to produce it, are likely to be skeptical about the content LHL Regulations that require the production of a wide range of documents to “prove” financial viability.

An approach to determining financial viability, in the context of preventing exploitation and enhancing business integrity, that looks only at financial documents is ineffective, costly and commercially intrusive.

For example, a requirement for **external independent audit** in every case would be massively expensive. The cost of something as sophisticated as external audit was not identified in the Regulatory Impact Statement carried out in March 2017. It would be unfair to impose that cost on business now.

Moreover, an **accountant's report on "viability"** would, in many cases, be unlikely to predict the impact of decisions such as the *Loaded Rates in Agreements Case; Skene v Workpac Pty Ltd* [2016] FCCA 3035 (under appeal); or *CFMEU v One Key* [2017] FCA 1266. It would not be well suited to predicting the likelihood and impact of a catastrophic claim.

Tax returns are unlikely to be predictive and are unnecessarily intrusive. The State Government would have to establish good reason to require the production of Commonwealth Government documents. If they were genuinely required in a specific case, they should be obtained by inter-governmental gateway.

High Low Weighted Document/ Minimum Number of Documents Approach

The **High/Low Weighted** document and **Minimum Number** of documents approaches both seem to be arbitrary. Insufficient information is provided about them in the Consultation Paper to permit a considered response to be made.

A Better Approach

Instead, it needs to be recognised that financial viability depends on related risk factors across several domains.

The presence of suitable **controls for financial risk** may be more important, in many cases, than the financial documents themselves. A diagnostic tool should therefore be used to identify what documents and controls might need to be evidenced in each case according to the scale of operation and type of business carried on.

StaffSure: RCSA's StaffSure Certification Program addresses this by setting out principles and standards for financial assurance. The principles and standards are supported by a focussed and related set of audit questions. RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the LHL test for financial viability to streamline the process and reduce the cost and red tape burden.

New Business Inspection

If there is no requirement for "inspection" of existing businesses, there should be no inspection of new businesses - self reporting or suitable certification should suffice.

2: Application – Compliance with the Work Health and Safety Act 2011 (WHS Act) and the Workers Compensation and Rehabilitation Act 2003 (WCR Act)

Please provide comments on:

- The suitability of this approach for demonstrating compliance with the WHS Act and WCR Act.
- The appropriateness of the list of safety laws.
- Any additional questions that should be asked of applicants.
- Any other criteria by which compliance with the WHS Act and WCR Act could be assessed.

Approach

The general approach requiring declarations and disclosure of convictions and enforceable undertakings is minimally satisfactory; but may not be the most effective approach.

"Regardless of success"

There should be no requirement to disclose prosecutions that have been successfully defended, because a successful defence is not evidence of compliance or non-compliance. It has no probative value. It is intrusive and burdensome. It does not disclose any line of inquiry that is directly relevant to the issue.

Appropriateness of List of “Safety Laws”

There is no definition of “**corresponding law**” - ought the reference not be to a “**relevant law**” in relation to Work Health & Safety?

Additional Questions

Questions should be additionally directed to the issue of the applicant’s **culture of compliance** and **compliance competence**, rather than merely to its history of non-compliance. We say more about this below in reference to RCSA’s StaffSure Certification Program

Other Criteria (StaffSure Example)

RCSA’s StaffSure Standard addresses Work Health & Safety assurance by establishing principles and standards, which are supported by a focussed and related set of audit questions. The Standards are stated (in question form) as follows:

Commitment

- Has the agency published a policy, approved by its owners/managers about ensuring that workers in its Service Network have a healthy and safe work environment?

Ascertain & Assure

- Does the agency ascertain the regulatory environment that governs the health and safety of workers in its Service Network?
- Does the agency ascertain the nature of health and safety hazards to workers in its Service Network?
- Does the agency conduct regular risk assessments of health and safety hazards to workers in its Service Network?
- Does the agency have controls (including adequate arrangements to conduct site inspections and to address hazards) to assure that workers in its Service Network have a healthy and safe work environment?

Roles & Responsibilities

- Does the agency have a defined structure for the management of work health and safety responsibilities within its Service Network?
- Are roles with respect to health and safety responsibilities clearly and appropriately allocated, documented and made known to Service Network participants?
- Does the agency have clear and appropriate processes for consultation, cooperation and co-ordination of work health and safety activities between work health and safety duty holders within its Service Network?

A more detailed set of Audit Questions then examines how these matters are operationalised within the agency.

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the LHL test for Work Health & Safety compliance to streamline the process and provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

3: Application – Additional requirements (section 13(3)(c)(iv))

Please provide comments on:

- The specific questions to be asked at application about any other relevant laws.
- The proposed questions in respect of the *Fair Work Act 2009 (Cth)* and the *Migration Act 1958 (Cth)* are appropriate to establish compliance.
- The proposed approaches for industry and location.
- Any other matter that may be relevant for application.

Specific Questions

A general approach requiring declarations and disclosure is minimally satisfactory; but may not be the most effective approach.

Proposed FWA and MA Questions

Incident of litigation regardless of success...

The question goes too far. It would extend to interrogation about successful defences of unfair dismissal and contractual claims. Limiting the question to one about **successful prosecutions** and **enforceable undertakings** would be more in keeping with the objects of the LHL Act.

Labour Agreements

Confidentiality issues arise. If access is sought to labour agreements, this should be done through **intergovernmental gateways** under strict protections of commercially sensitive information and in accordance with the Commonwealth's properly established disclosure obligations. In that regard, the Department of Home Affairs informs its stakeholders:

Confidentiality and disclosure

Sponsors should be aware that the Department may be required to release limited information about labour agreements including the names of approved sponsors, the date an agreement was signed and what type of agreement it was (e.g. company specific or industry agreement). Instances where disclosure is required include:

- the Department's annual report;
- parliamentary committees;
- where required under legislation or Australian Government policy, including privacy and freedom of information legislation; and
- court cases

The Australian Government does, however, appreciate that labour agreement requests and agreements may contain sensitive information.

As a result, more detailed information will only be released where it is required in line with the Australian Government's disclosure obligations, with confidentiality of information protected to the extent that the law allows.

Either party may request that the confidentiality of the information exchanged between the parties be formalized through a confidentiality deed. Any such arrangement should not limit the ability of stakeholders to provide genuine and frank advice on the matters proposed in the labour agreement.

Approved sponsors are advised to seek independent legal advice in relation to any confidentiality concerns and they should understand that, as part of the labour agreement consultation process, the labour agreement request provided to the Department will be shared with other government agencies

<https://www.homeaffairs.gov.au/WorkinginAustralia/Documents/requesting-labour-agreement.pdf>

In our respectful submission, a State Government ought not require the disclosure of Commonwealth Government protected information outside the scope of Commonwealth protections.

It is not practical to comment on the proposal to ask "a number of general questions relevant to fitness and propriety" without seeing what questions have been formulated.

StaffSure Example

RCSA's StaffSure Standard deals with Migration assurance by establishing principles and standards, which are supported by a focussed and related set of audit questions. The Standards address important issues of compliance culture and compliance competence. The Standards are stated (in question form) as follows:

Commitment

- Has the agency published a policy approved by its owners/managers about ensuring that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy?

Ascertain & Assure

- Does the agency ascertain the regulatory environment that governs the rights to work of workers in its Service Network?
- Does the agency have controls to assure to a reasonable standard of confidence that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy?

Monitoring

- Does the agency regularly monitor the work performed by workers in its Service Network to ensure that it is consistent with all relevant visa conditions?

A more detailed set of Audit Questions then examines how these matters are operationalised within the agency.

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the LHL test for Migration compliance to streamline the process and provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

Industry & Location

Regions should be broken down into **local government areas** because local government by-laws may be relevant to identifying correct accommodation standards.

Other Matters

RCSA reiterates its view that the Queensland Government should not require personal or commercial information unless it can be clear about **why** it needs the information; **how** it proposes to handle it; and **what** it proposes to do with it.

4: Fit and proper person (section 13(3)(c)(iv) and section 27(2))

Please provide comments on:

- The appropriateness of the additional information requirements for the fit and proper person test.
- Any other matters the Chief Executive should have regard to in respect to the fit and proper person test.

Appropriateness of Additional Information

The additional matters to which the Chief Executive proposes to have regard are generally satisfactory. The matters to which the Chief Executive may have regard under s. 27(2) are not restricted, save by the requirement of relevance.

Industry & Professional Associations

Some care may be required to ensure that in prescribing matters by regulation under s. 13(3)(c)(iv), the Queensland Government does not inadvertently create a disincentive to agencies joining professional or industry associations that maintain rigorous Codes of Conduct, or disincentives to enforcement sanctions.

It may be better, therefore, to provide gateways for the exchange of disciplinary information under s.27(2), or to preserve the avenues for professional associations to seek review as “interested persons” in cases where they consider review to be warranted.

Reciprocal Schemes

What is a reciprocal scheme - given that there is no definition and no provision for mutual recognition? Would the Queensland Government create provision for mutual recognition by Transitional regulation under reg. 110?

Not “Fit & Proper” Under Other Laws etc

The criteria would only be relevant if the other laws were for a related purpose akin to the objects of the Act. A person may have been deemed “not fit and proper” under another law because they do not have a particular qualification or practical experience in a professional field; or because they lacked a citizenship qualification (at the time); or because they had breached a professional standard that has no significant application to the provision of labour hire services.

Criminal Histories

Some regard may need to be had to the possibility that an offence may have been committed as a child and a shorter “protected period” applies. Some amendment to the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) may be required.

For the sake of coherence and consistency in approach, there would be benefit in aligning the provision, so far as possible, with s.43 of the *Private Employment Agents Act 2005* (Qld) - i.e. ask the Police Commissioner and obtain the information via intragovernmental gateway. Relevant offences should be identified with some particularity.

Other Matters

There are no competency criteria in the Act. Compare this with s.5 of the Schedule to the *Private Employment Agents (Code of Conduct) Regulation 2015* (Qld).

RCSA’s StaffSure Standard deals with this by including a professional knowledge requirement in its fit & proper person test. For example, the requirement for owners and managers is formulated:

Professional Knowledge

- Do all owners or managers, who are actively participating in the business have a reasonable degree of professional knowledge relating to the business and its regulatory environment?

A more detailed set of Audit Questions then examines how these matters are operationalised within the agency and tested in the process of audit. The questions highlight requirements for particular relevant knowledge. For example, one part of the StaffSure AQS asks:

- Can the Workforce Service Provider’s managers and consultants demonstrate a reasonable degree of relevant professional knowledge about:
 1. the difference between employment and independent contracting?
 2. the difference between casual and non-casual employment?
 3. the National Employment Standards or other “safety net” provisions that apply to workers in their Service Networks?
 4. the enforceability of contractual provisions that are inconsistent with safety net protections under applicable law?
 5. the record keeping rules under applicable law?
 6. the classification scale/s (if any) that apply to workers in their Service Networks?
 7. the general protection prohibitions and adverse action remedies that exist under applicable law?
 8. statutory rights of entry of officers and employees of registered organisations under applicable law?
 9. Anti-bullying provisions under applicable law?
 10. the slavery and slavery-like condition offences of Div 270 and the human trafficking and debt bondage offences of Div 271 of the *Criminal Code* (C’t) and ss 98 to 98F of the *Crimes Act 1961* (NZ) as applicable?

11. consumer protection provisions under applicable laws that prohibit the making of false or misleading representations in connection with offers of employment?
12. consumer protection and independent contractor protections under applicable law against harsh or unfair contracts?

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the LHL fit & proper person test to streamline the application process and provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

5: Reporting (sections 31 and 32)

Please provide comments on:

- The suitability of the additional details proposed for reporting.
- The appropriateness of the accommodation register.
- Any further details should be prescribed for reporting or for the accommodation register.

Suitability of Additional Details

RCSA reiterates its view that the Queensland Government should not require personal or commercial information unless it can be clear about **why** it needs the information; **how** it proposes to handle it; and **what** it proposes to do with it.

At the moment, the two legislative schemes (Qld and S.A) and the proposed scheme (Vic) all have different information and reporting provisions. The process should be simplified and harmonized so far as possible to reduce the cost and red tape burdens that will be imposed on the labour hire segment of the Workforce Services Industry.

RCSA respectfully submits that the Queensland Government's approach to information gathering warrants application of the "**less is more**" principle.

As the Government gains experience in administering the licensing scheme it will be better placed to review the effectiveness and utility of its information gathering regime.

Sect. 31(2)(h)(ii)

Paragraph (h) is about accommodation **provided by the licence holder** - NOT about whether **use of accommodation is a precondition** to receiving work. Sub-paragraph (ii) is about **fees for accommodation** provided by the licence holder.

The problem will be that accommodation may be outsourced to unscrupulous providers in a licence holder's service network.

The proposed subject may be better dealt with by reference to paragraph (i); but that is framed by reference to awareness without any clear duty to inquire.

RCSA's StaffSure Standard deals with this by requiring certified agencies to have (specified) controls in place to assure the suitability accommodation of workers in their Service Networks. The sufficiency of the controls is then a matter that can be investigated during audit.

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the accommodation reporting requirements under paragraphs (h) and (i) of ss. 31(2) and 32 of the Act to streamline the reporting process and to provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

Visa Worker Information (Country of Origin)

There seems to be no clear purpose that would be served by requiring country of origin information of visa workers.

RCSA has concerns that the requirement is not consistent with s. 124 of the *Anti-Discrimination Act 1991* (Qld). The provision (i.e. regulation requiring the information) was not existing at the time of commencement of s. 124. Moreover, RCSA would have concerns that constitutional issues may arise from inconsistency with the *Racial Discrimination Act* (Cwth).

Appropriateness of Accommodation Register

The requirements to maintain an accommodation register seem satisfactory. However, agencies, who have had experience of keeping the registers and demographic information required by Queensland's *Private Employment Agents (Code of Conduct) Regulation*, without ever having been required to produce it, are likely to be skeptical about the content of LHL Regulations that require the maintenance and production of yet another register – especially when the provision of accommodation can easily be outsourced to third party and the agency is not subject to any clear duty to inquire.

Further Details for Reports

RCSA does not consider that the requirement for additional information in s.31 reports will add to the effectiveness of the regulatory solution to the problems of exploitation and industry integrity which the Act seeks to address. Requirements for additional reporting information, in the absence of an effective “systems approach”, are likely only to increase cost and red tape burdens that fall upon labour hire providers.

It is neither fair nor practical to apply a certification requirement only to one party (e.g. a labour hire firm) in a multi-party environment. That is because key roles may be played by many different parties - some of whom will be in a business relationship with the Certified Workforce Services Provider and some of whom will not.

RCSA's StaffSure Standard therefore adopts a **systems approach** that focuses on a Certified Workforce Services Provider's stewardship of its Service Network as a primary means of enhancing the governance of supply chain labour provision arrangements. Under RCSA's StaffSure Certification Program, reporting serves a feedback and monitoring function regarding the effectiveness of control measures.

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the reporting requirements under ss. 31(2) and 32 of the Act to streamline the reporting process and to provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

6: Notification of a prescribed change in circumstances (section 40)

Please provide comments on:

- The suitability of these approaches to prescribed changes in circumstances.
- Any other matter should be included as a prescribed change.

Suitability of Approaches

If only “changes in circumstances that have the potential to alter a person's fitness and propriety, published administrative details and accommodation arrangements” require notification, then RCSA would have difficulty in seeing the need for information in excess of this – e.g. historical information about involvement in unfair dismissal litigation?

We have already spoken about the degree of skepticism that some agencies, who have experience of the Private Employment Agents regulatory regime in Queensland, are likely to entertain.

RCSA is concerned that if only some information is monitored for change, there will be a serious and justified question about the credibility of requests for anything else.

Other Changes Requiring Notification

For certified providers, who have the benefit of s.102 waivers, changes in certification status and arrangements may need to be notified. Similarly, participants in reciprocal schemes, who have the benefit of s.102 waivers may need to notify circumstances that might affect the waiver.

7: Public register of licences (section 103)

Please provide comments on:

- The suitability of these approaches to the public register of licences.
- Any other matter should be included on the public register.

Suitability of Approaches

There seems to be no good reason to require an additional address to be published, where the business address is also the residential address. If the residential address is the business address, what purpose would the provision of another address that is neither a business address nor a residential address serve?

The provision of information about whether a licence holder supplies visa workers will, in no way, “assist users, workers and providers of labour hire in using the register”. It may achieve little more than to mark out some agencies to the attention of those who are opposed to the engagement of migrant workers.

Other Matters for Inclusion on Public Register

In RCSA’s submission, attempts should be made to standardise the information to be included on registers across the two existing schemes (Qld and S.A) and the proposed scheme for Victoria. Failure to do so will increase the cost and red tape burdens falling upon the labour hire segment of the workforce services supply industry.

8: Record keeping (section 108)

Please provide comments on:

- The suitability of these approaches to recordkeeping.
- Any other matter should be considered.

Suitability of Approaches

The approach does not take adequate account of the fact that many licence holders will also be private employment agencies that will have record and register keeping obligations under employment agency legislation in Queensland, the ACT, South Australia and Western Australia.

Other Matters

Some guidance on the interactions between the record keeping obligations is needed, as many agencies operate both staffing functions.

For example, what would be the status of a registered workseeker, who is not *supplied*, but may be awaiting supply (or placement) and undergoing training – or serving an internship or participating in a work experience program? What records (if any) would need to be kept in relation to such a person?

What would be the position of, say, a nurse who has been placed in a permanent part time job with one hospital as employer and undertakes additional shifts with another hospital as an agency nurse through the same agency?

9: Renewal, restoration and application fees (Sections 13(c)(i), 18(2)(b) and 19(2)(b))

Please provide comments on:

- The tiered fee band approach.
- The criteria for each fee class.

Tiered fee band approach

RCSA respectfully submits that the amount of licensing fees ought not to exceed that which was indicated as the range of likely fees during public consultations throughout 2016-17.

The proposed yearly fees up to \$5,000 vastly exceed those for comparable businesses, which were published in the **2016 Issues Paper: Appendix 1 – Business Licence Arrangements in Queensland**.

In the Explanatory Memorandum, which accompanied the Bill, the Government stated:

“It is considered that **the cost to Government of the scheme will be low**, with annual revenue estimated to be between \$4 million and \$10 million. It is estimated that operational costs for the scheme, including compliance costs will not exceed \$5 million in the first two years and not exceed \$2 million per year thereafter.”

In RCSA’s respectful submission, the Queensland Government should disclose its costings before setting the licence fees. In doing so, it should provide an estimate of the number of agencies (including interstate based agencies supplying labour hire services into Queensland) that it anticipates will obtain licences.

It is also necessary to keep in mind that agencies will operate across State boundaries and may have exposures to fees in other States and Territories. Some agencies, which operate as placement agencies, will already have private employment agency licence fee exposures in the ACT, South Australia and Western Australia.

By way of comparison, the application fee in South Australia is set at \$500 for a corporation and at \$1,200 for a corporation upon renewal. The licence renewal fee for an individual licence holder is set at \$220.

RCSA has grave concerns that Queensland’s licensing scheme will be perceived as a cynical revenue generating exercise for the Government; and that its integrity will be undermined, as firms seek ways of avoiding or reducing the imposition of fees. Indeed, the higher the fee, the greater the likelihood that some firms may consider it “fair game” to exploit means of avoidance.

It is far better, in our submission, to bring agencies within the regulatory framework rather than to create financial barriers to entry that may see many attempt to reorganize in order to avoid excessive licence fees. Indeed, RCSA would go so far as to say that certification under the StaffSure Program is a far better investment in compliance and in raising industry standards.

Criteria

A wages threshold is a poor choice, if the object of the legislation is to protect against exploitation. A turnover threshold (limited to labour hire services supply turnover – keeping in mind the fact that many agencies will operate different staffing functions) is a better choice.

In any event, the **\$1.5 million wages threshold** for Class 2 licence fees (\$3,000 per year) is **too low**.

If a tiered licence fee structure is to be implemented, the threshold should be much higher, considering the fact that labour hire firms historically operate on low margins.

By way of comparison, “**small business entity**” is understood by the ATO, for the purpose of explaining the Small Business Tax Concessions:

“You are a small business entity if you are carrying on a business with less than **\$10 million aggregated turnover**. When we say ‘you’ we mean the individual, partnership, company or trust that runs the business.”

<https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Definitions/>

According to that criteria, there seems to be no justification to set the Class 2 threshold at \$1.5m wages. In RCSA’s submission, if there is to be tiered licensing system, the threshold should be set at **no lower than \$10m annual turnover from the supply of labour hire services**.

10: Waiver of particular requirements to give information (Section 102)

Please provide feedback on:

- The components of the listed accreditations and schemes could be considered as meeting critical elements of the labour hire scheme.
- Other schemes which should be considered and which information requirement could be waived.
- Any unintended consequences in recognising these schemes as meeting some aspects of the labour hire scheme.

Please note: When discussing an accreditation or licence to be recognised as meeting some of the requirements under the labour hire scheme, please provide detail of all relevant provisions and elements.

Components of Listed Accreditation Schemes (RCSA StaffSure)

We propose to address only the components of RCSA’s StaffSure Certification Program in this section.

StaffSure is an audit and certification program designed to support principles and standards which have been specifically developed and trialed within the workforce services industry.

System Approach Addressing the Agency’s Service Network

Parties, who are in a business relationship with a Certified Workforce Services Provider and supply key services, are part of its **Service Network** and can properly be considered to be within its **sphere of influence**.

For example, an agency can choose not to deal with a recalcitrant or uncooperative party; or it can (and should) withhold services in order to meet its responsibilities and duties of care.

The Standard therefore adopts a **systems approach** that focuses on a Certified Workforce Services Provider's stewardship of its Service Network as a primary means of enhancing labour supply chain governance.

Service Network

For the purposes of the Standard, we treat a **Service Network** as the set of contracts, arrangements or understandings for the performance of any two or more of the following roles in relation to workers:

- sourcing/selection
- engagement
- mobilisation
- performance of work (by workers)
- management & supervision
- accommodation
- payment
- demobilisation

(Service Network roles)

A Certified Workforce Services Provider's **Service Network Participants** are the persons with whom the Certified Workforce Services Provider has a contract, arrangement or understanding for the performance of any of the Service Network roles necessary for it to fulfil its purpose and that can be controlled or influenced by the Workforce Services Provider's owners or managers.

NOTE: Control or influence might be exercised through the provisions of a contract or terms of business. It might simply consist of a power to refuse to do business with a recalcitrant or unco-operative participant or to suspend the supply of services to such a participant.

Controls Developed from Principles and Standards

StaffSure Certification focuses on the **controls** that assure satisfactory governance (or stewardship) of a certified agency's Service Network across six key areas. Below we outline the **principles**, which govern the formulation of **standards** for each area.

Principles

The principles applicable to the six key areas are:

Fit & proper person

A Certified Workforce Services Provider has adequate controls to assure to a reasonable standard of confidence that it and its Service Network participants are lawfully able to supply services in the jurisdiction, where the services are to be supplied.

A Certified Workforce Services Provider applies resources and exerts influence to assure to a reasonable standard of confidence that it is not likely to be implicated in unlawful exploitation of workers either directly or through its Service Network.

Work status & remuneration

A Certified Workforce Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network:

- are classified and remunerated correctly; and
- have access to important information about the work they are to perform and the arrangements under which they are to perform it.

Financial assurance

A Certified Workforce Services Provider plans and applies resources and exerts influence to assure, to a reasonable standard of confidence, the **financial stability** of its Service Network.

Safe work

A Certified Workforce Services Provider plans, applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network have a safe work environment.

Migration

A Certified Workforce Services Provider applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers, employers and sponsors in its Service Network meet all conditions and restrictions imposed by applicable migration law and policy.

Suitable accommodation

A Certified Workforce Services Provider, where required, applies resources and exerts influence to assure, to a reasonable standard of confidence, that workers in its Service Network are suitably accommodated.

Three principles of general application are also included to support the level of assurance provided.

Ascertain & Assure

A Certified Workforce Services Provider applies resources to ascertain to a reasonable standard of confidence the regulatory environment that governs its Service Network.

A Certified Workforce Services Provider has controls to assure to a reasonable standard of confidence that requirements of the regulatory environment that governs its Service Network are met.

Accountability

A Certified Workforce Services Provider is accountable, through its certification, for assuring to a reasonable standard of confidence that its Service Network participants meet the requirements their regulatory environment.

Corrective Action

A Certified Workforce Services Provider takes reasonable corrective action to address any failure to meet this Standard or the requirements of the regulatory environment that governs its Service Network.

We have already given examples of some of the standards earlier in this submission.

A more detailed set of audit questions then examines how these matters are operationalised within the agency and tested during audit. We have already given an example of some of the questions that relate to the professional knowledge component of the fit and proper person standard. Other questions cover each of the principles and their accompanying standards.

The StaffSure Certification Program is a sophisticated program that is supported by third party audit, random surprise audit, random interview of workseekers and customers, defined program governance and role structure and a taxonomy with definitions that have been developed to address many of the challenges now presented by the LHL Act. Moreover, it has been developed to operate nationally and to integrate with State and Territory schemes as they are developed.

RCSA would be pleased to make a presentation to the Queensland Government about what elements of the StaffSure Standard could be incorporated into and aligned with the licensing and enforcement requirements of the Act to streamline corresponding processes and to provide a more effective level of assurance than that which may be obtained under the regulatory proposal.

Other Schemes

RCSA notes that the Queensland Government is considering how to best recognise labour hire licences obtained in other Australian jurisdictions. It will be necessary, in our submission, also to consider equivalent exemptions.

For example: Queensland's LHL Act s. 7(3)(a) exempts a person who merely acts as a private employment Agent under the *Private Employment Agents Act 2005* (Qld). South Australia's LHL Act s.7(4)(a) contains an equivalent exemption in respect of an employment agent licensed under that State's *Employment Agents Registration Act 1993*.

Question: Will Queensland extend a type of "full faith and credit" to the South Australian s.7(4)(a) exemption such that a South Australian (private) employment agent, licensed as a registered employment agent in South Australia merely acting within the scope of that licence to place workers in Queensland have the benefit of the Queensland s.7(3)(a) exemption? Will South Australia reciprocate? Similar questions arise in respect of each exemption specified in the Act or in the regulations.

RCSA respectfully submits that such firms should be granted exemption by regulations. Alternatively, it might be made clear that such firms could apply for waiver, at least, of information requirement under s.102 of the Queensland Act.

Unintended Consequences of Recognition

The matters addressed in the section immediately above may fall into the category of "unintended consequences". We address them in greater detail in our submission to Consultation Paper No.2.

Any other proposals/feedback

RCSA addresses additional matters in its response to Consultation Paper #2.

