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Regulatory Impact Statement for Regulations to be made under the Labour Hire Licensing Act 2018

Department of Economic Development, Jobs, Transport and Resources

July 2018

Contents

Glossary

Acronym	Full name
ABS	Australian Bureau of Statistics
CAV	Consumer Affairs Victoria
the Department	Department of Economic Development, Jobs, Transport and Resources
EDTR Act	*Education and Training Reform Act 2006* (Vic)
Forsyth Inquiry	Victorian Inquiry into the Labour Hire Industry and Insecure Work
FTE	Full-time equivalent
FWA	*Fair Work Act 2009* (Cth)
FWO	Fair Work Ombudsman
GLAA	Gangmasters and Labour Abuse Authority (UK)
GTOs	Group Training Organisations
HIA	Housing Industry Association
Inquiry Report	Final Report of the Victorian Inquiry into the Labour Hire Industry and Insecure Work
the Act	*Labour Hire Licensing Act 2018 (Vic)*
the Licensing Authority	Labour Hire Licensing Authority
the Licensing Commissioner	Labour Hire Licensing Commissioner
MCA	Multi-criteria analysis
MR Act	*Mutual Recognition Act 1992* (Cth)
NES	National Employment Standards
OCBR	Office of the Commissioner for Better Regulation
RCSA	Recruitment and Consulting Services Association
RTO	Registered Training Organisation
RIS	Regulatory Impact Statement
TAFE	Technical and Further Education
The Queensland Act	*Labour Hire Licensing Act 2017* (Qld)
The South Australian Act	*Labour Hire Licensing Act 2017* (SA)
VACC	Victorian Automobile Chamber of Commerce
VRQA	Victorian Registration and Qualifications Authority
WHSQ	Workplace Health and Safety Queensland

Executive summary

Background

The Victorian Government has established the *Labour Hire Licensing Act 2018* (the Act) which passed through the Victorian Parliament on 20 June 2018. The objectives of the Act are:

- To protect workers from being exploited by providers of labour hire services and hosts; and
- To improve the transparency and integrity of the labour hire industry.

Amongst other things the Act requires persons to be licensed in order to provide labour hire services, and persons who receive labour hire services must only use licensed providers. While the Act sets out the key provisions of the new legislative framework, it leaves a number of elements of the regime to be addressed in accompanying Regulations.

Under the *Subordinate Legislation Act 1994* (Vic), there is a requirement for a Regulatory Impact Statement (RIS) to be prepared if a proposed statutory rule, such as Regulations, imposes a significant economic or social burden on a sector of the public. This RIS has been prepared to document options considered in the development of the proposed Labour Hire Regulations 2018 (the Regulations), and their effects, assess the costs and benefits of the proposed regulations, the choice of the preferred approach, and the impact the regulations will have on the community.

Problem

The Victorian Inquiry into the Labour Hire Industry and Insecure Work (the Forsyth Inquiry) unveiled a range of problems within the labour hire industry, such as the exploitation of labour hire workers and the non-compliance of many labour hire businesses with workplace laws. It presented evidence of widespread exploitation in the labour hire industry and highlighted a range of ways in which labour hire workers are treated almost like 'second class' citizens, ranging from exploitation to differential treatment. It also highlighted the social impact of non-permanent working arrangements. While the final report of the Forsyth Inquiry (Inquiry Report) identified legislative non-compliance by labour hire agencies across a range of sectors, the horticulture, meat and cleaning sectors were singled out as particularly concerning.

These documented problems within the labour hire sector prompted the Victorian Government to establish a labour hire licensing scheme in Victoria. The Act establishes all of the main requirements of the licensing scheme, but assigns some important details to be addressed in accompanying regulations. In the absence of any regulations, amongst other things:

- The legislation may apply to classes of people and types of activities that are not appropriate for the licensing system;
- The legislation may not fully capture classes of people and activities that have been identified as having high levels of exploitation of workers by providers of labour hire services and hosts;
- Information to be provided in a licence application or renewal would not be complete; and
- The government would not be able to recover the costs of the licensing system unless fees are prescribed in the legislation.

In order to make a case for government intervention, the problem(s) that the Regulations are seeking to address must first be established. These are:

1. A need to minimise the regulatory burden imposed by the legislation on categories of labour hire providers considered at low risk of exploiting vulnerable workers;
2. The need to strengthen alignment of the scheme with the objective of protecting workers from being exploited by providers of labour hire services and hosts;
3. The need to provide certainty to businesses and government in respect to how to apply the legislation; and

4. Ensuring the licensing scheme is funded in a manner that is consistent with the Victorian Government's Cost Recovery Guidelines.[1]

Options

This RIS assesses in detail those elements of the proposed Regulations that will have the most significant impact on businesses in the labour hire sector.[2] These elements can be categorised as follows:

- **Exemptions from the requirement to hold a licence** – which aim to reduce the regulatory burden on the sector by making clear that certain activities are not subject to the licensing provisions in the Act;
- **Inclusions in the requirement to hold a licence** – in order to ensure that the licensing scheme properly applies to the three industries (cleaning, horticulture, meat) identified in the Inquiry Report;
- **Provisions for mutual recognition** – which will complement the mutual recognition provisions in the Act itself;
- **Other prescribed requirements** - a range of requirements relating to applications for licences, renewal of licences, conditions of licences, variation, cancellation of licences, obligations of licence holders, the register of labour hire providers and infringement penalties; and
- **The establishment of licence and related fees**.

A summary of the key non-fee options is outlined below.

Summary of options

Element	Option	Description
Exemptions		
Exemption 1: Secondees	Base Case	There is no exemption for organisations providing employees to another organisation on a secondment arrangement.
	Option 1	Organisations providing a secondee to another person to do work on a temporary basis would be exempt from the requirements of the Act and therefore the licensing scheme. A secondee is defined as a worker of a provider who the provider provides to another person to do work on a temporary basis and who: a) is engaged as an employee by the provider on a regular and systematic basis; and b) has a reasonable expectation that the employment with the provider will continue; and c) primarily performs work for the provider other than as a worker supplied to another person to do work for the other person. Also discussed as part of this option because it is related to the discussion of secondees, is the exemption of a public sector body that employs a person within the meaning of the *Public Administration Act 2004* (Vic) who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act.
Exemption 2: Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business	Base Case	There is no exemption for organisations where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business
	Option 1	An exemption applies to a person who a provider provides to another person to do work in the circumstances where the provider and the other person are each part of an entity or group of entities that carry on business collectively as one recognisable business, other than where the provider is predominantly in the business of providing the services of

[1] Department of Treasury and Finance, *Cost Recovery Guidelines*, January 2013.
[2] Note this RIS generally uses the term "organisation" or "business" to describe who is likely to be impacted by the Regulations, unless certain elements are being assessed that specifically apply to more narrow groups such individuals. It is noted that the Act uses the term "person" or "provider".

Element	Option	Description
		workers to other persons where those persons include persons that are not part of the entity or group.
Exemption 3: Workplace learning and vocational placements	Base Case	There is no exemption for organisations that participate in arrangements where workplace learning and vocational placement arrangements are provided or arranged by a third party.
	Option 1	A person would be exempt from the requirements of the Act where services or work is provided under a vocational placement within the meaning of section 12 of the *Fair Work Act 2009* (Cth) (FWA) or work is provided by a student to whom Division 1 or 2 of Part 5.4 of the *Education and Training Reform Act 2006 (Vic)* (ETR Act) applies. The exemption would not apply to apprentices or trainees. The exemption would also not apply to Group Training Organisations (GTOs), although the Option does allow for the Labour Hire Licensing Authority (Licensing Authority), in determining matters under the Act, to rely on a licence or accreditation under a scheme under which the Victorian Registration and Qualifications Authority registers an organisation as a GTO but excluding any organisation that provides workers other than apprentices and trainees.
Exemption 4: One or two-person businesses	Base Case	There is no exemption for small businesses providing labour hire services.
	Option 1	Providers will be exempt from being licensed under the Act if they provide persons to another person to do work if the provider is a body corporate with no more than two directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits.
Inclusions		
Inclusion of commercial cleaning, horticulture and meat activities	Base Case	Commercial cleaning, horticulture, meat and poultry businesses may not be fully covered by the definition of 'provides labour hire services' under the Act in certain circumstances. For example, commercial cleaning services may not be covered where services are being provided through outsourcing arrangements.
	Option 1	An individual that is performing any of the following activities would be taken as performing work in and as part of a business or undertaking and would therefore fall under the definition of labour hire services: commercial cleaning; and activities in relation to horticulture, meat manufacturing, meat processing and poultry processing. It is noted that, where both an inclusion and an exemption apply in particular circumstances, the exemption will prevail. This is discussed in more detail in section 4.3 of this RIS.
Mutual recognition		
	Base case	The current provisions in the Act provide that a natural person who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Licensing Authority, entitled to be registered as a licensed labour hire provider in Victoria. This is, however, subject to other procedural requirements such as the submission of an application, the payment of a fee and the provision of relevant information. Once licensed, the organisation would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
	Option 1: Base Case with reduced information requirements compared to the Base Case	Licence applicants could provide reduced information with their licence application to be licensed, if approved. The kind of information that would be reduced would be information that the Licensing Authority could forgo while still being able to fulfil its functions and powers under the Act. Once licensed, the organisation would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.

Element	Option	Description
	Option 2: Option 1 plus mutual recognition of businesses certified under the RCSA Standard	This option includes Option 1 plus businesses certified under the RCSA Standard would be granted a licence if applying to be licensed within Victoria. Licence applicants if approved, could provide some information with their licence application in addition to evidence of being certified under the RCSA Standard. Once licensed, the business would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
Other prescribed requirements		
Inclusion of other prescribed requirements	Base Case	No regulations provided for various matters where the Act enables regulations to be made.
	Option 1	The Regulations prescribe a range of requirements relating to applications for licences, renewal of licences, conditions of licences, variation of licences, cancellation of licences, obligations of licence holders, the register of labour hire providers and infringement penalties.

Assessment methodology

It has not been possible to quantify the costs and benefits of different options with precision. In part, this reflects the fact that the licensing scheme is new, and similar schemes in Queensland and South Australia only came into operation this year, so the likely impacts of the scheme, including the proposed Regulations, are highly uncertain. As a result, a mix of approaches has been used to demonstrate the possible impact of options. Where quantification was possible, a range of possible cost impacts has been estimated, reflecting different scenarios about the number of businesses affected. Where quantification was not possible, qualitative and anecdotal evidence has been used, including that presented to the Forsyth Inquiry. This evidence has then informed the Multi-Criteria Analysis (MCA) that has been used to assess and compare the options. MCA requires judgement regarding how the proposed options will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with each option. Each criterion is assigned a weight reflecting its importance to the policy decision, and a weighted score then derived for each option. The option with the highest weighted score is the preferred option. The Options have been assessed based on a framework which considers the following criteria:

- **Alignment with the objective of the scheme** – this criterion was identified to determine the extent to which the options align with the objective(s) of the scheme – that is:
  - To protect workers from being exploited by providers of labour hire services and hosts; and
  - To improve the transparency and integrity of the labour hire industry.

  This also includes alignment with the purpose as established in the legislation.
- **Regulatory burden on businesses –** this criterion has regard to the regulatory burden that would be incurred by businesses in complying with the regulation. This includes both the number of businesses impacted and the likely impact on each of these businesses, for example, the time impost. It also considers exemptions in other jurisdictions, and any duplication of effort for those operating across jurisdictions.
- **Impact on competition and small businesses –** this criterion determines the extent to which the option will change the competitive landscape in which businesses operate, including implications for small business.
- **Implementation risks and issues –** this criterion considers how the option can be implemented. This includes the ease and speed of implementation as well as any risks associated with implementation, for example stakeholder engagement and communication.
- **Government administrative and compliance burden –** this considers the extent to which the option imposes a cost to government, including costs that may be challenging to recover. This includes processing applications and undertaking enforcement activities.

The assessment has adopted the recommended approach of applying equal weights (50-50) in aggregate to criteria relating to benefits and those relating to costs. This is consistent with the

OCBR's guidance note on MCA.[3] Thus, the criterion **Alignment with the objective of the scheme** (to protect workers from exploitation by providers of labour hire services and hosts), the only benefits criterion, is weighted most heavily (50%) reflecting the priorities of the Government. **Regulatory burden on businesses** and **Government administrative and compliance burden** are weighted at 20% each, working on the premise that the cost of regulation for businesses and Government are equally important factors in assessing different policy options for this particular policy issue. The **Impact on competition and small businesses** and **Implementation risks and issues** are weighted at 5% each. While important, they were considered less critical to the assessment of the preferred option in this case as the most important considerations for this scheme are the improved labour market outcomes and the regulatory and compliance burden.

The criteria rating scale has a range of –10 to +10, where a score of zero represents no change from the Base Case.

Score	Description
-10	Much worse than the Base Case
-5	Somewhat worse than the Base Case
0	No change from the Base Case
+5	Somewhat better than the Base Case
+10	Much better than the Base Case

Assessment results

A summary of the MCA results is included in the table below. The analysis of these options and the explanation for these scores is provided in Chapter 5.

Summary of MCA results

Element	Option	Objective of the licensing scheme	Regulatory burden	Implementation risks and issues	Competition, small businesses	Govt admin & compliance burden	Total weighted score
Exemptions							
Exemption 1: Secondees	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+5	+5	+2	+5	**+3.4**
Exemption 2: Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+2	+6	0	+3	**+2.3**
Exemption 3: Workplace learning and vocational placements	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+7	+2	0	+7	**+3.9**
Exemption 4: One or two-person businesses	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+2	+5	+3	+3	**+2.4**

[3] OCBR, Guidance Note Multi-Criteria Analysis (MCA). Available at http://www.betterregulation.vic.gov.au/Guidance-and-Resources.

Inclusions - Commercial cleaning, horticulture, meat activities							
	Base Case	0	0	0	0	0	**0**
	Inclusion of service	+8	-4	0	-2	-4	**+2.3**
Mutual Recognition							
	Base case: Mutual recognition as per the Act	0	0	0	0	0	**0**
	Option 1: Base Case plus reduced information requirements	0	+2	-2	0	+3	**0.9**
	Option 2: Option 1 plus mutual recognition of RCSA Standard	-5	+4	-4	-1	+2	**-1.5**
Other prescribed requirements							
	Base case	0	0	0	0	0	0
	Inclusion of other prescribed requirements	+2	+2	0	+2	+2	**+1.9**

Discussion of preferred option (non-fee)

Based on the MCA results set out above, the preferred options are as follows:

Exemptions

Ultimately the merits of exemptions to the licensing scheme largely rest on balancing the benefits of lower regulatory burden and greater focus on high risk sectors and businesses against the risk that providing exemptions could facilitate the continuation of labour exploitation or the creation of 'loopholes' which organisations could exploit in order to subvert the licensing regime. In each of the cases below the analysis suggests that benefits are likely to outweigh the risks:

- **Exemption 1 - Secondees:** The option is intended to ensure that businesses operating genuine secondment arrangements (and not labour hire arrangements) are not inadvertently caught by the licensing scheme, thus improving alignment with the policy objectives. The risk of exploitation as a result of such arrangements is low. While there is potential for the exemption to be used as a loophole to avoid regulation, this risk will be constrained by the definition of secondee that is proposed because the definition limits the structure or type of working arrangements that can be accepted by the law. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. It is expected to lead to a significant reduction in regulatory burden for organisations and a significant reduction in costs for government.
- **Exemption 2 - Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business**: Significant evidence does not exist that this type of arrangement is high risk for labour exploitation. While concerns have been raised about the potential for businesses to exploit loopholes by setting up related entities or joint venture type relationships, the proposed definition should address this concern by limiting the structure or type of working arrangements that can be accepted by the law. As for Exemption 1 (Secondees), the exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. This option is expected to lead to a reduction in

costs for businesses and government, although there is some uncertainty regarding the size of these impacts due to limited data about the number of impacted businesses.

- **Exemption 3 - Workplace learning and vocational placements**: It is expected this option will lead to a significant decrease in regulatory burden for education providers and will reduce the costs of the Licensing Authority in administering the application process and undertaking compliance and enforcement activities. It is also expected to better target the focus and resources of the scheme on reducing labour exploitation for high risk workers. However, there is some uncertainty about the expected number of organisations that will be impacted because some might not have placements as a part of their education or training programs.
- **Exemption 4 – One or two-person businesses:** The option is intended to ensure businesses with low risk of exploiting labour hire workers are not required to be licensed by the scheme. Such risk is likely to be low in the case of one or two person businesses because the relevant directors are the same workers that are being on-hired. In the absence of this exemption the regulatory cost might be significant for one or two person businesses that could have very small turnovers. However, it is difficult to estimate the total cost saving across all businesses due to uncertainty about the number of businesses that will benefit from the exemption.

Inclusion of commercial cleaning, horticulture and meat activities
This option is preferred because it is strongly aligned with the objectives of the licensing scheme by ensuring that businesses in the commercial cleaning, horticulture and meat industries, which were identified in the Forsyth Inquiry as the three industries where the risk for labour exploitation was particularly prevalent, are covered by the licensing scheme.[4] However, it will impose material regulatory costs for both businesses and the government.

Mutual recognition
Option 1 is very slightly preferred to the Base Case because it is expected to increase alignment with the objectives under the Act. In addition, it reduces costs on businesses and the Government. However, the total weighted score of 0.9 is small, which is partly due to the fact that scores for this option reflect the uncertainty around the reliance that the Licensing Authority may implement under section 111 of the Act. The exact nature of such arrangements will be subject to further consideration by the Licensing Authority and may also depend on the outcome of the consultation process to be undertaken by the Department on the exposure draft Regulations. While Option 2 is expected to reduce costs to businesses because it extends coverage of mutual recognition to the RCSA Standard, it is less aligned with the objectives of the Act, which results in a lower score than for the Base Case. As with Option 1, there is uncertainty in regard to the exact manner in which the Licensing Authority is likely to rely on the RCSA Standard.

Inclusion of other prescribed requirements
The inclusion of certain prescribed matters in the Regulations addresses the uncertainty on the part of businesses in relation to their specific obligations under the Act. This supports compliance with the licensing scheme. However, the prescribed requirements could also result in increased costs to both businesses and government. Furthermore, relying only on what is included in the Act may result in inconsistent application of the requirements of the Act.

Cost recovery and fees

The Act provides for the Licensing Authority and the Labour Hire Licensing Commissioner (Licensing Commissioner) to undertake a range of activities including processing applications for licences, granting licences, and undertaking compliance and enforcement activities. Section 114(1)(c) provides that regulations may prescribe fees in respect of the operation of the Act.

The key issues in respect of cost recovery and fee setting are:

- Whether fees should be established, and if so what level of cost recovery should they achieve; and

[4] Forsyth, A. (2016). *Inquiry into the Labour Hire Industry and Insecure Work: Final Report,* 31 August 2016, p.23 and p.25.

- The structure and level of the fees.

Cost base being recovered
The estimated cost base, based on budget estimations for the total expected ongoing costs for the Licensing Authority and the Licensing Commissioner is $45.1 million over 10 years commencing 2018-19.

Summary of Licensing Authority and Licensing Commissioner costs ($2018-19)

Cost	Total cost (2018-19 to 2027-28)	Average annual cost (2018-19 to 2027-28)
Ongoing costs		
Employee costs	30.7	3.1
Supplies and consumables	14.4	1.4
Total recoverable costs	**45.1**	**4.5**

Ongoing costs reflect a workforce of approximately 20 FTE, except for the initial two years when additional compliance/enforcement FTE will be necessary in order to handle the anticipated higher initial workload. Supplies and consumables for ongoing costs consist of accommodation expenses, computer services and equipment, consultancy agency and professional services, education expenses, motor vehicle expenses, and uniform costs.

Cost recovery
In terms of the overall level of cost recovery, there appear to be few reasons why full cost recovery should not be pursued.

Having said that, the Department has funding for establishment costs of the Licensing Authority to the value of $4.3 million. Therefore, this has not been included in the cost base to be recovered from fees. This approach avoids the issue of having a significantly higher charge in the establishment period to cover this cost (which would be reduced in later years) or the complexity of spreading the recovery of these costs across future years, which would mean there would be a funding deficit in the establishment period which government would have to fund.

Options
Many different fee types are possible, ranging from a simple one-off licence fee for all labour hire entities, to fees that are different for different categories of applicant and licensee, to different fees for different steps in the licensing, compliance and enforcement process. The analysis of the proposed fee structures has considered:

- different ways of targeting the fees to those industry participants imposing the costs; and
- different types of fee structures.

The Base Case and three options plus two sub-options are outlined below.

Base Case: No fees charged
- In the Base Case, there are no licensing fees charged; and
- The costs of the labour hire licensing scheme would be funded from consolidated revenue.

Option 1: Annual licence fee only
- This option provides for a single licence fee charged only to successful applicants and covering the costs of both the application process and compliance/enforcement activities;
- The licence fee would be paid annually;
- All labour hire firms would pay the same fee;
- Licensees would be required to renew their licence annually; and
- Fees would be charged for significant licence variations.

Option 2: Separate application and licence fee

- This option includes charging a separate non-refundable application fee (paid by all applicants) and licence fee (paid by successful applicants);
- Revenue from application fees would recover the Licensing Authority costs that are not related to compliance and enforcement of licences, including the cost of licence application activities. It would also recover a proportion of indirect costs and corporate overhead costs;
- Licence fees would be based on recovering the cost of compliance and enforcement activities and a proportion of indirect costs and corporate overhead costs;
- The application fee and licence fee would both be paid annually;
- All labour hire firms would pay the same fee;
- Licensees would be required to renew their licence annually; and
- Fees would be charged for significant licence variations.

Option 2a: Separate application and licence fee, with a licence lasting 3 years

- This option is the same as Option 2 except that this option requires a renewal application every 3 years; and
- Information required for a renewal application is the same as for an initial application.

Option 3: Separate application and licence fees based on firm turnover

- This option includes a separate non-refundable application fee;
- Revenue from application fees would recover Licensing Authority costs that are not related to compliance and enforcement, including the cost of licence application activities. It would also recover a proportion of indirect costs and corporate overhead costs;
- Revenue from licence fees would recover the cost of compliance and enforcement activities and a proportion of indirect costs and corporate overhead costs;
- The application fee and licence fee would both be paid annually;
- In contrast to Option 2, both the application fee due and the licence fee due are based on the total annual turnover of the business in the previous year, with three tiers of fees.[5] Tiers 2 and 3 would be set at approximately three times and five times the lowest fee tier respectively; and
- Fees would be charged for applications for significant licence variations.

The three tiered fee structure outlined above for Option 3 was chosen based on analysis of different potential indicators for setting fees, which is set out in detail in Appendix C.

Option 3a: Separate application and licence fees based on firm turnover with three year applications

This option is the same as Option 3 except that licences would be renewed every three years rather than annually. In turn, this means that renewal fees would be paid on renewal.

Assessment method

The fee options were assessed using an MCA approach. The five criteria adopted are:

- Cost-reflectivity - the extent to which the total fees charged reflect the total costs of providing those services;
- Equity – the degree to which the parties that give rise to specific costs bear those costs, and the ability-to-pay of businesses with less means;
- Certainty – the extent to which applicants will understand their fees in advance
- Administrative costs – associated with calculating and levying fees;
- Impact on competition and small business – the extent to which the option will change the competitive landscape, particularly the implications for small businesses.

As with the MCA for the substantive elements of the Regulations, the options have been scored using a range of -10 to +10. Each criterion has been weighted equally, reflecting that the Department considers these criteria are broadly equal in terms of their importance to determining the preferred approach for this RIS. While efficiency and equity are important, considerations such as ability to

[5] Based on Department and Jaguar consulting survey data, and WorkSafe Victoria data.

pay for small business, simplicity in terms of administration, and businesses having certainty and being able to understand what fee they will pay are also valued highly.

Summary of MCA Results

With the highest score of +1.2, **Option 3a (Separate application and licence fees based on firm turnover)** best balances the objectives of cost-reflectivity, equity, certainty, administrative costs and impact on competition and small business and is the preferred fee option. It is noted, however, that the scores are very close and that a small change in assumptions or weightings could change the preferred option.

Modelled fees for preferred option

The following table presents the modelled fees for the preferred fee option, expressed in both monetary figures and fee units.[6] The fees have been modelled to recover the estimated ongoing costs (not including the establishment costs) of the Licensing Authority and the Licensing Commissioner over the first 10 years.

Modelled licence and application fees for preferred option

Option	Modelled fee based on average across years ($2018-19)	Fee units	Fee units in dollars
Option 3a: Separate application and licence fees based on firm turnover with three year applications			
Total 3-year application fee for:			
firms with turnover of <$2 million	$1,551	108	$1,560.60
firms with turnover $2 million-<$10 million	$4,160	288	$4,161.60
firms with turnover > $10 million	$7,677	532	$7,687.40
Total annual licence fee for:			
firms with turnover of <$2 million	$1,072	75	$1,083.75
firms with turnover $2 million-<$10 million	$2,876	200	$2,890
firms with turnover > $10 million	$5,308	368	$5,317.60

In addition, fees have also been modelled for applications for variations to licences. Fees for licence variations have been calculated for two different fee options:

- A tiered fee for 'low-cost' and 'high-cost' licence variations.
- A single fee for all licence variations.

The preferred option is the single fee because it performs better on the principles of certainty and administrative costs. It also performs in a similar manner on cost-reflectivity and the impact on competition and small business, although the tiered fee structure performs better on the issue of equity. The preferred fee option is as follows, expressed in both monetary figures and whole fee units. It should be noted, however, that the draft Regulations prescribe that the fee is 10 fee units, or such lesser amount as determined by the Licensing Authority. This will give the Licensing Authority the option of reducing the amount payable to reflect equity considerations.

[6] The fee structure appears as fee units in the proposed Regulations. The fee units in the proposed Regulations have been derived by taking the fees modelled in the RIS, calculating the equivalent fee unit amount, and rounding those figures up to achieve a whole fee unit. The fee units were rounded up, rather than down, given the risk that the estimated fees may not be sufficient to recover costs (see section 7.6). Fee units are used in Regulations in Victoria to describe the amounts payable for relevant provisions. The Treasurer of Victoria sets the value of fee units. As of 1 July 2018, the value of a Victorian fee unit is $14.45.

Preferred fees for applications for variations to licences

Licence variation	Estimated $ and fee unit
All licence variations	$153 – 10 fee units

Uncertainty: risk of over or under recovery of costs
The calculated fees modelled are based on a number of assumptions. As with any fee analysis there is inherent uncertainty about the underlying assumptions used, however there is particular uncertainty in this fee analysis because a new scheme and Authority are being established. There is particular uncertainty about:

- The number of organisations that will apply for a labour hire licence;
- The characteristics of the organisations that will apply for licences, for example size as measured by annual turnover or number of labour hire employees;
- The size and scope of the compliance and enforcement function, and how many staff will be required;
- The number of staff that will be required to administer the licence application process; and
- Potential structural changes in the labour hire industry, for example consolidation or business closures.

Assumptions have been made about all of these key inputs to the fee modelling. Fees vary significantly depending on the estimated number of licensed businesses.

A review of the fees charged after the first three years will be conducted to ensure the fee levels and fee structure is appropriate. This is discussed in the Evaluation Strategy (section 8).

Implementation plan

The Act and the Regulations will have a major impact on the Victorian labour hire sector. This RIS provides an overview of the implementation plan which sets out what needs to be done, when it will be done, who will be doing it, and who will monitor implementation.

Significant tasks associated with establishing the new licensing scheme include:

- Appointing the Licensing Commissioner;
- Determining the capability requirements of the Licensing Authority;
- Designing the organisational structure;
- Recruiting and training staff for the Licensing Authority;
- Formulating, documenting and implementing operational policies and procedures for licensing, compliance and enforcement functions;
- Locating and leasing premises for the Licensing Authority;
- Developing and disseminating information and education material for labour hire businesses, workers and host employers;
- Designing and building an ICT system for licensing, compliance and enforcement functions;
- Designing and building a website with online application functionality; and
- Planning and executing a stakeholder management and communication plan to facilitate the delivery of the licensing scheme and the commencement of the Licensing Authority.

The commencement of the licensing scheme is anticipated to be in the first half of 2019. In addition to the appointment of the Commissioner in 2018, progressive implementation could occur through the launch of an information website later in 2018 with provision for labour hire businesses to subscribe to information updates. During the lead up to the Licensing Authority commencing operations in 2019, an information campaign will promote industry and public awareness of the new scheme.

The Licensing Commissioner (appointed by the Governor in Council on the recommendation of the Minister for Industrial Relations) and the Department will each have roles and responsibilities for implementation. The Department's project team is undertaking tasks such as developing the

organisational structure, position descriptions, accommodation arrangements, IT system build, and recruiting processes, for review and consultation with the Licensing Commissioner when appointed.

The Licensing Commissioner and Licensing Authority key staff will be able to undertake implementation tasks, with the support of the project team, prior to the formal commencement of operations, such as formulating operational arrangements, training staff and planning the compliance and enforcement function.

The Department will be responsible for monitoring implementation of the licensing scheme.

Evaluation strategy

The purpose of the evaluation strategy is to put in place mechanisms that will enable the Government to assess the efficiency and effectiveness of the Act.

The Department will review the Act under section 113 of the Act:

1. The Minister must review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives;
2. The review is to be undertaken as soon as possible after the period of 5 years after the day on which the Act receives the Royal Assent; and
3. The Minister must cause a report on the outcome of the review to be laid before each House of Parliament as soon as practicable after the review is completed.

This review of the Act also provides the opportunity to review the Regulations if necessary.

The review of the Act is expected to focus on the extent to which the licensing scheme has performed against the key objectives of the Act:

- To protect workers from being exploited by providers of labour hire services and hosts; and
- To improve the transparency and integrity of the labour hire industry.

It is expected that formal terms of reference will be defined in the fourth year following commencement of the Act.

The Licensing Authority and the Department will work together to review fee arrangements three years after enactment, in order to assess:

- Whether the fees are achieving cost-recovery, both at an overall level and for individual charges; and
- The impact of fees on industry participants.

Quantitative and/or qualitative methods for the fees review will need to be determined and key information will need to be collected (e.g. relevant indicators and types of evidence) in order to assess the extent to which outputs or outcomes have been achieved.

The Department will have overall responsibility for the review and reporting to the Minister on the effectiveness of the Regulations. The Licensing Authority will complete the data analysis and provide this to the Department and will also be responsible for ongoing monitoring, reporting and data collection on key indicators. Stakeholder feedback will comprise both feedback provided to the Licensing Authority in the form of complaints or objections to licensing decisions and through face-to-face or phone consultations.

Consultation

Both the Forsyth Inquiry and the Act have involved extensive consultations. For the Inquiry, this includes:

- 695 primary submissions; 91 from organisations and 604 from individuals;
- 221 individual witnesses during 113 hearing sessions;
- Informal consultations; and
- 17 responses to direct requests for information.

In the development of the Act, the following consultations included:

- Consumer Affairs Victoria;
- Professor Anthony Forsyth;
- Queensland Treasury (Office of Industrial Relations)
- Recruitment and Consulting Services Association (RCSA);
- Victorian Chamber of Commerce and Industry;
- Victorian Trades Hall Council (including input from the National Union of Workers, Health Services Union, National Tertiary Education Union, Australian Meat Industry Employees' Union, Bendigo Trades Hall Council and Unions Ballarat Trades Hall).

Three consultations occurred to inform this RIS, including:

- Union groups (Victorian Trades Hall Council, United Voice and National Union of Workers)
- RCSA; and
- Ai Group.

1 Background

1.1 Introduction

The Victorian Government has established the *Labour Hire Licensing Act 2018* (the Act) which passed through the Victorian Parliament on 20 June 2018. The objectives of the Act are:

- To protect workers from being exploited by providers of labour hire services and hosts; and
- To improve the transparency and integrity of the labour hire industry.

Amongst other things the Act requires persons to be licensed in order to provide labour hire services, and persons who receive labour hire services must only use licensed providers.

While the Act sets out the key provisions of the new legislative framework, some elements of the regime are to be addressed in supporting Regulations. Under the *Subordinate Legislation Act 1994* (Vic), there is a requirement for a Regulatory Impact Statement (RIS) to be prepared if a proposed statutory rule, such as Regulations, imposes a significant economic or social burden on a sector of the public. This RIS has been prepared to document the proposed Labour Hire Regulations 2018 (the Regulations), the rationale that underlies them, and the impact they will have on the community.

1.2 What is labour hire?

Labour hire employment is one of a range of flexible work arrangements available to Australian businesses. Other examples of flexible work arrangements include casual, part-time labour and fixed-term employment.

The distinguishing feature of labour hire arrangements are that they involve three parties. Labour hire arrangements usually involve a 'triangular relationship' between a **host**, that receives the labour of a **labour hire worker** through a **labour hire agency**. In these arrangements there is no contractual relationship between the labour hire worker and the host, as the worker is engaged (and paid) by the labour hire agency. The labour hire agency charges the host a fee to cover the worker's remuneration and any associated on-costs. The worker may be supervised by the host's staff or by other workers supplied by the agency, typically on the host's premises. Both the agency and the host may have legal health and safety obligations to the worker.[7]

The Inquiry Report cites *Creighton and Stewart's Labour Law* which describes labour hire as involving:

> *… the agency entering into an agreement with the worker, and arranging to hire out their services to a host, or to a series of hosts. The worker generally performs these services at the host's premises, and may be supervised (if their work requires supervision at all) either by the host's staff or by other workers supplied by the same, or a different, agency. The worker is paid by the agency, but aside from any requirement to submit timesheets may have relatively little contact with it. The host, on the other hand, pays a fee to the agency which covers the worker's remuneration and any associated on-costs. … In many instances the nature of the arrangement is such that there is no obligation on either side to give or accept work. If an assignment is accepted, a contract is formed (usually on the agency's standard terms). But in between assignments, there may be no mutuality of obligation and hence no contract*.[8]

[7] Forsyth, A. (2016). *Inquiry into the Labour Hire Industry and Insecure Work: Final Report,* 31 August 2016.
[8] Ibid, p.49.

1.3 Victorian Inquiry into the Labour Hire Industry and Insecure Work

The Victorian Government established the Forsyth Inquiry into the Labour Hire Industry and Insecure Work (the Forsyth Inquiry) in October 2015 to examine work arrangements in the labour hire industry, and the extent of insecure work in Victoria. The Inquiry reflected concerns raised in a number of high profile media reports which exposed systemic underpayment and exploitation of labour hire workers. The Forsyth Inquiry received 695 written submissions (91 from organisations and 604 from individuals), and heard from over 200 individual witnesses over 17 hearing days across Victoria.[9]

The Inquiry Report was tabled in the Victorian Parliament on 27 October 2016. Key findings of the Forsyth Inquiry included that:

- the labour hire industry is a significant employer of Victorian workers and a major contributor to the Victorian economy. There are various legitimate and sound commercial reasons for Victorian businesses to utilise labour hire arrangements. Labour hire enables a flexible approach to the engagement of labour which assists businesses deal with peaks and troughs in demand;
- notwithstanding this, there is a significant problem with 'invisible' labour hire agencies and arrangements, operating almost entirely outside existing regulatory frameworks; and
- there are various ways in which labour hire workers are treated almost like a "second class" of worker, with treatment ranging from outright exploitation in certain sectors through to differential treatment in respect of issues like health and safety, dismissal and rostering.[10]

In all, the report made 35 recommendations to address these issues, including:

- a sector-specific licensing scheme applying to the horticulture, meat and cleaning sectors, with capacity to be expanded to cover other industry sectors, or to be contracted in response to changing (improved) practices in the regulated industries;
- a code of practice for the labour hire industry; and
- procurement practices on behalf of the Victorian Government that preference firms which provide more secure forms of work.[11]

The Inquiry Report recommended lobbying the Commonwealth Government for a national labour hire licensing scheme. The Victorian Government did so, but the Commonwealth Government has not indicated it intends to create such a scheme. The Inquiry Report also noted that in determining its response to the recommended licensing approach in Victoria, it remained open to the Victorian Government to consider introducing a labour hire licensing scheme of general application, in order to address problems in the design and application of a sector-specific scheme or in assessing capacity to administer and ease of compliance with the licensing regime.

The Victorian Government's response to the Forsyth Inquiry in May 2017 accepted the 35 recommendations in principle or in full.[12]

1.4 The *Labour Hire Licensing Act 2018* (Vic)

Following on from the Forsyth Inquiry, the Victorian Government established the Act. Key features of the Act are:

- The licensing scheme provides for universal coverage (that is, it is not sector-specific);
- It requires persons to be licensed in order to provide labour hire services;
- It specifies that people who receive labour hire services only use licensed providers;
- It outlines penalties for non-compliance; and
- In order to perform the functions and powers of the act, it establishes a Labour Hire Licensing Commissioner and a Licensing Authority.

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[9] Inquiry Report, p38-38.
[10] Ibid, p.16.
[11] Ibid. Note that this RIS only deals with the licensing system and the code of practice recommendations.
[12] 2017 Victorian Government Response to: The Victorian Inquiry into the Labour Hire Industry and Insecure Work.

More detail on key provisions of the Act is provided in Appendix A.

1.5 Other existing workplace legislation

Regulation of employment in Australia is largely the responsibility of the Federal workplace relations framework. Australia has a "lightly regulated framework" for agency work.[13] As noted in the Inquiry Report, there "are presently no federal or state laws which specifically prohibit, qualify or curtail the use of labour hire employment."[14]

The *Fair Work Act 2009* (Cth) (FWA) is the principal piece of legislation governing arrangements between workers and employers, including those in labour hire arrangements, at the Federal level. One of the objects of the FWA, as specified in section 3, is:

- enabling fairness and representation at work and the prevention of discrimination … protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms.

The FWA imposes penalties for non-compliance, and the Fair Work Ombudsman (FWO) is the workplace regulator created by the FWA to enforce compliance with the Commonwealth laws.[15]

The National Employment Standards (NES) under the FWA apply to 'national system employees' and 'national system employers' as defined by that statute. The NES are a set of statutory minimum conditions including matters such as hours of work, leave entitlements, notice of termination and redundancy pay. They cannot be displaced by an employment contract, award or enterprise agreement.[16]

However, as observed in the Inquiry Report, labour hire workers often do not receive the benefit of the NES. A key reason is because many labour hire workers are engaged as casual employees. Casual employees miss out on many entitlements under the NES such as annual leave and paid personal/carer's leave. Other NES provisions may have additional requirements to be accessible to casual workers, such as the right to request flexible working arrangements.

The FWA contains protections for employees against unfair dismissal.[17] However, as discussed in the Inquiry Report, there are a range of impediments to the application of unfair dismissal laws to labour hire employees, as follows:

- Unfair dismissal protections do not apply to independent contractors as they are not employees; and
- Unfair dismissal protections apply to ongoing employees with a minimum employment period of six months, or 12 months if the employee works in a small business. However, the protections only apply to casual employees where the employment is on a regular and systematic basis, and the employee has a reasonable expectation of continuous employment by the employer on such a basis.[18]

The Inquiry found that these provisions operate to prevent a large proportion of labour hire employees from accessing the unfair dismissal protections.[19]

Unfair dismissal protection can be limited in other ways too. For example, unfair dismissal protections do not apply to an employee whose employment is limited to a specified period of time, specified task, or the duration of a specified season, and the employment terminates at the end of that period, on completion of the task or at the end of the season. In some cases, labour hire agencies structure their arrangements with labour hire employees to limit the employee's

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[13] Cochrane and McKweown 2015 as cited by Inquiry Report*, 31 August 2016.*
[14] Inquiry Report*,* p. 88.
[15] FWO. (2017). Compliance and Enforcement Policy. Retrieved October 30, 2017, from file:///C:/Users/jotomlinson/Downloads/compliance-and-enforcement-policy.pdf
[16] FWA ss 44(1), 55(1), 56, 61 as cited in Inquiry Report*,* p.90-91.
[17] FWA, Part 3-2.
[18] Inquiry Report, p.111.
[19] Inquiry Report, p.111.

employment to a specified task, namely the assignment with a particular host. This can have the effect of excluding them from the unfair dismissal protections.[20]

In contrast, as noted in the Inquiry Report, the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Sex Discrimination Act 1984* (Cth) and *Racial Discrimination Act 1975* (Cth) contain protections from discrimination in the workplace which are not limited to an employment relationship, and most of which are broad enough to encompass discrimination by hosts against labour hire workers.[21] Victoria's *Equal Opportunity Act 2010* is also not limited by type of employment relationship.

1.6 Regulations and this RIS

The Act provides for some aspects of the licensing scheme to be determined through the use of Regulations. This Regulatory Impact Statement (RIS) discusses and makes proposals regarding the scope of the Regulations. These are some examples of matters that may be addressed in the Regulations:

- Exemptions from the definitions of 'labour hire services', and when an individual is a 'worker';
- Licence application fees;
- Additional information requirements;
- Additional 'fit and proper person' criteria;
- Additional matters in relation to compliance with legal obligations;
- The designated time for an application for renewal of a licence;
- Additional material to be published on the Register;
- The form of a notice to comply; and
- Prescription of other licensing or accreditation schemes that may be recognised by the Licensing Authority to do certain things (such as reduce information requirements on licence applicants)

Under the *Subordinate Legislation Act 1994* (Vic), there is a requirement for a RIS to be prepared if a proposed statutory rule imposes a significant economic or social burden on a sector of the public. The purpose of a RIS is to facilitate Government consultation with the community on the best approach to achieve its objectives. It also provides a framework for Government to develop and explain policy advice, and provides a foundation for effective and efficient regulation.

The Commissioner for Better Regulation's *Victorian Guide to Regulation* (the Guide to Regulation)[22] sets out the aims and requirement of a RIS, which are to answer the following key questions:

- Why is the Government considering action?
- What outcome is the Government aiming to achieve?
- What are the possible different courses of action that could be taken?
- What are the expected impacts of feasible options and what is the preferred option?
- What are the characteristics of the preferred option, including small business and competition impacts?
- How will the preferred option be implemented?
- When (and how) will Government evaluate the effectiveness of the preferred option in meeting the objectives?

1.7 Other Australian labour hire licensing schemes and standards

1.7.1 Queensland and South Australian labour hire licensing schemes

State based labour hire licensing systems have recently been enacted in Queensland and South Australia.

The Queensland labour hire licensing legislation passed through the Queensland Parliament on 7 September 2017. The Queensland *Labour Hire Licensing Act 2017* (the Queensland Act) commenced on 16 April 2018, and labour hire providers had 60 days from this date to apply for a licence.

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[20] Inquiry Report, p.111.
[21] Inquiry Report, p.118.
[22] Updated December 2016.

The South Australian Government introduced the South Australian *Labour Hire Licensing Act 2017* (the South Australian Act) into the House of Assembly on the 10th of August 2017 and the legislation passed both houses in late November 2017. The scheme commenced operation on 1 March 2018. Compliance with the Act was planned to commence from 1 September 2018, however the South Australian Commissioner has advised that at this stage, licensing requirements will not be enforced prior to 1 February 2019. This is because the State Government has received a number of submissions from stakeholders raising various issues in relation to the Licensing Scheme and wishes to enable proper consideration of the submissions received and sufficient time for the issues raised to be appropriately addressed.[23]

Some key features and differences across the state licensing schemes are outlined below. This is not an exhaustive list. However, it is provided to give an understanding that the schemes are similar but not identical. It can also help to provide insights into possible options for the Victorian Regulations.

Definition of labour hire

The Queensland and South Australia legislation define labour hire services in a similar way to the definition in the Victorian legislation. The South Australian definition of labour hire services is as follows: "A person (a provider) provides labour hire services if, in the course of conducting a business, the person supplies, to another person, a worker to do work in and as part of a business or commercial undertaking of the other person." The key difference between the Victorian and South Australian definitions is that the South Australia definition includes the word "commercial", which is not included in the Victorian definition. This means that the Victorian definition is broader because it can apply to an undertaking such as a local council, government departments or not-for-profit entities, which may not meet the definition of a 'commercial' undertaking.

Queensland's coverage is broader than the Victorian and South Australian schemes: "A person (a provider) provides labour hire services if, in the course of carrying on a business, the person supplies, to another person, a worker to do work." This definition more broadly captures circumstances where a worker is being supplied. For example, in Victoria if a worker was supplied but not in circumstances where they were performing work in and as part of the relevant business or undertaking, that working arrangement may not be caught by the labour hire licensing scheme. However, in Queensland the supply of a worker may be captured regardless of the fact that the worker is not performing work in and as part of the relevant business or undertaking.

Coverage

The schemes in all three States have universal coverage, applying to all industries. All three schemes require labour hire firms to obtain licences, and those that use labour hire services must only engage with licensed providers.

Regulation 4 of the Labour Hire Licensing Regulations 2018 (Qld) set outs individuals who are not workers for the purposes of section 8(2) of the Queensland Act. Such workers include:

a) an individual employed by a provider:
   (i) whose annual wages are equal to or more than the amount of the high income threshold under the FWA, section 333; and
   (ii) other than under an industrial instrument under the *Industrial Relations Act 2016* or a modern award or enterprise agreement under the FWA;
b) for a provider who is a corporation - an individual who is an executive officer of the corporation and the only individual the provider supplies, in the course of carrying on a business, to another person to do work;
c) an in-house employee of a provider whom the provider supplies to another person to do work on a temporary basis on 1 or more occasions.

Under section 8(1)(c), an *in-house employee* of a provider is an individual who:

a) is engaged as an employee by the provider on a regular and systematic basis; and
b) has a reasonable expectation the employment with the provider will continue; and

[23] *Labour hire laws – CBS news*, https://www.cbs.sa.gov.au/labour-hire-laws/, 5 June 2018.

c) primarily performs work for the provider other than as a worker supplied to another person to do work for the other person.

The South Australian scheme also has exemptions from coverage. The South Australian Act provides the example of an exemption for a worker (at a plumbing business) supplied to a business site to perform work in and as part of the business of the provider (the plumbing business). This same section notes that a person does not provide labour hire services merely because the person is an employment agent under the *Employment Agents Registration Act 1993* or the person is a contractor who enters into a contract to carry out building work within the meaning of the *Building Contractors Act 1995* and engage subcontractors to carry out the work.

The definition of 'provides labour hire services' in the Victorian Act is extended by the operation of section 8. A person provides labour hire services if:

a) in the course of conducting a business of providing recruitment or placement services, the provider recruits one or more individuals for, or places one or more individuals with, another person (a host) to perform work in and as part of a business or undertaking of the host; and
b) the provider also procures or provides accommodation for the individuals for some or all of the period during which the individuals perform the work; and
c) the individuals are workers for the provider, within the meaning of section 9(2)(a).

A person also provides labour hire services if:

a) in the course of conducting a business of providing contractor management services, the provider recruits one or more individuals for, or places one or more individuals with another person (a host) to perform work in and as part of a business or undertaking of the host; and
b) the individuals are workers for the provider, within the meaning of section 9(2)(b).

Fit and proper person test

The Victorian, South Australian and Queensland licensing schemes require that relevant persons pass a 'fit and proper person' test.

The discussion below considers the application of the 'fit and proper person test' across the three jurisdictions, highlighting some of the key similarities and differences.

To begin, the fit and proper person tests have a focus on compliance with relevant laws. The Victorian scheme considers matters such as whether the applicant and relevant persons have been found to have contravened relevant laws in the last five years. This component of the Victorian 'fit and proper person' test is complemented by section 23 of the Act, which requires a licence applicant (and in the case of accommodation and transport related laws, each relevant person) to demonstrate/verify current compliance. The Queensland scheme considers matters such as a history of compliance with relevant laws and the ability to demonstrate compliance. The South Australian scheme considers demonstrated compliance with relevant laws.

The fit and proper person tests also look at criminal and other history. The Victorian scheme considers matters such as guilt of an indictable offence within the last ten years and contravention of other laws. The Queensland scheme considers conviction of an offence against a relevant law, or another law that affects suitability to provide labour hire services. The South Australian scheme may have regard to information provided by the Commissioner of Police as well as other matters. This includes membership or association of a prescribed organisation under organised crime legislation.

There is a focus on insolvency issues across all three schemes. The Victorian scheme considers certain associations with an insolvent or externally administered company. The Queensland scheme considers matters relating to insolvency, administration, receivership and liquidation. The South Australian scheme considers insolvency issues and certain associations with a body corporate wound up for the benefit of creditors.

Both the Queensland and South Australian schemes consider some discretionary or subjective matters which are not included in the Victorian scheme. The Queensland scheme considers

elements such as character, honesty, integrity and professionalism and there is also scope to consider any other matter. The South Australian scheme also considers elements such as character, honesty, integrity and professionalism. In addition, the South Australian scheme considers whether there is sufficient business knowledge, experience and skills to carry on a business. Victoria has a fit and proper test based on such objectively tested matters as criminal record or non-compliance with other industrial laws.

Application process and information requirements
While broadly similar, there are some differences in the application processes of the three schemes. One key difference is that, unlike the Victorian Act, the South Australian Act and Queensland Act require information about the financial viability of the organisation applying for a licence. Under the Queensland scheme, an organisation must provide a description of the financial documents held by the applicant relating to the business's ability to:

- meet its actual, or projected, operating costs and expenses;
- pay each worker supplied by the business as and when the worker is due to be paid; and
- pay other financial obligations or entitlements in relation to workers, including, for example, the payment of payroll tax and superannuation for workers.

Under the South Australian scheme, a person must provide a letter from a chartered accountant, certified practising accountant or IPA public accountant confirming that the person is solvent. The letter date must be within six months of the date of licence application.[24]

In Victoria, financial viability was not included as the Inquiry Report noted that payment of a bond or demonstrating a minimal capital threshold should not form part of the licensing requirements as these would be particularly burdensome for smaller operators. The other proposed licensing requirements, and the imposition of obligations on hosts were noted as being sufficient to impose barriers to entry to the labour hire sector that will drive out the 'rogue' elements.

There is also a difference between the schemes in who can object to a licence being granted. In South Australia, a government agency, local council or industrial association may object to an application if they believe that the applicant or nominated responsible person is not fit and proper to hold a licence. In Queensland, an 'interested person' may apply for a review of a decision to grant a licence, while in Victoria any 'interested person' may object to an application. In Queensland, an interested person means a person or organisation, other than a licensee, who has an interest in the protection of workers or the integrity of the labour hire industry. In Victoria it means a person or organisation who has an interest in the protection of workers or the integrity of the labour hire industry. The key difference therefore is the exclusion of licensees from the Queensland definition.

Term of licence
In Queensland, a licence is granted for the term of up to one year stated in the licence and the licence will cease being in force if not renewed before it expires. In Victoria licence terms may be up to three years. Under the South Australian Act, a licence remains in force (except for any period for which it is suspended) until the licence is surrendered or cancelled, or the licence holder dies or, in the case of a licensed body corporate, is dissolved. However, the South Australian terms of licences have similarities to licence terms in Queensland and Victoria. This is because the South Australian licensing scheme has a 12 month reporting period and holders of a licence must pay the relevant fee and provide the relevant information during each reporting period. Failure to do so as prescribed will lead to licence cancellation.

Mutual recognition
The Victorian licensing scheme has specific provisions in regard to mutual recognition. Section 112 of the Act states that the *Mutual Recognition Act 1992* (Cth) applies as if providing labour hire services were an occupation within the meaning of that statute. This means that a natural person who holds the right to provide labour hire services in another State or a Territory will, on notifying the Licensing Authority, be entitled to be registered as a licensed labour hire provider in Victoria

[24] This is sourced from the SA Labour Hire Licensing website - https://www.sa.gov.au/topics/business-and-trade/licensing/labour-hire/labour-hire-licence. It is not sourced from the Act or Regulations.

subject to certain procedural arrangements. For example, applicants under the mutual recognition scheme will still have to complete a modified application process which will include the payment of a fee.

South Australia and Queensland have not released any information about mutual recognition to date.

Reduced compliance burden

Section 111 of the Act provides that the Licensing Authority may rely on prescribed laws or schemes to reduce the compliance burden on licence holders or holders of approval under those laws or schemes. The Licensing Authority may rely on these prescribed laws or schemes in a number of different ways, such as: by not requiring the person to provide to the Licensing Authority information that the Licensing Authority would otherwise require to determine a matter under the Act or the Regulations; by determining, without further consideration, that the person is a fit and proper person for one or more purposes of the Act or the Regulations, or that the person otherwise satisfies a prescribed condition or requirement of the Act or the Regulations.

The South Australian and Queensland schemes also provide the opportunity for the relevant regulators to reduce the compliance burden for applicants from relevant schemes or accreditation systems in ways related to the operation of section 111 of the Act. However, South Australia and Queensland have not to date released information to document any policies or procedures that have been implemented to process any such reduction in compliance burdens.

Monitoring, compliance and enforcement

The legislation across all states provides for the appointment of inspectors or authorised officers to perform compliance and enforcement activities. All three jurisdictions also provide for other enforcement methods, such as entry and seizure powers, the power to suspend and cancel licences and the existence of civil penalties and criminal offences.

The maximum fines under each licensing scheme are for providing labour hire services without a licence. The fines are similar in each scheme for individuals guilty of this offence: $130,439.10 in Queensland, $140,000 in South Australia and $126,856 in Victoria.[25] Importantly though, the Queensland and South Australia schemes prescribe the fine or a 3-year jail term, which is not prescribed in Victoria. The fines are slightly higher for this offence if it is committed by a body corporate. The amount is $378,450 in Queensland, $400,000 in South Australia and $507,424 in Victoria.

Regulator

Victoria is the only jurisdiction to establish a new, stand-alone, purpose built, statutory authority to administer the scheme. By contrast, Queensland has incorporated the administration of its scheme into the existing Office of Industrial Relations in the Queensland Treasury. South Australia has incorporated the administration of its scheme into Consumer and Business Services (CBS) which is a division of the South Australian Attorney-General's Department.

1.7.2 Recruitment and Consulting Services Association

The Recruitment and Consulting Services Association (RCSA) has developed the StaffSure Workforce Services Provider Certification Standard (the RCSA Standard). The RCSA Standard seeks to provide assurance that the Certified Workforce Services Provider is reputable, has established and operates reasonable controls in the six key areas covered by the Standard (fit and proper person, work status and remuneration, financial assurance, safe work, migration, suitable accommodation) and meets compliance obligations in accordance with the Standard.[26] Organisations eligible to apply for the RCSA certification include any workforce service provider lawfully carrying business to supply workforce services. Under the RCSA Standard, workforce

[25] Note the Act specifies fine in terms of penalty units for Queensland and Victoria. Fines presented in this RIS are based on current penalty units as at the date of this RIS.
[26] RCSA, 2017, "StaffSure Workforce Services Provider Certification Standard".

services are defined as any of the following services, other than government contracted employment services:

- Workforce contracting services;
- Contract management services;
- On-hire services; and
- Placement services.

While there may be overlap between coverage provided by the Act and coverage by the Standard, the definitions used are not consistent and the RCSA Standard currently covers some areas that are not regulated by the Act, while at the same time appears to omit coverage of other aspects of the labour hire licensing scheme currently regulated by the Act.

1.8 Structure of this RIS

The rest of this RIS is structured as follows:

- Section 2: Problem analysis – outlines three problems that exist without supporting Regulations. These relate to compliance, regulatory burden and cost recovery;
- Section 3: Objectives of the regulation – articulates the objectives and purpose of the legislation and regulation;
- Section 4: Options development – identifies and describes options for the Regulations. It also outlines the criteria used to undertake the assessment;
- Section 5: Impact analysis – outlines the assessment method used in the multi-criteria analysis (MCA), undertakes the assessment of the options and identifies the preferred option;
- Section 6: Cost recovery and fees analysis – outlines the considerations to be made when constructing fees and recovering regulatory costs, outlines the Licensing Authority and Licensing Commissioner's costs, and assesses the alternative fee options;
- Section 7: Implementation Plan – comprises a high-level strategy for implementing the Regulations;
- Section 8: Evaluation Strategy – outlines the evaluation strategy to assess the effectiveness of the Regulations as needed; and
- Section 9: Consultation – this lists the stakeholders consulted to inform this RIS, and summarises their views.

2 Problem analysis

2.1 Problems within the labour hire industry

As noted in Chapter 1, the Forsyth Inquiry unveiled a range of problems within the labour hire industry, such as the exploitation of labour hire workers and the non-compliance of many labour hire businesses with workplace laws. It presented evidence of widespread exploitation in the labour hire industry and highlighted a range of ways in which labour hire workers are treated almost like 'second class' citizens, ranging from exploitation to differential treatment. It also highlighted the social impact of non-permanent working arrangements. While the Inquiry Report identified legislative non-compliance by labour hire agencies across a range of sectors, the horticulture, meat and cleaning sectors were singled out as particularly concerning and requiring a regulatory response.[27]

2.2 Problems the Regulations are seeking to address

These documented problems within the labour hire sector prompted the Victorian Government to establish the labour hire licensing scheme in Victoria. The Act establishes all of the main requirements of the licensing scheme, and assigns certain details to be addressed in accompanying regulations. This creates potential issues if no regulations are established, as:

- The legislation may apply to classes of people and types of activities that are at lower risk in terms of exploitation;
- The legislation may not fully capture classes of people and activities that have been identified as having high levels of exploitation of workers by providers of labour hire services and hosts;
- Some details of information to be provided in an application may benefit from further detail; and
- The Government would not be able to recover the costs of the licensing system since fees are not prescribed in the legislation.

In order to make a case for government intervention, the problem that the Regulations are seeking to address must first be established. This section identifies why regulations may be required to support the primary legislation. In summary, the problems to be addressed by the Regulations are:

1. The size of the regulatory burden imposed by the legislation on categories of labour hire providers considered at lower risk of exploiting vulnerable workers;
2. The need to strengthen alignment of the licensing scheme with the objective of protecting workers from being exploited by providers of labour hire services and hosts;
3. The need to provide certainty to businesses and government in respect to how to apply the legislation; and
4. Cost recovery as per the Victorian Government's Cost Recovery Guidelines.[28]

2.2.1 The size of the regulatory burden imposed by the legislation

The Act establishes universal coverage of the labour hire licensing scheme. The general definition of 'provides labour hire services' begins in section 7(1), which provides that a person (a provider) provides labour hire services if:

a) in the course of conducting a business, the provider supplies one or more individuals to another person (a host) to perform work in and as part of a business or undertaking of the host; and
b) the individuals are workers for the provider.

Under section 9(1), an individual is a worker, for a provider, if:

[27] Inquiry Report, p.23 & p.25.
[28] Department of Treasury and Finance, *Cost Recovery Guidelines*, January 2013.

a) an arrangement is in force between the individual and the provider under which the provider supplies, or may supply, the individual to one or more other persons to perform work; and
b) the provider is obliged to pay the individual (in whole or part) for the performance of the work by the individual, whether directly or indirectly through one or more intermediaries.

There is potential for the definition of 'provides labour hire services' under the Act to result in regulation of some types of organisation when it is preferable that they were not caught by the coverage of the scheme. To include such organisations would unnecessarily impose a regulatory burden on industry to comply with legislation, and impose costs on government including the costs of administering the licence application process, compliance and enforcement activities. Incorporating these individuals and businesses would therefore result in an unreasonable regulatory burden, with little marginal benefit.

The Act does not specify any exemptions to the definition of 'provides labour hire services', or 'worker'. Instead section 10 provides that, despite sections 7 and 8 of the Act, a person does not provide labour hire services for the purposes of the Act if:

a) the person is included in a class of persons prescribed by the regulations; or
b) the person provides services prescribed by the regulations; or
c) the individual supplied, recruited or placed with the person is included in a class of individuals prescribed by the regulations.

Workers in the following categories could be covered by the licensing scheme when it may be preferable at this time that they were not, such as:

- Secondment of individual employees;
- Short term, ad hoc, worker share arrangements between similar businesses;
- Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business;
- Workplace learning and vocational placement arrangements; and
- Where a business has a small number of directors and the directors are provided to another business to perform work.

While there is limited data, the above categories of exemption potentially impact a large number of organisations, for example:

- Australian Bureau of Statistics (ABS) data shows that, at June 2017, there were 52,262 businesses providing professional services in Victoria.[29] Of these, 28,937 are non-employing businesses and therefore would not be required to be licensed under the Act (see further discussion of this in section 5.5.1.2).[30] Therefore, it is assumed that there are 30,997 professional services businesses that could be labour hire providers under the Act if they use secondees. If only 1% of these businesses use secondment arrangements, then 310 businesses would potentially be included in the licensing scheme under the Act.
- in relation to workplace learning and vocational placement arrangements, up to approximately 1,700 education and training organisations could be brought within the coverage of the Act if exemptions were not provided by the Regulations, including:
  - 583 secondary schools;[31]
  - 24 GTOs;[32]

[29] Includes research; architectural, engineering and technical; legal and accounting; advertising; market research and statistics; management and related consulting; veterinary; and other professional services. Bottom of Form
[30] ABS, 8165.0 - *Counts of Australian Businesses, including Entries and Exits*, Jun 2013 to Jun 2017. As defined in ABS 8165.0, a business without an active Income Tax Withholding (ITW) role or which has not remitted ITW for five consecutive quarters (or three consecutive years for annual remitters) is counted as non-employing.
[31] Department of Education and Training, *April 2018 Summary Statistics for Victorian Schools*. Number includes the sum of Primary-Secondary and Secondary schools as at April 2018.
[32] Group Training National Register Website (https://www.australianapprenticeships.gov.au/gto-listing). GTOs must comply with the *Revised National Standards for Group Training Organisations* (2017) in order to be registered. Only registered GTOs are eligible to apply for Australian Government or State or Territory Government group training program funding.

- 1,085 RTOs,[33] which includes 12 TAFE institutes and seven universities; and
- two other universities that are not RTOs.[34]

It is not known how many of these organisations would be captured by the definition of labour hire under the Act.

There are other categories of workplace arrangements or commercial arrangements where the Act is not considered to impose a burden because the definition of 'provides labour hire services' in section 7 of the Act would not cover these arrangements. This includes the provision of professional/trade services to a third party, genuine sub-contracting arrangements, pure outsourcing of a business or part of a business, the provision of volunteer workers, the supply of a worker to an individual not conducting a business or undertaking, and the supply of workers working in and as part of the business of the provider.

2.2.2 The need to strengthen alignment of the licensing scheme with the objective of protecting workers from being exploited by providers of labour hire services and hosts

The general definition of 'provides labour hire services' in the Act would exclude many commercial cleaning services from being regulated under the labour hire licensing scheme. This is despite a significant body of evidence being provided to the Forsyth Inquiry, along with many media reports and studies, detailing exploitative behaviour in the cleaning sector. The Inquiry Report identified rogue operators as being "particularly evident in the horticultural industry …and the meat and cleaning industries".[35] A number of examples of concerning labour hire, supply chain and outsourcing arrangements in the cleaning sector were detailed in the Inquiry Report. These include cases of 'reputable' cleaning contractors seeking to reduce costs by using less reputable cleaning sub-contractors who are not meeting minimum obligations. Workers in the cleaning industry are often vulnerable. For example, the evidence provided suggests a high proportion of cleaners working in Melbourne's CBD are international students from non-English speaking backgrounds.[36]

The Inquiry Report indicated that both labour hire and complex supply chains are particularly prominent features of the cleaning industry.[37] This adds to the problem, making it difficult to understand what workplace arrangements are in place and who is responsible for workers.

The Inquiry Report emphasised that the extent of non-compliance with workplace and other laws involving labour hire agencies in the horticulture, meat and cleaning industries in Victoria required a regulatory response.[38]

In some instances, arrangements common to the cleaning industry (the Forsyth Inquiry discusses the prevalence of these arrangements in the cleaning industry)[39], such as the outsourcing of cleaning work, may mean that cleaning services are excluded from coverage of the Act. This is despite the fact that such cleaning services would otherwise have been caught by the Act if not for the operation of such arrangements. This outcome is inconsistent with the objective of protecting workers from being exploited by providers of labour hire services and hosts. It is clear that the Forsyth Inquiry strongly supported the need to regulate workplace arrangements in the cleaning sector.

In relation to the horticulture and meat industries, the horticulture and meat industries would already be expected to be covered by the Act to a large extent based on the current definition of 'provides labour hire services' under section 7, there is a risk that some businesses may establish arrangements in such a way so as to seek to avoid their obligations. As noted, these industries were identified as being particularly exploitative of labour in the Forsyth Inquiry and in need of regulation. Similarly, regulations are proposed to mitigate this risk.

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[33] *Report of RTOs based Registration RCAB, Registration dates and scope*, training.gov.au, downloaded 30 May 2018.
[34] Tertiary Education Quality and Standards Agency (TESQA) National Register, www.tesqa.gov.au. (https://www.vta.vic.edu.au/doctest/about-the-vta/656-about-the-vta-updated-2017/file)
[35] Inquiry Report, p.25.
[36] Inquiry Report, p.176.
[37] Inquiry Report, p.174.
[38] Inquiry Report, p.23.
[39] Inquiry Report, p.174.

2.2.3 Uncertainty of businesses and government in respect of how to apply the legislation

Uncertainty on the part of businesses in relation to their obligations under the Act has an impact on compliance with the licensing scheme and can result in increased costs to both businesses and government.

In some sections the Act is detailed and prescriptive, while in others it is drafted with the expectation that there would be accompanying regulations. Certain sections of the Act allow the regulations to prescribe matters such as:

- What is included in a licence application;
- Requirements for nominated officers included in the application, including how many nominated officers are required for each licence;
- Application fees;
- Information on workers supplied/expected to be supplied by an applicant to hosts;
- Conditions of a licence;
- Matters relating to the suspension or cancellation of a licence;
- Changes in circumstances of which licence holders must notify the Licensing Authority; and
- Inspector powers.

Further, section 114(1)(d) of the Act enables regulations to be made in relation to 'any matter or thing required or permitted by this Act, to be prescribed or necessary to be prescribed, to give effect to this Act'.

Problems may arise if the Act is not accompanied by detailed regulations. In particular, businesses and government may face administrative costs due to the lack of specificity in the legislation. To minimise administrative costs for government and business, there needs to be clarity regarding the obligations of the licence applicant/holder. Without clarity regarding who needs to be licensed, under what conditions, and how, labour hire providers may need to seek assistance in complying with the Act, potentially at a cost. Businesses may engage consultants or lawyers to assist them in complying, or businesses may over-comply to reduce the likelihood of breaching the legislation. Due to the uncertainty, industry groups or consultants may need to assist labour hire businesses in applying for a licence and complying with the terms of a licence. Uncertainty on the part of licence applicants and holders may also result in additional costs for government as this may generate more work for the Licensing Authority.

2.2.4 Ensuring cost recovery as per the Victorian Government's Cost Recovery Guidelines

The Act does not specify the value of the licence application fee, instead stating that an application be accompanied "by the application fee (if any) prescribed by regulation".

Similarly, section 35 of the Act provides that an annual licence fee may be paid, but does not specify the quantum.

Cost recovery involves setting and collecting monies to recuperate in full or in part the costs associated with certain activities including government regulation.[40] The person who pays the costs could be those who benefit from, or give rise to, the relevant regulatory activities or services. The broad objectives of cost recovery are two-fold:

1. Equity – both horizontal and vertical equity – in terms of the costs of regulatory activities being paid for by those who give rise to the activity, or fees reflecting ability to pay; and
2. Efficiency – in terms of the allocation of resources and decreasing the level of general taxation required to fund government regulatory activities.

General Victorian government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met, although there are certain circumstances in which it can be appropriate to deviate from full cost

[40] Department of Treasury and Finance, 2013, *Cost Recovery Guidelines*, January.

recovery.[41] As presented in section 6.2, it is estimated that there will be ongoing costs of $40.8 million across the Licensing Authority and Licensing Commissioner over the first ten years of operation.

In the absence of regulations, the Licensing Authority will not be able to set fees, and regulatory costs would need to be recovered from general revenue, with consequent effects for efficiency and equity.

2.3 Characteristics and size of the labour hire industry in Australia and Victoria

It is challenging to estimate the number of businesses in the labour hire industry, the number of workers or the proportion of workers in different sectors that they operate in, with deficiencies in available data and inconsistencies between different sources of data.

Table 2.1 shows different data source estimates for the number of labour hire providers operating in Victoria. The differences may be due to the breadth of definition used to describe and define labour hire, how unregistered businesses are recorded on datasets and the underlying source and methodology for collecting data. According to WorkSafe Victoria data, the number of labour hire businesses has been stable from 2011-12 to 2014-15. Only a 2016-17 estimate of the number of labour hire businesses is available from the IBISWorld data, which puts the estimate at 1,541, which is slightly higher than the WorkSafe Victoria estimates.[42] As noted in section 2.2.1, however, the number of organisations that could be captured by the definition in the Act potentially could be much higher than all of these estimates.

Table 2.1: Estimated number of labour hire businesses by source

	Departmental Analysis		**Forsyth Inquiry**
	IBIS World	WorkSafe Victoria	WorkSafe Victoria
2011-12	-	1,364	968
1012-13	-	1,323	947
2013-14	-	1,311	916
2014-15	-	1,321	933
2015-16	-	1,336	-
2016-17	1,541	1,396	-

Source: Inquiry Report.

Similarly, estimates of the share of the workforce that are labour hire workers, for both Australia and Victoria, vary substantially. A comprehensive review of data was presented in the Inquiry Report, which summarised that, in Australia, estimates range between 1% and 2.5% of the workforce.[43] However for Victoria (based on an estimate from 8 years ago) the share is estimated to be much higher, at 7%.[44] IBISWorld estimates indicate there are approximately 69,776 Victorian labour hirees, based on a national average of 45.28 employees per business.[45] This is equivalent to 2.1% of the total Victorian labour force.[46]

[41] Guide to Regulation, Section 3.2.13
[42] IBISWorld Industry Report N7212 *Temporary Staff Services in Australia*, February 2017. Regarding the difference between the two WorkSafe Victoria estimates, the Departmental Analysis WorkSafe Victoria data is based on the number of businesses registered with WorkSafe Victoria falling within ANZSIC 7211 (employment placement and recruitment) and ANZSIC 7212 (labour supply), while the data presented in the Forsyth Inquiry refers to labour hire businesses, excluding businesses predominantly engaged in listing employment vacancies, that are registered for WorkSafe Victoria premium services.
[43] From ABS data and analysis of Household, Income and Labour Dynamics in Australia Survey data as cited in Inquiry Report*, p.57-62.*
[44] From the Victorian Workplace Industrial Relations Survey conducted by Industrial Relations Victoria in 2008 as cited in Inquiry Report*,* p.62.
[45] IBISWorld Industry Report N7212 *Temporary Staff Services in Australia*, February 2017.
[46] ABS, 6202.0 Labour Force, Australia, Table 5, as at April 2018.

The Inquiry Report noted that:

> *Whilst this variation in data makes it difficult to precisely establish the proportion of the overall workforce who are labour hire employees, it nonetheless has remained over time a significant form of employment, and appears to now be an ongoing feature of the Victorian and Australian labour market.*

As noted in section 2.2.1, it is possible that additional categories of workers could be captured by the definition of labour hire in the Act (for example, secondees) and may not be covered by in the numbers set out in the table above.

2.3.1 Characteristics of the industry

Evidence presented to the Inquiry Report found that the types of labour hire agencies varied widely, including:

- Large, multinational corporations with thousands of staff;
- Mid-tier labour hire providers;
- Small, regionally-based, industry-based or occupationally-based companies where the agency owners know each of their workers personally;
- Not for profit groups utilising labour hire as a means to improve employment opportunities in communities;
- Accommodation proprietors who procure work for backpackers; and
- Operators consisting of an individual (or a few individuals) with a van and mobile phone, known only by their first name(s).[47]

The labour hire industry is characterised by a large number of small providers. The Inquiry Report reported that, of the 933 labour hire businesses registered with WorkSafe Victoria in 2014-15, 56.9% employed 100 or fewer labour hire employees, 14.6% employed 500 or fewer employees, and just 5.6% employed more than 500 labour hire employees.

Total remuneration spend on Victorian labour hire in 2014-15 was highest in the administrative and support services sector, professional, scientific and technical services sector, manufacturing sector and financial insurance services sector.[48] However, as noted in the Inquiry Report, this may partly reflect higher salaries rather than higher numbers of labour hire employees in these sectors.

Based on 2014 Australia wide ABS data, the industries with the highest percentage of labour hire employees are:

- Administrative and support services (5.4% of employees in industry);
- Mining (2.8%);
- Manufacturing (2.6%);
- Electricity, gas and water services (1.8%);
- Public administration and safety (1.7%); and
- Information, media and telecommunications (1.4%).[49]

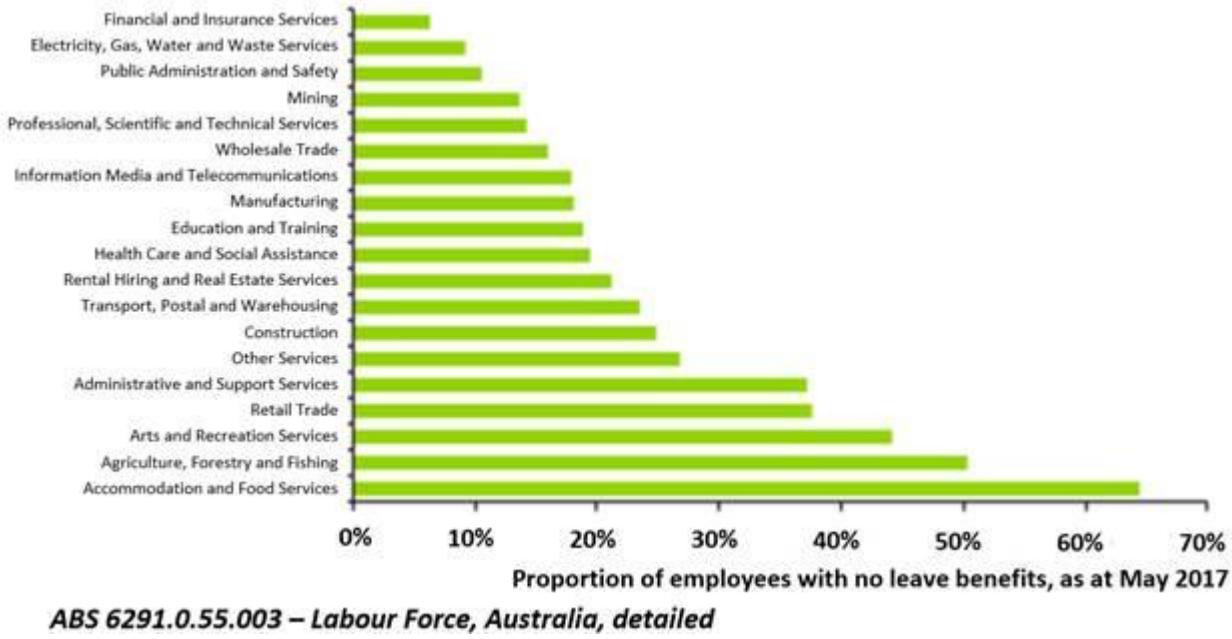
The estimated presence of labour hire employees, as a percentage of the Australian workforce within specified occupations, was largest for the following occupations:

- Machinery operators and drivers (2.9%);
- Labourers (2.4%);
- Technicians and trades workers (1.4%);
- Clerical and administrative workers (1.0%).[50]

[47] Inquiry Report, p.52.
[48] From data provided by WorkSafe Victoria, derived from internal premium systems as cited Inquiry Report, p.57.
[49] ABS (2014) as cited in Inquiry Report, Table 2.2.
[50] ABS (2014) as cited in Inquiry Report, p.61.

The vast majority of labour hire workers are engaged as casual employees.[51] The share of casual employment differs across industries (see Figure 2.1). In industries with higher turnover and generally younger workers such as accommodation and food services, arts and recreation and retail, there is a substantially higher casualised workforce.

Figure 2.1: Casual employment, by industry



ABS 6291.0.55.003 – Labour Force, Australia, detailed

2.3.2 Growth in labour hire

Australian businesses began to use labour hire employment arrangements in the 1950s, in the form of 'temping' agencies to fill short term vacancies for hosts.[52] Throughout the 1990s there was significant growth in the labour hire industry across a range of industries, with labour hire arrangements evolving significantly beyond the basic 'temping' arrangements. A Productivity Commission working paper found that labour hire employment grew strongly between 1990 and 2002. In workplaces with 20 or more employees:

- the number of labour hire workers grew from 33,000 in 1990 to 190,000 in 2002, an increase of 15.7 per cent a year; and
- the proportion of labour hire workers among all employees grew almost fivefold, from 0.8 per cent in 1990 to 3.9 per cent in 2002.[53]

There are different views on the growth in the use of labour hire. The Productivity Commission working paper attributed the growth to how firms manage their workforce, rather than to changes in the economy's structure (that is, its composition in terms of industry and firm size).[54] The following changes in operating environment contributed to firms altering their employment strategy in favour of labour hire workers:

- Changing industrial relations context: in the period there was a decline in the proportion of firms with 'closed union shops', a rise in enterprise bargaining, and an increase in the use of human resources managers. All three changes are likely to have contributed to an increase in the propensity of firms to use labour hire.

[51] Inquiry Report, p.18.
[52] Richard Hall, Labour Hire in Australia: Motivation, Dynamics and Prospects (Working Paper 76, ACIRRT, University of Sydney, April 2002) as cited in Inquiry Report, p.49.
[53] Laplagne, P., Glover, M. and Fry, T. 2005, The Growth of Labour Hire Employment in Australia, Productivity Commission Staff Working Paper, Melbourne, February, p.xii.
[54] Ibid.

- Rising competitive pressures: trade liberalisation and globalisation put increasing pressure on firms to be competitive. One way for firms to increase competitiveness was to optimise their use of labour. Labour hire employment helped some firms to achieve that objective.[55]

An IBISWorld Industry Report noted that the general increasing trend in outsourcing has generated growth in temporary staffing services, including labour hire. An increase in outsourcing means more firms require external staff to meet their resourcing needs. Other factors have also been cited as contributing to the growth in the temporary staff services sector. A comparatively low national unemployment rate stimulated demand for temporary staff as some employers struggle to fill vacancies. Also, more workers switching jobs given the strong labour market also created temporary vacancies, further providing oppurtunites for temporary staffing firms.[56]

[55] Laplagne, P., Glover, M. and Fry, T. 2005, The Growth of Labour Hire Employment in Australia, Productivity Commission Staff Working Paper, Melbourne, February, p.xii.
[56] Allday, A. (2017). *IBISWorld Industry Report N7212 Temporary Staff Services in Australia*.

3 Objectives of the Regulations

3.1 Objectives of the Act

The objectives of the Act are two-fold, as outlined in Part 1 Division 1 (section 4):

- To protect workers from being exploited by providers of labour hire services and hosts; and
- To improve the transparency and integrity of the labour hire industry.

3.2 Objectives of the Labour Hire Regulations

The Regulations seek to realise the objectives of the Act, while also having regard to the:

1. The size of the regulatory burden imposed by the legislation on categories of labour hire businesses;
2. Protecting workers from being exploited by providers of labour hire services and hosts;
3. Risk of non-compliance with the legislation;
4. Clarity of requirements; and
5. The level of recovery of the costs of the licensing scheme that are incurred by government in order to minimise the burden that the scheme imposes on government and the broader community.

4 Options

4.1 Introduction

A number of matters in the Act require further prescription through the making of regulations. For example, a holder of a licence must comply with the conditions of the licence, whether the condition is imposed by the Act, the Regulations or the Licensing Authority (Division 8). An application for a variation of a licence must include the information prescribed by the Regulations and be accompanied by the application fee prescribed by the regulations (Division 8).

Section 114 of the Act also allows the Governor in Council to make regulations for or with respect to substituting nominated officers to be appointed for a prescribed period in prescribed circumstances, prescribing forms, prescribing fees, and any matter or thing required or permitted by the Act, to be prescribed or necessary to be prescribed, to give effect to this Act.

It is important to note that not all the regulation-making powers in the Act will be used by the Regulations at the current time. The Department has identified key matters needed to support the start up of the licensing scheme. The Act provides the flexibility to establish regulations either now or in the future but does not mandate it. This is important because the Act is new and it will be important to assess the outcomes of the Act and the Regulations and consider whether additional or amended regulations are required. Examples of specific regulation-making powers that the Department is proposing not to use at this time (because the level of detail prescribed in the Act is currently considered adequate to meet the objectives of the Act) are:

- Imposing additional prescribed circumstances on the requirements for a fit and proper person under section 22;
- Imposing additional prescribed laws under section 23; and
- Prescribing additional people for whom the holder of a licence must produce a licence for inspection upon request under section 46.

The formal review of the Act that will occur after five years (see Evaluation Strategy in Chapter 8) will include a review of these regulation-making powers and whether they should be used.

4.2 Alternatives to regulation

As part of the RIS process, it is necessary to consider different options that could achieve the government's objectives. The *Subordinate Legislation Act 1994* (Vic), the Subordinate Legislation Act Guidelines, and the *Guide to Regulation* recommend that this includes considering a range of approaches, including co-regulation and non-regulatory approaches, and those that reduce the burden imposed on business and/or the community.

Given the choices available following the creation of the Act, potential alternatives to subordinate legislation include:

- Providing better information to affected groups to raise awareness of their rights and/or obligations;
- Self-regulation such as non-binding guidelines or voluntary codes developed by industry;
- Non-binding guidelines or voluntary codes developed by the Licensing Authority; and
- Lighter-touch regulation such as conditions inserted by the Licensing Authority into licences.

4.2.1 Information provision and self-regulation

The first two alternatives listed above do not require the introduction of binding, legal regulation. The main reason these are not considered as stand-alone options is that the framework established in the legislation does not allow for an entirely non-regulatory approach. Therefore, at most, these options could be useful complements to, rather than substitutes for, the regulatory approach.

Even without this legislative constraint, the Department does not consider that these options would be effective stand-alone options to address the problem, given the evidence of the high level of non-compliance with legal obligations in some parts of the labour hire sector (discussed in

Chapter 2 of this RIS and extensively documented in the Inquiry Report). The Inquiry Report highlights unscrupulous behaviour by some labour hire providers, rather than identifying lack of awareness of legal obligations, as a cause of non-compliance. For this reason, the provision of information through information or education campaigns is not likely to address the problem. While self-regulation options such as non-binding guidelines or voluntary codes developed by industry can be more effective than market based or education and information options in some circumstances, their non-mandatory nature means strong commitment and compliance from the whole industry is required. Again, the Forsyth Inquiry and other existing evidence suggests this will not likely be the case in this sector.

Therefore, these options have not been examined further in this RIS.

4.2.2 Guidelines

Part 4 of the Act provides that the Licensing Authority may issue guidelines to provide practical guidance to persons who have obligations under the Act. Further, Part 3 of the Act allows the Licensing Authority to impose one or more conditions to which a licence is subject (Division 3) and specifies the types of conditions that may be imposed.

The key advantage of guidelines issued by the Licensing Authority would be that they could enable the provision of significant practical information about the requirements of the Act in a format that is clear and accessible. Depending on their content, guidelines can potentially provide more practical guidance than may be possible in the Act or the Regulations. For example, guidelines could be used to provide detailed case studies of which types if labour hire services are considered to fall within or outside the relevant definitions of 'provides labour hire services' in the Act.

However, again, because they would not be mandatory, any guidelines would need to be voluntarily adopted at the individual business level. Even if the non-binding guidelines are more comprehensive than the Regulations, it is likely that adherence to the guidelines will be more inconsistent than if the Regulations were in place. It is also possible that this option will lead to variable interpretations of the Act (by both the Licensing Authority and labour hire businesses), and the consequent risk of under-compliance, which is a particular risk in the labour hire sector.

For the most significant or material areas of the Act that require further prescription, the Department does not consider that guidelines are a feasible stand-alone option for assessment in this RIS. Given the nature of this industry, guidelines are likely to be most useful for providing practical information on less significant areas of the Act or complementing the regulations by communicating examples of scenarios that are likely or unlikely to be caught by the coverage of the Act.

4.2.3 Licence Conditions

Some of the Act's objectives could be met by including detailed requirements as part of each business' licence. These requirements would be restricted to licensee-specific requirements, as licence conditions should generally not be used to impose industry-wide requirements.

Licences could be amended or updated individually on an as-needs basis. An advantage of this is that it enables the Licensing Authority to respond flexibly to different circumstances and characteristics of licensees. It also provides the opportunity to change licence conditions in a more rapid manner than can be achieved by amending Regulations, which is usually a more drawn-out process.

However, it is likely that there would be less transparency about the conditions that apply to each licensee and a less rigorous consultation and review process on the appropriateness of conditions. It is also possible that this approach could increase costs, or compromise outcomes over time.

Possibly the most significant problem with licence conditions is that it is difficult to see how licence conditions could be used to achieve all of the policy objectives of the Act. For example, exemptions from coverage of the licensing scheme could not be achieved through licence conditions. This is similar for the matter of mutual recognition and information to be included in an application for a licence. For these reasons, the Department does not consider that the singular use of licence conditions is a feasible stand-alone option for achieving the Government's objectives. Hence the making of regulations is the only feasible stand-alone option for consideration in this RIS.

4.3 Options examined in detail in this RIS (non-fee)

This RIS assesses those elements of the Regulations that will have the most significant impact on businesses, workers and government. The elements selected fall under four categories:

arrangements for mutual recognition with labour licensing schemes in other States, exemptions from the requirement to hold a licence, inclusions in the requirement to hold a licence, and other prescribed requirements.

Mutual recognition
Mutual recognition is examined as an option to reduce the size of the regulatory burden imposed by the Act.

Section 112 of the Act specifies that:

> *The Mutual Recognition Act 1992 of the Commonwealth applies as if providing labour hire services were an occupation within the meaning of that Act.*

The *Mutual Recognition Act 1992* (Cth) is adopted in Victoria by section 4 of the *Mutual Recognition Act 1998 (Vic)*. In accordance with section 17 of the Commonwealth Act, a person who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Authority, entitled to be registered as a licensed labour hire provider in Victoria (subject to procedural arrangements).

In addition to the provision of mutual recognition in section 112 of the Act, section 111 of the Act provides that the Licensing Authority may rely on prescribed laws and schemes to reduce compliance burdens. Specifically, section 111 provides that the Licensing Authority may, if satisfied that a person is the holder of a licence within the meaning of a prescribed law, or is otherwise accredited or approved (however described) under a prescribed law, or under a prescribed scheme relating to labour hire (however described), do one or more of the following:

a) not require the person to provide to the Licensing Authority information that the Licensing Authority would otherwise require in order to determine a matter under this Act or the regulations;
b) determine, without any further consideration, that the person:
   i. is a fit and proper person for one or more purposes of this Act or the regulations; or
   ii. otherwise satisfies a prescribed condition or requirement of this Act or the regulations.

The feasible options for mutual recognition and reduced compliance burdens (discussed under the heading of 'mutual recognition' in this RIS) are mutual recognition by:

- reducing the information required to be provided with a licence application under section 111 of the Act;
- extending the capacity of the Licensing Authority to rely on prescribed schemes to include the RCSA Standard (see discussion in section 1.7.2 of this RIS).

Exemptions from the requirement to hold a licence
Section 10 of the Act enables the Regulations to prescribe exceptions to when a person provides labour hire services, while section 11 enables the Regulations to prescribe exceptions to when an individual is classified as a worker. Section 12 allows the Regulations to make provision for and in relation to circumstances in which an individual is taken to perform work in and as part of a business or undertaking, and circumstances in which a business or undertaking is taken to be a business or undertaking of a host.

Options for exemptions from holding a licence considered in this RIS, which provide the opportunity to reduce the regulatory burden imposed by the Act, are:

- Secondees;
- Persons employed by a public sector body within the meaning of the *Public Administration Act 2004* who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act;
- Persons who perform work for an entity or group of entities that carry on business collectively as one recognisable business;
- Persons who the provider provides to another person to do work if the provider is a body corporate with no more than 2 directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits;

- Students to whom Division 1 or 2 of Part 5.4 of the EDTR Act applies; and
- A person undertaking work or services under a vocational placement within the meaning of the FWA.

The reason for including the first four exemptions described above is that there is potential for the definition of 'provides labour hire services' under the Act to result in regulation of organisations in these categories when it is preferable that they were not caught by the coverage of the scheme. The final two exemptions have been included because such arrangements could fall within the definition of 'provides labour hire services' under the Act if there is a tripartite relationship, such as where student placements to a business are organised by a third party such as an educational or training institution, yet the Department does not consider that the licensing scheme is the appropriate vehicle to regulate workplace learning and vocational placements.

Inclusions in the requirement to hold a licence

This RIS considers the option of including commercial cleaning activities, horticulture activities and activities in meat manufacturing, meat processing and poultry processing as circumstances where an individual that is performing any of these activities will be taken as performing work in and as part of a business or undertaking and will therefore be caught by coverage of the labour hire licensing scheme. These inclusions are examined as options to address the need to strengthen alignment of the licensing scheme with the objective of protecting workers from being exploited by providers of labour hire services and hosts, given that the Forsyth inquiry found these to be particularly high-risk sectors.

To confirm, the Regulations are used to:

i. bring certain working arrangements into the scheme (inclusions); and
ii. to exclude or exempt other working arrangements from the scheme (exemptions).

Where both an inclusion and an exemption apply in particular circumstances, the exemption will prevail. This is because an exemption operates so that a working arrangement that does not otherwise satisfy the meaning of 'provides labour hire services' under the Act (sections 7, 8 and 9), has been brought into the scheme (such as commercial cleaning, horticulture or meat activities in regulation 6). These working arrangements, like any other working arrangement, can be exempted from the scheme (as in regulation 5).

Other prescribed requirements

In addition to the above, the RIS also assesses a range of other requirements that are included in the Regulations relating to applications for licences, renewal of licences, conditions of licences, variation and cancellation of licences, obligations of licence holders, the register of labour hire providers and infringement penalties. These requirements use the heads of power provided in the Act to prescribe more detail or prescribe specific requirements. with the aim of providing more clarity to stakeholders. They are considered minor on an individual level and thus are considered as a group in this RIS.

4.4 Summary of feasible options

A summary of the key options is outlined below.

Table 4.1 : Summary of options

Element	Option	Description
Exemptions		
Exemption 1: Secondees	Base Case	There is no exemption for organisations providing employees to another organisation on a secondment arrangement.
	Option 1	Organisations providing a secondee to another person to do work on a temporary basis would be exempt from the requirements of the Act and therefore the licensing scheme. A secondee is defined as a worker of a provider who the provider provides to another person to do work on a temporary basis and who: d) is engaged as an employee by the provider on a regular and systematic basis; and e) has a reasonable expectation that the employment with the provider will continue; and f) primarily performs work for the provider other than as a worker supplied to another person to do work for the other person. Also discussed as part of this option because it is related to the discussion of secondees, is the exemption of a public sector body that employs a person within the meaning of the *Public Administration Act 2004* (Vic) who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act.
Exemption 2: Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business	Base Case	There is no exemption for organisations where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business
	Option 1	An exemption applies to a person who a provider provides to another person to do work in the circumstances where the provider and the other person are each part of an entity or group of entities that carry on business collectively as one recognisable business, other than where the provider is predominantly in the business of providing the services of workers to other persons where those persons include persons that are not part of the entity or group.
Exemption 3: Workplace learning and vocational placements	Base Case	There is no exemption for organisations that participate in arrangements where workplace learning and vocational placement arrangements are provided or arranged by a third party.
	Option 1	A person would be exempt from the requirements of the Act where services or work is provided under a vocational placement within the meaning of section 12 of the FWA or work is provided by a student to whom Division 1 or 2 of Part 5.4 of the *Education and Training Reform Act 2006 (Vic)* (ETR Act) applies. The exemption would not apply to apprentices or trainees. The exemption would also not apply to Group Training Organisations (GTOs), although the Option does allow for the Licensing Authority, in determining matters under the Act, to rely on a licence or accreditation under a scheme under which the Victorian Registration and Qualifications Authority registers an organisation as a GTO but excluding any organisation that provides workers other than apprentices and trainees.
Exemption 4: One or two-person businesses	Base Case	There is no exemption for small businesses providing labour hire services.
	Option 1	Providers will be exempt from being licensed under the Act if they provide persons to another person to do work if the provider is a body corporate with no more than two directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits.

Element	Option	Description
Inclusions		
Inclusion of commercial cleaning, horticulture and meat activities	Base Case	Commercial cleaning, horticulture, meat and poultry businesses may not be fully covered by the definition of 'provides labour hire services' under the Act in certain circumstances. For example, commercial cleaning services may not be covered where services are being provided through outsourcing arrangements.
	Option 1	An individual that is performing any of the following activities would be taken as performing work in and as part of a business or undertaking and would therefore fall under the definition of labour hire services: commercial cleaning; and activities in relation to horticulture, meat manufacturing, meat processing and poultry processing.
Mutual recognition		
	Base case	The current provisions in the Act provide that a natural person who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Licensing Authority, entitled to be registered as a licensed labour hire provider in Victoria. This is, however, subject to other procedural requirements such as the submission of an application, the payment of a fee and the provision of relevant information. Once licensed, the organisation would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes (s.112).
	Option 1: Base Case with reduced information requirements compared to the Base Case	This option includes base case (s.112) plus licence applicants could provide reduced information with their licence application to be licensed if approved (s.111). The kind of information that would be reduced would be information that the Licensing Authority could forgo while still being able to fulfil its functions and powers under the Act. Once licensed, the organisation would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
	Option 2: Option 1 plus mutual recognition of businesses certified under the RCSA Standard	This option includes Option 1 plus businesses certified under the RCSA Standard would be granted a licence if applying to be licensed within Victoria. Licence applicants would need to provide some information with their licence application in addition to evidence of being certified under the RCSA Standard. Once licensed, the business would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
Other prescribed requirements		
Inclusion of other prescribed requirements	Base Case	No regulations provided for various matters where the Act enables regulations to be made.
	Option 1	The Regulations prescribe a range of requirements relating to applications for licences, renewal of licences, conditions of licences, variation and cancellation of licences, obligations of licence holders, the register of labour hire providers and infringement penalties.

4.5 Explanatory note on wording of options

A number of considerations informed the particular wording used in the exemptions.

First, the need to draft the Regulations in a clear manner consistent with other well-understood definitions. This is seen, for example, in the exclusion of students to whom Division 1 or 2 of Part 5.4 of the EDTR Act applies, or the exclusion of persons undertaking work or services under a 'vocational placement' within the meaning of the FWA. These definitions from recognised sources/usage provide comprehensive guidance about the types of working arrangements that will be excluded.

Second, it was important that wording comprehensively captured the working arrangements at hand. This is seen in the definition of 'secondee', which includes elements of both the type of work being performed by a worker, as well as the expectations in relation to that work that would exist.

Third, there was a desire to maintain cohesion with the other labour hire licensing schemes where possible. This is reflected in the exemption from the scheme of persons who the provider provides to another person to do work if the provider is a body corporate with no more than 2 directors, in the circumstances set out. A version of this exemption first appeared in the Labour Hire Licensing Regulations 2018 (Qld). However, where the Queensland scheme confined a similar exemption to less than 2 directors, the Victorian scheme proposes to extend the exemption to provide greater relief from regulatory burden to the type of small businesses described. In turn, this modification reflects another objective, which is to ensure that the exemptions are tailored to circumstances relevant to Victoria.

4.6 Options not included in RIS

Throughout the process for developing the Act and the Regulations, a number of other exemptions from the requirement to be licensed were identified as potential options for exemption by Government or stakeholders. These include:

- The provision of professional/trade services to a third party;
- Genuine sub-contracting arrangements;
- Pure outsourcing of a business or part of a business;
- The provision of volunteer workers;
- Supply of worker to an individual not conducting a business or undertaking;
- Supply of worker working in and as part of the business of provider; and
- GTOs registered by the Victorian Registration and Qualifications Authority (VRQA).

The first six of these options for exemption have not been included for assessment in this RIS because the Department considers that definition of labour hire services contained in the Act is drafted to already exclude the supply of these workers.

GTOs registered under the VRQA have not been exempted under the Regulations because workers on training contracts under the ETR Act may be vulnerable workers and employer obligations under the ETR Act are not focussed on industrial matters in the same way as under the Victorian labour hire licensing scheme. In short, the registration of GTOs by the VRQA does not take place under a comparable scheme of legal compliance obligations, particularly in terms of obligations under workplace laws. However, the Regulations do allow for the Licensing Authority, in determining matters under the Act, to rely on a licence or accreditation under a scheme under which the VRQA registers an organisation as a GTO but excluding any organisation that provides workers other than apprentices and trainees. It should also be noted that the consultation process for the Regulations is an opportunity for feedback to be provided about how the Licensing Authority may should rely on this recognition by the VRQA under section 111 of the Act. In addition, the consultation process is specifically seeking submissions on matters including whether the prescription of this scheme is appropriate and whether there are additional laws or schemes that should be prescribed in the Regulations for the purposes of section 111 of the Act.

In addition, it is useful to review the exemptions prescribed in other jurisdictions to assess their feasibility as options for detailed assessment in this RIS. In the Queensland Licensing Scheme, the provision of high income earners is an exemption category. Reasons for not including this as an option for exemption in this RIS are that the Department considers that this category of worker is either less likely to be covered by the Act (e.g. because they are more likely to fit into categories such as the provision of professional/trade services to a third party), or they are more likely to be covered by the explicit exemption of secondments. The South Australian Act provides as an example a worker (at a plumbing business) supplied to a business site to perform work in and as part of the business of the provider (the plumbing business) as an example that is not a labour hire arrangement. The Department considers that the definition of labour hire services in the Victorian Act is drafted to already cover this circumstance, so is not necessary to include as an exemption.

4.7 Fee options

Cost recovery arrangements and fee options are considered in Chapter 6 of this RIS.

5 Impact analysis

5.1 Method of assessment

The options in this RIS have been assessed using MCA. MCA requires judgement of how the proposed options will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with each option. Each criterion is assigned a weight reflecting its importance to the policy decision, and a weighted score then derived for each option. The option with the highest weighted score is the preferred option. The MCA technique is outlined in Box 5.1.

Box 5.1: Multi Criteria Analysis

MCA refers to a range of techniques to assess policy options against decision criteria. MCA enables options to be compared in a way that utilises quantitative and qualitative evidence fully. The approach enables the inclusion of a wider range of criteria — including social and environmental considerations for example — than used in a typical financial analysis. In addition, the approach is transparent — necessarily subjective judgements and assumptions made to determine options and criteria, and to assign scores and weights are made explicitly. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed in a sensitivity analysis or to incorporate more robust indicators of community preferences.

5.2 Criteria

The Options have been assessed based on a framework which considers the following criteria:

- **Alignment with the objective of the scheme** – this criterion was identified to determine the extent to which the options align with the objective(s) of the scheme – that is:
  - To protect workers from being exploited by providers of labour hire services and hosts; and
  - To improve the transparency and integrity of the labour hire industry.

  This also includes alignment with the purpose as established in the legislation.
- **Regulatory burden on businesses –** this criterion has regard to the regulatory burden that would be incurred by businesses in complying with the regulation. This includes both the number of businesses impacted and the likely impact on each of these businesses, for example, the time impost. It also considers exemptions in other jurisdictions, and any duplication of effort for those operating across jurisdictions.
- **Impact on competition and small businesses –** this criterion determines the extent to which the option will change the competitive landscape in which businesses operate, including implications for small business.
- **Implementation risks and issues –** this criterion considers how the option can be implemented. This includes the ease and speed of implementation as well as any risks associated with implementation, for example stakeholder engagement and communication.
- **Government administrative and compliance burden –** this considers the extent to which the option imposes a cost to government, including costs that may be challenging to recover. This includes processing applications and undertaking enforcement activities.

5.3 Weighting

The assessment has adopted the recommended standard approach of applying equal weights (50-50) in aggregate to criteria relating to benefits and those relating to costs. Thus the criterion **Alignment with the objective of the licensing scheme** (to protect workers from exploitation by providers of labour hire services and hosts), the only benefit criterion, is weighted most heavily (50%) which reflects the policy priorities of the Government in terms of reducing exploitation of vulnerable workers. **Regulatory burden on businesses** and **Government administrative and compliance burden** are weighted at 20% each, as the cost of regulation for businesses and Government have been characterised as equally important factors in assessing different policy options. The **Impact on competition and small businesses** and **Implementation risks and issues** are weighted at 5% each. While important, they were considered less critical to the

assessment of the preferred option as the major impacts on the community will occur through the improved labour market outcomes and the regulatory and compliance burden.

5.4 Scale

The criteria rating scale has a range of –10 to +10, where a score of zero represents no change from the Base Case.

Table 5.1: MCA Scale

Score	Description
-10	Much worse than the Base Case
-5	Somewhat worse than the Base Case
0	No change from the Base Case
+5	Somewhat better than the Base Case
+10	Much better than the Base Case

Note that the assessment of the options relies in part on assumptions and estimates which are uncertain. This includes the number and characteristics of entities that will apply for licences and the time and effort required to obtain and make licence applications.

5.5 Multi Criteria Analysis

5.5.1 Exemption 1: secondees

- **Base case**: There is no exemption for organisations providing a secondee to another person to do work on a temporary basis.
- **Option 1 - Exemption**: Organisations providing a secondee to another person to do work on a temporary basis would be exempt from the requirements of the Act and therefore the licensing scheme. A secondee is defined as a worker of the provider who the provider provides to another person to do work on a temporary basis who:
  a) is engaged as an employee by the provider on a regular and systematic basis; and
  b) has a reasonable expectation the employment with the provider will continue; and
  c) primarily performs work for the provider other than as a worker supplied to another person to do work for the other person.

  Examples are:

  - A lawyer employed by a law firm is seconded for a period of time to a client of the law firm to do work for the client;
  - A consultant employed by a consultancy business is supplied to a business to conduct a review for the other business; and
  - A farmer who assigns a worker (the secondee) to work on a neighbouring farm to fulfil an immediate need at the neighbouring farm which may be fully or partly on a goodwill basis.

The definition of secondee covers short term, ad hoc arrangements between similar businesses where workers are shared between the businesses and the arrangement is based on full or partial goodwill rather than fully for commercial reasons. This is best illustrated by the third example above relating to neighbouring farms.

Also proposed, and discussed as part of this option because it is related to the discussion of secondees, is the exemption of a public sector body that employs a person within the meaning of the *Public Administration Act 2004* (Vic) who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act.

5.5.1.1 Alignment with the objective of the licensing scheme

The aim of this exemption is to ensure that businesses using genuine secondment arrangements are not inadvertently caught by the licensing scheme. It does so by exempting such businesses from the requirement under the Act to be licensed as providers of labour hire services. The

exemption would also enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in higher risk areas.

Achievement of the objectives is not served by extending coverage of the Licensing Scheme to organisations that are not considered a high risk of exploiting workers. In considering the alignment of this and other proposed exemptions with the objective of protecting workers from being exploited by providers of labour hire services and hosts, it is therefore important to consider the likely nature of the industries in which the proposed exemption occurs, and whether there is likely to be a low or high risk of exploiting workers.

No data are available on the number, sectors or type of secondments that occur in the Australian economy. This means that it is difficult to make conclusions based on strong quantitative evidence about the impact of the exemption in different industries.

In the absence of such data, we observe that secondments are a common arrangement across many industries and sectors. However, they appear to be more prevalent in larger businesses or corporate groups in which the individual is seconded to provide professional or technical skills to a client, for example accounting, legal, engineering or information technology skills. The employee would work to the direction of the client, while the professional services firm would continue to pay the employee's wage and the client would pay a fee to the firm that exceeded the employee's wage. Many secondments also occur within local government and the Victorian and Australian public service. The government sector and professional and technical services were not identified in the Inquiry Report as being high-risk industries for labour hire exploitation.

If genuine secondments are not exempt from the licensing scheme, businesses (particularly those that provide secondments but no other form of labour hire, and those that have flexibility in the way that they can provide workers) may seek to engage in other forms of contracting, such as sub-contracting, in an effort to be exempt.

In relation to high-risk industries for labour exploitation, the Forsyth Inquiry did not identify that secondment arrangements were a common or problematic arrangement in industries in which non-compliance amongst labour hire agencies is particularly prevalent: horticulture, meat and cleaning. More broadly, it is noted that secondment arrangements were not discussed in the Inquiry Report as an area of concern for labour hire.

Yet it is important to note that the short term, ad hoc arrangements that are explicitly covered by the definition of secondees being used for this exemption are arrangements that the Department understands to be relatively common in the horticulture industry. For example, a farmer could share a farm worker with a neighbouring farm to assist with an urgent need, for example assisting with protection from flood waters or damaged fences. These types of arrangements are used in other industries as well. For example, in the construction industry a worker of one concrete business providing assistance to another concrete business for a few hours during a concrete pour may fit within the definition of secondee. The horticulture industry has been identified as a high risk industry for exploitation of workers so any exemption for organisations within this industry has a greater potential to reduce alignment of the scheme with the primary objective of the Act.

A risk in relation to the extent that the exemption will achieve the objective of the licensing scheme is that unscrupulous labour hire providers may try to use the secondment exemption as a loophole to avoid regulation under the licensing scheme by masking genuine labour hire arrangements as secondments. For example, a labour hire business could provide workers on an allegedly "temporary" basis, then discontinue the arrangement for a short period, and then commence the arrangement again in order to try to fall within the exemption.

However, the definition limits the structure or type of working arrangements that can be accepted by the law. The Licensing Authority would be able to investigate businesses engaging in such activities, and such providers would need to demonstrate that the employee is engaged as an employee by the provider on a regular and systematic basis, has a reasonable expectation the employment with the provider will continue, and primarily performs work for the provider other than as a worker supplied to another person to do work for the other person. Demonstrating the last requirement would be challenging if the worker is not a genuine secondee. The scenario discussed above is unlikely to be regarded as meeting this definition.

Finally, related to the discussion of secondees is the proposed exemption of a public sector body that employs a person within the meaning of the *Public Administration Act 2004* (Vic) who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act. This exemption is consistent with the objective of reducing labour exploitation of high risk workers. Such workers work for the Victorian Government which has high levels of industrial relations compliance. In addition, such arrangements will be regulated by other Victorian legislation.

Overall, Option 1 is rated better than the Base Case because businesses using genuine secondment arrangements are not inadvertently caught by the licensing scheme. Achievement of the objectives of the Act is not served by having the Licensing Scheme cover secondee arrangements, where the risk of exploitation is low. While there is potential for the exemption to be used as a loophole to avoid regulation, this risk is considered to be reduced by the proposed definition of secondee. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. On balance, the risk of labour exploitation as a result of this exemption is small, compared to the benefit of freeing up resources to focus on higher risk businesses. A score of +2 is given compared to the Base Case.

5.5.1.2 Regulatory burden on businesses

In the absence of an exemption for secondment arrangements there is a high potential for a substantive regulatory burden to be imposed on businesses that use such arrangements. The proposed exemption will reduce this regulatory burden. The major burden that will be imposed in the absence of an exemption is that there are many instances in which secondee arrangements, as defined for the purpose this RIS, may occur spontaneously, without sufficient lead-time for a business to prepare a licence application. For example, a construction business that provides a worker to another business on the same building site to help with a concrete pour. Waiting for a licence could delay urgent work. The Base Case has therefore been assessed as imposing a very high degree of regulatory burden on businesses.

While it is difficult to find surveys or research that records the usage of secondments within Australian organisations, it seems reasonable to suggest that a significant number of businesses that use such arrangements could be included in the licensing scheme under the Act in the absence of an exemption. This can be illustrated by considering the number of professional services firms operating in Victoria.

ABS data shows that, at June 2017, there were 52,262 businesses providing professional services in Victoria.[57] Of these, 28,937 are non-employing businesses.[58] It is assumed that non-employing businesses have directors that are not workers under section 9 of the Act (and therefore do not need to be licensed under the Act) or are not workers for the purpose of the Act under section 5(c) of the Regulations, which provides that persons are not workers as follows:

> *persons who the provider provides to another person to do work if the provider is a body corporate with no more than 2 directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits.*[59]

Therefore, it is assumed that there are 30,997 professional services businesses that could be labour hire providers under the Act if they use secondees. As data about the prevalence of secondment arrangements is not available, we have developed scenarios to illustrate possible impacts. If only 1% of these businesses use secondment arrangements, then 310 additional businesses would potentially be providers of labour hire services under the Act. If 10% of these

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[57] Includes research; architectural, engineering and technical; legal and accounting; advertising; market research and statistics; management and related consulting; veterinary; and other professional services. Bottom of Form

[58] ABS, 8165.0 - *Counts of Australian Businesses, including Entries and Exits*, Jun 2013 to Jun 2017. As defined in ABS 8165.0, a business without an active Income Tax Withholding (ITW) role or which has not remitted ITW for five consecutive quarters (or three consecutive years for annual remitters) is counted as non-employing.

[59] The number excluded under this exemption could be higher if some of the businesses pay their directors a wage.

businesses use secondment arrangements, then 3,100 additional businesses would potentially be providers of labour hire services under the Act. It is noted that these numbers might be even higher if industries other than professional services businesses are included or no exemption of public sector bodies that second, transfer, provide or make available an employee to do work for another person.

Box 5.2: Estimated cost of completing an application per licence applicant

To estimate the cost per licence applicant, the Department estimated for the purpose of assessing the impact of the primary legislation that the time taken to complete the application process would be between two and eight hours of time, depending on the size of the business and the number of officers required to provide declarations. A fully compliant business would have all or most information on hand or would be able to obtain it readily, although larger businesses would be likely to incur a larger cost as under the Act they will have to verify that all relevant persons are fit and proper under the Act. They will be required to accompany their application with a declaration by the applicant to the applicant's or officer's knowledge, each relevant person in relation to the application is a fit and proper person at the time of the application within the meaning of the Act. Larger businesses are expected to have more relevant persons than smaller businesses.

In addition to the estimated two to eight hours spent completing an application form, time would also be required to review the Act and Regulations and determine whether the arrangement falls within the requirements of labour hire. It is assumed this could take approximately four hours.

It is emphasised that these time estimates have not been verified by processes such as data collection via stakeholder consultation. Such data collection will be undertaken in order to support a detailed review of cost recovery arrangements as discussed in the Evaluation Strategy (section 8 of this RIS).

Under the Act, a licence, unless cancelled, remains in force for up to three years. Under the Regulations, the process for a renewal is the same as for an application. However, it is assumed that efficiencies are gained from the first application process and that the time taken to complete the renewal application is half what is required for the first process. Therefore, a time of between 1 and 4 hours is assumed, depending on the size of the business.

In total, over a forecast period of 10 years, it is estimated that the time spent by a business on understanding the requirements and applications could range from nine to 24 hours (assuming an initial application and three renewals over 10 years).

An average hourly wage cost of $78.40 has been adopted based on ABS Average Weekly Earnings data (6302.0 - Average Weekly Earnings, Australia, Nov 2017) for November 2017 which notes average adult ordinary-time earnings are $1568. This has been divided by 35 hours, which is consistent with the ABS definition of full time, which states that those people usually or actually working 35 hours or more per week are defined as employed full-time (6105.0 - Australian Labour Market Statistics, July 2013). This gives $44.80 per hour. On-costs and overheads are then added at the default rate of 75%, which is consistent with guidance provided in the Victorian Government’s Regulatory Change Measurement Manual.

Table 5.2 shows the range of estimated burden for different scenarios for the number of businesses impacted. A range of costs is given which is based on an assumption of 9 hours reduced time spent on applications at the lower end and 24 hours reduced time at the upper end of the range.

Table 5.2 Reduction in regulatory burden estimation – secondment exemption

Scenario	No. of businesses impacted	Reduced hours of time spent on applications	Hourly rate	Estimated reduction in burden
0.5% of professional services firms use secondment arrangements	155	Between 9 and 24	$78.40	$0.1 to $0.3 million
1%	310	Between 9 and 24	$78.40	$0.2 to $0.6 million
10%	3,100	Between 9 and 24	$78.40	$2.2 to $5.8 million

Note: dollar values are not discounted.

In addition to time spent, businesses using secondment arrangements would have to pay the licence fees, as discussed in Chapter 6.

Overall, an exemption is therefore considered likely to result in a reduction in regulatory burden for a potentially relatively large number of businesses. Option 1 is therefore given a score of +5 compared to the Base Case for this criteria.

5.5.1.3 Implementation risks and issues

Under the Base Case, businesses that have secondment arrangements in place but no other labour hire activities may not otherwise be aware of their new obligations under the Act. As these businesses are also likely to be more dispersed across the economy and less likely to be part of industry associations that have a focus on labour hire, such as the RCSA, they will be more difficult to target through direct advertising and education. The scarcity of data on the number and nature of businesses engaged in secondments also poses challenges in implementing the licensing scheme. For example, compliance activities may be more difficult because businesses are so dispersed. The short term and ad hoc nature of some engagements also means non-compliant work may be difficult to detect. There is a risk that this will reduce the extent to which the objective of reducing exploitation of labour hire workers can be achieved, although it is a decision for the Licensing Authority to determine its approach to compliance and enforcement, and where it focuses its resources. The Licensing Authority may need to determine its approach to matters such as these when developing its policies and procedures for compliance and enforcement.

The exemption of secondees is given a score of +5, which mainly reflects that under the Base Case there are significantly greater implementation challenges and costs.

5.5.1.4 Impact on competition and small businesses

If a significant number of businesses that provide secondments (but no other forms of labour hire) are required to become licensed under the Act, this could reduce Victoria's competitiveness. For example, this would be the case if Victorian businesses are seeking to win work in New South Wales, where there is no similar labour hire licensing scheme. The impact depends on the type of businesses covered by the requirements. For larger businesses, such as professional services firms, the cost per individual businesses is likely to be too small to materially impact outcomes. Therefore, the potential impact on competition may not be material.

The Base Case has been assessed as having a larger impact on smaller businesses that use secondment arrangements. For example, drawing on the example of farms, a small farm would be required to spend time adhering to the licensing scheme, and potentially paying a licence fee, if providing or receiving labour hire services for a one-off, short term task. Smaller businesses may also have more limited ability to comply than larger businesses. Tasks are likely to be relatively more onerous for small businesses that have fewer resources to manage such requirements.

However, as noted in section 5.5.5.1, secondment arrangements appear to be more prevalent in larger organisations, which means this is unlikely to be a significant impact overall.

In relation to the exemption of a public sector body that seconds, transfers, provides or made available an employee to do work for another person, this is not expected to have an impact on competition.

Overall, Option 1 is given a score of +2 for this criterion.

5.5.1.5 Government administrative and compliance burden

Under the Base Case, a significant number of organisations will be subject to the licensing scheme. To put the number into perspective, as noted above, if 1% of professional services firms use secondment arrangements and are required to become licensed, this means that the Licensing Authority would incur costs associated with the application process and ongoing compliance and enforcement activities for an estimated additional 310 businesses. This represents an increase of over 20% on the 1,325 labour hire businesses in Victoria assumed for the purpose of this RIS. This would therefore likely to lead to a material increase in costs for the Licensing Authority, without comparable reduction in risk.

These costs will be reduced compared to the Base Case as such arrangements will not be covered. Option 1 is given a score of +5 compared to the Base Case.

5.5.1.6 MCA summary for secondment of employees

As can be seen in Table 5.3, the preferred option is to exempt secondments. The option is intended to ensure that businesses operating genuine secondment arrangements (and not labour hire arrangements) are not inadvertently caught by the licensing scheme, thus improving alignment with the policy objectives. The risk of exploitation as a result of such arrangements is low. While there is potential for the exemption to be used as a loophole to avoid regulation, this risk will be constrained by the definition of secondee that is proposed because the definition limits the structure or type of working arrangements that can be accepted by the law. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. It is expected to lead to a significant reduction in regulatory burden for organisations and a significant reduction in costs for government.

Table 5.3: MCA summary for exemption 1: exemption of secondees

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0		0
Exemption	+2	+5	+5	+2	+5	+19	+3.35

5.5.2 Exemption 2: a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business

- **Base case**: There is no exemption for organisations where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business.
- **Option 1 - Exemption**: A provider who provides a person to another person to do work is exempt if the provider and the other person are each part of an entity or group of entities that carry on business collectively as one recognisable business, other than where the provider is predominantly in the business of providing the services of workers to other persons where those persons include persons that are not part of the entity or group. Examples provided in the Regulations are:
  - A landscaping business is comprised of a number of companies that are responsible for different aspects of the business. The workers of the business are all employed by one of

the companies and are supplied to work for one or more of the other companies within the business.
  - A business that operates a group of medical centres employs workers for the centres through a trust entity. The workers including doctors, nurses and reception staff, are supplied to the medical centres to perform work.

5.5.2.1 Alignment with the objective of the licensing scheme

This exemption aims to ensure that an entity or group of entities that carry on business collectively as one recognisable business, are not inadvertently caught by the Licensing Scheme if they provide workers from one part of the business to another part. It does so by exempting such businesses from the requirement under the Act to be licensed as providers of labour hire services. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. Achievement of the objectives is not served by extending coverage of the Licensing Scheme to organisations that are not considered a high risk of exploiting workers.

The Inquiry Report cites Creighton and Stewart's Labour Law which states that*:*

> *A situation where a worker performs work for a different corporation within the same group is little different from the employee being directly employed by the employer, and a 'triangular relationship"*[60] *does not occur as there is no labour hire agency involved.*

There is no apparent evidence to suggest that an employee is exposed to a high risk of exploitation under this type of arrangement when compared to a normal employee/employer relationship. The Inquiry Report did not raise any concerns about such arrangements.

Arrangements where a worker is provided from one part of a corporate structure to another are quite common. The Ai Group noted in its written submission that:

- It is common for businesses to have different legal entities even though the various entities operate as a single integrated business (e.g. one legal entity owns the plant and equipment, while another entity employs the labour). Sometimes these business structures are necessitated by the lending requirements of banks that provide finance to the business.
- Many corporate groups have a "shared services" model where one entity within the group provides services (e.g. finance, Information Technology, Human Resources) to other entities in the group.[61]

Such arrangements could be covered by the definition of the provision of labour hire services under the Act. There is a host that receives the labour of one or more workers through a providing business. The worker is paid by the provider business but is working in and as part of the host business. The Act does not distinguish between types of providers or hosts, for example whether the provider and host are related as part of a corporate structure.

One risk, identified by the RCSA in its written submission, is as follows: "One wouldn't want to have a provider avoiding the Act by issuing nominal shareholdings to, or taking nominal shareholdings in, its clients - or its workers for that matter".[62] The RCSA's submission also noted that joint ventures are more problematic, as this structure could be adopted by a labour hire firm as a form of workforce contracting arrangements. It is difficult to assess how likely these scenarios are, because although the exemption is for an "entity or group of entities that carry on business collectively as one recognisable business", the Licensing Authority is able to assess the nature of an entity or group of entities in order to determine whether a person is providing labour hire services without being a holder of a licence. This reduces the potential that the exemption can be used as a loophole, and that the exemption will not achieve the objective of the licensing scheme, because the Licensing Authority will be able to seek evidence that the arrangement is genuine.

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[60] Johnstone, R et al (2012), as cited in Inquiry Report.
[61] Ai Group submission to IRV Consultation on Labour Hire Licensing Regulation Victoria, 6 December 2017.
[62] RCSA submission to IRV Consultation on Labour Hire Licensing Regulation Victoria, *VIC Labour Hire Licensing Exemptions*, December 2017, p.9.

Option 1 is rated better than the Base Case because there is no evidence that this type of arrangement being exempted is high risk for labour exploitation. The more significant issue is whether this exemption enables businesses to exploit loopholes by setting up related entities or joint venture type relationships, however this risk is reduced because the definition limits the structure or type of working arrangements that can be accepted by the law. As with Exemption 1 (Secondees), the exemption will enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. As per the second exemption, the risk of labour exploitation as a result of this exemption is small, compared to the benefit of freeing up resources to focus on higher risk businesses. This exemption is therefore given a score of +2 compared with the Base Case.

5.5.2.2 Regulatory burden on businesses

In the absence of the proposed exemption there is a high potential for a substantive regulatory burden to be imposed on businesses that are structured in this way and who have workers who wall fall within the definition of labour hire workers under the Act. The proposed exemption will reduce this regulatory burden.

The regulatory burden is difficult to estimate because of the uncertainty about the number of businesses that would be classified as having a structure in which they are part of an entity or group of entities that carry on business as one recognisable business. It is also difficult to estimate the number of such businesses that would then have an employee engage in work for another entity within such a business.

However, it appears they are relatively common arrangements (as observed by the Ai Group), particularly for larger businesses. It seems reasonable to suggest that a significant number of businesses that are not the intended focus of the legislation would be impacted in the absence of an exemption.

Using the assumptions in section 5.5.1.2 of this RIS, the Base Case could involve an additional regulatory burden cost per business of up to $1,881 per business (which is the estimate of the cost of time spent on applications for a large business) compared to if there is no exemption. In addition, businesses exempt under this option would not have to pay the licence or application fee. Given the absence of data about the number of businesses engaging in such arrangements it is considered too difficult to reliably estimate the total regulatory burden across all businesses.

This exemption is therefore given a score of +2 compared to the Base Case. The score reflects that there is expected to be a reduction in regulatory burden however it is not reasonable to score more highly given the uncertainty about the number of impacted businesses.

5.5.2.3 Implementation risks and issues

Under the Base Case, as for Exemption 1 (Secondees), there are likely to be challenges in education and communication. A provider that provides a person to another person to do work in the same entity or group of entities that carry on business collectively as one recognisable business, and which is not predominantly a labour hire provider, is likely to be dispersed across different parts of the economy and not necessarily aware of the labour hire reforms taking place. It is likely that they will be more difficult to target through advertising and education. As in section 5.5.1.3, it is noted that it is a decision for the Licensing Authority to determine its approach to compliance and enforcement, and where it focuses its resources. The Licensing Authority may need to determine its approach to matters such as these when developing its policies and procedures for compliance and enforcement.

This exemption is given a score of +6 compared to the Base Case. This score is mainly related to the significant implementation challenges in relation to ensuring that organisations understand their obligations under the Act in the absence of an exemption; a slightly higher score is given than for secondees because there appears to be less certainty about the businesses that fall within this exemption category than businesses most likely to use secondment arrangements. The uncertainty around the number of businesses likely to be impacted in the absence of an exemption is also likely to add to the implementation challenges, as the Licensing Authority has limited information about where such businesses are located, what industries they are in and how many relevant organisations exist.

5.5.2.4 Impact on competition and small businesses

Based on stakeholder consultation so far, the Department understands that larger businesses are more likely to be part of an entity or group of entities that carry on business collectively as one recognisable business compared to small to medium-sized businesses, such as individual farms. Under the Base Case, consequently, the regulatory burden of applying for licences and adhering to the licensing scheme is not expected to unduly impact small businesses.

In terms of competition, a similar impact is expected as for secondments. That is, the Base Case may make Victoria a less desirable destination for investment compared to other jurisdictions if the former requires a large number of businesses to pay licence fees and apply for a licence due to their corporate structure or operating model. However, the cost per individual businesses is likely to be too small to materially impact outcomes. Therefore, the potential impact on competition may not be material.

Overall, there is considered to be minimal difference between the Base Case and the proposed exemption, with both given a score of 0.

5.5.2.5 Government administrative and compliance burden

If there is an exemption, the number of required licence holders will be much lower than the Base Case, reducing government administrative costs associated with process licence applications. There will also be no need to undertake significant monitoring and compliance activities to ensure compliance with the Act. However, reflecting the uncertainty about the number of businesses expected to be impacted, a score of +3 is given, which is lower than for the secondment exemption.

5.5.2.6 MCA summary for exemption where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business

The preferred option is to exempt businesses from being licensed where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business. There is no evidence that this type of arrangement is high risk for labour exploitation. While concerns have been raised about the potential for businesses to exploit loopholes by setting up related entities or joint venture type relationships, the Department considers that the proposed definition addresses this concern by limiting the structure or type of working arrangements that can be accepted by the law. As is the case for Exemption 1 (Secondees), this exemption is will also enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. This option is expected to lead to a reduction in costs for businesses and government, although there is some uncertainty regarding the size of these impacts due to limited data about the number of impacted businesses.

Table 5.4: MCA summary for Exemption 2 - Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Exemption	+2	+2	+6	0	+3	+13	+2.3

5.5.3 Exemption 3: Workplace learning and vocational placements

- **Base case**: There is no exemption for organisations that participate in workplace learning and vocational placement arrangements
- **Option 1 - Exemption**: A person would be exempt from the requirements of the Act where services or work is provided either under a vocational placement as defined at section 12 of

the FWA or where work is provided by a student to whom Division 1 or 2 of Part 5.4 of the ETR Act applies. The exemption would not apply to apprentices or trainees or to GTOs.

Vocational placement arrangements

Vocational placement is defined in section 12 of the FWA as a placement that is:

a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and
b) undertaken as a requirement of an education or training course; and
c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

Workplace learning arrangements

Work provided by a student to whom Division 1 or 2 of Part 5.4 of the ETR Act includes work experience arrangements (section 5.4.3), structured workplace learning arrangements (section 5.4.5) under Division 1 and practical placement agreements under Division 2 (section 5.4.14(1)).

A work experience arrangement means an arrangement where a student at a school may be placed with an employer for work experience as part of the student's education if the principal of the school has made an arrangement in writing with the employer about the placement of the student with the employer, and the principal is satisfied that the child's health, education and moral and material welfare of the child will not suffer from the proposed arrangement, and related requirements.

A structured workplace learning arrangement means an arrangement where a student of a school who is of or over the age of 15 years and undertaking a course of study accredited by the VRQA may be placed with an employer for training as part of that course of study if the principal of the school, the employer, the student and, if the student is under the age of 18 years, the parent of the student has made an arrangement about the placement of the student with the employer. An arrangement may not be made where this would include any period of placement at a skills or training centre that is not operated by the employer or is not under the direct control of the employer.

Under section 5.4.2 of Division 1 of the ETR Act, the provisions of Division 1 relating to work experience also apply to a student at a TAFE[63] institute or a university with a TAFE division who is in a course of study that is or is equivalent to year 11 or year 12 of secondary education as if the student were a student at a registered school.

A practical placement arrangement means an agreement entered into under section 5.4.14(1) of the ETR Act as follows:

1. A post-secondary student of a TAFE provider may be placed with an employer for work experience or training if the governing body of the TAFE provider has entered into an agreement in writing with the employer about the placement of that student.
2. A practical placement agreement:
   a) may be varied or amended by another agreement; and
   b) must be consistent with any determination of the Victorian Skills Commission about placements of that kind; and
   c) may be cancelled at any time by notice in writing:
      i. given by the employer to the governing body; or
      ii. given by the governing body to the employer.

5.5.3.1 Alignment with the objective of the licensing scheme

The proposed exemption will ensure that educational or training institutions that arrange workplace learning and vocational placements for students are not inadvertently caught by the licensing scheme. Such arrangements could otherwise fall within the definition of 'provides labour

[63] TAFE means Technical and Further Education (s. 1.1.3 ETR Act).

hire services' under the Act if there is a tripartite relationship, such as where student placements to a business are organised by a third party such as an educational or training institution.

The potential concern with the proposed exemption is that unscrupulous businesses could use it as a loophole to avoid the operation of the licensing scheme. This could reduce the extent to which the exemption is aligned with the objective of the scheme. There has been an increasing focus on the issue of exploitation of individuals engaged by businesses for internships or work experience. Following reports in the media about such arrangements, the FWO commissioned a report, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia* by University of Adelaide Law School Professors, Andrew Stewart and Rosemary Owens. This report found a growing number of businesses use unpaid work schemes as an alternative to hiring paid staff. It also found a corresponding increase in employers engaging in illegal work practices in this regard contrary to the requirements of the FWA.[64]

However, the definition used in the Regulations limits the exemption to where services or work is provided under a vocational placement within the meaning of section 12 of the FWA or work is provided by a student to whom Division 1 or 2 of Part 5.4 of the ETR Act applies. This definition is prescriptive and narrow, which limits the potential to use the exemption as a loophole for exploitative behaviour. Where services or work is provided which is not in accordance with those provisions, the exemption would not apply.

The working arrangements that are the subject of the exemption were not a focus of the Forsyth Inquiry and were only referred to briefly. In regard to GTOs, the Inquiry Report states that it had "heard positive evidence regarding group training schemes, which are in effect 'a form of labour hire'. Both the Housing Industry Association (HIA)[65] and Victorian Automobile Chamber of Commerce (VACC)[66] provided the Inquiry with details of the group training schemes which they operate.[67] The Inquiry Report notes that:

> *HIA submitted that these schemes have evolved to provide an essential source of workforce development for the housing industry. Group training allows apprentices to obtain and complete their apprenticeships while being exposed to a diversity of work opportunities and construction environments, and permits builders and contractors to train apprentices without committing to a full three to four year contract of training, after which there may not be work available…*
>
> *VACC submitted that its scheme has greatly assisted in bringing apprentices through the automotive industry and has had a positive effect… The organisation considers that whilst group training schemes are a form of labour hire, organisations which provide group training are different to labour hire agencies and should be treated separately.*[68]

The Inquiry Report identified one instance of unscrupulous behaviour by a Registered Training Organisation (RTO).[69] This was in the meat industry, one of the three industries identified in the Inquiry Report as particularly concerning and requiring a regulatory response. However, it may be behaviour in the industry more generally, rather than the use of RTOs, that was particularly problematic. In addition, the issue related to misleading individuals about employment opportunities following training to secure government funding, rather than direct labour exploitation arising from work experience. The Inquiry Report noted that "[t]he Senate Work Visa Report detailed similar training scams in the meat industry in other states."[70] The Base Case could impose specific obligations on RTOs, TAFE institutes, schools and universities as labour hire providers, and on a wide range of businesses as hosts. This may have adverse consequences in

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[64] *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*, by University of Adelaide Law School Professors, Andrew Stewart and Rosemary Owens, January 2013.
[65] HIA.
[66] VACC.
[67] Inquiry Report, p.78.
[68] Inquiry Report, p.78.
[69] Inquiry Report, p.79. Note, RTOs are those training providers registered by Australian Skills Quality Authority (or, in some cases, a state regulator) to deliver vocational education and training services.
[70] Inquiry Report, p.79.

terms of deterring organisations providing legitimate opportunities from organising placements or work experience opportunities, and on education providers on facilitating such opportunities for their students. This could adversely affect the important opportunity for students to undertake legitimate workplace learning and vocational placements.

Additionally, a number of organisations already have responsibility for monitoring quality aspects of RTOs including the ASQA, TAFEs (Victorian Department of Education and Training), secondary schools (Victorian Department of Education and Training) and universities (Commonwealth Department of Education and Training). RTOs are therefore already subject to regulation that reduces the risk of some types of exploitative activities occurring. Similarly, GTOs are co-regulated by the VRQA and the Apprenticeship Employment Network. However, it is noted that workers on training contracts under the ETR Act are considered vulnerable and employer obligations under the ETR Act are not focussed on industrial matters such as compliance with workplace laws in the same way as under the Victorian labour hire licensing scheme.

Although Option 1 would provide an exemption for providers that make arrangements for or enter into arrangements for workplace learning and vocational placements, it would not apply to apprentices or trainees. The Inquiry Report did not discuss apprentices and trainees at length. However, the Inquiry Report notes a submission by JobWatch which described the use of apprentices and trainees as labour hire workers as a growing problem. JobWatch informed the Forsyth Inquiry that it regularly receives calls from apprentices or trainees who are working under labour hire arrangements. It submitted that these workers are young and already at risk of exploitation due to their inherent vulnerability as a result of their employment status, and labour hire arrangements increase that risk.[71]

The exemption would also not apply to exclude GTOs from recognition as providers of labour hire services. As noted above, the vulnerability of workers on training contracts under the ETR Act and the fact that employer obligations under the ETR Act are not focussed on industrial matters in the same way as under the Victorian labour hire licensing scheme such as compliance with workplace laws means that the Department considers that GTOs need to be covered by the labour hire licensing scheme. However, the Department expects that the Licensing Authority would adopt opportunities to reduce the compliance burden on GTOs through the operation of the Act and the Regulations.

Overall, the exemption of workplace learning and vocational placements is considered to be more aligned with the objective of the licensing scheme than the Base Case because it limits coverage to those workers that are identified as being most at risk of being exploited by providers of labour hire services and hosts, and not the narrow circumstances of students undertaking workplace learning or vocational placements. As with Exemption 1 and Exemption 2, the exemption should also enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. As per the other exemptions assessed in this RIS, the risk of labour exploitation as a result of this exemption is small, compared to the benefit of freeing up resources to focus on higher risk organisations. Option 1 is given a score of +2 compared to the Base Case.

5.5.3.2 Regulatory burden on businesses

There would be a regulatory burden imposed on providers of workplace learning and vocational placements if there is no exemption in the Regulations. The proposed exemption will reduce this regulatory burden. Education or training providers that have a placement as a requirement of an education or training course, secondary schools that have workplace learning arrangements and TAFE providers that enter into practical placement providers would all need to be licensed. This could potentially include up to:

- 583 secondary schools[72]
- 24 GTOs[73]

[71] Inquiry Report, p.78.
[72] Department of Education and Training, *April 2018 Summary Statistics for Victorian Schools*. Number includes the sum of Primary-Secondary and Secondary schools as at April 2018.
[73] Group Training National Register Website (https://www.australianapprenticeships.gov.au/gto-listing).

- 1,085 RTOs,[74] which includes 12 TAFE institutes and seven universities; and
- 2 other universities that are not RTOs.[75]

The total number of education and training organisations impacted by the exemption is therefore estimated to be 1,670 (the total above excluding GTOs). It is possible that not all organisations would be required to get a licence under the Base Case, because some might not have placements as a part of their education or training programs. 1,670, businesses have therefore been assumed to be impacted, but this could over-estimate the estimate regulatory burden.

Table 5.5 shows the estimated administrative burden for the 1,670 organisations, giving a range of costs based on an assumption of 9 hours reduced time spent on applications at the lower end and 24 hours reduced time at the upper end of the range.

Table 5.5 Reduction in regulatory burden estimation – workplace learning and vocational placements

No. of businesses impacted	Reduced hours of time spent on applications	Hourly rate	Estimated reduction in burden
1,670	Between 9 and 24	$78.40	$1.2 to $3.1 million

Note: dollar values are not discounted.

Option 1 will have a significantly lower regulatory burden than the Base Case, with university and TAFEs, secondary schools and RTOs exempt from the provision of labour hire services under the Act. Almost all of the costs estimated for the Base Case will be avoided under Option 1.

On balance, Option 1 is given a score of +7 compared to the Base Case. The impact is likely to be higher than for other exemptions because it is likely to impact more education and training organisations compared to the number of businesses impacted by other exemptions, however there is uncertainty about how many actually have placements as a part of their education or training programs.

5.5.3.3 Implementation risks and issues

The Government has a well-documented list of secondary schools, universities, GTOs and RTOs, which would mean communication with these organisations about the new legislative requirements would not be difficult. A possible risk under the Base Case could be stakeholder concern regarding the imposition of a regulatory burden on organisations that are undertaking activities considered to bring benefits to the community, such as vocational placements for students, and which are already subject to regulation under different regulatory frameworks, such as under the FWA. However, while educational institutions could choose not to provide or enter into such arrangements due to the additional regulatory cost, in practise we consider it is unlikely that the cost is significant enough to result in this occurring. Also, written submissions either did not comment or were supportive of the proposed exemption, indicating that significant stakeholder concerns are unlikely.

The level of education about the new requirements for this sector would be reduced under Option 1, except for communication and stakeholder management of GTOs, which will still need to be licensed. Given the small number of GTOs operating in Victoria, this could be a simple and directly targeted stakeholder engagement and communication exercise.

Option 1 is given a score of +2 compared to the Base Case.

[74] *Report of RTOs based Registration RCAB, Registration dates and scope*, training.gov.au, downloaded 30 May 2018.
[75] Tertiary Education Quality and Standards Agency (TESQA) National Register, www.tesqa.gov.au. (https://www.vta.vic.edu.au/doctest/about-the-vta/656-about-the-vta-updated-2017/file)

5.5.3.4 Impact on competition and small businesses

The Department does not anticipate that Option 1 would have a significant impact on small businesses or competition. Those parties organising work experience or educational placements typically are not for profit organisations or similar, and do not directly compete with labour hire businesses, small or large.

Similarly, the Base Case is also expected to have minimal impact on small businesses or competition, except to the extent that it may deter organisations from organising work experience or placement opportunities. In such circumstances it may reduce an individual's competitiveness in the labour market or Victorian education institutions relative to those in other jurisdictions, however these impacts are considered unlikely and small.

Option 1 is given a score of 0.

5.5.3.5 Government administrative and compliance burden

As discussed, there might be an estimated reduction of up to 1,670 organisations required to be licensed under Option 1 compared to the Base Case, although there is a degree of uncertainty about this number as it is not known how many actually have placements as part of their programs.

On balance, Option 1 is given a score of +7 compared to the Base Case, reflecting that Option 1 will significantly reduce the burden on the Licensing Authority because there will be significantly fewer applications to process and less compliance and enforcement activities being undertaken, yet recognising the level of uncertainty about the expected impact.

5.5.3.6 MCA summary for exemption of workplace learning and vocation placements

Option 1 is assessed as being better than the Base Case. The Department expects it to lead to a significant decrease in regulatory burden for education providers and reduce the costs of the Licensing Authority in administering the application process and undertaking compliance and enforcement activities. It is also expected to better target the focus and resources of the scheme on reducing labour exploitation for high risk workers. However, there is some uncertainty about the expected number of organisations that will be impacted because some might not have placements as a part of their education or training programs.

Table 5.6: MCA summary for Exemption 3: workplace learning and vocation placements

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Exemption	+2	+7	+2	0	+7	+18	+3.9

5.5.4 Exemption 4: One or two person businesses

- **Base case**: There is no exemption for small businesses providing labour hire services.
- **Option 1 - Exemption**: Providers will be exempt from being licensed under the Act if they provide another person to do work if the provider is a body corporate with no more than two directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits.

5.5.4.1 Alignment with the objective of the licensing scheme

This exemption is for providers of labour hire where the person being provided to the host is a director of a body corporate with up to 1 or 2 directors (this RIS refers to such businesses as "one or two-person businesses"). This aims to ensure that such businesses are not inadvertently caught by the licensing scheme where directors of a company are less likely to exploit themselves as labour hire workers. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries.

There is limited risk of misalignment with the primary objective of the licensing scheme, which is to protect workers from being exploited by providers of labour hire services and hosts.

An example of such an arrangement could include where a bookkeeping company with one or two directors provides one of the directors to do work on an ongoing basis in a host company, for example to complete tax and accounting work in that business.

In such an example there would be a provider, worker and host. Section 9 of the Act states that an individual is a worker, for a provider, if:

- an arrangement is in force between the individual and the provider under which the provider supplies, or may supply, the individual to one or more other persons to perform work; and
- the provider is obliged to pay the individual (in whole or part) for the performance of the work by the individual, whether directly or indirectly through one or more intermediaries.

Under the Base Case, businesses might be covered by the definition of worker under the Act or excluded, depending on the individual circumstances of the business and the director. While it is possible to estimate the number of businesses that are "one or two-person" businesses and therefore potentially included in this exemption, it is not possible to identify the number that would be considered labour hire providers under the Base Case.

Overall, Option 1 is rated higher than the Base Case because it excludes one or two-person businesses that are a low risk of exploiting from coverage under the licensing scheme. As per the other exemptions, achievement of the objectives of the Act is not served by having low risk businesses such as one- or two-person businesses covered. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. However, as there is significant uncertainty around the number of one or two-person businesses that will be impacted by the Act and the proposed exemption, a score of +2 is given compared to the Base Case.

5.5.4.2 Regulatory burden on businesses

Businesses that would have been covered by the Act in the absence of this exemption would incur the costs of applying for a labour licence, renewing the licence and learning about the requirements. The proposed exemption will reduce this regulatory burden.

Using the assumptions provided in section 5.5.1.2 of this RIS, the estimated cost of time spent on applications for a small business, which are the subject of this exemption, is $705 over a ten year period, which is not considered a significant cost burden.

Option 1 is given a score of +2 compared to the Base Case, reflecting the small reduction in regulatory burden for individual businesses, although it is too difficult to conclude what the total cost will be across all businesses.

5.5.4.3 Implementation risks and issues

Based on consultation so far and the Inquiry evidence, the Department expects that some one or two-person businesses that would need to be licensed under the Base Case may not immediately be aware of their new obligations under the Act. As these businesses are also likely to be more dispersed across the economy and less likely to be part of industry associations that have a focus on labour hire, they will be more difficult to target through direct advertising and education. The scarcity of data on the number of such businesses, and which businesses these may be and where they might be located, also poses challenges in implementing the licensing scheme. For example, compliance activities may be more difficult because businesses are highly dispersed. This will be taken into account in the forthcoming information campaign to ensure affected businesses can understand their new obligations.

The exemption of one or two-person businesses is given a score of +5 compared to the Base Case, which mainly reflects that under the Base Case there are significantly greater potential implementation challenges and costs.

5.5.4.4 Impact on competition and small businesses

If some one or two-person businesses were required to become licensed under the Act, it is expected that there would be a large impact on smaller businesses. For example, a one-person

book-keeping business would be required to spend time ensuring compliance with the licensing scheme, and potentially paying a licence fee. These tasks are likely to be relatively more onerous for small businesses that have fewer resources to manage such requirements. As Option 1 is beneficial for small businesses, it is given a score of +3 compared to the Base Case.

5.5.4.5 Government administrative and compliance burden

Option 1, to exempt one or two-person businesses, is likely to lead to some reduction in the number of businesses applying for licences and therefore will reduce the Licensing Authority's costs in terms of assessing and determining licence applications, and ongoing compliance and enforcement activities. The lack of data means it is too difficult to assess whether this will be a significant number of businesses impacted. However, the proposed exemption does mean that the Licensing Authority may not need to dedicate as much focus on monitoring and pursuing a potentially large and dispersed cohort of businesses with low risk to check whether they are complying with the requirements e.g. checks and reviews of businesses to see if they are providing labour hire without a licence. As with other exemptions, it is noted that it is a decision for the Licensing Authority to determine its approach to compliance and enforcement, and where it focuses its resources. The Licensing Authority may need to determine its approach to matters such as these when developing its policies and procedures for compliance and enforcement.

Overall, Option 1 is given a score of +3 compared to the Base Case.

5.5.4.6 MCA summary for one or two-person businesses

The preferred option is to exempt one or two-person businesses. With a total weighted score of +2.4, it is considered slightly better than the Base Case. The option will ensure that businesses with very little risk of exploiting labour hire workers are not required to be licensed by the scheme. On an individual basis, the potential reduction in the regulatory cost might be significant for one or two-person businesses with very small turnovers. However, it is difficult to estimate the total cost saving across all businesses due to uncertainty about the number of businesses that will benefit from the exemption.

Table 5.7: MCA summary for exemption 4: exemption of one or two-person businesses

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Exemption	+2	+2	+5	+3	+3	+15.0	+2.4

5.5.5 Inclusion of commercial cleaning, horticulture, meat and poultry activities

- **Base case**: Commercial cleaning horticulture, meat and poultry businesses may not be covered by the definition of labour hire services under the Act where services are being provided through other arrangements such as outsourcing.
- **Option 1**: An individual that is performing any of the following activities will be taken as performing work in and as part of a business or undertaking and will therefore fall under the definition of labour hire services These activities have been selected to represent typical duties that workers performing work in the commercial cleaning, meat and horticulture industries may perform:
  - (a) An individual that is performing activities as a cleaner in a commercial premises that is not a place occupied as a residence;
  - (b) An individual is performing any one or more of the following horticulture activities in relation to fruit or vegetables at a place where a business or undertaking is being conducted:
    - (i) picking; or
    - (ii) sorting; or
    - (iii) labelling; or
    - (iv) packing; or

grading.

(c) An individual is performing any of the following activities at a meat manufacturing establishment or meat processing establishment:
  (i) killing; or
  (ii) dressing; or
  (iii) boning; or
  (iv) slicing; or
  (v) preparation;
  (vi) packing; or
  (vii) processing.

(d) an individual is performing any of the following activities at a poultry processing establishment:
  (i) killing; or
  (ii) processing; or
  (iii) preparation; or
  (iv) packing.

These inclusions use the powers under section 12 of the Act, which enable the Regulations to make provision for circumstances in which an individual is taken to perform work in and as part of a business or undertaking, or a business or undertaking is taken to be a business or undertaking of a host.

These inclusions are assessed together because the rationale for their inclusion is similar, which was to ensure that the three industries identified as highest risk for labour exploitation in the Forsyth Inquiry are covered by the Licensing Scheme.

5.5.5.1 Alignment with the objective of the licensing scheme

Commercial cleaning

The inclusion of commercial cleaning activities is that it will address a potential gap in the coverage of the Act in relation to commercial cleaning, which has been identified as a high risk industry for labour exploitation.

Under the Base Case, the general definition of labour hire services in the Act would exclude many commercial cleaning services from being regulated under the Act. As discussed in section 2.2, the exclusion of arrangements in the cleaning industry that do not fit the definition of 'provides labour hire services' in the Act, such as outsourcing and complex supply chains, would be inconsistent with the objective of protecting workers from being exploited by providers of labour hire services and hosts.

The Forsyth Inquiry strongly supported the need to regulate workplace arrangements in the cleaning sector, noting:

> *there are various ways in which labour hire workers in Victoria are treated almost like a 'second class' of worker. This treatment ranges from outright exploitation in certain sectors – principally the horticulture, meat and cleaning industries – through to differential treatment in respect of issues like health and safety, dismissal and rostering.*[76]

The Inquiry Report specifically recommended that:

> *…Victoria introduce a licensing scheme for labour hire agencies, that is initially targeted at those supplying labour in the following specific sectors: the horticultural industry (including the picking and packing of fresh fruit and vegetables), and the meat and cleaning industries.*[77]

Specifically, in relation to employment arrangements in the cleaning industry, the Inquiry Report noted that:

> *Evidence presented to the Inquiry, along with many media reports and studies, indicate that both labour hire and complex supply chains are particularly prominent features of the cleaning*

[76] Inquiry Report, p.14.
[77] Inquiry Report, p.25.

industry. The issues which the Inquiry has examined in respect of the cleaning industry go beyond labour hire, and extend to other forms of outsourcing and broader issues arising from the utilisation of complex supply chains in this industry.[78]

A range of examples provided in the Inquiry Report demonstrate that such arrangements are very complex, often with supply chain arrangements that make it difficult to categorise or identify whether the workers are labour hire workers. For example:

UV also submitted that in 2015, a group of cleaners working at Crown Casino were discovered to have been engaged through a labour hire agency called OZSCS Group, which had been engaged to provide labour to the principal contractor, Challenger Services Group. The cleaners had never met anyone from the labour hire agency, and their only contact with their purported 'employer' was via a mobile phone number apparently connected to a person in Sydney.[79]

GTHC[80] *also told the Inquiry that the City of Greater Geelong engaged a large cleaning contractor called Quayclean to clean the three public swimming pools in Geelong. In turn, Quayclean subcontracted the cleaners through a labour hire agency that recruited workers on bridging visas, knowing they had no work permits. The workers had to work the first two weeks for free and were only paid $10 per hour cash in hand. They could not read English and were forced to sign documents stating they had received training. GTHC told the Inquiry that this case was satisfactory resolved with the assistance of the city council and Quayclean.*[81]

It seems reasonable to observe that the supply chain arrangements in place in such examples may make it possible for arrangements that seem to involve traditional labour hire services and workers to fall outside the scope of the Act. In the City of Greater Geelong example, the engagement could be seen as involving only two parties: the City of Greater Geelong and the contractor. However, through the contractor's sub-contracting arrangements, the cleaning work is being undertaken by what appears to be labour hire workers. This potential loophole is particularly concerning because of the evidence about the prevalence of labour exploitation in the cleaning industry.

The commercial cleaning industry employs a significant number of people in Victoria. Using IBISWorld reports, there were 106,656 people employed in the sector in Australia; it is estimated that 26.60% of these employees are located in Victoria.[82] While some of these are expected to be covered by the Act in the absence of this regulation (because they satisfy the definition of labour hire services), the prevalence of arrangements such as outsourcing in this industry indicates that there is potential for this inclusion to increase coverage of the Licensing Scheme to a significant number of businesses and reduce the risk of labour exploitation for a significant number of workers. However, there is no data available to support the estimation of this number.

Horticulture, meat and poultry

While the powers under section 12 of the Act are also being used to explicitly include the horticulture, meat and poultry industries explicitly included in the definition of labour hire, the problem being addressed for horticulture, meat and poultry has distinct differences to the problem that is being addressed for the commercial cleaning industry. On the one hand, like the commercial cleaning industry, these industries were identified in the Forsyth Inquiry as high risk for labour exploitation.

However, the evidence presented in the Inquiry Report suggests that exploitation that occurs in the meat and horticulture industries is related to non-compliance of labour hire firms rather than the complex supply chains and sham arrangements in which often occur in the commercial cleaning industry.

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[78] Inquiry Report, p.173.
[79] United Voice submission to Forsyth Inquiry, cited in Inquiry Report, p.174.
[80] Geelong Trades Hall Council.
[81] GTHC submission to Forsyth Inquiry, cited in Inquiry Report, p.175.
[82] IBISWorld Industry Report N7311, *Commercial Cleaning Services in Australia*, April 2017.

The Inquiry Report noted a widespread view amongst Inquiry participants that labour hire is used extensively, and relied upon heavily, in the horticulture industry. Participants suggested that the key reasons for this are the seasonal nature of the work, unpredictable and variable workplace needs, domestic labour shortages and the lack of time and human resources capabilities amongst growers. For the meat industry, the Inquiry observed that "it heard that labour hire is prevalent in the meat industry". [83]

The Inquiry Report noted that "There is a significant body of evidence, including evidence presented to the Inquiry and other sources, which demonstrates that many labour hire operators in the horticulture industry in Victoria do not comply with their legal obligations towards their workers."[84] The Inquiry provided many examples of exploitation of workers by labour hire firms in both the horticulture and meat industries.

The horticulture and meat industries would already be expected to be covered by the Act to a large extent based on the current definition of 'provides labour hire services' under section 7 of the Act. However, some businesses may attempt to engage in avoidance arrangements in these industries in order to try and evade their obligations. This concern is founded on the culture of non-compliance in these industries, which suggests there is a heightened risk of firms in these industries behaving in a manner to avoid regulation. The explicit inclusion of the horticulture and meat industries is to clarify and make explicit the obligations that are already imposed on businesses in these industries rather than impose new obligations.

It should be noted that, where both an inclusion and an exemption apply in particular circumstances, the exemption will prevail. This means there is a risk that more unscrupulous labour hire providers might use the exemptions as a loophole to avoid being covered by the Licensing Scheme. This is a risk for the commercial cleaning industry as well as the horticulture, meat and poultry industries. However, this risk is reduced because the definitions of the exemptions limit the structure or type of working arrangements that can be accepted by the law.

Overall, across both inclusions, Option 1 is given a score of +8 in comparison to the Base Case, reflecting that the inclusions are strongly aligned with the objective of protecting workers from being exploited by providers of labour hire services and hosts. The option has been rated highly due to the finding of the Forsyth Inquiry that the three industries are the highest risk for labour exploitation, however there is also some uncertainty about the number of businesses that will be impacted.

5.5.5.2 Regulatory burden on businesses

Commercial cleaning

Option 1 is likely to increase the regulatory burden on commercial cleaning businesses. Many cleaning businesses providing cleaning services using arrangements which would not fit within the definition of 'provides labour hire services' under the Act are excluded under the Base Case. Option 1 requires all businesses providing commercial cleaning services to be licensed except where the cleaning services are being provided in a place occupied as a residence.

ABS data shows that, at June 2017, there were 7,114 businesses providing Building and Other Industrial Cleaning Services in Victoria. However, not all of these will be covered by the Licensing Scheme in the absence of this inclusion, and some subtractions need to be made from this number in order to estimate the number of these businesses that will be impacted. Of the 7,114 businesses, 4,640 are non-employing businesses. Because these are non-employing businesses, it is assumed they do not employ labour hire workers and will not be covered by the Act.

A further 2,284 businesses employ between 1 and 19 workers.[85] Of these, it is assumed that between 50% and 80% of businesses employ 1 or 2 workers, which means between 1,142 and 1,827 businesses. This assumption is based on the fact that it is expected that there are significantly more businesses in this industry employing 1 or 2 workers than 19 workers. There are

[83] Inquiry Report p.153, p.60-61. Note the Inquiry Report defines the "meat industry" as including the meat processing industry, the cured meat and smallgoods industry and the poultry processing industry.
[84] Inquiry Report, p.155.
[85] ABS, 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2013 to Jun 2017.

very few larger businesses: there are only 173 businesses with 20 to 199 employees and 16 businesses with 200+ employees.

Of these businesses assumed to employ 1 or 2 workers, it is further assumed that 50% have directors that are not workers for the purpose of the Act under clause 5(c) of the Regulations. This is an assumption made in the absence of quantitative evidence, to reflect that a number of these businesses will not be covered by the Licensing Scheme because of the exemption. Therefore, it is assumed that the number of these businesses that do not need to be licensed is between 571 and 914.

IBISWorld data indicates that 33.9% of commercial cleaning services revenue is not provided in commercial premises, including Other cleaning (e.g. duct, chimney cleaning), street and road cleaning, residential, and exterior building and window cleaning.[86] Therefore, it is assumed 33.9% of the remaining businesses do not provide "commercial cleaning" services as defined in Option 1. This means the number of commercial cleaning businesses estimated to be included as a result of this Option is between 377 and 604. There are clearly some significant assumptions in these figures, but it gives an indication of the potential size of the impact of the inclusion of commercial cleaning services.

Overall, this data suggests that the commercial cleaning sector has a significant number of businesses, but that many will be exempt from the licensing scheme under clause 5(c) of the Regulations, which prescribes that persons who the provider provides to another person to do work are not workers if the provider is a body corporate with no more than two directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body or shares in its profits. However, there are still a significant number of businesses that will likely need to be licensed as a result of this inclusion. The estimated cost of time spent on applications is shown in Table 5.8.

Table 5.8 Change in regulatory burden estimation – inclusion of commercial cleaners

No. of businesses impacted	Reduced hours of time spent on applications	Hourly rate	Estimated increase in burden
377	Between 9 and 24	$78.40	$0.3 to $0.7 million
604	Between 9 and 24	$78.40	$0.4 to $1.1 million

Note: dollar values are not discounted.

In addition to cleaning businesses, many businesses will need to understand their obligations as "hosts" and ensure that they are complying with the requirement to only use licensed providers. For example, every commercial building and education institute that outsources cleaning services will need to comply with the requirements of the Act. The number of businesses is difficult to estimate reliably, for example management and ownership arrangements for commercial buildings are not known (e.g. one business could own/manage many buildings) so the number of hosts is unclear. A single host could be responsible for a number of labour hire arrangements.

Horticulture, meat and poultry

The definition of 'provides labour hire services' under section 7 of the Act means that the type of horticulture, meat manufacturing, meat processing and poultry processing activities set out above would be stereotypical examples of labour hire caught by the scheme. It is therefore difficult to predict the number of peculiar business structures or avoidance arrangements which the Regulations would be bringing into the scheme through the prescription of the relevant horticulture, meat and poultry activities as constituting circumstances in which an individual is taken to perform work in and as part of a business or undertaking. The size of the regulatory

[86] IBISWorld Industry Report N7311, April 2018, *Commercial Cleaning Services in Australia*. Note IBISWorld notes a fairly equal ratio between revenue and number of businesses in Victoria.

burden has therefore been estimated using different scenarios. Drawing on ABS data, Victoria had an estimated 1,748 fruit and vegetable growing and processing businesses and 157 meat processing businesses[87] at June 2017 (excluding non-employing businesses).[88] If 5% are brought into the Licensing Scheme by this inclusion when they would not have been without it, this would equate to 19 businesses.

Table 5.9 shows the range of estimated burden for different scenarios. There would need to be a large proportion of businesses impacted by the inclusion (which means a significant gap in coverage under the Act in the absence of the proposed inclusion) to result in a significant increase in regulatory costs for businesses. This is unlikely, given that the inclusion of horticulture and meat will generally clarify licence requirements under the Act for these industries, rather than extend coverage.

Table 5.9 Change in regulatory burden estimation – horticulture, meat and poultry

Scenario: % of Horticulture, meat and poultry businesses	No. of businesses impacted	Reduced hours of time spent on applications	Hourly rate	Estimated increase in burden
0.5%	9	Between 9 and 24	$78.40	$0.01 to $0.02 million
5%	95	Between 9 and 24	$78.40	$0.07 to $0.18 million
10%	190	Between 9 and 24	$78.40	$0.13 to $0.36 million
50%	953	Between 9 and 24	$78.40	$0.7 to $1.8 million

Note: dollar values are not discounted.

Overall, Option 1 is therefore give a score of -4 compared to the Base Case, reflecting the additional regulatory burden that will be imposed due to the inclusion of commercial cleaning businesses. The impact of the inclusion of the horticulture, meat and poultry businesses is less certain.

5.5.5.3 Implementation risks and issues

On the one hand, Option 1, compared to the Base Case, might require additional implementation and ongoing work by the Licensing Authority to ensure that all commercial cleaning, horticulture and meat organisations are licensed as required. However, compared to other exemptions which involve a relatively dispersed group of impacted businesses e.g. secondees, it is likely to be a less challenging exercise to advertise and communicate the new obligations to these businesses and host businesses. Furthermore, the inclusions might make it clearer, for both the Licensing Authority and businesses, to understand the licensing requirements. There will be ongoing compliance and enforcement work required to be undertaken for these licensees. There could be some less scrupulous businesses that will seek to avoid being licensed, although this will be the case under the Base Case as well. A key strategy for the Licensing Authority in relation to commercial cleaning activities could be to target host businesses such as large city building managers and hotel owners/operators.

Option 1 is given a score of 0 compared to the Base Case. As noted above, it is expected that these businesses will be quite a straightforward group to implement the requirements for as they are relatively easy to identify. The broad coverage of the inclusions also means there will be less uncertainty to deal with in regard to who is covered by the inclusion and who is not.

5.5.5.4 Impact on competition and small businesses

The key competition and small business impact of Option 1 is that it is likely to favour larger businesses that have greater resources and capability to undertake the work required for the

[87] Meat processing used here collectively describes meat, poultry and cured meat and smallgoods processing.
[88] ABS, 8165.0 - *Counts of Australian Businesses, including Entries and Exits*, Jun 2013 to Jun 2017.

application process. The regulatory cost will be proportionately larger for smaller businesses as a proportion of turnover and profit. Option 1 has therefore been given a score of -2.

5.5.5.5 Government administrative and compliance burden

All three industries, identified as high risk for labour exploitation, could be expected to require a relatively high level of compliance and enforcement focus from the Licensing Authority. Under Option 1, it is estimated that somewhere between 377 and 604 commercial cleaning businesses will be subject to the licensing scheme. Obviously, there is significant uncertainty around these estimates, yet it gives an indication of the potential for an increase in costs for the Licensing Authority, which will incur costs associated with the application process and ongoing compliance and enforcement activities. There is less certainty about the number of businesses that will be impacted by the inclusion of the horticulture, meat and poultry industries. Option 1 is therefore given a score of -4 compared to the Base Case.

5.5.5.6 MCA summary for inclusion of commercial cleaning, horticulture, meat and poultry activities

The preferred option is Option 1, which is to include commercial cleaning, horticulture and meat and poultry activities in the licensing scheme. Overall, this option is rated slightly better than the Base Case, with a score of +1.3. This score reflects the fact that Option 1 is strongly aligned with the objectives of the licensing scheme, but will also lead to material regulatory costs for both businesses and the government. The commercial cleaning, horticulture and meat industries were identified in the Forsyth Inquiry as high risk industries for labour exploitation. This intervention is aimed at ensuring that some businesses are not inadvertently left out of the Licensing Scheme, which there is a risk of in the absence of this inclusion. For commercial cleaning, the supply chain arrangements in place may make it possible for arrangements that seem to involve traditional labour hire services and workers to fall outside the scope of the Act. For horticulture, meat and poultry, there is a concern that some businesses may attempt to engage in avoidance arrangements in these industries in order to try and evade their obligations.

Table 5.10: MCA summary for inclusion of commercial cleaning, horticulture, meat and poultry activities

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Exemption	+8	-4	0	-2	-4	-1	2.3

5.5.6 Mutual recognition of different labour hire licensing schemes

Section 112 of the Act specifies that:

> *The Mutual Recognition Act 1992 of the Commonwealth applies as if providing labour hire services were an occupation within the meaning of that Act.*

Further, section 112 of the Act states in a note that the *Mutual Recognition Act 1992* (Cth) is adopted in Victoria by section 4 of the *Mutual Recognition Act 1998* (Vic). In accordance with section 17 of the Commonwealth Act, a person (a natural person) who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Authority, entitled to be registered as a licensed labour hire provider in Victoria.

Applications under mutual recognition will still be subject to procedural requirements, such as payment of a fee and the submission of an appropriate application.

Section 111 of the Act specifies that the Licensing Authority may, if satisfied that a person is the holder of a licence within the meaning of a prescribed law, or is otherwise accredited or approved

(however described) under a prescribed law, or under a prescribed scheme relating to labour hire (however described), do one or more of the following:

1. not require the person to provide to the Licensing Authority information that the Licensing Authority would otherwise require in order to determine a matter under the Act or the regulations;
2. determine, without any further consideration, that the person:
   a) is a fit and proper person for one or more purposes of the Act or the regulations; or
   b) otherwise satisfies a prescribed condition or requirement of the Act or the regulations.

Clause 30 of the exposure draft Regulations set out the prescribed laws under which a licence or accreditation may be relied upon by the Licensing Authority. For the purposes of section 111(1) of the Act:

1. The prescribed laws are:
   a) the *Labour Hire Licensing Act 2017* (Qld); and
   b) the *Labour Hire Licensing Regulations 2018* (Qld); and
   c) the *Labour Hire Licensing Act 2017* (SA); and
   d) the *Labour Hire Licensing Regulations 2018* (SA).

2. A prescribed scheme is a scheme under which the VRQA registers an organisation as a GTO but does not include any organisation that provides workers other than apprentices and trainees.

The Regulations do not have the power to prescribe the exact manner in which the Licensing Authority will rely on the prescribed laws and schemes. However, as part of this public consultation process for the exposure draft Regulations and the RIS, submissions can be made on the manner in which the Licensing Authority should rely on the prescribed laws and schemes. The Licensing Authority can consider these views when formulating policies and procedures on this topic.

For the purpose of this RIS and in order to assist stakeholders to make submissions, the following options for mutual recognition have been assessed:

- **Base case**: The current provisions in the Act (s.112) provide that a natural person who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Licensing Authority, entitled to be registered as a licensed labour hire provider in Victoria. This is, however, subject to other procedural requirements such as the submission of an appropriate application, the payment of a fee and the provision of relevant information. Once licensed, the organisation would be required to fully meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
- **Option 1 – Base Case with reduced information requirements compared to the Base Case**: Licence applicants if approved, could provide reduced information with their licence application. The kind of information that would be reduced would be information that the Licensing Authority could forgo while still being able to fulfil its functions and powers under the Act. Once licensed, the organisation would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.
- **Option 2 – Option 1 plus mutual recognition of businesses certified under the RCSA Standard**: This option includes Option 1 plus businesses certified under the RCSA Standard would be granted a licence if applying to be licensed within Victoria. Licence applicants would need to provide some information with their licence application (as approved) in addition to evidence of being certified under the RCSA Standard. Once licensed, the business would be required to meet its obligations under the Act, and would be subject to Victorian compliance and enforcement processes.

Appendix B provides a discussion of mutual recognition and arrangements established in other licensing schemes in Victoria.

5.5.6.1 Alignment with the objective of the licensing scheme

Under Option 1, reduced information would need to be provided with a licence application compared to the Base Case. This could be a partially streamlined and fast-tracked application

process. For example, evidence of documents might not be required if they have already been provided to and assessed by interstate licensing processes.

It is a decision for the Licensing Authority to determine which matters it will rely on to reduce compliance obligations under section 111 of the Act. However, this topic may be the subject of the public consultation for the exposure draft Regulations. Under Option 1 though, the Department does not expect that any arrangements established for mutual recognition will reduce the capacity of the Licensing Authority to determine a matter under the Act or the Regulations. Options could include having different information requirements for businesses operating in high risk industries versus low risk industries. Another option is that the Licensing Authority may seek different information requirements depending on the interstate licensing scheme in which the applicant holds a licence. This would reflect the fact that there are different application requirements in different schemes.

It is noteworthy, however, that the more complex the arrangements become, the more difficult the process is to understand for licence applicants and to administer for the Licensing Authority. It is emphasised that these are hypothetical examples. The consultation process is an opportunity for stakeholders to inform development and assessment of feasible options for the reliance that the Licensing Authority may have on the prescribed laws and schemes under section 111.

Given all of the above factors, Option 1 is not considered likely to impact the alignment with the objective of the licensing scheme compared to the Base Case. A score of 0 is therefore given.

In relation to Option 2, the RCSA Standard demonstrates the commitment of the RCSA and its members to respond to the findings of the Forsyth Inquiry and seeks to incorporate six key areas pertinent to the findings of the Forsyth Inquiry, including suitable accommodation and migration. However, there are limitations:

- While the intention of the RCSA is to regularly monitor members, it is currently unclear how frequently this would occur, or whether the penalties for non-compliance are sufficient to act as a deterrent;
- There may be an inherent conflict, perceived or actual, in the RCSA's primary revenue stemming from membership fees while their activities comprise certifying its members; and
- The Forsyth Review demonstrated that unscrupulous labour hire organisations circumvent industry codes and ethical behaviour more generally, which means that voluntary codes are less likely to be effective in achieving the key policy objective.

This option is therefore given a score of -5.

5.5.6.2 Regulatory burden on businesses

Under Option 1, there would be a reduction in the regulatory burden compared to the Base Case. This is because businesses could if approved provide reduced information with their licence application to be licensed under section 111 of the Act. Labour hire businesses that have operations in multiple jurisdictions would be able to complete a less onerous version of the Victorian application process compared to other licence applicants that do not have the benefit of section 111 of the Act. This reduced burden is likely to be particularly beneficial for larger businesses that operate in multiple jurisdictions, compared to smaller businesses which are less likely to do so.

Box 5.3: Number of organisations providing labour hire services across multiple jurisdictions

In assessing the impact of different mutual recognition options, it is useful to consider the number of organisations that might benefit from mutual recognition arrangements. There is no accurate data available about the number of organisations that provide labour hire services across multiple jurisdictions. We have therefore assumed for the purpose of this RIS that all very large businesses in the industry operate in multiple jurisdictions, where we are defining very large businesses as those with a turnover of greater than $10 million. It is estimated that these businesses comprise 22% of the total number of labour hire businesses operating in Victoria i.e. 22% of 1,234 businesses (based on data from a small survey undertaken by the Department to support the development of the legislation). Therefore, we estimate that 270 businesses could be subject to the reduced information requirements under Option 1.

Under Option 1, some requirements of the normal application process will be reduced or applications might be granted priority assessment. The exact nature of such arrangements will be determined by the Licensing Authority and may also depend on the outcome of the consultation process on this RIS. The exact application of Option 1 is uncertain until there is greater clarity in regard to how the Licensing Authority intends to use its powers. In any case, any reliance that the Licensing Authority places on the prescribed laws or schemes will reduce the compliance burden on licence applicants. This is so whether the Licensing Authority elects to require less information or to determine that the fit and proper person test, or other prescribed conditions or requirements of the Act or Regulations, are satisfied. On balance, Option 1 is given a score of +1 compared to the Base Case, reflecting that it is expected that there will be a decrease in regulatory burden but there is uncertainty about the size of the reduction in burden.

For Option 2 there may be a reduction in burden on businesses that are certified under the RCSA Standard and therefore are entitled to be registered as a licence holder. The RCSA has made a number of representations to the Department in support of this position. However, the impact is difficult to estimate because it depends on factors such as the number of businesses that already hold RCSA certification and how many would be incentivised to gain this certification in order to be entitled to the benefits of mutual recognition.

The total number of impacted businesses is uncertain. The RCSA has over 3,000 corporate and individual members,[89] however it is not known how many of these members would be regulated under the labour hire licensing scheme as some members are not labour hire businesses. It is also difficult to estimate the difference in costs of becoming licensed under the licensing scheme versus the costs of becoming certified under the RCSA Standard. Finally, it is difficult to predict how many businesses will choose to become certified under the RCSA Standard versus the labour hire licensing scheme. This choice will depend on the requirements for certification versus the requirements of the application process under the mutual recognition process. It is likely that the Licensing Authority would require additional information to support an application from a business certified under the RCSA Standard compared to a business that is an interstate licence holder. This reflects that voluntary codes such as the RCSA Standard may be seen as less effective in achieving the key policy objectives. This would reduce the cost savings under Option 2.

Reflecting these factors, Option 2 has been given a score of +3. This takes into account the expectation that there will be a reduction in burden but that there is also a high degree of uncertainty around what will happen in practice.

5.5.6.3 Implementation risks and issues

Options 1 and 2 would require the Licensing Authority to undertake additional implementation work compared to the Base Case. This might include development of different application forms, guidelines and communication with labour hire businesses. Mutual recognition arrangements will require working with the other jurisdictions to determine how mutual recognition would work in practice, and potentially developing a Memorandum of Understanding (MOU) or equivalent. For example, details regarding information-sharing including in relation to monitoring and compliance

[89] https://www.rcsa.com.au/

activities and actions may need to be determined. The need to work with other jurisdictions would likely be more pronounced under Option 1 than under the Base Case because the Licensing Authority would consider the quality of information required by other jurisdictions in assessing whether it would not require that information in Victoria.

Licence fee arrangements, especially for licence applications, would also need to be established. Under one model the Licensing Authority that receives the initial application receives the licence application fee, with a nil or reduced application fee in other jurisdictions. However, this RIS recommends a uniform fee regardless for all application types, which simplifies the mutual recognition arrangements (see Chapter 6).

Option 2 may pose additional implementation concerns. The Department and/or the Licensing Authority would need to work closely with the RCSA to develop a detailed understanding of certification requirements for the RCSA Standard to understand the degree of alignment and consistency with the Victorian legislation. If the RCSA Standard changes or proves to be inadequate, or compliance and enforcement arrangements under the RCSA Standard are not appropriate, the Licensing Authority might need to review the appropriateness of Option 2.

On balance, Option 1 has been assessed as likely to require less implementation effort than Option 2. It is given a score of -2 compared to a score of -4 for Option 2.

5.5.6.4 Impact on competition and small business

Larger labour hire businesses are those most likely to have workers operating across jurisdictions and are expected to benefit the most from mutual recognition. However, the impact on competition and small business is uncertain because the nature of competition between these and other labour hire providers in the market is not known; the extent to which they compete against smaller providers in particular is also uncertain. If there is an impact, it is also expected to be small. Option 2 is therefore given a score of 0.

Option 2 involves recognition of interstate licensing schemes and the RCSA Standard. The impact on competition and small businesses under Option 2 would be similar to under Option 1, noting also that this depends in part on the number of small businesses which are members of the RCSA scheme. If there is a wide take up of the RCSA scheme by small businesses, there will be a positive benefit for small businesses, however this is highly uncertain. Option 2 is therefore given the same score as Option 1, 0.

5.5.6.5 Government administrative and compliance burden

Under Options 1 and 2, the time spent by the Licensing Authority reviewing and processing application information for mutual recognition applicants would be reduced compared to the Base Case. Option 1 is given a score of +3 compared to the Base Case while Option 2 is given a score of +2. The burden will be reduced because the process is likely to involve the processing of less information as opposed to a complete determination of a full application. More information is expected to be required to be provided as part of the mutual recognition arrangements for the RSCA Standard, leading to a slightly lower score being given for Option 2.

5.5.6.6 Summary of MCA for Mutual Recognition

Option 1 is slightly preferred to the Base Case because it is expected to increase alignment with the objectives under the Act. In addition, it reduces costs both on businesses and the Government. However, the total weighted score of 0.9 is small, which is partly due to the fact that scores for this option have been discounted due to uncertainty around the arrangements that will be implemented. The exact nature of such arrangements will be subject to further consideration by the Licensing Authority and may also depend on the outcome of the consultation process being undertaken by the Department on the exposure draft Regulations. While Option 2 is expected to reduce costs to businesses because it extends coverage of recognition to the RCSA Standard, it is less aligned with the objectives of the Act, which results in a lower score than for the Base Case. As for Option 1, there is uncertainty in regard to the exact manner in which the Licensing Authority is likely to rely on the prescribed laws and scheme.

Table 5.11: MCA summary for mutual recognition

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Option 1	0	+2	-2	0	+3	+3	0.9
Option 2	-5	+4	-4	-1	+2	-4	-1.55

5.5.7 Inclusion of other prescribed requirements

- **Base case**: No regulations provided for various matters where the Act enables regulations to be made.
- **Option 1 – Inclusion of other prescribed requirements**: Using powers provided for in the Act, the Regulations prescribe a range of requirements relating to applications for licences, renewal of licences, conditions of licences, variation of licences, cancellation of licences, obligations of licence holders, the register of labour hire providers and infringement penalties.

The inclusion of other prescribed matters in the Regulations include:

- Applications for licences:
  - Prescribed information to be included in application for labour hire licence;
  - Prescribed fee for application for a labour hire licence;
  - Prescribed circumstances of cancellation of licence preventing the making of a valid application;
  - Prescribed requirements for registration with Australian Taxation Office and Work Safe Victoria;
  - Prescribed information for application where applicant is conducting a business that provides labour hire services; and
  - Prescribed information for application where applicant is not conducting a business that provides labour hire services.
- Renewal of licences
  - Prescribed time for making an application for renewal of labour hire licence;
  - Prescribed information to be included in application for renewal of labour hire licence;
  - Prescribed declarations required for licence renewal; and
  - Prescribed application fee for renewal of labour hire licence.
- Conditions of licences
  - Prescribed information to be provided by holder of labour hire licence;
  - Prescribed manner of providing information;
  - Annual licence fee; and
  - Form of notice to comply with licence condition.

- Variation, cancellation of licences
  - Prescribed information to be included in application for variation of labour hire licence;
  - Prescribed application fee for variation of labour hire licence; and
  - Matters of which Authority to be satisfied for cancellation of labour hire licence.
- Obligations of licence holders
  - Significant changes that must be notified by licence holder.
- The register of labour hire providers
  - Fee for certified extract or copy of register.
- Prescribed infringement penalties for certain offences.

These prescribed requirements, other than the fees, are assessed as a group rather than individually because the Department considers the individual requirements are relatively minor in nature. Prescribed infringement penalties, which are not assessed as part of this impact analysis, are discussed in section 5.7.

Fees are discussed in Chapter 6 of this RIS.

5.5.7.1 Alignment with the objective of the licensing scheme

All of the requirements set out above are prescribed for the purposes of the Act and are therefore considered to be consistent with the objectives of the Act. It is possible that, in the absence of the provision of this prescribed information, the uncertainty about requirements might mean that compliance with the Act by businesses is reduced, or requirements of the Act are not consistently enforced by the Licensing Authority. For example, this might be the case for the types of significant changes that must be notified by the licence holder. Option 1 is given a score of +2, slightly higher than the Base Case.

5.5.7.2 Regulatory burden on businesses

On the one hand, detailed specification of requirements could be seen to add to the regulatory burden that the Act imposes on businesses. On the other hand, the absence of such information may reduce the ability of the Licensing Authority to complete the necessary compliance activities. For example, section 19(2)(a) of the Act specifies that a licence application must also include the number of workers supplied by the applicant to hosts during the 12-month period before the date of the application, and the information prescribed by the regulations in relation to those workers. The prescribed information in the Regulations is:

a) the total number of employees; and
b) the total number of independent contractors; and
c) the total number of workers that are or had been employed as both an employee and an independent contractor.

In the absence of this prescribed information, licence applicants might not provide adequate information in their applications necessary for the operation of the scheme. The prescriptive nature of such obligations increases the likelihood that the information provided is clear. This reduces the likelihood that licence applicants contact the Licensing Authority to seek further guidance, or obtain legal or professional advice about the requirements.

On balance, requesting prescriptive information on these matters would slightly reduce the regulatory burden imposed on businesses compared to the Base Case, and is given a score of +2.

5.5.7.3 Implementation risks and issues

The Department does not consider that there will be any difficulty in implementing Option 1, which is given the same score as the Base Case for this criterion.

5.5.7.4 Impact on competition and small businesses

It is not expected that there will be any significant difference in the impact on competition under Option 1 compared to the Base Case. In regard to small businesses, providing more clarity around the requirements of the Act might benefit small businesses relative to large businesses because small businesses are less likely to have the resources available to assist them to interpret the requirements of the Act in the absence of more detailed prescription. Option 1 is therefore give a score of +2.

5.5.7.5 Government administrative and compliance burden

Under the Base Case, uncertainty on the part of licence applicants and holders may result in additional costs for government as this may generate more work for the Licensing Authority. Government may face increased costs in trying to administer the Act due to the lack of detail, including potentially needing to develop internal guidelines or guidelines for industry, or needing to respond to queries from businesses. Option 1 is therefore given a score of +2 compared to the Base Case.

5.5.7.6 MCA summary for inclusion of other prescribed requirements

The preferred option is to include the other prescribed requirements. Uncertainty on the part of businesses in relation to their specific obligations under the Act has an impact on compliance with the licensing scheme and can result in increased costs to both businesses and government. Furthermore, relying only on what is included in the Act may result in inconsistent application of the requirements of the Act.

Table 5.12: MCA summary for inclusion of other prescribed requirements

Option	Alignment with objectives	Regulatory burden on business	Implementation risks and issues	Impact on competition and small business	Government admin. and compliance burden	Total score (raw)	Total score (weighted)
Base case	0	0	0	0	0	0	0
Other prescribed requirements	+2	+2	0	+2	+2	+8	+1.9

5.6 Summary of MCA results for all options (non-fee)

The results of the MCA for all options is provided in the following table.

Table 5.13: Summary of MCA results

Element	Option	Alignment with objectives	Regulatory burden on business	Implement ation risks and issues	Impact on competition and small businesses	Govt admin and compliance burden	Total weighted score
Exemptions							
Exemption 1: Secondees	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+5	+5	+2	+5	**+3.35**
Exemption 2: Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+2	+6	0	+3	**+2.3**
Exemption 3: Workplace learning and vocational placements	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+7	+2	0	+7	**+3.9**
Exemption 4: One or two-person businesses	Base case	0	0	0	0	0	**0**
	Option 1: Exemption	+2	+2	+5	+3	+3	**+2.4**
Inclusions							
	Base Case	0	0	0	0	0	**0**

Commercial cleaning, horticulture, meat activities	Inclusion of service	+8	-4	0	-2	-4	**+2.3**
Mutual Recognition							
Mutual recognition	Base case: Mutual recognition as per the Act	0	0	0	0	0	**0**
	Option 1: Base Case plus reduced information requirements	0	+2	-2	0	+3	**0.9**
	Option 2: Option 1 plus mutual recognition of RCSA Standard	-5	+4	-4	-1	+2	**-1.55**
Other prescribed requirements							
Other prescribed requirements	Base case	0	0	0	0	0	0
	Inclusion of other prescribed requirements	+2	+2	0	+2	+2	**+1.9**

Based on the MCA results set out above, the preferred options are as follows:

Exemptions

Ultimately the merits of exemptions to the licensing scheme largely rest on balancing the benefits of lower regulatory burden against the risk that providing exemptions could facilitate the continuation of labour exploitation or the creation of 'loopholes' which organisations could exploit in order to subvert the licensing regime. In each of the cases below the analysis suggests that benefits are likely to outweigh the risks:

- **Exemption 1 - Secondees:** The option is intended to ensure that businesses operating genuine secondment arrangements (and not labour hire arrangements) are not inadvertently caught by the licensing scheme, thus improving alignment with the policy objectives. The risk of exploitation as a result of such arrangements is low. While there is potential for the exemption to be used as a loophole to avoid regulation, this risk will be constrained by the definition of secondee that is proposed because the definition limits the structure or type of working arrangements that can be accepted by the law. The exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. It is expected to lead to a significant reduction in regulatory burden for organisations and a significant reduction in costs for government.
- **Exemption 2 - Where a worker performs work for an entity or group of entities that carry on business collectively as one recognisable business**: There is no evidence that this type of arrangement is high risk for labour exploitation. While concerns have been raised about the potential for businesses to exploit loopholes by setting up related entities or joint venture type relationships, the proposed definition should address this concern by limiting the structure or type of working arrangements that can be accepted by the law. As for Exemption 1 (Secondees), the exemption is also expected to enable the Licensing Authority to focus more of its compliance and enforcement activities on reducing labour exploitation in high risk industries. The option is expected to lead to a reduction in costs for businesses and government, although there is some uncertainty in the size of these impacts due to limited data about the number of impacted businesses.
- **Exemption 3 - Workplace learning and vocational placements**: Based on discussions with relevant groups so far, the Department believes this option may lead to a significant decrease in regulatory burden for education providers and will reduce the costs of the Licensing Authority in administering the application process and undertaking compliance and enforcement activities. It is also expected to better target the focus and resources of the

scheme on reducing labour exploitation for high risk workers. However, there is some uncertainty about the expected number of organisations that will be impacted because some might not have placements as a part of their education or training programs.

- **Exemption 4 – One or two-person businesses:** The option is intended to ensure businesses with low risk of exploiting labour hire workers are not required to be licensed by the scheme. Such risk is likely to be low because the relevant directors are the same workers that are being on-hired. In the absence of this exemption the regulatory cost might be significant for one or two person businesses with very small turnovers. However, it is difficult to estimate the total cost saving across all businesses due to uncertainty about the number of businesses that will benefit from the exemption.

Inclusion of commercial cleaning, horticulture and meat activities
This option is preferred by the Department because it is considered to be strongly aligned with the objectives of the licensing scheme by ensuring that businesses in the commercial cleaning, horticulture and meat industries, which was identified in the Forsyth Inquiry as the three highest risk industries for labour exploitation, are covered by the licensing scheme.[90] However, it will impose material regulatory costs for both businesses and the government.

Mutual recognition
Option 1 is very slightly preferred to the Base Case because it is expected to increase alignment with the objectives under the Act due to licence applicants being required to provide reduced information with their licence application. However, licence applicants would still be required to provide information that is necessary to enable the Licensing Authority to fulfil its functions and powers under the Act. This option reduces costs on businesses and the Government. While Option 2 is expected to reduce costs to businesses because it extends coverage of recognition to the RCSA Standard, it is considered to be less aligned with the objectives of the Act. It is noted that there is significant uncertainty around the actual requirements that will be established under Option 1. The exact nature of such arrangements will be subject to further consideration by the Department and may also depend on the outcome of the consultation process to be undertaken by the Department on the exposure draft Regulations.

Inclusion of other prescribed requirements
The inclusion of certain prescribed matters in the Regulations addresses the uncertainty on the part of businesses in relation to their specific obligations under the Act has an impact on compliance with the licensing scheme and can result in increased costs to both businesses and government. Furthermore, relying only on what is included in the Act may result in inconsistent application of the requirements of the Act.

5.7 Infringements

Labour hire providers who do not comply with the Act are liable for a range of penalties. Depending on the nature of the breach, unlawful conduct may result in infringement penalties, civil penalties, variations, suspension or cancellation of a licence or imprisonment.

Under section 90 of the Act, an inspector may serve an infringement notice on a person in respect of a prescribed offence if the inspector has reason to believe that the person committed the offence. The draft Regulations prescribe an offence against the following sections of the Act:

- section 46 - Offence not to produce licence;
- section 65(2) – Inspector identity cards;
- section 65(3) – Inspector identity cards;
- section 67(5) - Documents to be available for inspection;
- section 74(2) - Entry without consent or warrant;
- section 85(2) - Other assistance in exercising powers;
- section 89(1) - Confidentiality; and
- section 103(2) – Secrecy provision.

[90] Inquiry Report, p.23 & p.25.

For the purposes of section 90(3) of the Act, the prescribed infringement penalty for an offence:

a) against sections 46, 65(2) and 65(3) is for a natural person 1 penalty unit and 5 penalty units for a body corporate.
b) against section 85(2), 89(1) and 103(2) is 5 penalty units for a natural person and 30 penalty units for a body corporate.
c) against section 67(5) and 74(2) is 10 penalty units for a natural person and 60 penalty units for a body corporate.

The largest penalty applied, 60 penalty units, which is equivalent to $9,671 based on a penalty unit rate of $161.19 which applies as at 1 July 2018, is imposed for a body corporate for an offence against section 67(5), which has a requirement to produce documents for inspection, and, for refusal or failure to comply with requirements relating to entry of an inspector to premises of a business without consent or warrant under section 74(2) of the Act.

Offences were selected for infringements using standard principles, including selecting less serious offences where breaches are likely to be accompanied by less complex factual scenarios.[91] The use of infringements will increase the regulatory tools available to the Licensing Authority and is expected to increase compliance levels.

[91] Principles for assessing the suitability of infringement penalties are set out in the Attorney-General's *Guidelines to the Infringements Act 2006*.

6 Cost recovery and fees analysis

The Act provides for the Licensing Authority and the Licensing Commissioner to undertake a range of activities including processing applications for licences, granting licences, and undertaking compliance and enforcement activities. Section 114(1)(c) provides that regulations may prescribe fees in respect of the operation of the Act. Specifically, the Act enables the following fees to be prescribed in the regulations:

- For the purpose of section 17(6), the application fee to be prescribed by the regulations (for application of a licence);
- For the purpose of section 24(1)(d), the prescribed application fee (in relation to grant of a licence);
- For the purpose of section 28(2)(b), the prescribed application fee (for renewal of a licence);
- For the purpose of section 29(1)(d), the prescribed application fee (for renewal of an application);
- For the purpose of section 35(1), the prescribed annual licence fee; and
- For the purpose of section 38(4)(b), the prescribed application fee (for an application for a variation of licence).

The key issues in respect of cost recovery and fee setting are:

- Whether fees should be established, and if so what level of cost recovery should they achieve; and
- The structure and level of the fees.

6.1 Cost recovery considerations

Cost recovery enables those who utilise services to pay for the cost of those services, rather than have them funded by others through general taxation. Under full cost recovery, taxpayers do not subsidise those who use the service, or impose the costs, which are to be recovered.

Cost recovery has the potential of advancing both equity and efficiency objectives, although in some cases these objectives may need to be balanced against each other. A requirement of the *Victorian Guide to Regulation* and general government policy is that unless there is good reason not to, regulatory fees and user charges should be set on a full cost recovery basis to ensure that both efficiency and equity objectives are met.[92] Full cost represents the value of all the resources used or consumed in the provision of an output or activity. In particular:

- Full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity; and
- Full cost recovery ensures that those that have benefited from government-provided goods and services, or those that give rise to the need for government regulation, pay the associated cost. Those parties that do not benefit or take part in a regulated activity do not have to bear the costs.

The principle of fully internalising the costs of regulation is supported by the Department of Treasury and Finance's Cost Recovery Guidelines which states that costs should be recovered directly where possible, *"from those that benefit from, or whose actions give rise to the need for, the government good/service/activity."*[93]

[92] Office of the Commissioner for Better Regulation, 2016, *Victorian Guide to Regulation: A handbook for policy makers in Victoria,* Department of Treasury and Finance, Melbourne.
[93] Department of Treasury and Finance, 2013, *Cost Recovery Guidelines*, January.

At the same time, the *Cost Recovery Guidelines* recognises that there are situations where it may be desirable to recover at less than full cost, or not to recover costs at all. Examples include circumstances where:

- Practical implementation issues make cost recovery infeasible;
- There are benefits to unrelated third parties (sometimes referred to as 'positive externalities');
- Social policy or vertical equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery; and
- Full cost-recovery might adversely affect the achievement of other government policy objectives.

The *Victorian Guide to Regulation* requires that, where proposed regulations impose fees or charges, the fee proposals be assessed against the principles in the *Cost Recovery Guidelines*. The *Cost Recovery Guidelines* identify 10 key issues to address when considering cost recovery arrangements:

Step 1 Is the provision of the output or level of regulation appropriate?
Step 2 What is the nature of the output or regulation?
Step 3 Who could be charged?
Step 4 Is charging feasible, practical and legal?
Step 5 Is full cost recovery appropriate?
Step 6 Which costs should be recovered?
Step 7 How should charges be structured?
Step 8 Are cost recovery charges based on efficient costs?
Step 9 What is the importance of consultation?
Step 10 How should cost recovery arrangements be monitored and reviewed?

6.2 The Licensing Authority's and Licensing Commissioner's recoverable costs

6.2.1 Cost recovery

In terms of the overall level of cost recovery, there appear to be few reasons why full cost recovery should not be pursued in this case. In particular:

- There are no practical reasons supporting zero or partial cost recovery, such as difficulty in establishing fee arrangements or mechanisms for collecting licence fee revenue;
- There would appear to be no social policy or vertical equity considerations supporting zero or partial cost recovery – the activities that the labour hire industry undertakes predominantly generate private benefits rather than public benefits, and the labour hire industry is expected to have the ability to pay for the regulation of the activities that it undertakes; and
- Full cost-recovery will not adversely affect the achievement of the purpose of the government activity – for example, because it will be illegal to provide labour hire services without a licence, charging labour hire providers fully cost reflective fee is not expected to reduce the number of applications for licences. While it is possible that charging a fee might lead some providers to operate without a licence, the likelihood of this scenario is difficult to estimate as it requires evidence about the ability to pay of labour hire providers and the likelihood of non-compliance at different fee levels. The requirement under the Act for the host to use only licensed providers is likely to reduce the extent to which this will occur, because such behaviour would need both the provider and the host to not comply with requirements. Overall, this risk is considered too uncertain to justify further consideration in regard to cost recovery arrangements.

The Government has provided $4.3 million in funding for the establishment costs of the Licensing Authority. This amount has not been included in the cost base to be recovered from fees. This avoids the issue of having a significantly higher charge in the establishment period to cover this cost (which would be reduced in later years) or the complexity of spreading the recovery of these costs across future years, which would mean there would be a funding deficit in the establishment period.

6.2.2 Cost base

The estimated cost base, based on budget estimations for the total expected ongoing costs for the Licensing Authority and the Licensing Commissioner is $45.1 million over 10 years commencing 2018-19. Costs have been estimated using a process of benchmarking against comparable

licensing systems was undertaken. These include the Gangmasters Licensing and Labour Abuse Authority (GLAA) in the United Kingdom, Manitoba Employment Standards in Canada and Consumer Affairs Victoria's Business Licensing Authority. Information collected about labour hire licensing schemes was given the most weight in the benchmarking exercise.

Table 6.1: Summary of Licensing Authority and Licensing Commissioner costs ($2018-19)

Cost	Total cost (2018-19 to 2027-28)	Average annual cost (2018-19 to 2027-28)
Ongoing costs		
Employee costs	30.7	3.1
Supplies and consumables	14.4	1.4
Total recoverable costs	**45.1**	**4.5**

Ongoing costs are estimated to reflect a workforce of approximately 20 FTE, except for the initial two years when additional compliance/enforcement FTE are required to handle the anticipated higher initial workload. Supplies and consumables for ongoing costs consist of accommodation expenses, computer services and equipment, consultancy agency and professional services, education expenses, motor vehicle expenses, and uniform costs. Ongoing costs reflect an estimated number of labour hire businesses assumed for the purpose of this RIS: 1,325.

It should be noted that there is some uncertainty about the level of costs likely to be incurred to administer the licensing scheme because of uncertainty about key cost drivers such as the number of labour hire businesses and the level and type of compliance and enforcement activities to be undertaken. This uncertainty is common in the establishment period of new schemes and authorities such as this. In addition, there is also uncertainty around some timing aspects, such as the date of scheme commencement. For this reason, costs have only been presented at a total level and as an average annual cost (not year-by-year). As discussed in Chapter 8 (Evaluation Strategy), a review of the financial performance and position of the Licensing Authority, and a review of cost recovery arrangements, will be undertaken after the first three years of operation of the licensing scheme.

6.3 Development of licence and application fees

6.3.1 Feasible fee options

The Base Case and three options plus two sub-options that are considered in this RIS are outlined below.

Base Case: No fees charged

- In the Base Case, there are no licensing fees charged; and
- The costs of the labour hire licensing scheme would be funded from consolidated revenue.

Option 1: Annual licence fee only

- This option would provide for a single licence fee charged only to successful applicants and covering the costs of both the application process and compliance/enforcement activities;
- The combined licence/application fee would be paid annually;
- All labour hire firms would pay the same fee;
- Licensees would be required to renew their licence annually; and
- Fees would be charged for significant licence variations.

Option 2: Separate application and licence fee

- This option would include charging a separate non-refundable application fee (paid by all applicants) and licence fee (paid by successful applicants);
- Revenue from application fees recovers the Licensing Authority costs that are not related to compliance and enforcement of licences, including the cost of licence application activities. It also recovers a proportion of indirect costs and corporate overhead costs;

- Licence fees are based on recovering the cost of compliance and enforcement activities and a proportion of indirect costs and corporate overhead costs;
- The application fee and licence fee would both be paid annually;
- All labour hire firms would pay the same fee;
- Licensees would be required to renew their licence annually; and
- Fees would be charged for significant licence variations.

Option 2a: Separate application and licence fee, with a licence lasting 3 years

- This option is the same as Option 2 except that this option requires a renewal application every 3 years; and
- Information required for a renewal application is the same as for an initial application. This ensures that the Licensing Authority is provided with the most up-to-date information.[94]

Option 3: Separate application and licence fees based on firm turnover

- This option includes a separate non-refundable application fee;
- Revenue from application fees recovers the Licensing Authority costs that are not related to compliance and enforcement of licences, including the cost of licence application activities. It also recovers a proportion of indirect costs and corporate overhead costs;
- Revenue from licence fees recover the cost of compliance and enforcement activities and a proportion of indirect costs and corporate overhead costs;
- The application fee and licence fee would both be paid annually;
- In contrast to Option 2, both the application fee due and the licence fee due are based on the total annual turnover of the business in the previous year, with 3 tiers of fees and larger firms paying larger fees.[95] Tiers 2 and 3 are set at approximately three times and five times the lowest fee tier respectively; and
- Fees would be charged for significant licence variations.

The term 'annual turnover' is defined in the Regulations as the total ordinary income that is derived in the course of running a business.

The three tiered fee structure outlined above for Option 3 was chosen based on analysis of different potential indicators for setting fees, which is set out in detail in Appendix C.

Option 3a: Separate application and licence fees based on firm turnover with three year applications

This option is the same as Option 3 except that licences would be renewed every three years and not every year.

6.3.2 Why these options were chosen

Many different fee types are possible, ranging from a simple one-off licence fee for all labour hire entities, to fees that differ based on categories of applicant and licensee, different fees based on stages in the licensing, compliance and enforcement process. Development of proposed fee options has taken into account principles such as equity, simplicity, feasibility and impact on competition. Matters considered in developing the set of feasible options and ruling out options include:

- Does the fee option target the fees to those industry participants that impose the costs (equity);
- Would the charge stifle investment, competition or innovation (impact of small business and competition)?
- Would the fee option be straightforward and efficient to establish and administer (simple, feasible);
- Is there data available to enable modelling of fees (feasible).

Option 1 (Annual licence fee only) was chosen because it provides a simple average of costs across all businesses, it is very simple and straightforward.

[94] The fees modelling assumes the same Licensing Authority budget regardless of the licensing renewal period.
[95] Based on DEDJR and Jaguar consulting survey data, and WorkSafe Victoria data.

Option 2 (**Separate application and licence fee)** uses the powers granted in the Act to charge an application fee and a licence fee. Based on a simple average of costs across all businesses, it is also simple, yet unlike Option 1 it means that applicants who do not become licence holders do not pay for enforcement and compliance costs.

Option 2a (Separate application and licence fee, with a licence lasting 3 years) is a basic variation of Option 2, included to reflect the length of the licence period.

Option 3 (Separate application and licence fees based on firm turnover) uses a tiered structure based on annual business turnover. It is included to reflect the greater ability to pay of businesses with higher turnover, and the fact that larger businesses are likely to be more costly to administer for the Licensing Authority (noting that this will need to be confirmed once the Licensing Scheme has commenced). Firm turnover was chosen because it is based on reliable and available data which businesses are expected to report in their Business Activity Statements to the Australian Taxation Office. There is also access to the data that is required to calculate estimated fees for each category, with survey work having been undertaken for the Legislative Impact Assessment. Compared to Option 1 there is a lower regulatory burden for smaller businesses looking to continue operating or enter the industry. The main disadvantage of this option is that there is no clear evidence to demonstrate that turnover is an attribute that is directly related to the regulatory costs imposed by a business, which means that the option might not sufficiently target the fees to those industry participants that impose the costs.

An alternative option that was considered for inclusion in the options is one where fee tiers are based on wages paid (as calculated for payroll tax purposes). The advantage of this is that wages are more likely to be linked to the employment activities of a business than turnover, although it still might not reflect regulatory costs imposed by a business - a business with a large number of employees but only a small number of labour hire employees would pay a higher fee. The main disadvantage of this option is that data are not currently available to enable the calculation of tiers i.e. information about the wages by businesses undertaking labour hire activities. This is necessary for calculating how many businesses will fit into each tier. The ability to request adequate data on gross wages from WorkSafe Victoria or the State Revenue Office is limited at this stage as insufficient information is known about potential licence applicants i.e. it is difficult to work out what applicant data would be requested. This option has therefore not been considered in this RIS, although over time with more data available on licence holders it might become feasible.

Further analysis of different fee structures is provided in Appendix C.

Option 3a (Separate application and licence fees based on firm turnover with three year applications) is a variation of Option 3, included to reflect the length of the licence period.

6.3.3 Fee options not included in this RIS

A number of other fee options were considered for inclusion in this RIS. These include:

- A variation to each option described above that includes a lower fee for applicants under mutual recognition arrangements with other jurisdictions. This has not been included because the preferred regulatory option is "partial" mutual recognition which already includes reduced non-fee costs to applicants.
- A different application and licence renewal fee could be charged, however at this stage the Department does not have sufficient information about the costs of administering the initial application process versus the licence renewal process to justify a difference in fees.
- Fees based on whether an applicant is in a sector considered at high risk of labour exploitation. On the one hand, this option might target the fees to the sectors that impose higher regulatory costs. On the other hand, it could result in individual businesses that are not likely to be high risk paying the higher fees, even though they are in a high risk sector. Small businesses in high risk sectors might also struggle to pay the higher fees, which could be a barrier to entry or continued operation in the sector.
- A single licence fee (like Option 1) but with a tiered structure based on a parameter such as total annual turnover. As discussed below, this is not included because a fee structure including a licence fee and an application fee is considered to be more equitable.

- Fee tiers based on alternatives to firm turnover, such as wages paid as discussed above. Appendix C discusses the advantages and disadvantages of different approaches to setting fee tiers.

It is possible that some options that may not be feasible now could become feasible once there is more certainty about how the Licensing Authority will operate and the nature and number of licensed firms. These will be considered further as part of the review of the fees three years after the commencement of the Regulations (see Evaluation Strategy below).

6.3.4 Modelled fees

Table 6.2 presents the modelled fees for all options. The fees have been modelled to recover the estimated ongoing costs (i.e. excluding establishment costs) of the Licensing Authority and the Licensing Commissioner over the first 10 years of operation of the licensing scheme. The fees are presented in 2018-19 dollars, although it is noted that there is uncertainty in regard to the exact timing of the commencement of the scheme.

Table 6.2: Modelled licence and application fees for all options

Fee option	Estimated fee ($2018-19)
Option 1	
Annual licence fee charged to successful applicants	$4,717
Option 2	
Annual application fee	$1,242
Annual licence fee	$2,760
Option 2a	
Application fee (required every 3 years)	$3,579
Annual licence fee	$2,474
Option 3	
Annual application fee for:	
firms with turnover of $500,000-<$2 million	$538
firms with turnover $2 million-<$10 million	$1,443
firms with turnover > $10 million	$2,664
Annual licence fee for:	
firms with turnover of $500,000-<$2 million	$1,196
firms with turnover $2 million-<$10 million	$3,208
firms with turnover > $10 million	$5,919
Option 3a	
Application fee (required every 3 years) for:	
firms with turnover of $500,000-<$2 million	$1,551
firms with turnover $2 million-<$10 million	$4,160
firms with turnover > $10 million	$7,677
Annual licence fee for:	
firms with turnover of $500,000-<$2 million	$1,072
firms with turnover $2 million-<$10 million	$2,876

firms with turnover > $10 million	$5,308

This RIS expresses the proposed application/renewal and licence fees in dollar figures. This assists comparison with the fees charged by other jurisdictions. However, the fee structure appears as fee units in the proposed Regulations. The fee units in the proposed Regulations have been derived by taking the fees modelled in the RIS, calculating the equivalent fee unit amount, and rounding those figures up to achieve a whole fee unit. Fee units are used in Regulations in Victoria to describe the amounts payable for relevant provisions. The Treasurer of Victoria sets the value of fee units. As of 1 July 2018, the value of a Victorian fee unit is $14.45.

A summary of the preferred fee structure expressed in both monetary figures and fee units is provided below.

Table 6.3: Modelled licence and application fees for all options

Business size	Application/Renewal Fee	Licence Fee
Tier 1 business (annual turnover of no more than $2,000,000)	$1,551 – 108 fee units ($1,560.60)	$1,072 – 75 fee units ($1,083.75)
Tier 2 business (annual turnover of between $2,000,001 and $10,000,000)	$4,160 – 288 fee units ($4,161.60)	$2,876 – 200 fee units ($2,890)
Tier 3 business (annual turnover of more than $10,000,000)	$7,677 – 532 fee units ($7,687.40)	$5,308 – 368 fee units ($5,317.60)

6.3.5 Modelling approach and assumptions for application and licence fees

Key assumptions are as follows:

- *All costs are recovered*: The fees in Table 6.3 are those that need to be charged for the total revenue to equal the total forecast costs of the Licensing Authority and Licensing Commissioner over the first 10 years, in real terms, assuming a discount rate of 4%. In 2018-19 there are costs yet no fees collected; in other years, fees exceed costs.
- *Revenue collected from application fees versus licence fees*: For the purpose of informing the relative magnitude of application versus licence fees when both are included in an option, it is assumed that two-thirds of total costs are due to compliance, enforcement and the issuance and renewal of licences, and these are recovered via licence fees. One-third of total costs are due to resourcing the licence application process, and these are recovered via application fees. This assumption has been developed with reference to the Department's budget estimations, including FTE forecasts in relation to the number of inspectors to be employed, however it is noted that there is significant uncertainty in regard to it. As a reference point, the GLAA in the United Kingdom estimates that approximately 55% of its costs are related to enforcement and 45% are related to licensing (see section 6.5 for a detailed description of this Authority).[96] It is too difficult to draw conclusions about whether the approach taken to licensing and enforcement will be similar across these schemes or different. It is emphasised that there is imprecision regarding the costs likely to be incurred to administer the licensing scheme because of uncertainty about key cost drivers such as the number of labour hire businesses and the level and type of compliance and enforcement activities to be undertaken. This uncertainty is common in the establishment period of new schemes and authorities such as this.

[96] Annual Report 2015-16, p.62, http://www.gla.gov.uk/media/2834/gla-annual-report-and-accounts-2015-16-pdf.pdf.

- *Number of labour hire businesses*: The fees modelling is based on an estimate of 1,325 labour hire businesses in Victoria, for the purposes of informing the number of licence applicants each year.[97] As discussed previously in this RIS, there is uncertainty in regard to the actual number of labour hire businesses in Victoria. Of the firms that apply, 90% are assumed to be successful on the initial application. While there is no supporting evidence for this assumption, it recognises that not all applications will be successful.
- For options 2a and 3a, which require licence applications to be submitted every three years, it is assumed that 10% of labour hire firms in operation undertake a restructure and therefore need to resubmit initial applications each year. This is based on industry survival rates as published in ABS data.[98]
- *Number of businesses at each fee* tier: The tiered fee structure for Options 3 and 3a is modelled based on 22.9% of total labour hire firms having an annual turnover less than $500,000, 28.9% with turnover between $500,000 and under $2 million, 26.3% with turnover over $2 million and less than $10 million, and 21.9% of firms with turnover of $10 million or greater. This uses survey data collected by the Department and Jaguar Consulting as part of the process for review of options for the primary legislation. A reasonable alternative would be to use data on turnover of Labour Supply Services from the ABS.[99] Doing so would result in more businesses falling into the two lower tiers rather than the top tier, and result in modelled fees at all tiers increasing because fewer firms are paying the highest tier. The data from the survey undertaken by the Department and Jaguar Consulting has been chosen because it is a consistent approach with the review of the options for primary legislation and the survey was undertaken specifically to support that work. However, it is important to note that, if the actual distribution is different to the distribution used in the modelling, there could be impacts on the total amount of revenue collected. The risk of under or over recovery is discussed further in section 6.4.1.
- Potential cost differences as a result of different fee structures have not been reflected in the detailed fees modelling, due to uncertainty about what the impact will be and also because it makes comparison of different structures quite difficult when different base costs are used. However, in practice, different fee structures could lead to different costs for the Licensing Authority. For example, assessing licence applications every 3 years rather than annually is likely to lead to a lower licensing administration cost.

The actual levels of the tiers have been set to balance considerations such as the expected regulatory costs imposed by larger firms versus small firms, and the ability-to-pay of smaller firms versus the desire to not have a fee set at such a low level as to encourage less reputable or less legitimate businesses not to apply for a licence. The tier structure does not provide for a truly progressive fee structure – fees as a proportion of turnover will be higher for businesses with lower turnover than businesses with higher turnover. A more progressive structure, for example fees set so that businesses with higher turnover pay the same proportion of their turnover in fees as businesses with lower turnover, would result in a significantly higher top fee tier and a lower fee tier that is close to zero. It would not appropriately balance the considerations noted above. In particular, the fees paid by larger firms compared to smaller firms would significantly exceed the costs that such firms are expected to impose.

6.3.6 Assessment of the fee options

6.3.6.1 Assessment method

The fee options have been assessed using an MCA approach. The five criteria chosen for assessing fees in this RIS are:

- **Cost-reflectivity** - the extent to which the total fees charged reflect the total costs of providing those services;
- **Equity** – the degree to which the parties that give rise to specific costs bear those costs, and the ability-to-pay of businesses with less means;
- **Certainty** – the extent to which applicants will understand their fees in advance;

[97] Based on Worksafe Victoria data for 2017-18 registered businesses falling under employment placement and recruitment (ANZSIC 7211) and labour supply (ANZSIC 7212).
[98] ABS, 8165.0 - *Counts of Australian Businesses, including Entries and Exits*, Jun 2013 to Jun 2017.
[99] From ABS Catalogue No. 8165.0.

- **Administrative costs** – the level of administrative costs associated with calculating and levying fees; and
- **Impact on competition and small business** – the extent to which the option will change the competitive landscape, particularly the implications for small businesses.

As with the MCA for the substantive elements of the Regulations, the options have been scored on a range of -10 to +10. Each criterion has been weighted equally, reflecting that the different criterion are broadly equal in terms of importance. While efficiency and equity are important, considerations such as ability to pay for small business, simplicity in terms of administration, and businesses having certainty and being able to understand what fee they will pay are also valued highly.

6.3.6.2 Detailed MCA of fee options

A detailed assessment of fee options is set out below. Appendix D provides a table summarising this assessment. Modelled fees are shown in section 6.3.4.

Base Case: No fees charged

The Base Case is given a score of 0 for all criteria. The below provides a brief assessment of the Base Case against the criteria as a point of reference for assessment of the other fee options.

Cost-reflectivity
The Base Case does not reflect costs at all.

Equity
The Base Case has poor equity outcomes because all of the costs of regulation of labour hire businesses would be funded by all taxpayers via consolidated revenue. No costs would be recovered from those parties who give rise to the need for regulation (the labour hire businesses).

Certainty
Under the Base Case, businesses have complete certainty about what they will pay, which is nothing.

Administrative costs
In the Base Case there would be no fees charged, and so there would be no costs associated with administering the collection of fee revenue.

Impact on competition and small business
With no fees being charged, there are no barriers to entry and therefore no impact on competition and small business.

Option 1: Annual licence fee only

Cost-reflectivity
A fee based on a simple average of the attributable staff, supplies and consumables costs across all licence holders would be more reflective of costs than the Base Case. Given the calculated fees are based on a 10-year average of what fully cost-reflective fees would be, some variation over time of the actual costs of the regulatory activities is smoothed over. There will be some years where fees do not cover costs, and other years where fees more than cover costs, but over time full cost recovery should be achieved. No application fee is paid under this option. Overall, this option is therefore given a score of +10.

Equity
Charging a fee to the labour hire businesses is more equitable than not doing so. However, this option means that the licence fee paid by successful applicants covers the application processing costs of unsuccessful applicants, who do not pay a fee. However, it also does not account for the possibility that larger firms may impose greater application, compliance and enforcement costs compared to smaller firms due to factors such as the need to verify that more relevant persons are fit and proper for the licensing process, or that there will be more activities to be inspected. It is noted though that there is uncertainty about how the enforcement activities will vary across small and large firms in practice – it is possible that some small firms could impose higher enforcement costs than some large firms. At this stage it is expected that larger firms will impose higher costs,

however this is a matter that should be monitored and reviewed. On balance, Option 1 is given a score of +2 compared to the Base Case.

Certainty
This option provides a high level of certainty about what the fee will be, compared to a situation where, say, fees vary to reflect the annual costs of the Licensing Authority and Licensing Commissioner. However, this option is slightly less certain compared to having no fee at all, because businesses have to pay a fee and this could in theory be subject to change each year. Option 1 is therefore given a score of -2 compared to the Base Case.

Administrative costs
Invoicing and collecting fees will impose some administrative costs and so this option is given a score of -3 to reflect that it would be costlier than the Base Case.

Impact on competition and small business
Compared to the Base Case, the introduction of the fee could act as a barrier to entry. Further, the fee is the same for small firms as it is for large firms, making it a larger barrier to entry for new entrants than if the fee were based on firm size. Therefore, this option is given a score of -4.

Option 2: Separate application and licence fee

Cost-reflectivity
All fees are based on the 10-year average of costs, making it similar to Option 1, although there is slightly more uncertainty around cost recovery under Option 2 because collection of the licence fee depends on a licence being granted. Option 2 is therefore given a slightly lower score of +9.

Equity
Compared to Option 1, Option 2 is more equitable, given that with separate application and licence fees, successful applicants are no longer subsidising unsuccessful applicants. The total fees that licence holders pay under Option 2 is $4,002, compared to Option 1 where they would pay $4,717. However, like Option 1, it does not account for the possibility that larger firms may impose greater application, compliance and enforcement costs than smaller firms, or for the possibility that firms already licensed interstate require fewer application processing resources than firms not already licensed interstate. As noted for Option 2, at this stage it is expected that larger firms will impose higher costs, however there is some uncertainty about this. Slightly better than Option 1, it is given a score of +4.

Certainty
This option is assessed the same as Option 1 and also given a score of -2.

Administrative costs
Given this option requires the administration of both an application and separate licence fee, it is scored at -6 compared to the Base Case.

Impact on competition and small business
Unlike Option 1, this option results in a slightly smaller overall fee for successful new applicants who do not have to pay for the costs associated with processing unsuccessful applications. Additionally, with a separate licence fee, the ongoing costs for new firms are also lower. Due to the smaller barrier to entry, this has a score of -2.

Option 2a: Separate application and licence fee, with a licence lasting 3 years

Cost-reflectivity
This option is assessed the same as Option 2 and also given a score of +9.

Equity
This option is assessed the same as Option 2 and also given a score of +4.

Certainty
This option is assessed slightly better than Options 1 and 2 because having a three-year licence fee instead of an annual licence fee reduces the year to year uncertainty that might exist. A score of -1 compared to the Base Case is therefore given.

Administrative costs
This option requires the administration of both an application and separate licence fee. However, compared to Option 2, this option processes a much smaller volume of applications given an application lasts 3 years. It is noted that this cost difference has not been reflected in the detailed fees modelling, due to uncertainty about what the impact will be and also because it makes comparison of different structures quite difficult when different base costs are used. However, in practice, it is expected that this option will be less costly to administer than Option 2, and thus this option is given a score of -4.

Impact on competition and small business
Having to apply only every three years results in a larger application fee, resulting in a larger barrier to entry compared to Option 2. This is given a score of -3.

Option 3: Separate application and licence fees based on firm turnover

Cost-reflectivity
This option is given a slightly lower score than Options 2 and 2a because of the uncertainty around some forecasting assumptions, such as how many businesses will fit into each tier level. A score of +8 is given.

Equity
This option charges separate application and licence fees. Further, unlike the other options, it allows for larger businesses that may impose a greater cost burden to be charged a greater fee, making it an improvement over the other options. For example, firms with a turnover greater than $10 million are charged $5,919 for an annual licence fee compared to firms with a turnover of up to $2 million that are charged $1,196. This compares to Option 2a which charges all firms an annual licence fee of $2,474. As noted for other options, at this stage it is expected that larger firms will impose higher costs, however there is some uncertainty about this. Ability-to-pay was also considered, as discussed in section 6.3.5 in regard to how tiers were set. Reflecting these considerations, a score of +8 is given.

Certainty
Option 3 is given a score of -4 compared to the Base Case because the use of a tiered structure introduces some uncertainty into the fees compared to other Options due to the fact that turnover could vary across years, and businesses will also have to work out which tier they are likely to fit into.

Administrative costs
The tiered application and licensing fee based on turnover is more complicated to administer than the other options. This option is given a score of -8.

Impact on competition and small business
This option has the smallest application and licence fee for the smallest firms, fees that are substantially smaller than the fees charged to the largest firms. This results in the smallest barrier to entry of all the options. This option is therefore given a score of -1.

Option 3a: Separate application and licence fees based on firm turnover with 3-year applications

Cost-reflectivity
This option is assessed the same as Option 3 and also given a score of +8.

Equity
This option is assessed the same as Option 3 and given a score of +8.

Certainty
This option is assessed slightly better than Option 3 and given a score of -3 because having a three-year licence fee instead of an annual licence fee reduces the year to year uncertainty that might exist.

Administrative costs
Like Option 3, the tiered application and licensing fee based on turnover is more complicated to administer than any of the other options. However, compared to Option 3, this option has a smaller administrative burden given that firms only need to apply every three years. This option is given a score of -5.

Impact on competition and small business
Like Option 3, this option has smaller application and licence fee for the smallest firms, fees that are substantially smaller than the fees charged to the largest firms. However, this option may present a larger barrier to entry for the smallest firms compared to Options 3 given application fees that now last three years are substantially higher. This option is therefore given a score of -2.

6.3.7 Summary of MCA results for fee options

With the highest score of +1.2, the Department considers that **Option 3a (Separate application and licence fees based on firm turnover)** best balances the objectives of cost-reflectivity, equity, certainty, administrative costs and impact on competition and small business and is the preferred fee option. The options are also only rated slightly higher than the Base Case, reflecting that options generally are considered strong against some criteria such as cost reflectivity and equity, but that this is offset by strongly negative scores for administrative costs versus the Base Case where no fee administration is required. It is noted, however, that the scores are very close and that a small change in assumptions or weightings could change the preferred option.

Table 6.4: Summary of MCA results for different fee options

Criteria	Weight	Base case	Option 1	Option 2	Option 2a	Option 3	Option 3a
Cost reflectivity	20%	0	+10	+9	+9	+8	+8
Equity	20%	0	+2	+4	+4	+8	+8
Certainty	20%	0	-2	-2	-1	-4	-3
Administrative cost	20%	0	-3	-6	-4	-8	-5
Competition/ small business	20%	0	-4	-2	-3	-1	-2
Weighted total	**100%**	0	0.6	0.6	1.0	0.6	1.2

6.4 Fees for applications for licence variations

Fees for licence variations have also been assessed. It is noted that the costs of such variations are not included in the recoverable cost base for the Licensing Authority, so have been estimated separately. Fees have been calculated for two different fee options:

- A tiered fee for 'low-cost' and 'high-cost' licence variations.
- A single fee for all licence variations.

The other fee option that was considered was charging no fee for variations. The key advantage is that it would be administratively simple. It might also not discourage organisations from making licence variations compared to if a fee is charged, although discussions with other business licensing functions within the Victorian Government, such as CAV, did not raise this as an issue in regard to their fee arrangements for variations. Overall, this was assessed as performing poorly against the principles of cost reflectivity and equity so was not examined in more detail.

The licence variation fees are the same across all licensing options assessed above.

A tiered fee for 'low-cost' and 'high-cost' licence variations

For the estimation of the tiered fees for 'low-cost' and 'high-cost' licence variations, all possible changes or variations to licences have been sorted into three different groups:

- Some changes have a very low administrative burden, such as changes to contact details through online forms. These types of 'no-cost' changes do not incur a fee;
- Low-cost fees require limited follow-up contributing to a low administrative cost, and incur a fee; and
- High-cost changes require substantially more follow-up by administrative staff, such as probity checks for changes to nominated officers, and incur a higher fee.

Single licence fee for all variations

The single licence variation fee averages the total expected cost of variations each year across the total expected number of medium cost and high cost variations each year.

Modelling assumptions for licence changes/variations

The following assumptions apply to both options:

- For the purpose of fee modelling, costs reflect only those external costs that will be incurred by the Licensing Authority, which will include the costs, where relevant, of police and bankruptcy checks. The probity checks will be undertaken by the Licensing Authority;
- No other costs have been allocated, for example an allocation of annual IT costs or staff time. In relation to IT costs this is because the service for a licence variation will be a very small part of the Licensing Authority's activities and it is expected that the IT costs would be incurred anyway, even if the licence variation activity was not undertaken. This argument applies so long as a special IT solution is not needed for licence variations – it is assumed that this will be included in the design of the IT system for the Licensing Authority. Staff costs for licence variations are generally not included as these costs will be relatively low and they are effectively recovered through the general licensing and application fees. Thus, only direct incremental costs are included; and
- The number of each type of change or variation has been estimated with reference to data provided by CAV in relation to motor vehicle trader licences, which has been used for comparison purposes because it is a business licensing scheme in Victoria and CAV has been willing to share information about the administration of its scheme. It is assumed that 25% of all licence holders make a no-cost variation, 16% of all licence holders make a low-cost-variation and 16% of all licence holders make a high-cost variation each year. The costs for variations are assumed to be the same across all fee options.

Based on the above option descriptions and assumptions, the following fees have been calculated.

Table 6.5: Modelled fees for applications for licence changes/variations: tiered and single fee structures

Variation fee tier	Tiered fee structure	Single fee structure
	Estimated fee ($2018-19)	
All licence variations	-	$153
Fee for no-cost variations	$0	-
Fee for low-cost variations	$50	-
Fee for high-cost variations	$250	-

Assessment of licence variation fee options

In assessing the preferred variation fee, the following criteria have been considered, consistent with the analysis of licence and application fees:

- Cost-reflectivity - both options are expected to fully recover the Licensing Authority's estimated costs of administering the licence variations;
- Equity – under the tiered fee structure, parties that give rise to the higher costs, for example variations that involve probity checks, bear those costs. Under the single fee structure, there will be a substantially higher fee for licence holders that request only a low cost variation

compared to the tiered fee structure ($153 compared to $50), since they will cover some of the costs of licence holders that make high cost variation requests;
- Certainty – the single fee structure will provide more certainty to licence holders, although if the fee schedule is specified clearly this should not be a significant difference. For example, it could be made clear the types of variations that will be charged the higher cost;
- Administrative costs – the single fee structure is simpler than the tiered fee structure for the government to administer. In addition, a tiered fee structure would represent a significant increase in IT establishment costs; and
- Impact on competition and small business – there is no material difference between the options.

On balance, the Department is proposing to implement the single fee structure because it performs better on the issues of certainty and administrative costs. It also performs in a similar manner on cost-reflectivity and the impact on competition and small business, although the tiered fee structure performs better on the issue of equity.

A summary of the preferred fee structure for licence changes is expressed in both monetary figures and fee units below. It is important to note that the draft Regulations currently prescribe that the amount payable for an application for a variation is the amount of 10 fee units or a lesser amount as determined by the Licensing Authority. This means that the Licensing Authority will have the option of reducing the amount that needs to be paid for each variation. This will give the Licensing Authority the option of reducing the amount payable to reflect equity considerations.

Table 6.6: Preferred licence variation fees in $ and fee units

Licence change	Estimated $ and fee unit
All licence variations	$153 – 10 fee units

6.5 Risk of under or over recovery

The calculated fees modelled are based on a forecast of costs for the Licensing Authority and Licensing Commissioner that have a high level of uncertainty, and a number of assumptions. As with any fee analysis assumptions need to be made, however there is additional uncertainty in this fees analysis because a new scheme and Authority is being established. There is uncertainty about:

- the number of organisations that will apply for a labour hire licence;
- the characteristics of the organisations that will apply for licences, for example size as measured by annual turnover;
- the size and scope of the Licensing Authority's compliance and enforcement function, and how many staff will be required;
- the number of staff that will be required to administer the licence application process; and
- potential structural changes in the labour hire industry, for example consolidation or business closures.

Assumptions have been made about all of these key inputs to the fee modelling.

If there are fewer applicants and/or approved licences than assumed, or a relatively greater number of small organisations, or a higher percentage of firms that are already licensed interstate than is assumed, there may be under-recovery of costs.

The possible fee levels for a small number of scenarios for entity number and Licensing Authority Costs are shown in Table 6.7. The results show that the fees would be significantly lower or higher, depending on the number of licensed businesses, however the impacts are not considered large enough to materially change any analysis undertaken in the assessment of the preferred option. It does, however, highlight the importance of the planned review of the fees three years after commencement of the Regulations (see Evaluation Strategy below).

Undertaking a review of the fees charged after the first three years will be important to ensure the fee levels and fee structure is appropriate. This is discussed in Chapter 8.

Table 6.7: Sensitivity testing of licence fees to costs and business numbers

Option 3a – sensitivity testing	Preferred option – assuming 1,325 businesses	Estimated fee assuming 994 businesses ($2018-19)	Estimated fee assuming 994 businesses and a 15% decrease in costs ($2018-19)	Estimated fee assuming 1,750 businesses ($2018-19)	Estimated fee assuming 1,750 businesses and a 15% increase in costs ($2018-19)
Application fee (paid every 3 years) for:					
firms with turnover of <$2 million	**$1,551**	$2,177	$1,851	$1,175	$1,350
firms with turnover $2 million-<$10 million	**$4,160**	$5,839	$4,963	$3,149	$3,622
firms with turnover > $10 million	**$7,677**	$10,775	$9,159	$5,813	$6,684
Licence fee (paid annually) for:					
firms with turnover of <$2 million	**$1,072**	$1,505	$1,280	$812	$934
firms with turnover $2 million-<$10 million	**$2,876**	$4,037	$3,432	$2,178	$2,504
firms with turnover > $10 million	**$5,308**	$7,450	$6,333	$4,019	$4,618

6.6 Comparison to other jurisdictions

Fees are being charged by the equivalent South Australian and Queensland licensing authorities for the schemes being established in these jurisdictions.

At a broad level, there are a number of reasons why fees charged for similar regulatory schemes might differ across jurisdictions:

- Details of the licensing scheme - there may be significant differences in the requirements of different licensing schemes, even if they have the same policy objectives. For example, increased or more subjective information requirements for the application process will increase the costs of reviewing applications;
- Resourcing decisions - for example, decisions about how much resources the licensing authority in each jurisdiction needs to put into monitoring, compliance and enforcement activities;
- Cost of inputs –wages paid and other input costs might be different across jurisdictions
- Level of cost recovery – we note that the Victorian Government will pay for establishment costs from consolidated revenue. There may be different approaches to the level of costs being recovered in other jurisdictions;
- Number of businesses/economies of scale – total costs divided by number of labour hire firms. Some of the costs will be fixed (e.g. Information Technology, executive staff), therefore the larger the number of labour hire firms the lower the per unit cost;
- Number of businesses forecast to be charged at each fee tier - it is difficult to compare total fee impacts across jurisdictions without detailed information about how many businesses will pay the fee at each level;
- Fee arrangements – fees might be charged for different periods of time e.g. a licence term of one year versus three years; and
- Political and stakeholder management issues – fees established by governments do not always reflect full cost recovery.

Queensland
The Queensland Act was passed on 7 September 2017 and the Queensland licensing scheme commenced on 16 April 2018.

The licence fees for the scheme are shown in Table 6.8. Licence fees must be paid at application, annual renewal and restoration.

Table 6.8: Queensland licensing scheme licence fees-

Total amount of wages paid in the financial year preceding the day the application is made	**Tier**	**Licence fee as at 1 July 2018**
$1.5 million or less	1	$1,000
$1.5 million and up to $5 million	2	$3,000
Over $5 million	3	$5,000

Source: https://www.labourhire.qld.gov.au/i-provide-labour-hire/licensing.

Licence fees are calculated according to the total amount of wages or salaries paid to labour hire workers supplied in Queensland during the last financial year. To calculate total wages, businesses are advised to use the definition of wages for calculating WorkCover Queensland premiums. Licence fees must be paid at application, annual renewal and restoration. For a business that did not operate in the financial year immediately preceding the day the application is made, the total amount is the amount the business is projected to pay in wages in the financial year in which the application is made and the following year.[100]

The Queensland Decision RIS states that, with an estimate of 1,500 to 2,000 labour hire businesses operating in Queensland, the preliminary estimate of revenue that may be generated is at least $3 million to $5 million.[101]

The Queensland Decision RIS also stated that the fee would be set at a level such that it acts as a small financial barrier to entry to deter speculative applications and encourage businesses to be licensed, but would not make it overly burdensome for small labour hire providers to become licensed. Other factors considered include:

- The potential number of licences which might be given;
- The work to set up and maintain the licensing scheme including the administration of licensing and the website; and
- The extent to which the fee is designed to act as a disincentive to breach obligations.

To enable comparison with the Victorian fees, we have estimated the total fees that would be paid by a Queensland business in each fee tier that is licensed for 10 years and does not have changed circumstances. This is shown in Table 6.9.

[100] https://www.labourhire.qld.gov.au/i-provide-labour-hire/licensing.
[101] Although the Decision RIS notes that there may be significantly more than this given the common use of labour hire arrangements, but the precise number is difficult to quantify.

Table 6.9: Comparison of Victorian and Queensland fees

Queensland fee structure	Fees paid (Queensland)	Option 3 Fees paid (Victoria)
Renewal, application and restoration fee (licence renewed annually)		
Class 1	$1,000	$1,693
Class 2	$3,000	$4,540
Class 3	$5,000	$8,379
Total payment over 10 years		
Class 1	$10,000	$16,929
Class 2	$30,000	$45,401
Class 3	$50,000	$83,788

For an individual business, the preferred fee option for Victoria set out in this RIS will result in higher fees being paid over a ten-year period than in Queensland.

The key differences between the two approaches are:

- Queensland is planning to charge a single fee to recover costs rather than charging separate fees for the application and the annual licence, although all else being equal, this should not produce a significant difference in the total fees paid.
- The order of magnitude of costs expected to be recovered under the Queensland fee arrangements is fairly similar to Victoria, at between $3 million to $5 million per year. Victoria is expecting an average annual ongoing cost of approximately $4.8 million for the first four years and approximately $4.3 million ongoing thereafter.
- In contrast to Victoria, which is establishing a new, stand-alone statutory authority to administer the scheme, Queensland has incorporated the administration of their scheme into the existing Office of Industrial Relations (OIR) in the Queensland Treasury. The Queensland RIS stated that "it is anticipated that initial implementation costs will be reduced through the use of existing infrastructure and staff. This will be achieved by appropriate delegation of administrative responsibilities to existing departments capable of conducting regulatory functions. In particular, this will be achieved through the use of existing functions, facilities and staff to minimise the cost to Government".[102] While there will be some dedicated staff, there will also be some sharing of resources with other programs within the OIR that employ staff who carry out enforcement and compliance activities, for example Workplace Health and Safety Queensland (WHSQ). For example, WHSQ undertakes on-farm assessments for workplace safety purposes that could potentially provide information for the labour hire compliance and enforcement work.
- Queensland is forecasting a larger number of organisations applying to be licensed than in Victoria, - 1,500 to 2,000 compared to an estimated 1,300 in Victoria. One reason is that businesses that provide services into domestic situations may need to be licensed in Queensland; in Victoria, such arrangements will not be covered by the licensing scheme. The nature of the Queensland economy might also mean that there are more labour hire businesses operating in that state, for example due to types of business sectors operating, eg a larger horticultural sector. A higher number of labour hire businesses being licensed lowers fees charged as fixed costs are spread across more businesses.
- Level of cost recovery: the Queensland Government is funding initial establishment costs, with less than full cost recovery at least in the early stages of the licensing scheme (it is understood that, over the longer term, the fee arrangements might move towards full cost recovery, but this is uncertain). The Queensland Decision RIS notes that "[i]t is considered that the licensing fee may go some way to covering the cost of administration of the licensing scheme, and the ongoing application process, administration and website costs".[103]

[102] Queensland Decision RIS, p.41.
[103] Queensland Decision RIS, p.41.

South Australia
The South Australian Act came into operation on 1 March 2018. Sections 15, 20, 28 and 29 of the South Australian Act provide that the regulations may make provision for an application fee, a periodic fee for a reporting period, a fee for an application to change responsible person, and a fee for substitution of responsible person for limited period. The reporting period, in relation to a licence, means the period of 12 months starting on the day the licence is granted, and each subsequent period of 12 months. Fees have been set as follows:

Table 6.10: South Australian fee structure

Applications:	**Fees include the application and annual amounts.**
Natural person application fee	$550 + $220 (first year' s fee)
Body corporate application fee	$550 + $1,200 (first year' s fee)
Application to change a responsible person	$120
Application to apply for substitute responsible person	$120

These fees are significantly lower than the preferred fee option for Victoria. In addition, there is a uniform fee across all applicants and licence holders. Like the preferred option for Victoria, a fee for a licence variation has been set, although this only applies where there is an application to change or substitute the responsible person.

Like Queensland, South Australia is not establishing an independent, stand-alone authority to administer the licensing scheme. South Australia has incorporated the administration of their scheme into Consumer and Business Services (CBS) which is a division of the South Australian Attorney-General's Department. This is expected to deliver synergies with other divisions within the Department that operate licensing schemes and could lead to cost efficiencies.

Gangmasters and Labour Abuse Authority in the United Kingdom[104]
The GLAA operates a licensing scheme to regulate businesses who provide workers to the United Kingdom fresh produce sector.

An applicant for a new licence must pay an application fee and an inspection fee for inspection by a GLAA officer to make sure they meet the licensing standards. These fees are non-refundable whether the licence is granted or refused. Upon renewal an annual fee is payable but there is no charge for any additional inspections. Fees are calculated according to the gross annual turnover of the business in the licensed sector. This differs from the preferred option above, which reflects the total turnover of the business. Fees are set at less than 50% cost recovery.[105] The table below shows the different fee bands and associated costs.

Table 6.10: GLAA fee structure (in Australian dollars)[1]

Annual turnover	**Fee band**	**Application[1]**	**Inspection fee**
$17.6m or more	A	$4,576	$5,104
From $8.8m to less than $17.6m	B	$3,520	$4,224
From $1.76m to less than $8.8m	C	$2,112	$3,784
Less than $1.76m	D	$704	$3,256

Note: [1]Exchange rate as of 1 February 2018 is 1 British Pound equals 1.76 Australian Dollars.

[104] www.gla.gov.uk
[105] Annual Report 2015-16, p.49, http://www.gla.gov.uk/media/2834/gla-annual-report-and-accounts-2015-16-pdf.pdf.

7 Implementation plan

7.1 Introduction

The Act and the Regulations will have a major impact on the Victorian labour hire sector. This implementation plan outlines:

- **What** needs to be done?
- **When** will it be done?
- **Who** will be doing it?
- **Who** will monitor implementation including identifying and managing implementation risks?

7.2 What

Significant tasks associated with establishing the new licensing scheme include:

- Appointing the Licensing Commissioner;
- Determining the capability requirements of the Licensing Authority;
- Designing the organisational structure of the Licensing Authority;
- Recruiting and training staff for the Licensing Authority;
- Formulating, documenting and implementing operational policies and procedures for licensing, compliance and enforcement functions;
- Locating and leasing premises for the Licensing Authority;
- Developing and disseminating information and education material for labour hire businesses, workers and host employers;
- Designing and building an ICT system for licensing, compliance and enforcement functions;
- Designing and building a website with online application functionality; and
- Planning and executing a stakeholder management and communication plan to facilitate the delivery of the licensing scheme and the commencement of the Licensing Authority.

7.3 When

The commencement of the licensing scheme is anticipated to be in the first half of 2019. In addition to the anticipated appointment of the Commissioner in 2018, progressive implementation could occur through the launch of an information website later in 2018 with provision for labour hire businesses to subscribe to information updates. During the lead up to the Licensing Authority commencing operations in 2019, an information campaign will promote industry and public awareness of the new scheme.

7.4 Who

The Licensing Commissioner (appointed by the Governor in Council on the recommendation of the Minister for Industrial Relations) and the Department will each have roles and responsibilities for implementation. It is likely that the Department's project team would undertake tasks such as developing the organisational structure, position descriptions, accommodation arrangements, IT system build, and recruiting processes in consultation with the Licensing Commissioner.

The Licensing Commissioner and Licensing Authority key staff will be able to undertake implementation tasks, with the support of the project team, prior to the formal commencement of operations, such as formulating operational arrangements, training staff and planning the compliance and enforcement function.

The Department will be responsible for implementation of the licensing scheme, together with the Commissioner and other Authority staff when recruited.

7.5 Stakeholder communications and engagement plan

A stakeholder communications and engagement plan will be developed to identify the stakeholders in the implementation process, what their interests are likely to be, and how the stakeholder relationship may be managed. It will include a communications strategy to ensure that the labour hire industry is aware of the Act and Regulations, and provides information to assist organisations to comply with the new arrangements. This communications strategy is currently being prepared by the Department.

7.6 Risks

There are a number of implementation risks which have been considered both in terms of the likelihood of them occurring and the magnitude of their impact. A preliminary risk register has been developed and is summarised below. Likelihood and impact are ranked as low, medium or high, and high-level mitigation strategies have been identified.

Table 7.1: Risk register

Risk category	Risk	Likelihood	Impact	Mitigation strategies
Financial	Fees are not sufficient to recover costs.	High	Medium	Undertake review of fees at three years.
Governance	The governance structure provided is inadequate to support the licensing system.	High	Medium	Ensure strong planning occurs during the establishment phase of the Licensing Authority.
Governance	External governance between the Licensing Authority and Department is not adequate for interagency communication, cooperation, coordination and timely decision-making	Medium	Low	Ensure governance structure is developed collaboratively and agreed to by all parties. Ensure ongoing communication throughout implementation.
Governance	Lack of coordination at national level	High	Low	Engage with relevant State bodies as part of the implementation plan and consider arrangements needed to support mutual recognition.
Workforce	Difficult attracting the required number of suitably qualified staff in Bendigo location	High	High	Commence recruitment as early as possible.
Industrial relations / Workforce	Labour hire businesses and host employers (and labour hire workers indirectly) do not understand their respective legislative requirements	Medium	High	Ensure communications and stakeholder engagement plan is developed so that this can be provided to businesses and workers. Allow lee-way period during implementation.
Industrial relations/ workforce	There is a lack of buy-in from the labour hire business sector to adhere to licensing scheme.	Medium	High	Ensure strong communication and engagement in lead up to and subsequent to commencement of licensing scheme. Enforcement mechanisms will need to be a realistic threat to encourage uptake.

Risk category	Risk	Likelihood	Impact	Mitigation strategies
Stakeholder communication	Organisations do not understand licence applications, leading to high non-compliance	Medium	High	Early planning is critical. Identify key types of organisation that are likely to be difficult to identify and contact: strategies could include large-scale advertising, including via regional newspapers and industry groups such as the Victorian Farmers Federation.
Market / demand	Demand for licences and queries higher than expected. Demand for services changes, with increasing reliance on online platforms to match services and undercut prices as they would be exempt from labour hire regulation.	Medium	Medium	Constant review and feedback on demand during commencement period. Ensure 5-year evaluation considers any unintended consequences, including on the labour hire market.
Timing	Delay in establishing the Licensing Authority prevents implementation of the legislation	Medium	Medium	Develop phased approach to implementation, communicate early, and have a contingency plan.

8 Evaluation Strategy

8.1 Purpose

The purpose of the evaluation strategy is to put in place mechanisms that will enable the Government to assess the efficiency and effectiveness of the Act and Regulations as needed, and to drive continuous improvement in regulatory arrangements over time.

8.2 Key elements of an evaluation strategy

The key elements of the evaluation strategy are:

- **What** will be evaluated?
- **How** it will be done?
- **Who** will do it?
- **When** will it be done?

8.3 What

The Department proposes to review the Act as required undersection 113 of the Act:

4. The Minister must review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
5. The review is to be undertaken as soon as possible after the period of 5 years after the day on which the Act receives the Royal Assent.
6. The Minister must cause a report on the outcome of the review to be laid before each House of Parliament as soon as practicable after the review is completed.

This review of the Act also provides the opportunity to evaluate the Regulations, as needed or as a consequence of the Act review.

8.4 How

The evaluation of the Act is expected to focus on the extent to which the licensing scheme has performed against the key objectives of the Act:

- To protect workers from being exploited by providers of labour hire services and hosts; and
- To improve the transparency and integrity of the labour hire industry.

It is expected that formal terms of reference will be defined in the fourth year following commencement of the Act.

Quantitative and/or qualitative methods for the evaluation will need to be determined and key information will need to be collected (e.g. relevant indicators and types of evidence) in order to assess the extent to which outputs or outcomes have been achieved. It is too early at this stage to determine the evaluation methods to be used, as in-depth planning supported by a detailed understanding of data availability will need to occur.

However, the Licensing Authority will be required to consider the types of data that will need to be collected as soon as possible after commencement of the licensing scheme. The key challenge is identifying existing data sets or developing new data sets that can be used to measure the level of exploitation being experienced by labour hire workers. The preferred approach for reviewing the effectiveness of the legislation and Regulations is to have quantitative *outcome data* available, however no such comprehensive data set currently exists and it is challenging to determine how such data would be developed. Reflecting this, in the first year of commencement of the licensing scheme, the Licensing Authority will investigate potential data sets, including the approach to evaluating outcomes adopted by agencies such as WorkSafe Victoria and the FWO who have similar roles.

In the absence of quantitative outcome data being available, the Licensing Authority will support its evaluation by conducting consultations with key industry stakeholders and organisations to elicit qualitative information regarding the effectiveness of the licensing scheme.

In addition, *output data* will be used to support the evaluation. Output data can be used as a proxy for measuring the effectiveness of the licensing scheme with key information including:

- Number of businesses licensed, by type and by industry, and how licensee numbers have changed over time
- Number of licence applications received, granted and rejected
- Number and nature of any complaints or objections to licensing decisions
- Number of workers, by type and by industry
- Time to process an application
- Customer initiated measures of activity e.g.:
  - no. of resolved requests for assistance
  - no. of calls answered
  - no. of online enquires answered
  - no. of website visits
- Licensing Authority initiated activities, such as number of audits and investigations leading to compliance/enforcement actions such as suspension or cancellation of licence or financial penalties issued
- Information regarding the cost of regulation.

This data will be collected by the Licensing Authority and reported on an annual basis.

Data will ideally be collected both at an aggregate level and by industry.

As part of the five year review, the Licensing Authority will also compare outcomes/outputs in Victoria with those in Queensland and South Australia, in order to identify opportunities for improvement in the licensing scheme.

8.5 Who

Various stakeholders will have input into the evaluation of the Act, and Regulations as needed. This includes:

1. **The Department –** will have overall responsibility for evaluation and reporting to the Minister on the effectiveness of the Act.

2. **Licensing Authority** – will complete the data analysis and provide this to the Department. Will also be responsible for ongoing monitoring, reporting and data collection on key indicators.

3. **Third party regulators –** this comprises other regulatory bodies including the FWO and Australian Taxation Office. Information is likely to comprise additional complementary compliance activities that will provide insight into any changes in industry behaviour over time.

4. **Stakeholder feedback –** this would comprise both stakeholder feedback provided to the Licensing Authority in the form of complaints or objections to licensing decisions and through face-to-face or phone consultations.

8.6 When

As noted, a formal review of Act will occur after five years. The Licensing Authority will also review fee arrangements three years after enactment, in order to assess:

- Whether the fees are achieving cost-recovery, both at an overall level and for individual charges
- The impact of fees on industry participants

9 Consultation

9.1 Prior to this RIS

Both the Forsyth Inquiry and the Act have involved extensive consultations. For the Inquiry, this includes:

- 695 primary submissions; 91 from organisations and 604 from individuals;
- 221 individual witnesses during 113 hearing sessions;
- Informal consultations; and
- 17 responses to direct requests for information.

In the development of the Act, the following consultations included:

- Consumer Affairs Victoria;
- Professor Anthony Forsyth;
- Queensland Treasury (Office of Industrial Relations)
- RCSA;
- Victorian Chamber of Commerce and Industry;
- Victorian Trades Hall Council (including input from the National Union of Workers, Health Services Union, National Tertiary Education Union, Australian Meat Industry Employees' Union, Bendigo Trades Hall Council and Unions Ballarat Trades Hall).

9.2 For the purposes of this RIS

Three consultations occurred to inform this RIS, including:

- Union groups (Victorian Trades Hall Council, United Voice and National Union of Workers)
- RCSA; and
- Ai Group.

Appendix A: Labour Hire Licensing Act

This section discusses key provisions of the Act.

Definition of 'provides labour hire services' in the Act
Under section 7(1) of the Act, a person is a provider of labour hire services if:

- in the course of conducting a business, the provider supplies one or more individuals to another person (a host) to perform work in and as part of a business or undertaking of the host; and
- the individuals are workers for the provider (within the meaning of worker as defined in section 9(1) of the Act).

Section 8(1) of the Act also includes within the meaning of 'provides labour hire services' circumstances where a person:

- in the course of conducting a business of providing recruitment or placement services, recruits one or more individuals for, or places one or more individuals with a host to perform work in and as part of a business or undertaking of the host, and the provider also procures or provides accommodation for the individuals performing the work for some or all of the period during which the individuals perform the work.

In addition, section 8(2) of the Act also includes within the meaning of 'provides labour hire services' circumstances where a person (a provider):

- in the course of providing contractor management services, recruits one or more individuals for, or places one or more individuals with a host to perform work in and as part of a business or undertaking of the host.

Under the Act, the provider may provide labour hire services to a host regardless of the following:

- whether a contract has been entered into between the provider and the host;
- whether the individuals supplied by the provider are supplied:
  - directly; or
  - indirectly through one or more intermediaries;
- whether the work performed is under the control of the provider or the host.

Overview of the licensing system
This section describes some of the key features of the licensing system as set out in Part 3 of the Act.

Under section 17, a person may apply to the Licensing Authority (see below for a description of the Licensing Authority) for a licence authorising the person to provide labour hire services. This section of the Act also outlines some of the requirements for an application, which are intended to help to ensure that the Licensing Authority receives appropriate information in order to administer the scheme for granting licences under this Act. These matters include:

- The information to be included in an application;
- Requirements related to nominated officers for the licence;
- The declarations necessary to accompany the application;
- The consents necessary to accompany the application;
- Information related to the application fee to accompany the application;

- Specific matters relating to applications where 2 or more natural persons intend jointly to operate a business that provides labour hire services; and
- Matters which the Licensing Authority must publish on the Licensing Authority's Internet site upon receiving an application.

More specifically, some of the key requirements include:

- The application must include the full name, position description and contact details of the prescribed number of nominated officers for the licence, each of whom must:
  b) be a natural person who is responsible for the day-to-day conducting of the business to which the licence relates; and
  c) satisfy any requirements prescribed by the regulations.
- Declarations that must accompany the application include the following:
  - a declaration by the applicant or, if the applicant is a body corporate, an officer of the body corporate, that, to the applicant's or officer's knowledge, each relevant person in relation to the application is a fit and proper person at the time of the application, within the meaning of section 22;
  - a declaration of compliance with legal obligations, as required by section 23.
  - A relevant person, in relation to an application for or in respect of a licence, or in relation to a licence that is in force, as the case requires, means the following persons:
    a) the applicant, or the holder of the licence, as the case requires;
    b) if the applicant, or the holder of the licence, is a body corporate, each officer of the body corporate;
    c) if the applicant, or the holder of the licence, is a natural person, each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business conducted by the natural person that provides or is to provide labour hire services;
    d) each proposed nominated officer, or nominated officer, for the licence.

Section 19 outlines information that is required for applications under section 17 for a licence. This includes the number of workers supplied by the applicant to hosts during the 12-month period before the date of the application, and the information prescribed by the Regulations in relation to those workers, the industrial instruments that determined the terms and conditions of employment or engagement of the workers, whether those workers held temporary work visas (and if so, the number of workers and kinds of visas held), and the industries in relation to which the applicant is providing labour hire services and intends to provide labour hire services.

Section 22 provides that a person will be a fit and proper person, at a particular time, unless any of the specified matters set out in the section apply.

Clause 23 requires compliance with certain legal obligations. If an application for a licence or renewal of a licence is made by an applicant who, at the time of making the application, is conducting a business that provides labour hire services, the applicant must include with the application a declaration that, to the applicant's knowledge, the applicant complies with the various laws that are set out so far as they relate to the business to which the licence relates. Examples of such laws include workplace, taxation and occupational health and safety laws.

Clause 26 establishes the period that licences will remain in force, which is until the expiry date specified in the licence (and that date must not be later than 3 years after the day on which the licence comes into force) or if the licence is cancelled or otherwise ceases to be in force before the expiry date, until the licence is cancelled or otherwise ceases to be in force. Section 28 sets out the requirements for an application for renewal of the licence.

Clause 32 provides for objections to licence applications to be made by interested persons.

Clause 33 provides the Licensing Authority with the flexibility to grant a licence but to manage associated risks by imposing one or more conditions. Potential conditions are conditions directed at ensuring that labour hire services provided under the licence are provided in accordance with all relevant legal obligations, conditions relating to the provision of information to the Licensing

Authority as and when required, conditions requiring the holder of the licence to allow the Licensing Authority or inspectors, at stated reasonable intervals, to inspect premises at which the holder of the licence conducts the business to which the licence relates.

Clause 35 specifies that it is condition of a licence that the holder of the licence must pay to the Licensing Authority the prescribed annual licence fee (if any).

Labour Hire Licensing Authority
Clause 50 of the Act establishes the Authority responsible for the licensing scheme. The Licensing Authority has the following functions (section 51):

a) to administer the scheme for granting licences under the Act and related matters;
b) to promote, monitor and enforce compliance with the Act and the regulations;
c) to investigate compliance with the Act and the regulations;
d) to maintain the Register of Licensed Labour Hire Providers;
e) to develop and publish Codes of Practice in relation to the Act;
f) to provide advice and to report to the Minister on a Code of Practice or any other matter referred to the Licensing Authority by the Minister (within the time specified by the Minister);
g) to engage in, promote and coordinate the sharing of information with other government agencies and bodies, including agencies and bodies of the government of the Commonwealth or another State or a Territory, to achieve the objects of the Act;
h) to conduct, procure and support research into the labour hire industry;
i) to disseminate information about the duties, rights and obligations of persons under the Act and the regulations;
j) to establish advisory committees to provide advice or information to the Licensing Authority regarding the performance of its functions;
k) any other function conferred on the Licensing Authority by the Act or any other Act.

The Authority has all the powers that are necessary or convenient to perform its functions under the Act or any other Act.

Labour Hire Licensing Commissioner
Clause 55 of the Act provides for the appointment of a person to be the Labour Hire Licensing Commissioner (the Licensing Commissioner). The Licensing Commissioner has the following functions (section 60):

1. The Commissioner has all the functions and powers of the Licensing Authority.
2. All acts and things done by the Commissioner in the name of or on behalf of the Licensing Authority are taken to have been done by the Licensing Authority.

Other key features of the Act
Other key features of the Act are:

- Under section 43, during the term of the licence, the licence holder is obligated to notify the Licensing Authority of certain changes to information or declarations within 30 days.
- Under section 48, the Licensing Authority must establish and maintain a register to be called the Register of Licensed Labour Hire Providers. Under section 49 the Licensing Authority may publish prescribed information such as withdrawn, refused or suspended applicants and information about enforcement actions. One example of such information is the name and business name of an applicant for a licence, if the application is refused or withdrawn.
- Part 5 of the Act deals with inspectors and enforcement. The Licensing Authority may authorise an eligible person to be an inspector. Inspectors will have identity cards. Inspectors will be subject to the Licensing Authority's directions but will have powers in regard to inspection of documents and records, entry, search and seizure and in relation to other matters, such as the ability to issue infringement notices for prescribed offences.
- Section 102 provides for application for review of certain decisions by the Victorian Civil and Administrative Tribunal. Applications for review may be made by an 'eligible applicant', defined to mean, in the case of a decision relating to an application for a licence or renewal of a licence, the applicant for the licence or renewal of the licence or an interested person who

made an objection to the application. In the case of any other decision relating to a licence, the eligible applicant will be the holder of the licence.

Non-compliance

The Act has multiple methods of addressing non-compliance. This includes imposing conditions on a licence, issuing a notice to comply and suspending and cancelling a licence during its term. It also includes infringement notices, civil penalties and criminal offences. Contraventions such as operating without a licence, using an unlicensed provider and entering into avoidance arrangements are civil penalty provisions. Providing false or misleading information is an example of a criminal offence.

Appendix B: Mutual recognition schemes

This Appendix provides information about the historical context of mutual recognition in Australia, and reviews existing licensing schemes to assess the different approaches to mutual recognition currently in operation in different industries.

Benefits of mutual recognition

The Productivity Commission notes that there are many benefits of mutual recognition. They include:

- A reduction in firms' compliance costs and workers' registration costs (efficiency gains);
- Closer economic integration drives competition among firms;
- Improved product choice;
- Greater regulatory competition between jurisdictions; and
- Improved cooperation between jurisdictions.[106]

There are also potential costs of mutual recognition that should be considered, including:

- Jurisdictions may have less scope to tailor regulations to reflect local conditions and preferences;
- Joint decision-making procedures associated with the mutual recognition schemes can make it more difficult to implement regulatory reforms within a given jurisdiction;
- Firms and workers may have an incentive to engage in jurisdiction 'shopping and hopping' — the practice of using the jurisdiction with the easiest or cheapest standards to enter markets in other jurisdictions — that reduces the quality and/or safety of goods and services supplied;
- To benefit from mutual recognition, firms and workers will have to incur the cost of becoming informed about the relevant procedures, and complying with them;
- Governments will incur additional administration costs, such as to fund coordinating bodies, and to implement and oversee mutual recognition procedures; and
- Regulators may not implement mutual recognition arrangements appropriately.[107]

The Intergovernmental Agreement on Mutual Recognition

In May 1992 the Australian, State and Territory Governments signed the Intergovernmental Agreement on Mutual Recognition, which committed the parties to:

> *… establish a scheme for implementation of mutual recognition principles for goods and occupations for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia. (COAG 1992, p. 1).*

As noted by the Productivity Commission, the participating governments accepted that they sought similar outcomes from regulations on the sale of goods and the registration of occupations, and so mutually recognising compliance with each other's laws would not raise significant concerns. Moreover, adopting mutual recognition was seen to address regulatory differences much more promptly, and across a far wider range of goods and occupations, than could be expected from attempting to negotiate uniform laws.[108]

The Mutual Recognition Agreement sets out the principles whereby Commonwealth legislation, the *Mutual Recognition Act 1992* (Cth) (the MR Act), implements the domestic arrangement between the Commonwealth and state and territory governments of Australia. The purpose of the MR Act is

[106] Productivity Commission. (2015). *Mutual Recognition Schemes*, Research Report, Canberra, p.4.
[107] Ibid, p.51.
[108] Productivity Commission. (2015). *Mutual Recognition Schemes*, Research Report, Canberra, p.3.

to promote the goal of freedom of movement of goods and service providers in a national market in Australia. The MR Act relates to how:

- Goods that can be lawfully sold in one Australian jurisdiction are sold in other Australian jurisdictions without having to meet additional requirements; and
- People registered to practise an occupation in one Australian jurisdiction are entitled to practise an equivalent occupation in other Australian jurisdictions.

Part three of the MR Act deals with mutual recognition as it applies to occupations. The MR Act entitles individuals registered to practise an occupation in one state or territory (the 'first state') the ability to practise an equivalent occupation in another state or territory (the 'second state'). The MR Act sets out the process by which an individual would become registered in another state under mutual recognition and establishes the 'equivalent' occupation principles. By 'equivalent' occupations, the MR Act focuses on registrations where the activities to be carried out are substantially the same. The MR Act covers all occupations that require some form of registration, licensing or other form of authorisation to be able to legally practise the occupation.

Examples of mutual recognition in licensing of occupations

The table below outlines licensing processes for a range of different regulated occupations and industries in Victoria. Notably the Gaming industry employee licence (Victorian Commission for Gambling and Liquor Regulation) and the Motor car trading licence (Consumer Affairs Victoria) do not have some form of mutual recognition arrangement in place.

All schemes require details and evidence of interstate registration to be provided (consistent with the MR Act). In most cases the mutual recognition scheme also requires the interstate applicant to provide the same information as is requested from local applicants, although there are exemptions as follows:

- Educational qualifications/training and employment history (for builders and real estate agents);
- References (for builders and private security personnel); and
- Completion of a medical assessment (for driver accreditation and private security personnel).

Interstate applicants are in some cases required to apply for mutual recognition using a different form from the one that local applicants are required to use.

In all cases that we reviewed, the fee charged for applicants applying for mutual recognition is the same as the fee charged to local applicants.

In summary, the typical approach across the schemes reviewed is an application process that is slightly streamlined through reduced information requirements, but which charges all applicants the same application/licensing fee.

Table B1: Licensing processes for different regulated occupations and industries in Victoria

Occupation /Industry	Registration/ licensing authority	1: Does registration/licensing in another state automatically grant you registration/licence in VIC?	2: If not automatically granted, do you still need to go through the full process?	2: If not automatically granted, is the fee that same/ do you still need to pay the full fee?	3: If no, how does the process differ under the mutual recognition arrangements?	Source
Builders (building inspectors, commercial/domestic builders, draftspersons, engineers, demolishers, etc.)	Victorian Building Authority	No. The applicant must complete a separate mutual recognition application	No	Yes, however the fee may be lower if applying for mutual recognition across multiple licences at the same time.	The application requires the applicant to supply evidence of the interstate licence. Unlike other applicants, the application does not require that the applicant outlines qualifications/training, employment history, experience statement, or provide a technical referee report	Application form for Building inspector registration and Mutual Recognition application form
Real-estate agents (individual)	Consumer Affairs Victoria	No. Must complete an application for a licence online and select that you already have a licence interstate	No	Yes	The applicant must provide evidence of interstate licence, but does not need to provide details about their academic	Consumer Affairs Victoria

					qualifications or provide a copy of their qualifications, and employment history	
Driver accreditation (includes taxi drivers, hire cars, commercial vehicles, bus, etc)	Commercial Passenger Vehicles Victoria	No	No	Yes	Applicant does not need to do a medical assessment, but on an additional form need to provide details/copy of a current interstate commercial passenger vehicle driver authority and a copy of traffic offence history in the other jurisdiction.	Commercial Passenger Vehicles Victoria
Gaming industry employee licence	Victorian Commission for Gambling and Liquor Regulation	No – no mutual recognition arrangement in place	n/a	n/a	n/a	Victorian Commission for Gambling and Liquor Regulation
Motor car trading licence	Consumer Affairs Victoria	No – no mutual recognition arrangement in place	n/a	n/a	n/a	Consumer Affairs Victoria
Private security licence	Victoria Police Licensing and Regulation Division	No	No	Yes	Applicants need to complete a different 'mutual recognition' application that is similar to the	Victoria Police

			original application, and need to provide a copy of interstate registration/licence. Applicants do not need to demonstrate competency for working in the security industry, provide references or demonstrate medical fitness to be employed in the industry.

Appendix C: Development of fee tiers for Option 3

If a tiered fee structure is used, a choice needs to be made about the basis on which the tiers are set. There are a range of factors that could be considered when setting fees, such as:

- The complexity of process required to review and approve an application;
- The level of regulatory supervision required in relation to a particular licence holder;
- The sector of the labour hire service provider, for example whether the provider is from a sector with a high or low risk of labour exploitation; or
- Specific attributes of a labour hire provider, such as turnover, number of labour hire employees, the level of payroll tax paid, the level of wages paid, WorkCover premium paid etc.

Principles

The Cost Recovery Guidelines discuss a number of considerations that need to be taken into account when structuring the cost recovery charges. These are:

- Importance of smoothing fluctuations: under and over recovery of costs: fluctuating and unpredictable cost recovery charges from year to year can create uncertainty, which is not a conducive environment for planning or investment.
- Would the charge stifle investment, competition or innovation (impact of small business and competition)? In some cases, charges could prohibit certain types of business from entering the market or discourage new products from being introduced.
- Avoiding cross subsidisation/equity: cross-subsidies occur when one group of users pay for more than the costs of the services they receive, and the 'surplus' is used to offset the cost of services provided to other users.
- Simplicity: fees are simple to understand and implement and administer. Opportunities to 'game' the system to avoid or reduce fees should be minimised.

In relation to this latter point, we have considered the principle of reliability, which we define as meaning the quality of information which exists when that information can be depended upon to represent faithfully, and without bias or undue error, the transactions or events that either it purports to represent or could reasonably be expected to represent. This is based on the Accounting Standards Review Board's definition of reliability.[109]

Reliability is an important principle to assess because of the potential for businesses to misrepresent some types of business or financial information for the purpose of paying a lower fee.

Analysis of fee tier options

Fee tier options are assessed in the table below. We have not explicitly assessed the principle "Importance of smoothing fluctuations" because this can be addressed for all options by using information over a period longer than just one year.

The preferred option is a tiered structure based on annual business turnover. The strength of this approach is that it is based on reliable data which businesses must report in their Business Activity Statements to the Australian Taxation Office. There is also access to the data that is required to calculate estimated fees for each category (based on survey work undertaken for the Legislative Impact Assessment). Under this option, businesses with higher turnover pay higher fees, which means a lower regulatory burden for smaller businesses looking to continue operating or enter the industry. The main disadvantage of this option is that there is no evidence to demonstrate that turnover is an attribute that is directly related to the regulatory costs imposed by a business,

[109] Public Sector Accounting Standards Board of the Australian Accounting Research Foundation and the Accounting Standards Review Board, *Qualitative Characteristics of Financial Information*, http://www.aasb.gov.au/admin/file/content102/c3/SAC3_8-90_2001V.pdf.

which means that the option might not sufficiently target the fees to those industry participants that impose the costs.

The advantage of an option that would set fee tiers on the basis of wages paid (as calculated for payroll tax purposes) is that wages are more likely to be linked to the employment activities of a business than turnover, although it still might not reflect regulatory costs imposed by a business - a business with a large number of employees but only a small number of labour hire employees would pay a higher fee. The main disadvantage of this option is that data are not currently available to enable the calculation of tiers i.e. information about the wages by businesses undertaking labour hire activities. This is necessary for calculating how many businesses will fit into each tier. While information on gross wages could be requested from WorkSafe Victoria or the State Revenue Office, a lack of information about businesses that will be licensed means that accurate data would still be limited. Hence this option has not been considered in this RIS, although over time with more data available on licence holders this option might become feasible.

Table C.1: Assessment of options for a tiered fee

Attribute	Investment, competition or innovation	Cost-reflectivity	Simplicity	Reliability
Number of employees	Small firms and new firms looking to enter the market, will be on the lowest fee tier and less likely face undue regulatory burden.	If there is a link between the cost of regulation and the number of labour hire employees, which is considered likely, this approach reduces the possibility of unduly high fees for those businesses that have more employees (compared to a single fee structure). However, businesses where non-labour hire comprises a large proportion of the employee group may subsidise other businesses.	Businesses are required under section 19 of the Act to provide data on the number of workers supplied by the applicant to hosts during the 12-month period before the date of the application, and the information prescribed by the regulations in relation to those workers. However, no information is available on this currently, which makes it difficult to estimate fees on this basis.	Businesses will be required to provide this information, although we consider that this information might be less reliable than information such as turnover calculated for the Business Activity Statement. Reliability of data may improve over time.
Number of labour hire employees	As above.	This option would potentially more strongly align fee recovery to costs imposed by different businesses.	As above for number of employees.	The Department is not aware of any other government requirements for businesses to provide this information, therefore reliability and verification of information might be a concern. Categorisation of labour hire workers versus other types of workers will be of particular concern.
Turnover, which is the ordinary income derived in the income year	As above.	Turnover is a much broader indicator than number of employees and may be less	There is a simple, established definition for federal taxation purposes that applies to all	This is a reliable source that can be verified.

in the ordinary course of carrying on a business		relevant to the costs of labour hire regulation. There may be cases of high turnover businesses that have only a few labour hire businesses and create few regulatory costs. However, the extent of this issue is not known due to lack of data about the firms that will become licensed.	businesses. Businesses must calculate turnover for their Business Activity Statements (BAS). A practical consideration is how businesses will provide the data, for example in the form of a copy of their BAS and for what historical period. Data collected from a survey conducted by Jaguar Consulting and the Department is available to inform the modelling for estimation of fees.	
Turnover from labour hire part of business	As above.	This is a more targeted attribute than total turnover, which in theory would be more cost-reflective.	It might be difficult for businesses to identify the turnover related to labour hire activities.	As above, except it might be difficult to verify the part of the turnover that is derived from labour hire activities.
WorkSafe Victoria premium	As per the impacts of equity, this is difficult to assess without further information. Might deter businesses in high risk industries if they are charged at a higher rate.	This might discriminate against businesses in high risk industries. Businesses with remuneration higher than $0.2m would also pay a higher premium if they perform worse than the industry average. We are not aware of any evidence to show a link between businesses with higher than average Work WorkSafe Victoria Safe claims and exploitative practices in the labour hire industry. It is difficult to understand, without having access to premium data, which businesses pay higher	From a stakeholder perception point of view this approach may seem more complicated / less easy to understand / explain the reasoning for than other measures. It may appear to be less transparent in regards to who is required to pay what.. A practical consideration for this is whether a data sharing agreement could be established with WorkSafe Victoria. This would lead to significant administrative cost reductions.	This is a reliable source that can be verified.

		premiums and which pay lower premiums. Premiums are based on rateable remuneration, industry risk ratings and history of claims for each business with remuneration higher than $0.2m.	No information is available on this currently, which makes it difficult to estimate fees on this basis.	
Wages paid – as calculated for payroll tax purposes. It should be noted that the employment agency provisions in Division 8 of Part 3 of the Payroll Tax Act apply to labour hire arrangement, which means that labour hire arrangements are subject to payroll tax.	Small firms and new firms looking to enter the market, will be on the lowest fee tier and less likely face undue regulatory burden.	Might unduly penalise businesses with relatively highly paid employees – which are typically not where the exploitation occurs. It is difficult to determine how significant an issue this is because there is inadequate information available about the characteristics of labour hire providers, for example how many businesses with diverse operations including non-labour hire activities will need to be licensed.	There is a simple, established definition of wages paid for the purpose of payroll tax. Businesses must lodge monthly return showing wages paid must be lodged with the State Revenue Office (SRO). An issue of implementation is that, for calculation of tiers, we do not have information about the wages paid of businesses undertaking labour hire activities. This is necessary for calculating how many businesses will fit into each tier. A practical consideration for this is whether a data sharing agreement could be established with the SRO. This would lead to significant administrative cost reductions.	This is a reliable source that can be verified.
Payroll tax paid	Small firms and new firms looking to enter the market, will be on the lowest fee tier and less likely face undue regulatory burden.	Again, this might discriminate against businesses with highly paid employees.	Because payroll tax paid involves a calculation based on different rates and includes discounts, this is a less simple approach and less transparent approach than using the wages paid measure.	This is a reliable source that can be verified.

Appendix D: Summary table of fee analysis

	Cost-reflectivity	Equity	Certainty	Administrative costs	Competition and small business
Base Case: no fees (zero cost recovery)	This option does not reflect costs at all. 0	This has poor equity outcome because all of the costs of regulation of labour hire businesses would be funded by all taxpayers via consolidated revenue. 0	Businesses have complete certainty about what they will pay – nothing. 0	There are no administrative costs under the base case. 0	There are no barriers to entry under the base case. 0
Option 1: Licence fee only	More cost reflective than the base case. The calculated fees are based on a 10-year average of what perfectly cost-reflective fees would be. There will be some years where fees do not cover costs, and other years where fees more than cover costs. +10	This is more equitable than the base case, although successful applicants must cover the cost of unsuccessful applicants and fee is the same for all businesses regardless of the costs that different firms may impose. +2	Fee certainty exists, although fees may change from year to year due to inflation. -2	There would be some administrative costs under the base case, however it is a simple flat fee so costs are not significant. -3	The introduction of a fee acts as a barrier to entry. Further, the fee is the same for small firms as it is for large firms, making it a larger barrier to entry for new entrants than if the fee were based on firm size. -4
Option 2: Separate application and licence fee	Slightly lower score than Option 1 because collection of the licence fee depends on a licence being granted. +9	More equitable than Option 1 because successful applicants are no longer subsidising unsuccessful applicants. However, does not account for the possibility that larger firms may impose greater regulatory costs compared to smaller firms, although uncertainty in relation to this is noted. Slightly better than option 1. +4	Same as option 1. -2	Given this option requires the administration of both an application and separate licence fee, this is assessed lower than option 1. -6	Unlike option 1, this option results in a slightly smaller overall fee for new successful applicants who do not have to pay for the costs of assessing unsuccessful applications. -2

	Cost-reflectivity	Equity	Certainty	Administrative costs	Competition and small business
Option 2a: Separate application and licence fee with 3-year term	This is assessed the same as option 2. +9	Same as option 2. +4	More certainty than Options 1 and 2 because lience fee is paid every 3 years rather than annually. -1	Less administrative costs than option 2 given applications only need to be made every 3 years. -4	Having to apply only every three years results in a larger application fee, resulting in a larger barrier to entry compared to Option 2. -3
Option 3: Separate application and licence fees with 3 separate tiers	Slightly lower score than options 2 and 2a because of the uncertainty around some forecasting assumptions, such as how many businesses will fit into each tier level. +8	Unlike the other options, it does allow for larger businesses that impose a greater cost burden to be charged a greater fee (although noting uncertainty in regard to this), and takes account of ability-to-pay, making it an improvement over the other options. +8	Less certainty than other options because fees based on tiers. -4	The tiered application and licensing fee based on turnover is more complicated to administer than any of the other options. May encourage 'gaming' by labour hire firms in order to reduce their fees. -8	This option has the smallest application and licence fee for the smallest firms, thereby providing the smallest barrier to entry and competition. -1
Option 3a: Separate application and licence fees with 3 separate tiers with 3-year application process	This is assessed the same as option 3 +8	Same as option 3. +8	Similar to Option 3 but slightly more certain because lience fee is paid every 3 years rather than annually. -3	Less complicated to administer than Option 3 given frims only need to apply every 3 years. -5	Having to apply only every three years results in a larger application fee, resulting in a larger barrier to entry compared to Option 3. -2

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