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http://hdl.handle.net/10536/DRO/DU:30042119

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Beyond statutory enforcement – alternative approaches to improving OSH in the temporary agency sector

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Abstract

As with other types of flexible employment, a growing body of international research has found an association between temporary agency work and comparatively poor occupational safety and health outcomes. Temporary agency work has also been found to pose a serious challenge to regulatory regimes, including the activities of inspectors. Government agencies have responded to these challenges in a number of ways. This study examines a project undertaken in the Australian state of Queensland that sought to identify both particular problems and ways of resolving them. The focus of the project was to identify ‘non-regulatory’ solutions based on information collected through focus groups of agency and host employer representatives. However, while a number of policy interventions were identified that fitted this approach, the project also found that both agency firms and hosts believed additional regulatory controls were required. This paper assesses these findings in the context of broader research and policy debates about how to deal with the occupational safety and health problems posed by the global shift to more flexible work arrangements.

Key words

Occupational safety and health, regulation, temporary agency workers, triangular employment relationship

Introduction

Over the past decade, a large body of international research has linked downsizing/job insecurity and the growth of flexible work arrangements – including the use of self-employed subcontract workers and temporary employees – to poorer occupational safety and health (OSH) outcomes.1-8 A smaller but growing body of research also indicates these changes to work organisation have weakened regulatory regimes in the areas of risk prevention and workers’ compensation, and placed additional logistical challenges on labour/OSH inspectorates.9-11 Research into temporary workers hired through an agency rather than directly by the host employer – variously known as temporary agency workers, leased workers or labour hire workers – has produced similar findings. For example, studies have found temporary agency workers face a heightened risk of injury relative to direct hire employees,12,13 and the triangular employment relationship (worker, agency, host employer) has tended to undermine the effectiveness of regulatory control.14-15

Understanding how these types of work arrangement undermine OSH is still the subject of investigation,8 yet is critical to designing and implementing effective policy interventions. In reviewing research, Quinlan & Bohle1 have suggested that precarious workers experience more inferior OSH outcomes, compared to those with more stable employment, due to the combination of economic and reward pressures (which causes compromises or corner-cutting
on health and safety), disorganisation (such as inexperience, and poor communication, supervision and training regimes) and regulatory failure (in terms of coverage, enforcement and the ability of these workers to raise OSH concerns). Again, research suggests these risk factors are applicable to temporary agency work.\textsuperscript{16} The focus of this paper is on ameliorating the third of these risk factors, namely regulatory failure.

The discussion begins with an overview of the ways in which regulatory failure has been associated with temporary agency employment in Australia. The methodology for the project is then outlined, followed by analysis of the data drawn from focus groups of agency employers and hosts. We first present their views on factors regarded as discouraging compliance with statutory obligations, followed by an account of practices which they viewed as contributing to compliance and subsequently better OSH outcomes. Our discussion then identifies ways in which OSH outcomes and regulatory compliance can be improved by regulators, including encouraging a shift among hosts’ and agencies’ operational practices. Finally, the paper makes some observations on the policy dilemmas posed by agency work, which are symptomatic of those that apply to ‘flexible’ work arrangements more generally.

Regulatory failure and agency employment in Australia
Regulatory failure has been identified in a number of studies involving contingent workers in Australia.\textsuperscript{9,14,15} It encompasses:

- gaps in regulatory coverage of workers/workplaces
- contingent workers’ poor knowledge of legal rights and obligations, as well as their limited access to OSH and workers’ compensation rights
- a greater prevalence of fractured or disputed legal obligations in workplaces with multiple employers
- non-compliance coupled with regulator oversight, which is often an outcome of insufficient resources.

These issues are outlined further in order to contextualise the discussion that follows.

In Australia, separate state, territory and federal statutes govern OSH. Notwithstanding differences in general duty provisions (and some limitations) under these Acts, agency employers and hosts bear OSH responsibilities for agency workers, with both required to ensure that agency workers’ work environments are safe and healthy. The Queensland Workplace Health and Safety Act 1995 has been especially innovative in this regard. Under s28(1), primary duties are imposed on ‘persons in charge of a business or undertaking’ (covering employers, contractors, temporary agencies and a wide range of other parties). These duties are owed to workers (not simply employees), thereby clearly including temporary agency workers. The national model Work Health and Safety Bill has adopted and, indeed, extended this approach (see paper by Richard Johnstone in this issue).

As both case law and the guidance material produced in jurisdictions such as Victoria makes clear, to meet their obligations agency employers must ensure their workers have sufficient training to perform tasks safely, conduct pre-placement risk assessments at host workplaces, assess and monitor hosts’ OSH management systems, and develop agreements with hosts on the allocation of shared responsibilities.\textsuperscript{17–18} In this way, agency employers ensure hosts’ workplaces are safe at the time of placement, and on an ongoing basis. Hosts’ obligations towards agency workers are akin to those owed to their own employees. They must provide training and supervision to enable the safe performance of tasks, conduct risk assessments, monitor working
conditions to ensure new OSH risks are not introduced, and advise the agency employer should a change of job tasks arise for agency employees. These obligations reflect, in part, the extent to which agency workers’ OSH is contingent on the constant involvement of the host. While these overlapping responsibilities might be expected to offer substantial protection to agency workers, gaps typically arise. A review by Johnstone & Quinnlan identified five sources of regulatory weakness in relation to agency workers. The first concerned constraints on agency workers participating in OSH consultative and representative processes. Legislation designed to enable employee participation often inadvertently excludes temporary agency workers from host OSH consultative processes because they are not employees of the host; and their employment insecurity undermines consultation with their own employer. The second weakness was the operationalisation of shared responsibility, with the overlap creating confusion and encouraging blame-shifting between the parties. Agency employers have also pointed to the practical impediments to managing the OSH of a workforce located across multiple host workplaces, so that gaps arise in the provision of OSH and on-the-job training, as well as pre-placement risk assessments. Consistent with this, Underhill found training by agencies and hosts, when provided, was often poor, while Brennan et al.’s survey of agency employers found 16 per cent did not assess the clients’ OSH management systems before placing workers; and 23 per cent never or rarely provided safety induction (what would be labelled ‘orientation’ in North America). They also found that host employers contributed to these problems: 62 per cent of agencies claimed a host had either impeded access to workplace premises or prevented OSH assessment documentation from being obtained. The third challenge identified by Johnstone & Quinnlan arises from the high turnover of small agencies, including their tendency to cease operating once prosecuted, or under threat of prosecution, only to be replaced by another inexperienced operator. The fourth weakness is the complex nature of relationships at workplaces involving multiple parties, with regulators encountering increased difficulty monitoring and identifying responsibility in multi-employer work sites. This also undermines employers’ and employees’ understanding and knowledge of obligations and entitlements, including injury reporting requirements. Data for the formulation of future prevention strategies, both for regulatory agencies and organisations, are subsequently weakened. A related issue is the application and effectiveness of surveillance practices for workers exposed to hazardous substances, when the transitory nature of much contingent employment impedes such tracking and data collection. Fifth, a number of commentators have asserted that temporary agency employees are universally vulnerable to the termination of their employment for reasons other than job performance, which has a negative impact on their ability to collectively organise, express workplace grievances and enforce employment entitlements. Prosecutions against employers who have allegedly dismissed employees for raising OSH issues are rare in Australia, and hosts can easily request the removal of agency workers who voice concerns, with no fear of legal recriminations. The failure of governments to reinforce employment protection systems underpins many of the regulatory failures which contribute to poor OSH outcomes for contingent workers, especially agency workers. As Lewchuk et al. aptly surmised: ‘Every manner in which the legislation is blurred or where workers are not covered has a negative impact on prevention in the workplace’. Low levels of unionism among agency workers compounds these weaknesses.
OSH regulatory agencies in Australia have adopted different approaches to encouraging temporary agency employers to comply with statutory obligations. In the State of Victoria, comprehensive guidance material was developed in the mid-2000s to improve temporary agencies’ and hosts’ understanding of their statutory obligations. The regulator has also placed more emphasis on prosecuting agencies with injured workers and advertising prosecutions widely to maximise demonstration effect. In Queensland – the location of this study – a number of prosecutions of agency employers for breaches of OSH obligations have been undertaken, although the regulator has not been as active in this respect as in other jurisdictions, such as Victoria and New South Wales. Also, while guidance materials for agencies and hosts have been produced, these have not been developed as comprehensively as in Victoria, where such material has become the industry standard for prosecutions. Most recently, the Queensland regulatory agency sought information from the parties themselves (agency employers and hosts) on how compliance might be encouraged without continual resort to prosecutions, and in an environment where statutory amendments would be limited to achieving compliance with the forthcoming national OSH model laws. It is the views of these parties that this paper analyses and reports on.

Methodology
This study draws on the views of temporary agency employers and hosts, gathered through focus groups conducted in Queensland during 2010. Focus group participants were accessed through several means. First, invitations were sent to all employment agencies with a telephone listing in the relevant areas. Second, to access hosts, all employers in industries known to have a high usage of agency labour were sent invitations by post, again based on telephone listings. Hosts were also accessed via employer associations that promoted the focus groups to members. Third, the regulator’s officers contacted hosts and agencies directly to encourage participation; they also provided a mailing list of employers who had previously indicated an interest in attending regulator promotions.

Eleven focus groups were conducted: four in the capital city (Brisbane) and seven in major regional centres (such as Townsville and Toowoomba). Six were composed of agency employers, five of host employers; 59 people attended in total. The firm size of the agency participants varied – from very small operations (with only two or three office staff) through to multinational operators. Among host participants, most worked for medium (around 50 employees) to large employers. A wide range of industries was represented, including agriculture, construction, health services, manufacturing, mining and mine processing and warehousing.

Each focus group lasted approximately 90 minutes, with discussions focusing on three questions:

- What works in terms of safeguarding the health and safety of temporary agency workers?
- What measures would improve the safe placement of agency workers?
- How could the regulator enhance its activities in relation to securing the safe placement of temporary agency workers?

Proceedings were recorded and transcribed for analysis. The transcriptions were read by both researchers independently to identify repeated themes, and verbatim records of comments which best illustrated the views of the participants across the key issues were selected and agreed for inclusion. While the nature of voluntary participation in such
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research inevitably attracts participants with a positive approach to OSH, the agency sector in Queensland is sufficiently confined (especially in regional centres) that participants were well informed on agency and host practices more broadly. What follows is an examination of the key themes to emerge.

Problems identified by agency and host representatives

With notable exceptions, size does matter

A recurrent theme (especially in large population centres) was the OSH problems posed by small host firms and small temporary agency firms. Small hosts were repeatedly identified as lacking a background in, and knowledge of, OSH; not caring about OSH; and even engaging in calculated avoidance, epitomised by the comment of one agency representative: ‘Send us the fittest of your fittest, young blokes that aren’t broken. And when we finish with them, and they’ve got problems later in life, they’ll be someone else’s issue.’ Such hosts were unwilling to engage temporary employment agencies with comprehensive OSH practices. Importantly, they could always find an agency willing to supply workers on their terms.

Some areas of growth in small business were seen to present particular difficulties. For example, one temporary agency representative suggested problems already experienced in the insulation installation industry were likely to be repeated with the installation of solar energy panels:

... the number of businesses that are springing up that are doing solar installs... that have asked us to supply – but we have refused because they have no controls in place, they have people working on roofs above three metres, on 26 degree slopes, and it's up to the person doing the install to decide how to safely access that roof. There have been no inspections whatsoever... no risk assessment... A client recently said... when I pointed out the risk of being prosecuted A$2,400 before something even occurs... ‘I can [expletive] afford to be fined that amount per install because I make... [lots]... of money on every one of these installs.’ I said: ‘Well that might be so... can you afford to live with your conscience when little Johnny falls off the roof and kills himself, and then you’re up for the prosecution or the jail time?’ He didn’t have a lot to say to that.

A related problem group was small family-based companies that had grown rapidly but had failed to adapt their management systems, and were reluctant to do so when requesting temporary agency workers. A Brisbane-based agency representative observed:

They’re usually a small family business that is growing... just grown so quickly. Their income would be a medium business, but their mentality’s a small backyard business still. And they don’t want help. They don’t think they’re in trouble. But from what you see, they’re gonna kill somebody. And you go: ‘Sorry, we won’t... unless you can do this, then we’ll help you. Sorry, we don’t want to touch you.’ And they go: ‘Oh, we’ll just get somebody else.’ And they will.

Not all small hosts operated this way. A small manufacturing host representative emphasised that even small firms must take a considered and strategic approach to using temporary agencies if they are to safeguard OSH, including ensuring that placements are underpinned by agency processes that minimise the risk of inappropriate and unsafe placements:

I’ve only been with the company just on 18 months. When I first arrived they were with a
different agency… you just rang them up and they would send any Tom, Dick or Harry straight over… wasn’t too much of an induction process and their fees were pretty high… We’ve moved onto an agency that I’ve worked with in the past and they were more of a national type of agency. Got them onboard, fees were cheaper, the processes I knew, and we introduced those processes and improved the overall process of handling labour hire.

Temporary employment agencies pointed to the advantages of dealing with large firms that have comprehensive OSH management systems, although even here problems could arise. Notable among these issues was agency workers being moved to new jobs in the host organisation without adequate notification or control measures; agencies might only become aware of job changes during the monthly contact with the host, which could be some time after the move had occurred. While all agencies emphasised their need to be informed about such proposed changes, the impression gained was that it was not uncommon for hosts to fail to do this; indeed, it may have been the norm. The problem of redeploying agency workers to new jobs or tasks without advice or prior risk assessment is not unique to large hosts, but appears more prevalent because large hosts have more jobs (and therefore more options) than smaller hosts.

A more specific set of problems arose with placements in the home care sector. In line with the recent Report on the occupational health and safety of homecare contract workers in Adelaide and the Barossa Region, the provision of home care – involving workers visiting homes often by themselves – was seen as especially challenging. A temporary work provider observed:

Dealing with clients in their homes there’s… their environment, there are client assessments that we do… as opposed to working in a hospital or a residential facility where the environment is quite stable, we find all sorts of environments, so that does pose issues at times… We would go out, so the staff member would go out knowing that there’s back-up at the office. We would ring a client before we go out to see if they have any dogs in the yard and, you know, tie them up… we would ask them [the referring agency] if there are any issues that might pose a risk to our staff… Obviously, there are at times the unexpected [happens]: there might be somebody visiting a client that could start to show signs of, you know, our staff member could be put at risk – that’s happened at times.

While these risks might be inherent to the provision of home care services, they are compounded in the case of agency workers because of the extent to which agency workers churn through home care provider agencies, and the subsequent ongoing need to familiarise new workers with unique risks.

Similar problems were identified with regard to small temporary work agencies, namely a lack of background, knowledge and procedures for safely placing workers, a lack of care and, in some cases, calculated avoidance. Several larger agencies pointed to the ease of establishing an operation, the bypassing of formal tendering processes (and the safeguards this entailed) or use of abbreviated tenders, and smaller agencies’ capacity to respond quickly to host requests because they lacked formal OSH procedures. As one observed:

Everybody’s prepared to promise you the almighty dollar, everybody’s prepared to cut the rates. We’ll do this, we’ll get you somebody quicker and faster and smarter than that one, but at a huge cost.

Typical comments included:
... your very small little operators who decide let’s set this up... and before you know it they’re providing

... they usually work very quickly because they don’t have all the processes and hoops to go through

... it turns into a free for all. Outside the scope of the contractor or tender, it’s do what you like, price whatever you like, safety how you like.

A host representative expressed scepticism as to where small agencies sourced their information: ‘Whoever they worked with last, or Facebook, YouTube.’ Others thought small agencies expended no effort on learning what was required: ‘I don’t think it is an ambiguity around what they’re reading. They’re just not reading. There is no exposure to it.’

At the same time, a number of hosts pointed to advantages accruing to using niche providers, with examples given indicating many of these were relatively small. Indeed, a key characteristic of successful small operators appeared to be limiting activities to providing only one or two categories of labour. Several of the small operators indicated they placed a limit on the number of host clients, both to maintain the quality of service and their own work–family balance. Anecdotal evidence tended to also locate effective small operators in the regions. Even in large regional centres (populations of over 100,000), the number of potential host employers for niche operations was limited, providing, according to interviewees, an ‘in-built’ restriction on the scope of activity.

In addition to the advantages of a more focused, trustworthy approach that characterised niche suppliers, positive reference was also made to small firms established by managers with considerable experience in the industry, who drew on their positive and negative experiences with larger temporary work agencies (such as maintaining regular and direct contact with host management/regular workplace visits). However, it seems clear that most small operations are not established by people already experienced in the agency labour field.

Other key aspects of effective smaller operations identified in focus groups were:

- a detailed knowledge of the workplaces and their risks
- the establishment of long-term relationships with hosts
- the possession of OSH credentials, most typically workplace health and safety officer (WHSO) qualifications.

Under the Queensland Workplace Health and Safety Act 1995, all workplaces with 30 or more workers must appoint a duly trained and accredited WHSO who can advise managers on OSH (managers themselves can elect to become a WHSO). This requirement has been found to lift the level of OSH knowledge and management in small to medium-sized firms. Our study suggested these benefits have flowed through to some small temporary agency operations. A small regional-based operator where all three principals were WHSO-trained observed:

We’re a little bit different. The clients we’ve got, we’ve dealt with for 10 years. The wife and I have actually worked in those client sites to get the hands-on experience. Our attitude towards new clients is if I don’t like what I see on first impression, I won’t bother taking them on. If we were national or some bigger firm, we would have to almost take on the bigger risk, but we are happy with what we’ve got.
Familiarity with the host workplace was regarded as a critical ingredient of safe placements. A pastoral operation owner who also worked for a temporary work agency emphasised the importance of the agency’s workplace knowledge developed through on-site induction and accompanying workers undertaking this process:

So, where the packing sheds are, where the transport dispatch area is – I’ve done the inductions out there with them [the agency]. And then they can deliver part of that. So, at least when they’re doing the inductions in the labour hire agency, they can say ‘you go near the big red shed out the back’ – they’ve actually been there, they’ve actually seen it, they’ve actually done it.

By way of contrast, a number of host representatives pointed to the benefits of dealing with larger agencies. For example, a regional host pointed to the superior quality of workers provided by larger operations and their greater attention to OSH issues:

We’ve come across little agencies and… there’s probably more problems… big guys [are] pretty good. We’ve seen them, they come out for risk assessments… qualifications as they come through the door, checks for forklifts and things like that.

As with large hosts, large temporary employment agencies were not exempt from problems. One issue was the degree of turnover (mostly attributed to ‘burn out’ or better opportunities with other agencies) and internal transfers of key staff. Staff turnover impeded the building of long-term relationships and intimate workplace knowledge, and resulted in more business agents learning the ‘ropes’ and being subject to risks of error or omission. Another issue was the procedural/document-based approach used by large agencies, which had both strengths and weaknesses. On the positive side, it provides for a more systematic and considered approach than is typical with smaller ‘hands-on’ operations. On the negative side, a procedure-driven approach can prove less flexible with regard to contingent events or hosts with special needs. We were unable to explore these issues in any depth.

Notwithstanding the evidence from some effective small operators, the overall impression drawn from focus groups is that small operators are more likely to be problematic, quite possibly because they lack one or more of the ‘success characteristics’ explained further below.

Identifying regional differences
An unexpected finding previously unrecognised by research was region-specific characteristics that need to be taken into consideration when planning policy interventions. One set of differences relate to population concentrations and the diversity of economic activities. In large population centres (such as Brisbane), many temporary agencies and hosts, and a wider array of hosts using agency labour, facilitated greater anonymity between parties, turnover among providers and hosts, and more ‘one-off’ contracts. Such unstable business relations undermined the development of in-depth host agency knowledge, seen by most as a pre-condition of safe placements. Long-term relationships were nevertheless evident in metropolitan regions, especially among medium to large hosts with regular labour needs that established a single preferred or small pool of preferred providers. Large agencies also seek to build long-term relationships.

However, longer-term relationships appeared more typical in regional centres. Here, the distance from other major population centres promoted a self-contained business and labour market with a relatively small number of agencies, including national and multinational
operators and some smaller, mostly niche, operators. Establishing a new agency seemed more difficult in regional centres due to a combination of recent economic volatility and more restricted opportunities. Also, the dominance of particular industries and large workplaces in some regional centres (for example, mining, mineral processing and related activities in the town of Gladstone) was conducive to longer-term arrangements among the larger operators (both hosts and agencies), and at the same time narrowed the scope for other temporary work agency activities (especially the provision of office and service staff). Even in centres with a more diverse array of activities (such as healthcare, tourism, flour milling and so on), the scope for providing particular categories of labour (such as nurses and milling assistants) was restricted. This, as well as a reliance on informal knowledge and social networks, was more conducive to a limited number of suppliers. In contrast to the portrayal of intense competition among small suppliers in the capital city, several regional host firm representatives expressed a preference for establishing a strong and ongoing relationship with a niche provider whose management/personnel were well-versed in the industry and the needs of their organisation. The importance of reliability and trust in terms of the workers selected, including but not limited to their formal skills and training, was emphasised. Examples cited ranged from the physical characteristics of workers (eg those required to climb ladders), to having an appropriate character and awareness of OSH issues (including when home service providers should not enter premises and when they should call for assistance).

A final aspect of regional settings was the use of informal knowledge networks to identify workers at risk. For example, a healthcare host noted that these information flows tended to discourage practices such as ‘double shifting’ (where an agency worker might work at two different hosts ‘back to back’ in the same 24-hour period), arguing that such activities were soon identified by community ‘gossip’ or the worker arriving at their second job in the uniform of the healthcare provider they had just completed work for. The effectiveness of local knowledge networks could not be fully assessed, but the evidence suggests they may offer opportunities for regional compliance interventions.

Verification processes
A critical aspect of agency work is the pre-placement risk assessment and the ongoing verification process subsequently undertaken to ensure that:

- hazards have not changed
- workers have not been re-assigned to different tasks
- training, supervision and consultation are adequate
- any issues of concern among agency workers are identified.

The focus group discussions suggested large organisations relied more on contact based on formalised procedures, while small operators (at least the better ones) tended to depend more on personal contact and frequent work site visits.

Given the overriding importance of risk assessments, the OSH skills and knowledge of those agency staff conducting the assessments and engaged in ongoing monitoring is critical. Focus groups indicated that staff conducting initial risk assessments generally had appropriate skills and training in OSH, but it was unclear whether the client liaison managers (business agent) responsible for contracting with new hosts, conducting placements and ongoing monitoring had such skills or knowledge. It was also apparent that where workers had been previously been placed with an organisation, risk assessments were not undertaken prior to new placements for those tasks (although independent of this, ongoing monitoring could occur).
There were also mixed messages regarding ongoing monitoring, especially in relation to the quality and regularity of communication/feedback loops with placed workers. In some instances, monitoring and communication were restricted to emails, phone calls and attachments to payslips.

A further aspect of verification processes concerns the exchange of information about the placement to be filled. A number of employment agencies referred to the difficulty in getting adequate information from hosts on issues as central as the full range of the tasks required and the working environment. One representative described the process as:

… absolutely dragging the information out… particularly things like the nature of the experience. It’s easy enough to get the qualifications and licensing, but it’s far more difficult if you’ve got to be thinking in terms of ‘what kinds of experience does the person have to have had to be able to do that work?’

While some agencies pointed to the need to continually ask about the risks associated with tasks, others, including hosts, asserted that verifying full job placement information (as distinct from receiving a standard job description and specification) could best be achieved by developing a detailed understanding of the workplace based on multiple visits. Such visits would also overcome gaps in information that commonly arise when the human resource department staff ordering labour have only a rudimentary knowledge of the tasks to be performed. Agency employers who regularly visited host sites endorsed this approach:

… that helps us from the ordering side of things because we may go out to the site and then we’ll ring the office and say: ‘We discovered that this person is actually going to be doing confined space work. So quick, you’re going to have to do the confined space ticket, we’re going to have to deal with the higher level assessment.’ So, yeah, it is important, if you can, to get out there.

Similarly, relationship building and knowledge of hosts was seen as important to developing open communication:

If your relationship with the client’s good then… your client isn’t going to tell you everything about the job because for them it’s normal, they turn up to work every day. So we ask them ‘Well, OK, are they going to be jumping over holes in the ground?’ ‘Oh, actually, yeah they are.’

Growth of ‘hold harmless’ clauses
A number of representatives of large temporary employment agencies spoke of the increasing prevalence of hosts demanding that agencies agree to ‘hold harmless’ clauses as a condition of gaining a contract with the host. Hold harmless clauses protect the host by requiring the agency to bear the costs of fines should the host be prosecuted for breaches of OSH legislative requirements, although they can also be viewed as an instrument designed to defeat legislative intent. They were recently voided in Victoria (though not Queensland) following a recommendation of the Hanks review:31

I consider that to allow host employers to avoid any financial responsibility for the cost of workplace injuries is out of line with the policy objectives of the Accident Compensation Act, which is to encourage workplace safety – through premium adjustment in the case of the general run of employers and through recoveries in the case of host employers...
In Queensland, agency representatives believed such clauses were becoming more prevalent among large hosts, particularly in construction and manufacturing, and were imposed as a condition of ‘preferred supplier’ status, as well as to drive down costs. As one agency representative described it:

They [the host] typically wear 25 per cent against their work cover [workers’ compensation] policy… And the 75 per cent you’re left to wear against your public liability policy… you end up effectively acting on behalf of the business who was in control of the workplace where the injury occurred, and they totally wash their hands and have no commercial risk whatsoever. And the bean counter is being praised in the board meeting for saving 200K, 300K, 400K a year forevemore.

Agency representatives aware of the Victorian developments were keen to see similar prohibitions introduced in Queensland:

I think it’s important for everyone in this room to understand that that’s occurred in Victoria… we should be collectively, as a group, looking for that to be promoted here in Queensland and nationally, because it does nothing to help with positive outcomes in the safety area.

While some agencies refuse to supply labour to hosts demanding hold harmless clauses, because they regard those sites as too unsafe, others continue to do so, particularly when preferred supplier status is at stake. That hold harmless clauses can conflict with and potentially undermine employment-related public policy objectives has also been observed in other jurisdictions, including North America. 32

Focus group participants were consistent in the extent to which they viewed the above issues as impediments to safe placements. Small hosts and temporary employment agencies were regarded as problematic, with niche suppliers the exception. Regional differences impact on the stability of the agencies in multiple ways. Importantly, the demands of hosts with comprehensive OSH management systems in limited markets shape OSH among agencies, and ‘local networks’ can be a constraining influence. At a broader level, there were mixed messages about the adequacy of verification processes. Gaps appear to arise between initial pre-placement and annual risk assessments, and ongoing monitoring processes, while acquiring sufficient job information from hosts to fill a placement safely was also problematic. Finally, hold harmless clauses were universally agreed to be a backward step that encourages hosts to pay less regard to the risks experienced by agency workers. There was also relatively widespread agreement among focus group participants on practices which safeguarded agency workers’ OSH. These are discussed next.

What works now?
It was apparent that a number of temporary agency employers invest considerable resources into the safe placement of their workers. The voluntary nature of participation in our focus groups meant that employers with such a commitment were especially well represented in the research process. A range of positive steps were described by agencies, and endorsed further by host focus group participants.

The value of long-term relationships
One of the most consistent themes to emerge was the value of building long-term relationships between host and agency work suppliers. Long-term relationships were seen to enhance
knowledge about both parties’ needs and how best to secure the OSH of workers supplied. For the agency it meant supplying workers into a setting where the placement and tasks of workers was more clearly understood; where more informed judgments could be made about induction, training, supervision and OSH consultation procedures; where communication with host management was better; and where it was easier to negotiate improvements when problems were identified. For their part, hosts emphasised the value of reliable labour provision, the skill-set of the workers provided, and the capacity to ensure workers abided by the host’s OSH and other procedures.

Long-term relationships were linked to the willingness of both hosts and agencies to invest time and resources into understanding the workplace and tasks better, enabling more appropriate and safer placements. A Brisbane-based, small to medium-sized host explained the importance of the agency being familiar with his workplace:

I invite the agency out for a tour of the factory so that they can understand what I need in a worker. Too many times you ring up and you say ‘I want a brake press operator’ and they send out a press operator who doesn’t know the difference between stamping a part and folding a part… it’s easier to get the agency out, show the machines, show them what we require; they get to see the whole factory as it’s operating under normal circumstances… and then they can select more suitable candidates… By getting them out early you build up a rapport.

Long-established relationships were also seen as conducive to integrating agency workers into the host organisation. Long-term agency workers were accorded similar rights and opportunities as permanent employees and, in some instances, were offered the potential for permanent work. A host observed:

The majority of our temps are long term. We’ve got guys that have been there over two years… We treat them exactly the same as our permanent staff. They come to all the safety meetings and everything like that, so we try to get away from having an ‘us and them’ sort of nature; and if we ever have a full-time role that comes up, obviously you just get the best temp at the time and offer him a job, and that’s a bit of incentive for the guys as well.

Finally, long-term relationships were seen as more conducive to lifting host standards over time. An agency representative from one focus group commented:

We’ve been talking to our clients and educating our clients… about accountability and responsibility, and a lot of our clients have been involved with Workplace Health and Safety Queensland [the statutory body] – they’ve been going and doing those audits, you know, small to medium businesses.

 Nonetheless, while long-term relationships and established points of contact had advantages in terms of managing OSH, there can be potential risks in terms of a willingness to supply at short notice. A host noted that the agency he used had:

… a pool of ready workers already sort of semi-familiar with our work site. They bring them round, give them an induction and they’ll queue… we give them a phone call at 10 o’clock at night and say: ‘We need a bloke all of a sudden.’ They’ll have a guy there who’s got a rudimentary sort of understanding of the plant and… that works for us, which is really good.

In this way, familiarity could potentially breed complacency.
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The value of OSH qualifications/training
A second theme to emerge was the value of having temporary agency client managers with OSH training and qualifications. Among both agency and host focus groups there was almost universal endorsement of the notion that agency managers responsible for initiating contracts and monitoring supply arrangements should have OSH training and qualifications so they could make informed judgments about hazard identification, risk management and the like. Focus groups indicated that only large agencies provided internal OSH training to field representatives or made use of the Queensland WHSO training programme. In some instances, this training formed part of a more general framework of OSH systems accreditation. A number indicated they employed OSH co-ordinators (often present at focus groups) whose responsibilities included training field/business representatives as well as investigating incidents and co-ordinating return to work. There was strong support for the WHSO training scheme and indeed considerable concern was expressed that the WHSO position itself might disappear (it did) as a result of the national harmonisation of OSH legislation. Consistent with research by Mayhew, the role of the WHSO was seen as an especially valuable source of OSH expertise in the workplace, especially in small to medium-sized workplaces, where such training might otherwise be lacking. A number of hosts also pointed to the value of WHSOs in their own establishments in terms of building a rapport with agency workers and providing the appropriate safety climate. Others used external agencies, such as employer associations, to run training programmes or keep WHSOs updated.

Formal training, however, seemed less common among small to medium-sized temporary employment agencies. In some smaller operations the principals undertook WHSO training or had received formal OSH training when they previously worked for a larger agency, but this appears to be far from the norm.

The value of regular interaction and work site visits
The need for regular interaction between host organisations and agency representatives was uniformly endorsed by focus group participants. There were, however, differences of opinion on what constituted ‘regular’ contact, to what extent contact entailed workplace visits, and the extent to which contact entailed detailed discussions and feedback from agency workers on site. Here we discuss two levels of interaction: communication between placed workers and hosts, particularly in relation to the reluctance of workers to communicate risks; and communication between the agency and the host employer.

Feedback mechanisms with agency workers mostly involved regular phone contact (mentioned by both small and large agency representatives), toolbox talks (periodic meetings in workplaces to raise and discuss health, safety and other issues), and in the case of one large agency, employee surveys. In describing the methods used to stay in touch with placed workers, the representative of a large agency stated:

"We’re trying to put in a call every week... after work, not when they’re at work. Because if the boss is around they won’t say things, or they won’t mention that they’ve been put on an excavator or a backhoe. So we give them a call on a Friday and say: ‘What are you up to next week? How did you go? How did they treat you on site?’ They’ll more than likely tell you when they’re at the pub on a Friday afternoon, than when they’re at work... They don’t want to talk in front of the other guys..."

Regular safety talks at sites, with a significant number of agency workers, were also
mentioned. A regional agency representative, whose employer had incorporated toolbox talks into its key performance indicators, described how host employees occasionally also attended such talks. She described how:

… every client that you’ve got, say more than 10 people on, you will do a safety talk a month… if someone has reported an incident, we’ll go out and we’ll do a talk and an incident report.

Other mechanisms for promoting employee knowledge of safety included posting flowcharts in host workrooms and direct reinforcement. A Brisbane agency representative explained:

Whenever someone in our operations team, at the end of a phone, speaking to one of our employees, there’s about a 15-question questionnaire where questions are asked. One is ‘tell me what do you know’ – so they answer yes or no – ‘tell me what you must do if you are injured at this client site’. And they come back to you with exactly what they’ve been inducted… we’re talking about almost brainwashing…

However, communication between the host and the agency worker was often seen as difficult. The reluctance of agency workers to raise issues for fear it would jeopardise their future employment prospects was raised by both small and large temporary employment agencies. An agency representative captured the problem agency workers confront at some host work sites:

We say: ‘You know, if you can’t do it safely, you don’t do it. It doesn’t matter who asks you to do it.’ But then behind the scenes, the boss is saying: ‘Look, mate, if you don’t want to do it, I’ll get someone else that will.’ So, they’re too frightened.

Several small operators had developed informal feedback networks to overcome agency workers’ reluctance to provide candid responses during their visits to hosts’ workplaces. One had promoted an open-house policy:

We’ve had people come out to our house at 2 o’clock in the morning on their way home, stop in for a cup of coffee when they’ve finished their shift. Even if our lights are off they know they can just give us a call and we’ll get up and meet them for a coffee. But again, because of what we are and the way we’ve built our business up, you know we’ve got that relationship with workers and with the clients.

Such a policy is clearly not viable for large firms or those wishing to maintain their own work–family balance.

Turning to communication between the agency and host employer, while larger agencies affirmed the existence of host consultative mechanisms in their pre-placement assessments, there was limited evidence that their effectiveness was evaluated. Yet in those rare instances when agency representatives participated in host OSH committee meetings, they provided a valuable source of knowledge that informed risk assessment processes. A number of host organisation representatives supported such attendance. For example, a health sector host believed such involvement would be more informative, and convenient, than having agency representatives on the floor near patients. Others in manufacturing spoke of how it would contribute further to their ‘partnership’ status:

Like a partnership. They’re not just supplying a service; they’re actually involved with the ongoing function of the workers in the workplace… That’s probably the best thing: if they
came to the safety meetings and they could find out what the issues are, what the risks are, what people have issues about in the workplace.

Agency representatives, likewise, endorsed such involvement, although few had engaged in it.

Where involvement in formal consultative processes was not offered or available, informal ongoing contact with clients could substitute. Small agencies with a limited clientele appeared more inclined to visit or keep in contact with workplaces on a regular basis, and to adopt informal measures to enhance feedback from agency workers and hosts, than larger agencies, who placed more emphasis on procedural oversight. A small regional operator observed:

> We operate 24/7 with one of our hosts… I’m there quite often… We’re on the phone continuously… not necessarily checking up on what’s going on, but you shoot the breeze and you get a bit of gossip [about] what’s going on around the place.

Another observed:

> Quite often I’ll go at 2 in the morning, 3 in the morning, at the end of one of the shifts just to meet the supervisor and the workers… we get to see what it’s like in the factories at night.

However, these small firms are likely to be atypical. More generally, the tone of responses from both small and large agencies often indicated that consultation was synonymous with the process of reinforcing OSH messages.

The value of niche agency operations
Another recurrent theme to emerge among hosts and some labour providers (although it may be disputed by larger/more generic agencies) was the OSH advantages accruing to a niche provider approach. This point has been raised in earlier reviews of agency work (in relation to the mining industry, for example). For hosts, the advantages were seen to lie in:

- a greater knowledge of the industry, as well as of the needs and circumstances of the workplace
- closer contact between the host and the supplier
- a better ‘fit’ and reliability in terms of workers provided.

For example, a host in the healthcare sector pointed to the healthcare professional background of their temporary work supplier as a significant advantage in terms of these factors. Others, like a regionally based medium-sized manufacturing operation, saw advantages in terms of obtaining workers who could (after achieving a record of reliable service) be engaged by them as direct employees. In other words, the agency effectively helped to screen workers for direct employment, although this was only one reason agency workers were used. This ‘screening’ was not confined to niche providers, although several hosts emphasised the value of niche providers in this regard.

The vast majority of small temporary agency representatives who attended the focus groups were from niche providers. However, the niche approach can also be successfully adopted by medium-sized and even large operators. Amongst the medium-sized operators represented in this study were those who had developed specialised services in the provision of technical/professional staff, community service workers, trades staff, specialised mining staff and the
like. A number of large agencies also indicated they specialised in the provision of particular categories of labour or made strategic judgments about what types of worker they should provide in particular regions.

The value of a more strategic approach to agency hire by hosts
An issue which emerged early in focus groups and was repeatedly endorsed was the idea of providing guidance material to host organisations on the criteria to be used in selecting the most appropriate temporary agency on OSH grounds. This is one step towards encouraging a more strategic and considered approach by hosts to engaging agency workers. For example, guidance material could emphasise the value of selecting agencies with a demonstrated successful track record of providing particular categories of labour, as well as the OSH advantages accruing to building long-term relationships with agency operators.

A number of hosts also emphasised the importance of adopting a strategic approach to agency hire in terms of:

- what sort of labour is sought, when it is sought and for how long
- the overall use of agency hire
- the type of provider that should be used.

In terms of the degree of dependence on agency labour, a common response was that reliance should be limited in terms of overall scope and timing to reduce the challenges of managing these workers and gain the best return. Hosts in several regions, for example, described how they carefully selected the roles/tasks that agency workers could perform, based on OSH aspects that could be effectively managed. For example, one manufacturer stated they did not use agency labour on jobs involving potentially hazardous machinery but on tasks where the major hazards were strain injuries that could be carefully monitored (such as manual handling). Another manufacturer indicated their preference for highly qualified specialist machine operator placements (whose credentials were checked and for which they could also rely on the agency to supply), precisely because they could rely on workers to have the requisite skills and knowledge to operate the machinery safely after suitable induction. This approach might be portrayed as host firms taking a niche approach to their own agency labour needs based on an assessment of managing the associated OSH risks. In both cases, as well as among hosts in several other industries (such as agriculture and healthcare), it was notable that they had given careful consideration to long-term labour needs and used agency labour strategically both in terms of timing (for example to meet seasonal fluctuations in demand) and in terms of the type of labour recruited and the control measures needed to safeguard these workers. While the use of agency labour was contingent, it was also planned, based on known seasonal shifts in activity or the commencement of new projects.

A similar approach had been taken by a regionally based large mineral processing host that had established a set of procedures for inducting, training and deploying agency workers that paralleled those applied to directly hired staff, including integrating them into all safety-related activities. Contractors were classified into three classes based on their activities (operational/regular maintenance, large construction projects and specific tasks) and OSH management was developed in relation to each of these. The goal was to lift OSH performance among contractors to match that of direct employees – something achieved in five years – by implementing a more effective contractor review process and more thorough integration of contractors into the organisation (including the team structure of work groups) and its safety practices. After receiving a full induction, each agency worker:
… will then join a team under the direction of a crew leader and superintendent for that particular area, and they’ll do everything our other employees do… attend a toolbox meeting in the morning before they start work. Before they did any particular work they’d be trained and deemed competent… a leader will observe work and give feedback…

On the other hand, many hosts use agency labour on an ‘as-needed’ basis, without forward planning on how to manage this process. Indeed, this approach is often how agency work is advertised and promoted. However, in workplaces where tasks entail significant OSH hazards, it is arguable that a more planned approach is required, even if agency workers are providing a measure of flexibility. Further, temporary employment agencies themselves, especially larger or more professional organisations, were critical of ‘old-style’ agency labour where workers might be requested and provided on the same day. A number of large firms stated they tried to avoid this sort of engagement because it was impossible to manage OSH under these circumstances unless they were already familiar with the client and the job tasks involved, and had suitably inducted/trained workers available.

Some host representatives, particularly in the health sector, also indicated that, where possible, the preferred to directly hire workers rather than use agency labour. The reasons given included the greater degree of control exercised and the difficulty in supervising agency workers, workers’ knowledge and the reliability of tasks undertaken, as well as the time/cost of induction training and supervision for, at times, short engagements. A disability services host was establishing its own internal agency labour operation to overcome these problems.

**Ongoing challenges**

A number of issues of concern were raised by focus groups participants that require further research. First was the challenge posed when agency workers are foreign workers. Hosts spoke of the need for additional training of agency workers to overcome entrenched ways of doing things differently. Problems may be especially acute when those workers are employed under temporary visa arrangements (ie guest workers) and their residence status is dependent on employer nomination (making it unlikely workers will raise issues of concern). Other research has identified additional problems, such as:

- assigning workers to tasks for which they are unsuited
- overseas temporary agency firms including contract terms requiring workers not to join unions
- a denial of workers’ compensation and of serious incidents/OSH breaches.\(^{35}\)

The Norwegian labour inspection authority’s processes now incorporate specific steps to minimise the risks to which ‘foreign workers’ are exposed.\(^{36}\) This issue warrants further investigation.

Second was the challenge posed by inexperienced or formerly unemployed agency workers. This goes to the heart of what may be seen both as a strength and limitation of agency labour, especially with regard to low skill occupations. On the one hand, agency work may provide a vehicle for employment for transient, low-skilled or inexperienced, unemployed workers. On the other hand, it is more challenging to manage safety among workers who have no history of regular employment, low skill/bargaining power, or a pressing need for work which over-rides other considerations. A number of hosts raised this issue. For example, one described how he had observed a female agency clerical worker moving boxes while archiving records. The women injured her back but did not report the incident because she said she was desperate for the job and did not want to cause ‘ripples’. Such under-reporting of injuries has been identified in other
studies of precarious workers, including agency workers, as problematic and a contributor to the compounding of injuries.\textsuperscript{16,37}

Third was the potential for internal conflicts created by reward systems in temporary employment agencies, especially the inducements for signing up business, which could result in new clients who were (in the words of one focus group attendee) ‘not up to scratch’ in terms of OSH. A number of countervailing controls were proposed by focus group participants, including a ranking system of potential clients whereby, for example, those rated at more than 7 out of 10 could only be approved by the state OSH manager. Other options include reducing the disjuncture in responsibilities between recruiting new clients and the OSH performance of agency workers placed with those clients.

Fourth was the role played by OSH performance statistics. There was an awareness of the limitations of standard measures of OSH performance, especially lost-time injury frequency rates and medically treated injury rates, including under-reporting and unreliability of measures. There was also a recognition that injury data tend to reflect routine hazards in the workplace rather than major hazards that occur infrequently but have far greater impact (eg fire explosion; chemical spill; or a serious incident involving fixed or mobile plant). The quality of such data is important because it is a critical component in risk assessment. Both host and agency focus group participants spoke of a willingness to consider other measures, such as near misses and process measures, but few appeared to have implemented more sophisticated measures. While not unique to temporary agency work, more informative measures of OSH performance are especially important because they are commonly used in ‘preferred supplier’ contracts and can readily become a key indicator in the checklist for selection of agencies by hosts and vice-versa. Such measures can also be used as a countervailing control against the importance of rewards based on client revenues.

A related issue was that the OSH measures used in evaluating placements and monitoring performance focused on safety indices largely to the exclusion of health. Broad terms such as ‘zero harm’ were used, but the examples given pertained overwhelmingly to injury safety. At one level, the focus on immediate safety risks is understandable in the context of placing workers. However, the implications of this approach warrant closer investigation. For example, while short-term placements of workers who subsequently experience exposure to hazardous substances may not involve a ‘safety’ risk, they may well involve a longer-term risk to health. Whether these are being picked up by the OSH management of either the host or the labour hire firm is unknown, but (on the basis of the focus groups) appeared to have not received attention or recognition.

The fifth ongoing challenge is short-term placements and placements with little notice. As noted above, there are advantages in hosts and temporary employment agencies adopting a strategic approach to the use of agency labour. Part of a strategic approach involves avoiding short-term placements where the worker has not already been inducted into that site, or when the ‘notice’ is too short for an adequate pre-placement risk assessment to be undertaken. Some of the larger temporary agencies reporting already ‘steering away’ from short-term placements because the risk could not be adequately managed, and implementing appropriate controls (even if accepted by the host) would prove too costly. At the same time, however, in some industries (eg healthcare), many hosts (with notable exceptions) appear to want agency employees precisely on this short-term basis. A host in the health sector, for example, had adopted a ‘buddy system’ for newly placed agency workers to overcome gaps in their knowledge. The buddy system was also raised by a number of hosts as an adjunct to
inductions and task training, rather than a stand-alone process. But in the context of short-term placements, where agencies do not conduct risk assessments and hosts do not conduct inductions prior to the placement, it places a heavy burden on host employees while not eliminating exposure to risk by agency workers. Even where more responsible agency labour providers decline short-term placements, these placements are simply picked up by other less discriminatory operators, labelled as ‘cowboys’.

Lastly, a number of focus group participants raised concerns about workers registered with more than one temporary employment agency and, on occasion, taking multiple jobs and doing double shifts (ie going from one job straight to another). Agency representatives admitted this was a difficult problem to address from an OSH perspective, at least in cases where different agencies are involved. The extent of such practices is unknown, but even if they only involve a small proportion of agency workers, the OSH implications (from a fatigue perspective alone) are concerning.

Discussion and conclusions
A growing body of evidence points to the challenges that the growth of temporary agency work can pose for managing OSH. Far less attention has been given to ways regulators and other can meet this challenge. Some responses include:

• changes to OSH legislation to ensure both host and agencies have identified obligations with regard to temporary agency workers
• the production of guidance material/codes or practice
• targeted enforcement campaigns/prosecutions
• altering workers’ compensation insurance premium-setting so that agency labour cannot be used to ‘risk shift’.

There is, however, also the question of encouraging and discouraging certain practices or particular modes of behaviour that influence the degree of risk agency workers are exposed to. This paper examined a project initiated by a regulator to identify these intervention points. The policy intervention points that emerged included establishing clear guidance material for both host and agency firms, including information on the criteria that should be used to select a labour provider or a suitable host firm, and highlighting the advantages of long-term strategic relationships, as well as the pitfalls to be avoided. Inspectorates should also target the OSH qualifications of those involved in temporary agency industry and ensure that the assessment of temporary agency arrangements is an integral part of ‘routine’ inspection activity, as well as targeted campaigns (which take account of regional and industry-specific factors). Finally, the question of OSH qualifications and unlimited entry into the industry indicated the need to establish regulatory standards in this area.

In this study, focus group participants derided those who intentionally avoided their legal obligations in relation to protecting agency workers’ health and safety (agencies and hosts alike), while also acknowledging their critical role in both tainting the reputation of the agency sector and placing cost pressures on those operators and hosts who sought to meet their legal obligations. These operators have no incentive to comply, and their operations are regarded as economically viable only because of their lack of compliance and the willingness of hosts to hire such operators. From the perspective of focus group participants, these ‘cowboy’ operators would only comply with legal obligations when compelled to do so through active prosecution. In a sector with virtually no barriers to entry or exit, however, even active prosecutions are unlikely to be effective. The more effective path to compliance
appears to be the creation of barriers to entry, such as minimum licensing arrangements, which discourage or prevent ‘cowboys’ from operating. Only then, perhaps, could the regulatory failures associated with the high turnover of firms be overcome.

At the other end of the spectrum were agencies that had invested substantially in OSH practices to meet legal obligations, and judiciously contracted with hosts whom they considered also met their legal obligations. These arrangements were often characterised by longer-term relations between the agency and host (although not necessarily long-term placements) that enabled a better mutual understanding of host and agency needs. The regulatory failures drawn from the confusion and ambiguities which arise from shared legal obligations and multi-employer work sites were said to be less likely to occur because both parties had a better understanding of each others’ practices and approaches. Between these two extremes were agencies that sought safer placements in principle but, for reasons related to resource and/or knowledge constraints, were poorly positioned to consistently achieve this. Here, suggested paths to improved compliance included more extensive and targeted information and education processes, followed by penalties for non-compliance.

Two dimensions of regulatory failure, the absence of agency workers’ involvement in OSH consultative processes and their vulnerability to dismissal for raising workplace concerns are not, however, overcome through the more strategic long-term approach adopted by some agencies, nor the educational emphasis encouraged among the mid-range operators. A top–down approach to OSH management appeared common among the more strategically focused operators, perhaps an outcome of the agency representatives being more familiar with host workplaces than those agency workers placed only temporarily. However, evidence of the critical role workers can play in improving OSH outcomes through their active involvement is incontestable. Yet some agencies reported the fear their workers had of raising issues with hosts, while other research has confirmed the same fear exists in relation to raising issues with the agency employer. One policy option here would be to strengthen and vigorously enforce anti-victimisation/reprisal provisions in OSH laws, although it is likely that detecting and proving ‘offences’ would remain a barrier, as would the ‘chilling’ effect of fears that cannot be allayed. A more effective solution is likely to be found in strengthening the collectivist elements of industrial relations laws and union presence, in conjunction with the introduction of regional/roving health and safety representatives so problems can be reported and pursued by a third party.

At one level, the project findings were consistent with observations made with regard to other forms of contingent work arrangements. For example, the benefits of long-term relationships and planning have been identified as one means of better addressing the hazards arising from outsourcing/subcontracting (through preferred subcontractors and the like). At another level, while such remedies have apparent value – though more evaluative research is required – they do raise a more fundamental question or dilemma. This is that, in a sense, efforts at establishing long-term relationships, strategic planning and the like essentially represent an effort to mitigate adverse effects of changes to work arrangements predicated on an entirely different principle, namely to permit greater flexibility in the allocation of workers to jobs. The growth of flexible work arrangements was arguably designed to obviate or avoid the regulatory, financial and other constraints of the postwar model of ongoing employment. The promotion of a more strategic, longer-term approach to agency–host relations seeks to reintroduce some of the certainty that went with this model – although more directly in terms of OSH regulatory compliance needs, where regulatory coverage cannot be obviated – rather than restoring rights to agency workers (although they do benefit from such a response).
This leads to two further questions. First, to what extent is it possible for all hosts and temporary employment agencies to adopt the sorts of positive approach identified in this paper, namely building long-term relationships, strategic planning in labour placement and niche operations? The short answer to this question we suspect – and focus group responses hint at this – is that while more hosts and agencies could move in this direction, it is never likely to encompass all, or even most, hosts and agencies in the absence of extremely powerful incentives/sanctions in this regard, something now quite absent from the very structure of the industry. Second, is a ‘light touch’ regulatory approach really viable in an industry marked by intense competition, high levels of business turnover (especially among agencies) and no minimum start-up standards or barriers to entry – at least in Australia, if not elsewhere? Again, the answer here, we believe, is no. Indeed, the evidence for this can be found in the industry itself. As the focus group responses made clear, there was a strong view among agency representatives (especially though not entirely the larger ones) and to a lesser extent among hosts that temporary employment agencies require a level of OSH expertise; they and hosts should both receive guidance material on good practice tailored to the particular perspective of each; and there needs to be a licensing requirement to prevent ‘cowboy’ agency operators from undermining those who seek to comply with their legal obligations.

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