

THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION

(Queensland Branch)

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Branch Secretary
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The Committee Secretary
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee Secretary,

Re: Submissions in relation to the Labour Hire Licensing Bill 2017

1. This submission has been prepared on behalf of the Queensland Branch of the Australasian Meat Industry Employees' Union. Unless otherwise specified, all references to the "AMIEU" should be read as referring to the Queensland Branch of our organisation.
2. The AMIEU is a trade union which represents employees in the meat industry in Queensland. This includes the beef, pork, and poultry processing sectors, meat manufacturing (such as smallgoods), and meat retailing (which includes both butcher shops and employees working in supermarket meat departments). Labour hire is a significant feature of both the meat processing and meat manufacturing sectors in this State.
3. In March 2016, the AMIEU made submissions to the Finance and Administration Committee of the 55th Queensland Parliament in relation to its *Inquiry into the practices of the labour hire industry*.

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4. In February 2017, the AMIEU made further submissions in response to the Issues Paper published by the Office of Industrial Relations, *Regulation of the Labour Hire Industry 2016* ("the OIR Issues Paper"). In those submissions, the AMIEU expressed its views and concerns as to the practical implications of introducing a system of licensing labour hire providers.
5. In brief, the AMIEU supports generally the *Labour Hire Licensing Bill 2017*, and considers the Bill addresses the significant concerns raised by the AMIEU in its submissions in response to the OIR Issues Paper.

The need for government regulation

6. The use of labour hire providers is widespread in the meat industry. There is an ample and ever-increasing body of evidence indicating widespread non-compliance with legal obligations on the part of many labour hire operators. Such non-compliance generally arises from blatant disregard for the law, and a preparedness of many operators to engage in exploitation and intimidation of vulnerable workers.
7. The existence of such exploitation and illegality in the labour hire sector has been apparent for some time. The Fair Work Ombudsman commenced an inquiry into labour hire practices at poultry processing establishments in New South Wales in November 2013, following the exposure of those practices by a union campaign. The FWO inquiry delivered a damning report in June 2015. Since that time, exploitative labour hire practices and deliberate, systematic underpayment of employees has been found across a range of industries.

8. There is simply no indication that such public exposure has done anything to diminish the brazenness of labour hire suppliers, or to generate any effective attempt at self-regulation by the labour hire sector. Equally, the continued presence of these arrangements in the meat industry suggests that meat industry employers have failed to adopt any measures, or any adequate measures, to address the problem. Experience has also shown that, given the heavy reliance by labour hire operators on vulnerable workers (whether due to language barriers, or visa status, or ignorance of workplace rights), many problems in the sector remain undiscovered without some active external intervention.
9. In such circumstances, the AMIEU considers that a system of licensing labour hire providers to be both justifiable and sorely needed.¹ The AMIEU commends the Queensland government for being the first government in the country to introduce such a licensing system.

The Licensing System

10. The provisions of the Act dealing with a licensing system allow the decision maker to take into account a broad range of information in determining whether or not a person is a fit and proper person to hold a licence as a labour hire provider. The AMIEU considers that the criteria specified in clause 27 of the Bill encompass appropriate considerations in determining fitness to hold a licence. Importantly, the AMIEU notes that the criteria addresses [at clause 27(1)(h)] the issue of an applicant who is being put forward as a puppet of the real operator of a business, where the real operator would not be considered a 'fit and proper person' to hold a licence. This is definitely a situation that the AMIEU has

¹ The AMIEU has broader, serious concerns about the impact of labour hire on the meat industry, even where labour hire providers operate lawfully and are compliant with federal industrial relations legislation. The AMIEU acknowledges, of course, that addressing concerns of this kind are necessarily a matter for regulation by the Commonwealth Parliament, rather than state governments.

encountered in the meat industry, where the real controller of a labour hire agency seeks to insulate themselves from legal consequences.

11. Further, the AMIEU notes that the effect of clause 15 of the Bill is that, where the applicant for a licence is a corporation, the “fit and proper person test” will extend not only to the corporation (“the legal person”) itself, but to specified natural persons associated with the corporation. This is an important and necessary feature of the Bill, given the avoidance strategies adopted by certain operators. Such an approach can be used to prevent phoenixing of new entities controlled by the operators of previously non-compliant or disqualified licence holders.
12. The AMIEU considers the regular reporting system appropriate to allow ongoing monitoring of licence eligibility and compliance with licence conditions. Provision of the information required for reporting (outlined in clause 31 of the Bill) should not be problematic for any business with proper record keeping systems. However, to the extent that there is some regulatory burden, it is appropriate that it is the labour hire sector which bears that burden. The implementation of a licensing system with regular reporting requirements and monitoring of compliance allows the legislation to have minimal regulatory impact upon employers seeking to engage labour hire providers (e.g. checking that a labour hire provider holds a license).
13. Data obtained from compliance with reporting obligations can also provide useful information about an industry in which accurate data is lacking. In the meat industry, many labour hire employees are particularly vulnerable to exploitation, with large numbers of workers from non-English speaking backgrounds, or present in Australia on temporary work visas, or both. Unlike longer-term work visas which require employer sponsorship (such as subclass 457 visas), there is no real data collected about where foreign workers on short-term visas (such as subclass 417 ‘backpacker’ visas or student visas) are employed, or the

circumstances of such employment. Such data is likely to be useful for identifying issues and areas of focus for other State government departments (e.g. workplace health and safety, workers' compensation).

Cost to government

14. The AMIEU does not consider there to be any reason why the introduction of this legislation should become a financial cost to public expenditure. Licensing fees should be established at a level which is both appropriate to the size of a labour hire operation, and reflective of the cost of the licensing scheme.

15. However, it should also be recognised that unscrupulous labour hire operators and exploitative labour hire arrangements impose a significant cost upon the community as it is. Systematic underpayment of workers may cause significant financial hardship to individual workers, but in rural and regional areas where labour hire arrangements are prevalent (in agricultural industries, meat and other food processing etc) it reduces the disposable income in local communities, with the attendant consequences this entails for the local economy. Although the underpayment of workers employed by "7-Eleven" convenience store franchises did not occur in a "labour hire" context, this much-publicised example gives an indication of the scale at which underpayments can and do occur.²

Commitment to Compliance

16. The AMIEU has, earlier in these submissions, commended the Queensland Government for being the first government to introduce measures to regulate labour hire providers and exclude undesirable elements and practices from the industry. Our organisation understands that other jurisdictions are contemplating similar licensing schemes, which

² The "7-Eleven" Wage Repayment Program established to deal with claims of underpayments committed by 7-Eleven franchises has to date identified and determined claims in excess of \$114 million. See www.wagerepaymentprogram.com.au

only adds to the importance of this legislation in successfully achieving its intended purposes.

17. Such success will depend upon a commitment to enforce compliance with the legislation.

Some operators have already demonstrated the lengths to which they are prepared to go to avoid legal obligations: lack of record keeping, false records, false identifies, phantom principals using puppets as company officers, phoenixing of labour hire companies, and threats and intimidation, and simply preying upon the ignorance or desperation of vulnerable workers. Given those circumstances, a properly resourced and active inspectorate is crucial to identifying those who operate without a license or who breach license conditions.

18. It will also be important to monitor the way in which the labour hire sector responds to the legislation. Again, given the legislation has no real precedent in an Australian jurisdiction, some labour hire operators may attempt novel legal arrangements to avoid its effects or test the legislation's parameters. The AMIEU accepts that it is impossible to anticipate every possible response by unscrupulous operators. Nevertheless, should such attempts occur, the AMIEU considers it important that the government be prepared to respond to any such developments, and to amend the legislation if necessary to ensure that no form of labour hire arrangement escape its scope.

Submissions made on behalf of the
Australasian Meat Industry Employees' Union,
Queensland Branch,

Matthew Journeaux
Secretary
AMIEU Qld Branch