



19 June 2017

Committee Secretary  
Finance and Administration Committee  
Parliament House  
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Brisbane QLD 4000

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Dear Committee Secretary,

BHP appreciates the opportunity to make submissions in relation to the *Labour Hire Licensing Bill 2017 (Qld) (Bill)*.

BHP supports the objectives of the Bill in seeking to protect labour hire workers from exploitation by providers of labour hire services and promoting the integrity of the labour hire industry in Queensland.

However, the current drafting potentially extends the operation of the Bill to arrangements outside the labour hire industry and beyond the stated intent. If left unchanged, the Bill could result in the regulation of employment relationships more generally, instead of effectively addressing the stated concerns within the labour hire industry. In particular as currently drafted coverage could include:

- intra-business arrangements (eg within a single corporate group where the arrangements are not for profit) whereby one entity employs and supplies workers to related operating entities or associated third party entities;
- specialised skills labour arrangements (which are not traditionally considered to be within the labour hire industry); and
- secondments of personnel.

The coverage of these arrangements by the Bill are inconsistent with the stated intent of the Bill and appear to be unintended consequences.

Further, as a user of labour hire services we need certainty as to specifics eg what entities will be 'providers' and what arrangements will be 'labour hire services' and covered by the regime.

In particular, section 7 of the Bill sets out the meaning of 'provider' and 'labour hire services'. This section uses the phrase '*in the course of carrying on a business*' when defining who will be covered by the legislation. The phrase '*in the course of carrying on a business*' (as used in other legislative contexts) has previously been the subject of much judicial consideration. In our view, the use of the phrase here would equally require judicial interpretation. That leaves the Bill with an uncertain scope and will undermine the objectives of the legislation.

In our view, this uncertainty could be removed or at least minimised by the inclusion of specific exclusions in the legislation. While we note that there is an ability for these to be introduced by regulation, this still provides uncertainty. Our preference would be that section 7(1) is amended to read subject to a new subsection 7(5), which provides:

**7 Meaning of provider and labour hire services**

(5) *The following arrangements are not **labour hire services**:*

- (a) *the provision of a worker to do work by one person who is a member of a corporate group to another person who is a member of the same corporate group;*
- (b) *the provision of a worker to do work between associated entities;*
- (c) *the provision of a worker between persons where the arrangement is not for profit;*
- (d) *legitimate secondment arrangements.*

In our submission, to ensure that the coverage reflects the intention of the Bill with sufficient certainty, the above change should be made. We would welcome any other steps that clarify specifically what arrangements the Bill intends to cover, either through amendment of the Bill, via the second reading speech and/or in the explanatory notes.

Steve Smith  
**Vice President Legal Minerals Australia**