

**AgForce Queensland Industrial Union of Employers**

ABN 21 241 679 171

Second Floor, 110 Mary Street, Brisbane, Qld, 4000
PO Box 13186, North Bank Plaza, cnr Ann & George Sts, Brisbane Qld 4003

Ph: (07) 3236 3100
Fax: (07) 3236 3077
Email: agforce@agforceqld.org.au
Web: www.agforceqld.org.au

GM/DM/GG013

19 June 2017

Committee Secretary
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000

By Post & by email: FAC@parliament.qld.gov.au

Dear Ms Honeyman

Re: Labour Hire Licensing Bill 2017

Thank you for the opportunity to make a submission to the Committee to inform its deliberations in respect of the Labour Hire Licensing Bill 2017 (the Bill) presently before the Queensland Parliament.

AgForce is the peak rural group representing the majority of beef, sheep & wool and grain producers in Queensland. The broadacre beef, sheep and grains industries in Queensland generated around \$5.7 billion in gross farm-gate value of production in 2014/15. AgForce exists to facilitate the long-term growth, viability, competitiveness and profitability of these industries. Our members provide high-quality food and fibre products to Australian and overseas consumers, manage around 40% of the Queensland agricultural landscape and contribute significantly to the social fabric of rural and remote communities.

AgForce does not condone exploitation or mistreatment of labour hire workers, either in Queensland or elsewhere and opposes any such unlawful behaviour.

We do support the principle of effectively regulating Labour Hire Companies that operate outside the law, but have concerns with the effect of the proposed Bill on the significant majority of contractors who do abide by the relevant legislation applicable to their operations.

The Bill seeks to establish a licensing scheme to regulate the provision of labour hire services with the aim of protecting workers from exploitation by providers of labour hire services (Providers) and promote the integrity of that industry through the imposition of penalties on providers who fail to comply.

AgForce does not consider that a state-based licensing scheme is the right mechanism through which this issue should be addressed, with alternative national approaches likely to be more effective. For the reasons outlined below, AgForce does not support the Bill.

National Approach Preferable

Given that Providers can operate across jurisdictional boundaries and relocate or 'phoenix' their businesses, a consistent, national approach is more likely to be effective and deliver the best outcome, as the Minister has acknowledged and the Committee's 2016 Report recommended.

As a member of National Farmers Federation (NFF), AgForce has supported their and other groups' efforts to work with the Recruitment and Consulting Services Association (RCSA) and the broader industry to develop a national labour hire certification program (Employment Services Provider Certification program). A list of certified Providers will be made generally available and the program will include biennial independent audits of labour hirer services to provide assurance to purchasers of employment services that Providers are operating legally and honestly.

AgForce understands that this Certification program is well advanced and enjoys broad support from horticultural and other agricultural representative bodies, unions, and the federal government. The program attends to many of the elements covered by the current Bill. When this national program is implemented, it will leave Providers who operate within Queensland subject to compliance with two duplicative schemes aimed at the same outcome. This is inefficient.

AgForce supports the NFF submission to the Committee which contains further information on this national program and the strengths of a national approach.

Should the Government still seek to progress the Bill AgForce would make the following points towards its improvement.

Current Provider Definition is too General

Clause 7 of the Bill provides a broad meaning of provider and labour hire services as follows:

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. Examples given include a contractor who supplies workers to a fruit grower to pick produce for the grower.

Further, a provider provides labour hire services regardless of:

- whether or not the worker is an employee of the provider
- whether or not a contract is entered into between the worker and the provider, or between the provider and the person to whom the worker is supplied
- whether the worker is supplied by the provider to another person directly or indirectly through 1 or more agents or intermediaries
- whether the work done by the worker is under the control of the provider, the person to whom the worker is supplied or another person.

There are several types of contractors traditionally engaged by AgForce members in producing high quality food and fibre for Australian and overseas consumers. These include contractors for the purposes of undertaking shearing, mustering, fencing, yard building, machinery, harvest, crop spraying, or livestock and other transportation.

These arrangements applicable to the engagement of rural contractors are characterised by:

- the dominant purpose of the business not being to organise workers 'at arm's length'
- the provision of workers being an integral part of their business
- with few exceptions, contractors work with their workers in carrying out a contract and direct the workforce to meet the specifications provided by the host primary producer
- they have made a considerable investment in vehicles, plant, machinery and equipment
- contractors are generally well-established and recognised in local communities and rely on their reputation to secure ongoing work and workers.

These characteristics make 'fly by night' and 'phoenix' operations much less likely to operate in the broadacre agricultural sector.

The definition in the Bill outlined in Clause 7 and of workers in Clause 8, potentially has the effect of capturing those contractors traditionally engaged by our members as being providers of 'labour hire services'. Given a lack of evidence of exploitation or mistreatment amongst such contractors this would seem to entail an overreach of the proposed legislation.

Recognising the complexity in defining labour hire services as identified by Minister Grace in her First Reading speech on 25 May 2017, Clause 7 also contains some exclusions to the definition of a Provider, including through Regulation, and specifically identifies building and construction industry contractors who engage subcontractors to carry out the work.

Should the Bill be progressed, AgForce would request that the contractors commonly used by broadacre agriculture be specifically excluded from the definition of labour hire services Provider, as unintended classes of workers. This exclusion should occur within the Act itself, in preference to being contained in any subsidiary Regulation. This exclusion is important given the national agricultural labour hire certification program in development.

Third Party Auditing More Rigorous Than Self-Reporting

Clause 31 obligates licensed Providers to report to the Chief Executive on their activities within each 6-monthly period, including information about the licensee's compliance with relevant laws, disclosure of any disciplinary action or enforcement action taken against the licensee by a regulatory body and the number of notifiable incidents or applications for compensation.

Notwithstanding the penalties attached to non-reporting of prescribed changes (Clause 40), this places significant emphasis on the honesty of each individual licensee in reporting their own behaviour and offers significantly less rigour and potential value than independent third party audits, such as proposed under the national certification program. While self-reporting represents a less expensive avenue, its value in removing sub-standard providers is also limited.

Use of a Licensed Provider Should Cover Host Client Obligations

Any licensing scheme should be structured in such a way that the use of a licensed provider covers any responsibility or liability that the host producer/client employer has in relation to the actions of that Provider, as implied by Clause 11(2).

Contact with Agricultural Contractors Often Difficult

Clause 34 proposes that licensees must ensure nominated officers for the licence are reasonably available to be contacted by the chief executive or a member of the public during business hours. This will be problematic for agricultural contractors operating in rural and remote areas where mobile phone reception is poor or non-existent and landlines only available outside of business hours. Further, workplace entry powers would appear to permanently apply to primary production properties (Clause 55(d1)) and entry procedures potentially difficult to apply (eg, Clause 66 (2) even when the occupier is not seeking to frustrate a warrant).

In conclusion, any questions about the content of this submission should be directed towards Dr Dale Miller, General Manager – Policy

Yours sincerely

Grant Maudsley
General President