



United Voice, Industrial Union of Employees, Queensland

Submission to the Finance and Administration Committee

Labour Hire Licensing Bill 2017

19 June 2017

Introduction

United Voice, Industrial Union of Employees, Queensland (United Voice) makes this submission to the Finance and Administration Committee in regard to the *Labour Hire Licensing Bill 2017* (the Bill).

Overview of United Voice, Queensland

United Voice represents almost 30,000 workers in Queensland across a range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

Our membership includes school cleaners, teacher aides, ambulance officers, health professionals and operational staff, childcare workers, those employed in the contracting industries including but not limited to cleaning, security and hospitality, private prisons and detention centres and aged care workers.

Main industries using labour hire (in United Voice's coverage)

The main industries where United Voice have membership coverage where labour hire arrangements are prevalent are in property maintenance, contract cleaning, security and hospitality related areas. Labour hire arrangements are also found, in manufacturing areas where our union has industrial coverage.

Licensing and regulatory regime

United Voice supports the introduction of a labour hire licensing and regulatory regime of the kind contemplated by the Bill.

United Voice submits that an effective labour hire licensing and regulatory regime would:

- proactively remove undesirable operators;
- provide strong sanctions and strict compliance measures that undermine unwanted behaviour;
- stringently vet new and existing labour hire operators;
- stifle illegal phoenix activity, sham contracting and other strategies commonly used to avoid employee entitlements;
- include mandatory self-reporting;
- include a 'fit and proper person' test as part of a multi-layered approach;
- include a system for reporting breaches past and present;

- be properly resourced to be able to proactively investigate reported breaches; and
- be empowered to take decisive action once breached.

United Voice submits that the Bill would achieve these broad goals.

Cost implications

Whilst implementing a labour hire licensing scheme will not be without cost, much of that cost would be offset by licensing fees paid by labour hire providers, and additional revenue to government generated through indirectly deterring tax avoidance.

Importantly, the cost of the scheme is heavily outweighed by the necessity to regulate a culture of non-compliance and the economic benefits of restored competitive balance to the labour hire industry.

Is the scheme too onerous?

The scheme should create little burden for *bona fide* labour hire providers who should have no trouble reporting on their business because they, as a matter of course, would keep and maintain proper records and practices.

There may however be new obligations and responsibilities to those who currently do not keep and maintain proper records or practices, and in our view, imposing such obligations on those providers is consistent with the objects of the Bill.

Ultimately those who can comply with what are otherwise basic employer obligations, will adopt good practices, or cease operating in the labour hire industry.

Change to executive officers and the fit and proper person test

An application can be made by an individual or a corporation (s.15). On an application being made, executive officers and nominated officers are subject to the fit and proper person test.

If during the license term there is a change to a 'nominated officer', the licensee must apply to change the nominated officer subject to, *inter alia*, the fit and proper person test (s.35).

If during the license term there is a change to an 'executive officer', the licensee is required to report the change to the license (s.40), but the licensee is not required to make an application to change the executive officer. The result being, the new executive officer is not subject to the fit and proper person test at the time of the change.

The new executive officer would however be subject to the fit and proper person test on renewal of the license (s.21(2)(c)), however, the timing of this may allow for an executive officer to be in the role unchecked for a period of up to one year.

Accordingly, it would be beneficial to include a mirror provision to s.35 that requires a new executive officer to apply for the change and the incoming executive officer concurrently subject to the fit and proper person test.

[REDACTED]

The importance of taking a positive step towards strong deterrence and regulation is demonstrated by the circumstance which affected United Voice member, [REDACTED]

[REDACTED] was amongst a group United Voice members who uncovered improper practices where a major cleaning contractor, [REDACTED], had subcontracted out some of the work to smaller subcontracting labour hire companies.

The labour hire subcontractors were underpaying cleaners, breaching the *Cleaning Services Award 2010*, and paying a flat hourly pay rate for all hours worked, including weekends and nights.

United Voice sought to obtain employment records from one of the labour hire subcontractors through exercising its right of entry powers. One address the subcontractor had listed was their accountant's address, where the cleaning work was not performed, and therefore not subject to a right of entry of inspection. The second listed address where the subcontractor claimed employment records were kept was a residential address, and therefore also not subject to a right of entry inspection. No employment records were recovered from either location.

Once the labour hire subcontractor was aware their workers were involved with United Voice, they utilised intimidation and bribing tactics to undermine their workers' continuing relationship with the union.

Those tactics included an offer to pay \$150 to the person who disclosed the identity of who had spoken to the union, together with the threat that they would [REDACTED]

[REDACTED]

These workers were also advised that could not be protected by the union because they were "on an ABN" and were directed to not speak with the union or they would lose their jobs.

Taking the subcontractor's threats very seriously, representatives of United Voice recorded a statutory declaration from [REDACTED] detailing the threats and bribes and then assisted [REDACTED] in making a formal complaint to the police. [REDACTED]

[REDACTED] The police photocopied the statutory declaration and opened a file. Whilst the police were willing to record the complaint and agreed the threat was very serious, because the threat did not adequately identify a specific victim, the police advised could not charge the subcontractor with a criminal offence.

In addition to assisting [REDACTED] with making a formal complaint to the police, United Voice initiated proceedings in the Fair Work Commission. [REDACTED] subsequently terminated the services of both labour hire subcontracting companies, employed the cleaners directly and financially compensated them. [REDACTED] advised that they were unaware of the conduct of the labour hire subcontractors, and did not condone it.

Had a robust labour hire licensing and regulatory regime been in effect at that time, it would be unlikely that the labour hire subcontractors used by [REDACTED] could have obtained a license to operate in the labour hire industry. Or, they would have to improve their operation to comply.

If the subcontractors had however chosen to operate without a license, the penalties would be significant enough to shut them down once their activity was discovered.

It is unlikely in any event that [REDACTED], or alike, would risk association with unlicensed subcontractors in circumstances where the penalties for doing so, as contemplated in the Bill, are also so significant.

In the circumstances, [REDACTED] would be better informed, if they were to use a licensed labour hire company.