

QUEENSLAND COUNCIL OF UNIONS
SUBMISSION IN RELATION TO
LABOUR HIRE LICENSING BILL 2017

The Queensland Council of Unions (QCU) is Queensland's peak union council. The QCU is grateful for the opportunity to make a submission in support of the Labour Hire Licensing Bill 2017 (the Bill). This submission is made against a backdrop of rising income and wealth inequality to which the precarious nature of labour hire employment has contributed.

Previous submissions from the QCU have suggested that more than 90 per cent of employees within labour hire arrangements are employed on casual basis and this figure has not been disputed from any quarter.

As we know, casual employment is precarious employment and this high proportion of casualisation makes labour hire employment and precarious employment synonymous. Moreover, submissions have discussed the double precariousness of guest workers being employed in labour hire arrangements who face not only arbitrary termination of their employment but cancellation of the visa status as well. Some of the more repugnant transgressions have occurred in these circumstances where poor English skills are combined with a general atmosphere of intimidation to ensure that workers are in position to be aware of, let alone enforce their legal entitlements.

The Palaszczuk Government is to be commended for introducing legislation to tackle an industry that has been exposed as containing elements that are best described as a national disgrace.

Condemnation of the worst aspects of employment within labour hire has been universal. Queensland is the fourth state to investigate labour hire but is the first state with the courage to introduce legislation to tackle the problems.

Public attention has been brought to industrial practices that include systematic underpayment, noncompliance with workplace health and safety standards, abuse and intimidation of the most vulnerable members of the community and sexual harassment. Not even the most hardened defenders of management's right to manage and the free labour market could defend the abuses that have been highlighted in the several inquiries that have touched upon labour hire and its often-insidious implications.

The following submission sets out the reasons

for the QCU support of the Bill in its current form. It seeks to do so under broad headings associated with the major thrust of the Bill.

JURISDICTION

In previously considering the regulation of the labour hire industry, Liberal National Party members of the Finance and Administration Committee, had suggested that the regulation of labour hire might best be achieved at a federal level. Whilst this argument may have some merit for providing nationally consistent outcomes it is politically unrealistic. The Deputy Prime Minister has recently ruled out any sort of intervention from the Commonwealth saying that it is matter for the states. Given this abrogation of responsibility by the Australian Government the only option available for any state government that is serious about preventing abuse of the labour hire work force is to introduce its own legislation.

The Bill is drafted in such a way as to confine its application to licensing of the labour hire industry. As such, the Bill does not attempt to traverse any area covered by the Fair Work Act 2009 (CTH) (FWA). There is no reason as to why the Bill should not be passed by the Queensland Legislative Assembly.

COMPLIANCE

Licensing the labour hire industry is the only effective measure available to the state of Queensland to bring about compliance with various industrial legalisation. A serious problem that has been identified is the absence of compliance with legislation, whether it be in relation to workplace health and safety, workers' compensation, taxation, immigration, minimum rates of pay and conditions and other workplace rights. "Relevant law" is included in the proposed section 27 (Fit and Proper Person) for history of compliance and a demonstrated ability to comply. It is defined in the proposed Schedule 1 and includes a representative list of acts that assists with the definition of relevant law.

This method of regulation addresses some of the more significant matters that were raised by the QCU and other affiliates in relation to the level of non-compliance associated with some labour hire operators. It is recognised that less reputable operators may continue to

operate outside of the law (including this Bill if enacted). The substantial fines that are included for breaches of this legislation will introduce a deterrent against this type of conduct.

The QCU is hopeful that this regulatory framework will provide the basis for an improvement to the integrity of employment within labour hire. A happy coincidence of greater integrity is that the less palatable practices will become economically unviable. However, the effective application of any type of regulation will rely upon enforcement and to this end we impress upon government the need for an effective enforcement regime to ensure that the legislation is effective. Moreover, employees who have suffered at the hands of unscrupulous labour hire operators should feel empowered and encouraged to make representations to the regulatory bodies to enforce the law proposed by this Bill and other laws.

FIT AND PROPER PERSON

As mentioned in relation to compliance, the Bill importantly introduced the concept of "fit and proper person" as a prerequisite for operating within the labour hire industry in Queensland. This type of test is not unusual for licensing legislation. It is hoped that this test will provide the basis upon which the less scrupulous operators are eradicated from the industry. As discussed above, it should also improve levels of compliance with a range of existing legislative obligations.

COST

Some of the more disgraceful conduct within the labour hire industry has come from what might best be described as "backyard" operators. Anecdotal evidence has been that all you need is a mobile phone and you can be a labour hire operator. A licensing fee would go some way to eliminate these organisations that are little more than a façade for an unscrupulous operator.

It is noted that there is some cost to both the government, labour hire operators and their clients. This cost is necessary, in our submission, to negate the cost currently being borne by workers in underpayment of wages, poor workplace health and safety standards and general degradation at work such as sexual harassment and racial vilification.

The cost to government should be at worst, insignificant, and at best, non-existent, as there will be a licensing fee associated with operating as a labour hire provider. The cost to labour hire providers is in our submission both necessary and desirable to demonstrate some economic capacity on the part of the labour hire operator. It is presumed that this cost will be passed on to clients of labour hire operators and would be negligible in the overall cost of operation.

The union movement makes no apology however for making this form of employment in anyway more expensive to the end user (who in many cases would otherwise be the employer). As was demonstrated in many submissions the expansion of labour hire has occurred as a means of reducing labour costs with its associated precarious employment and separation and subsequent avoidance of legal obligations towards the work force.

ADMINISTRATIVE BURDEN ON LABOUR HIRE OPERATORS

It is also noted that there will be a requirement for labour hire providers to furnish information to the appropriate authority. This new obligation is, in our submission, far from onerous and a necessity in an industry that demonstrated absolutely no capacity to regulate itself.

The information that is required by the proposed section 31 would not be difficult to establish for a legitimate operator. If an organisation would struggle with providing the details proposed it would be reasonable to assume that they are not keeping proper records as would be required by a range of other existing legal obligations, particularly in terms of the FWA.

The details that will be provided by labour hire operators and collected by government will also be of use to gain a better understanding of the industry and its scope. Information about operators will be useful to potential clients as well as potential employees who will have access to understanding of the track record of the respective labour hire providers.