



Submission to the Finance and Administration Committee

Labour Hire Licensing Bill 2017

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Introduction

The National Union of Workers (**NUW**) is a large Australian labour union registered under the *Fair Work (Registered Organisation) Act 2009* (Cth).

It represents workers in all forms of employment in a range of industries including warehousing, cold storage, logistics, pharmaceutical, oil refining and storage, food processing and the fresh food supply chain, food services, manufacturing, poultry, defence logistics, dairy, and market research.

It is the view of the NUW that the growth and entrenchment of precarious and contingent work is a significant threat to workers and their life chances. The current scheme of workplace laws in this country does not comprehend the radically changed nature of modern employment relationships.

The layers of contractual obfuscation arising from many labour hire and sub-contracting arrangements can often, in the NUW's experience, lead to exploitative practices such as wage theft, extreme working hours and forced job insecurity, for which the principal or host employer can avoid legal and moral responsibility.

The result of this is the loss of decent work and growing inequality.

Throughout the Queensland inquiry into the practices of the labour hire industry, the Government received overwhelming evidence of the egregious treatment of workers at the hands of unregulated labour hire operators. A vast majority of stakeholders recognised that labour hire arrangements are subject to widespread abuse by unscrupulous operators in Queensland.

The NUW congratulates the Queensland Government for recognising the systemic issues in the labour hire industry and acknowledging that the problem of exploitation and unregulated labour hire requires urgent solutions.

The Queensland governments leads the way for other jurisdictions by introducing the *Labour Hire Licensing Bill 2017* (**Bill**) and the NUW welcomes the opportunity to provide submissions on this Bill to the Committee.

Labour Hire Licensing Bill 2017

We commend the Government for supporting reform to address worker exploitation by the providers of labour hire services and promoting the integrity of the labour hire industry through the creation of a labour hire licensing scheme (**licensing scheme**).¹

Our submissions address the key pillars of the proposed Bill.

Structure of the licensing Scheme

State-based licensing scheme

While the Commonwealth has primary responsibility to reform Australia's workplaces to provide for more secure employment for Australian workers, the NUW supports the introduction of a state based scheme that applies to labour hire providers operating inside Queensland as a way to begin addressing the problem.²

While some employer groups claim the application of a State-based licensing system is problematic, the NUW submits that such a system would not in and of itself provide any unusual challenges as many laws and regulations that business is currently obliged to comply with are confined to the jurisdiction of one State, among them workers compensation, child protection and long service leave.

Further, the Deputy Prime Minister has recently ruled out the Federal government acting on the recommendations of the Senate Education and Employment References Committee inquiry into Australia's temporary work visa program,³ by alleging that labour hire licensing is a matter for the states.

Nature of the licence

The NUW supports the regulatory framework proposed by the Bill on the basis that it encompass' labour hire agencies, triangular contracting arrangements and other contracting mechanisms where host companies are supplied with labour by third parties. This will ensure that labour hire companies which operate in Queensland are viable, reputable, 'fit and proper', adhere to certain minimum standards and can be monitored.

¹ Labour Hire Licensing Bill 2017, clause 3(1)-(2).

² Labour Hire Licensing Bill 2017, clause 5(a).

³ The Committee recommended that a "licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour, Senate Education and References Committee, "A National Disgrace: The Exploitation of Temporary Work Visa Holders," Recommendation 32, p. xiv.

The proposed model protects workers from bearing the majority of risk because it ensures companies intending to operate as labour hire are fit for purpose and can be duly penalised for non-compliance. It will also assist in creating a level playing field across the industry where reputable operators are not undercut by dodgy ones.

Fit and proper person test

The granting of a license in the Bill is appropriately subject to certain requirements to ensure worker exploitation is avoided and unlawful and unscrupulous behaviour is eliminated from the industry.

The NUW supports the key tenets of the 'fit and proper person test' proposed by the Bill. The test would likely preclude persons from operating in the industry where they have: been convicted of an offence, have breached workplace laws including occupational health and safety laws and have previously held a license and had it suspended, cancelled or had conditions imposed.⁴

Such a test reflects the level of labour hire operators' responsibility over workers' wellbeing and is consistent with community expectations.

Reporting

We support the reporting requirements outlined in the Bill⁵ on the basis that it will assist in minimising non-compliance and allow the Government to receive up to date information about the operation of providers and seek enforcement with licence obligations, if required.

The documentation required is consistent with the documentation and record any bona fide labour hire provider would be required to keep in the ordinary course of conducting such a business. As such, providing this information as part of the licensing framework cannot be viewed as particularly onerous.

The public register of licenses available through the 'labour hire website'⁶ will further support the transparency of the industry and activate community trust in the system by allowing potential workers and clients to view the credentials of a provider.

⁴ Labour Hire Licensing Bill 2017, clause 27.

⁵ Labour Hire Licensing Bill 2017, clause 31(2).

⁶ Labour Hire Licensing Bill 2017, clause 103.

Fees

The licensing scheme provides for a payment of a fee to be prescribed by the Regulations.

The NUW has previously submitted that a licensing fee is a core component of any effective labour hire licensing scheme, in addition to the provision of a bond and establishing a threshold capital requirement.

The purpose of the bond and a capital threshold in our submission is to act as a disincentive to very small, undercapitalised or unscrupulous employers from entering the market unless they have sufficient capital to properly fund the necessary costs of operation, including ongoing licence fees, tax liabilities and employee wages and entitlements, including superannuation payments.

While a fee payment provides some safeguard against the continued participation of the most undercapitalised operators in the industry, in order to be adequate, the fee should be set at an amount that is commensurate with effective international schemes⁷.

We note that the Bill does propose to seek statements in relation to financial viability of labour hire providers as part of their application, which may go some way to ensuring that the business has sufficient assets, revenue and cash flow to operate a legitimate labour hire business.⁸

Compliance

Failing to ensure employees receive their legal entitlements is currently a regular occurrence in this industry. Such failures are often intentional. Given this industry trait, to ensure an effective licensing scheme, the Government must seek to enforce it. We are hopeful that the Government commits to providing a 'well-resourced compliance unit' to promote compliance with the scheme and regularly audits and investigates labour hire providers.⁹

We believe that the range of offences and powers of inspection in relation to the enforcement of the licensing scheme are broadly capable of ensuring the object of protecting vulnerable workers and promoting the integrity of the labour hire industry by providing effective deterrents for non-compliance.

⁷ For example, the fee and bond structures in Norway, Singapore and Luxembourg, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/luxembourg/luxembourg-temporary-agency-work-and-collective-bargaining-in-the-eu>; <http://www.mom.gov.sg/employment-agencies/eligibility-and-requirements/security-bond-requirements>

⁸ Labour Hire Licensing Bill 2017, clause 13(3)(c)(ii).

⁹ Explanatory Notes, Labour Hire Licensing Bill 2017 at pg 3.

In order to ensure integrity and compliance within supply chains, NUW has previously submitted that there should be a requirement on a host company to make reasonable enquiries of a labour hire provider that it is complying with its licensing obligations.

While the Bill provides a specific obligation on licensees that they comply with all ‘relevant laws’,¹⁰ the offence on the host employer (or ‘client’) only requires that they report an ‘avoidance arrangement’,¹¹ which may not capture a situation where the client becomes aware of non-compliance during the term of the license and fails to act. We recommend that Clause 90 be clarified to ensure the harm sought to be remedied is covered.

We support the penalties outlined in the Bill on the basis that they are comparable to the offences in the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 and will likely have a serious deterrent effect on exploitative providers.

Conclusion

The NUW is happy to assist the Committee further by providing verbal submissions at the public hearing on the 22 June 2016.

¹⁰ Labour Hire Licensing Bill 2017, clause 28 and Schedule 1, Dictionary, ‘*relevant laws*’.

¹¹ Labour Hire Licensing Bill 2017, clause 12.