MASTER BUILDERS. QUEENSLAND
The home of building

19th June 2017

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

By Email: fac@parliament.qld.gov.au

Dear Sir/Madam,
Re: FINANCE AND ADMINISTRATION COMMITTEE INQUIRY - LABOUR HIRE LICENSING BILL 2017

We appreciate the opportunity to respond to the Inquiry. Master Builders strongly supports lawful and ethical practices in employment and contracting.

1 Scope of Submission

Master Builder's made submissions to the labour hire inquiry in February 2017. In that submission we stressed the importance of a robust building construction sector, which needs to be flexible and capable of responding to rapid changes in demand for labour. We also cautioned the government in unfairly equating the subcontracting activity with sham contracting.

The preceding inquiries into the circumstances of workers engaged through labour hire have not established that a new law in the form of the Labour Hire Licensing Bill 2017 (the Bill) is required.

The following response confirms our earlier submission, along with a critique of aspects of the Bill that must be addressed by the Committee.

2 The building and construction industry

Master Builder's represents more than 8500 members in building and trade contracting including a relatively small number of labour hire firms. We do not represent nor have members engaged in the employment agency industry.

However, the scope of the Bill is not confined to traditional labour hire, and there is the potential for a new licencing regime to apply to a much greater number of contractors and subcontractors than was originally proposed in the earlier inquiry and briefing papers issued by the department.

The pattern of engagement through a subcontracting model is natural to the industry, and it must not be painted as fundamentally flawed. Subcontracting requires flexibility, both in multiple work sites, but also in methods of engagement of workers. The typical pattern of employment is 'follow the job'. Short term engagement, casual and daily hire, is provided for in the *Building and Construction General On-Site Award* 2010. This award is one of only a few in the nation that provide for daily hire.

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3 The recommended response to the Bill.

The Bill is extremely controversial. It should not proceed in current draft. Master Builders submits the Committee should determine that:

- It is unnecessary that the Queensland government introduce the type of licencing and enforcement proposed by the Bill, and
- the labour hire industry can be adequately monitored and regulated through the existing suite of federal and state laws and agencies, especially the Queensland Building Construction Commission (QBCC), and
- the concerns of the Office of Queensland Parliamentary Counsel (CQPC) on the Bill are warranted, and
- The Bill is inconsistent with the federal jurisdiction of the *Fair Work Act 2009.*

4 The Bill is no longer required

It is widely accepted that the Bill was proposed because of concerns over conditions of employment of labour hire workers. The Report to this Committee in June 2016 included allegations of unsatisfactory performance of the Fair Work Ombudsman (FWO) in relation to enforcement of workplace rights. *Pg 36 -38 Inquiry into the practices of the labour hire industry in Queensland.*

That Report raised concerns of the FWO's limited investigative powers, its resources and the effectiveness of its penalties. The thrust of that brief was the FWO was legally and operationally limited in identifying and remedying improper treatment of vulnerable workers and, therefore, a Queensland solution was required. This is no longer a reason to justify the Bill.

The 2016 Senate Education and Employment References Committee inquiry into vulnerable workers[1] , was also particularly concerned with employment, safety and entitlements of vulnerable workers and temporary work visa holders generally. The FWO's submissions, at para 9.153, asserted that conferring further compulsive powers including compulsory examination powers on the FWO "would assist our Inspectors to address some of the egregious, deliberate, systematic and exploitative examples of non-compliance encountered in our work".

This recommendation has been converted to action, and the federal *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* (VW Bill) will provide the FWO with more investigative powers, more resources, and higher penalties for breaches of wages, and sham subcontracting.

All workers, not just those engaged by labour hire business, will have enhanced protections under the VW Bill. Indeed, FWO is the only regulator which has authority to investigate and prosecute industrial matters on behalf of vulnerable workers - no matter who they are engaged by.

The Bill is therefore unnecessary. Instead, Queensland regulators must harness the enhanced powers of the FWO in a cooperative manner across both State and Federal jurisdictions. This will add to the existing

[1] *1. Education and Employment References Committee. A National Disgrace: The Exploitation of Temporary Work Visa Holders. March 2016*

efforts with other regulators. For example, in *Briefing for the Finance and Administration Committee Inquiry into the practices of the labour hire industry in Queensland* [2], (2) issued by the Office of Industrial Relations, February 2016, WHSQ acknowledge that:

> there may be opportunities to improve the current methods of responding to health and safety concerns within the labour hire industry. Given the number of government agencies with regulatory responsibilities for different aspects of the labour hire industry (e.g. immigration, industrial relations, workers' compensation, taxation), there may be ways to better coordinate enforcement activities, such as through joint compliance campaigns and enhanced information sharing.' Pg12

Further in the same report, it was noted that:

> The Office of Industrial Relations on behalf of WHSQ, Electrical Safety Office and Industrial Relations Policy and Regulation has a Memorandum of Understanding (MOU) with the Department of Immigration and Border Protection (DIBP) in relation to the exchange of information for subclass 457 visa holders. Although the MOU is not legally binding, it establishes a commitment from both OIR and DIBP to work cooperatively and exchange information in a timely manner in relation to the 457 visa program where it applies to each agency's respective legislation .pg17

The Bill takes no account of the existing arrangements that support the regulation of labour hire. This fact alone warrants a standalone Regulatory Impact Statement (RIS) of the Bill before any further assessment is made.

5. Consideration of the Bill contents.

Section 7. Meaning of provider and labour hire services

5.1. The Bill's application extends beyond its Objectives.

The meaning of "provider" and "labour hire services" is clearly drafted wider than the example of providers given in the Bill and will capture businesses whose main business is not the provision of labour hire services, for example:

- A consulting engineering firm seconds one of its employees to a client to assist the client with the engineering design or advise on the construction phase;

- A law firm seconds one of its employees to a client for a defined period of time to assist the client with legal matters.

The above overreach in application of the Bill is in conflict with the stated objectives of the Bill. Section 3 of the Bill states the main purpose of the Bill is to "protect workers from exploitation by providers of labour

[2] *Briefing for the Finance and Administration Committee Inquiry into the practices of the labour hire industry in Queensland.*

hire services" and "promote integrity of labour hire industry", yet the Bill goes much further in its reach and will cover the following types of activities which are not traditionally viewed as "labour hire services"

It is common practice in the secondment of professional services that the employees' terms and conditions with their employer (engineering firm or law firm) will usually remain unchanged during the secondment period. In the above two examples, the secondment cannot be said to impact adversely on the employees, nor that it exposes the employees to any form of exploitation. It is also trite that certain professional services firms, such as law firms, are already subject to stringent professional standards under their own legislation (for example the *Legal Profession Act 2007*) and as such it cannot be argued that a labour hire licensing statute is required to promote the integrity of such firms.

5.2 Exclusion of genuine subcontracting arrangements should be absolute

Section 7(3)(b) appears to provide an exemption for contractors who engage subcontractors to carry out construction work within the meaning of the *Building and Construction Industry Payments Act 2004.*

Section 7(3) reads that - "However, a person does not provide labour hire services merely because….the person is a contractor who enters into a contract to carry out construction work within the meaning of the *Building and Construction Industry Payments Act 2004*, section 10, and engages subcontractors to carry out the work". The wording suggests the possibility that such arrangements (i.e. a genuine subcontractor) could, based on other unidentified factors, still be considered labour hire services.

In our view, this exemption must be written more clearly, so it is unequivocal that subcontracting arrangements within the construction industry are not the focus of the Bill and not intended to be captured by the definition of labour hire.

It would be inappropriate to capture genuine business-to-business arrangements in the Bill, and the wording of section 7(3) should be changed to clarify that usual subcontracting arrangements will not be considered labour hire services. If the Government is concerned about true labour hire arrangements being referred to as subcontracting arrangements to escape application of the Bill, this scenario is already addressed under section 12 of the Bill, as well as in the extensive provisions in the *Fair Work Act 2009* (FWA) sections 357-359, and the *Independent Contractors Act 2006* generally, that deal with characterisation of independent contractors. As it is, the Queensland Government does not have the power to regulate the commercial transactions of constitutional corporations.

5.3 Inappropriate to allow regulation to determine application of the Bill

Furthermore, we note section 7(3)(c) allows, through regulation, for further classes of persons to be excluded from the Bill's application. Master Builders believes that such a fundamental element of the licensing scheme ought not to be prescribed by regulation (which can be changed more readily and regularly), but should be provided for in the substantive legislation itself. The Bill's impact on businesses, and the accompanying penalties under the Bill, are such that the substantive legislation should state this unambiguously. Delegation of the power of who is covered by the legislation to the Chief Executive of Treasury is not appropriate, nor is the Chief Executive the appropriate person to whom to delegate these powers – see *Legislative Standards Act 1992* (LSA), section 4(4)(a).

5.4 Unnecessary and costly duplication of red tape for group training organisations

Lastly, section 8(1)(3) provides that "workers" covered by the Bill includes apprentices or trainees of group training organisations (GTO's). Our industry relies on GTO's to deliver apprentices to the construction industry and in this way maintain a steady influx of new trade qualified employees into the industry.

GTO's are already subject to significant regulation under the *Further Education and Training Act 2014*, including a comprehensive prequalification process in order to be registered as a GTO. The 2017 National Standards for Group Training Organisations requires a GTO to demonstrate high-quality services and provide a framework to ensure GTOs operate ethically, with due consideration for apprentice, trainee and host employer needs. Extending the labour hire licensing regime to a group of employers already heavily regulated seems not only superfluous but a costly and unnecessary increase in red tape for organisations which operate as not-for-profit entities. Importantly, there appears to be no net gain achieved by requiring further licensing for this group of employers.

The Office of Industrial Relations report in labour hire industry[3] did not contain any data that suggests GTOs are non-compliant or exploitative.

5.5 Application over State borders uncertain

The Bill provides no information on the application to a Queensland business trading over the state border, nor the obligations on interstate firms which supply labour or services to a Queensland host. The Committee should inform itself of the consequences of this before any decision is made on the Bill.

5.6 Inter-company supply of labour should not be licenced

There are some cases where a building contractor has arranged its business structure that gives it flexibility through a cross hire of workers but the hirer is within the group of related entities. For example, a concreting business may need 5 -10 workers to service the projects it has contracted to. If there is an unexpected short term need to increase the workforceanother 15 concrete workers, the business will cross hire the workers for the day. The hirer is confident all the extra workers are PAYG employees of the other business. Both entities must hold a licence with Queensland Building Construction Commission (QBCC).

It is also not uncommon for a subcontractor to organise extra workers from an unrelated entity - but a similar business - for a short term period, as little as a few hours. For example, if concreter *A* needs additional labour to overcome an unexpected delay it is possible for concreter *B, C* etc., to supply them and charge *A* an hourly rate. Each of these subcontractors are licenced with the QBCC. This unremarkable practice would be captured by the Bill, and would cause these opportunities to cease. That is to the detriment of efficiency, administration, and short term access to skilled workers.

[3] *Briefing for the Finance and Administration Committee Inquiry into the practices of the labour hire industry in Queensland.*

6 The licensing scheme

6.1 Fit & Proper Person Test

Section 27. The description of fit and proper person leaves a very high level of discretion to the Chief Executive, For example:

- How is a person's honesty, integrity and professionalism to be assessed? Against what standard is this done?
- What does "convicted under an offence against a relevant law" mean? Will an unfair dismissal under the *Fair Work Act 2009* be counted as a conviction against a relevant law? Will a provisional improvement notice under the *Work Health Safety Act 2011 (WHS Act)* be considered a contravention of a relevant law? How many contraventions/how serious must the contravention be before a person is considered to not be fit and proper?
- Section 27(1)(h) prohibits a person if they are "under the control of" another person who is considered not to be a fit and proper person? If a union has a GTO, and the union owns 50% of the GTO, and the union has been fined for breaches of the *Fair Work Act 2009*, or has been called a "recidivist" in a decision by a federal court judge, will this disqualify that union from obtaining a licence? Does the union pass the fit and proper test despite a number of its officers having failed to obtain Right of Entry permits, because the officers failed the FWA fit and proper person test?
- 27(2) should be deleted. It grants far too wide a discretion to an officer of the executive government, without any oversight from parliament. Especially considering that the Chief Executive may at any time suspend or cancel a licence if he considers the person no longer is a fit and proper person.

6.2 Business Financially Viable Test not known

The Bill contains no criteria against which the 'financial' test will be made and requires readers to wait for regulations. Once again, this is an inappropriate use of regulation and the criteria should be made known in the substantive legislation. Industry must have consistency in application of the financial criteria and should be certain that from one year to the next, the criteria is transparent. At this point in time, we are asked to comment on an unknown test that could determine the future of our members business. That is unacceptable.

6.3 Suspension and cancellation of licenses unfair

Section 22 Suspension of license

A licensee may have their licence suspended without any notice from the Chief Executive. In the case of ordinary labour hire services, this may very well mean that their business will have to shut down. In practice, the suspension of a license has the same effect as cancellation of a license, since in both cases the business will immediately have to cease operating.

It offends against the *Legislative Standards Act 1992* that a person may lose their business and employees may lose their jobs without notice or opportunity to a licensee to rectify whatever breach motivated the suspension. Even if the Chief Executive has suspended in error (for example due to a misinterpretation of information provided by the licensee), the Bill provides no avenue for correcting an error prior to the business suffering significant losses and potential closure.

This is an unjustifiable overreach of executive power – even the Criminal Code provides a right to be heard. The Bill ought to be amended to allow for due process and at a minimum a show cause notice to be served prior to suspension.

Section 24(1) (b) Cancellation of license

The Chief Executive may cancel a license if the Chief Executive is satisfied that the licensee, employee of representative of the licensee has contravened a relevant law – regardless of whether they have been convicted of an offense for the contravention.

What criteria must be satisfied for the Chief Executive to be "satisfied" that a contravention has occurred? Bearing in mind that the Chief Executive and their agency will have no expertise in most of the "relevant laws" listed in the Bill, how is the Chief Executive to form an opinion if, for example, the *Migration Act 1958* has been contravened? It is inappropriate for a State based agency with no expertise or experience in areas governed by federal law, to form an opinion as to the contravention of such law.

It also offends against the rights and liberties of persons to be subjected to significant adverse impacts on a belief by an officer of the executive government that they have contravened a relevant law before they have been convicted of the same. This is nothing but a finding of guilty before a person has had the opportunity to have their case heard.

"Relevant law" is defined as any State or Commonwealth law that imposes an obligation on a person in relation to workers, including obligations to keep records. So, if a labour hire employer neglects to keep accurate record of, for example, overtime , their business can be shut down. Similarly, if an employee makes an unfair dismissal claim against a labour hire employer, is this enough of a "contravention" of a "relevant law" to lead to cancellation of the labour hire license. This connection is manifestly unfair.

Section 23 Show cause notice before cancellation

Provides a period of 14 days for an employer to respond to a show cause notice not to cancel their labour hire license. When the practical consequences of cancellation of a license is considered, it is an unfairly short period of time. The labour hire employer will lose their business once the license is cancelled, and this will impact on all of their employees. The likelihood of insolvency following a cancellation of license is very high, as is job losses for the workers engaged by the labour hire employer. What protection is afforded to the employees of the labour hire employer in circumstances of a cancellation of license? Reviews and appeals are available but the business is forced to cease trading. What are the consequences for the employees or apprentices in that business? Is the cancellation of licence without regard to the balance of convenience? Is it without regard to the community?

Section 29 Conditions may be imposed

It is most concerning that the Bill leaves it to the discretion of the Chief Executive whether or not the licensee must lodge a security. The Bill gives no information on how this is determined, what amounts are under consideration, who will hold the security, does it earn interest, and who gets that interest. The Committee must obtain details on the use of a security or bond, before it determines this power.

6.3 Excessive reporting

Section 31 Obligation to report to Chief Executive

6 monthly reporting is excessive. This will pose a massive work load on the licensees and the regulators. For example, the Bill will require GTOs to report on every apprentice and every host employer. It must declare whether an apprentice was provided a meal or transferred to different work sites. The report must differentiate whether the GTO or the host employer provided the meal.

This requirement must be investigated through a RIS before it is considered any further. This is expanded upon later in this submission.

In practice, the weight of details and frequency in reporting will create irregularities and uncertainty at both ends. This will fuel ongoing disputes which in turn risks the orderly administration of the scheme. For example, (k) requires 'information about the licensees' compliance with relevant laws for the period'. This is an extraordinary vague and broad requirement. The dictionary to the Bill does not provide a definitive list of relevant laws. This is a major concern for Master Builders. It leaves it open for the regulator to deny the provider of the information. The licensee is at the mercy of an assessor.

What if a licensee has had a dispute with an employee about the payment of a travel allowance? Is that a non-compliance which must be reported? Is a licensee required to demonstrate through its employee records that all its employee's entitlements have been paid? Does the Bill have the jurisdiction to request that information?

6.4 Offences and penalties

The offences provided for are essentially:

- Operating without a license;
- Entering into an arrangement with an unlicensed provider;
- Entering into an avoidance arrangement[4].

It is important to note that operating without a license does not equate to a person being in breach of federal employment legislation, nor any of the other statutes listed within the definition of "relevant law" in the Bill.

The penalties proposed are up to 1034 penalty units or 3 years imprisonment for an individual or 3000 penalty units for a business. These are serious penalties, and even though the Explanatory Notes justify the penalties in light of the stricter penalties imposed under the recently introduced *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*, there is a significant category difference between these two pieces of legislation. The latter penalises an individual or corporation for breaching workers' workplace rights under legislation, i.e. underpayment of workers etc. That is a much more serious offense that the offense of operating without a required license.

[4] See sections 10, 11 and 12 of the Bill.

The Bill's penalty offenses should be benchmarked against occupational licensing regimes. Under section 42(1) of the QBCC Act 1991, for example, doing building work without a license attracts a maximum penalty of 250 penalty units for an individual. Furthermore, section 42(3) of the Act provides that a person who carries out building work without the appropriate licence is not entitled to any monetary or other consideration for doing that work. We recommend that the above approach to type and size of penalties is more appropriate for an occupational licensing regime such as proposed in the Bill.

We suggest the Government takes guidance on appropriate penalties from the following pieces of legislation which deals with similar scenarios where a person operates without a license:

- Under the *Property Occupations Act 2014*[5] a person who operates without the required property agent license is subject to a maximum penalty of 200 penalty units or 2 years imprisonment.

- Under the *Liquor Act 1992*[6] a person who sells liquor without the required license is subject to a maximum penalty of 500 penalty units for a first offence; 700 penalty units or 6 months imprisonment for a second offence; or 1000 penalty units or 18 months imprisonment for a third or later offence.

- Under the *Motor Dealers and Chattel Auctioneers Act 2014*[7] a person operating without a chattel auctioneer's licence is subject to a maximum penalty of 200 penalty units or 2 years imprisonment.

Bearing in mind that, should an unlicensed labour hire provider contravene any of the relevant statutes listed in the Bill, the provider will be separately liable under each of those Acts as well. Care should be taken not to conflate the offense of operating without a license with the contravention of other laws – the Bill can only penalise contraventions of its own licensing scheme.

Under the *Workers' Compensation and Rehabilitation Act 2003* (WCRA), an employer who fails to take out the appropriate insurance for their workers face a maximum penalty of 275 penalty units.[8] The WCRA also provides a defence to employers who can prove that at the time of the alleged contravention they believed on reasonable grounds that they could not be liable under that Act[9]. Given the complex application field of the Bill, it is recommended that a similar defence be available to "providers" who believed on reasonable grounds that they did not require a license under the Bill.

7 Unjustified intervention into private sector

7.1 Regulatory Impact Statement wanting

A Regulatory Impact Statement (RIS) is a form of accountability in relation to regulation-making. An RIS should examine the likely impact of a proposed legislation and should consider a range of alternative options which could meet the government's policy objectives.

[5] Section 97(1) of the *Property Occupations Act 2014*.
[6] Section 169(1) of the *Liquor Act 1992.*
[7] Section 149(1) of the *Motor Dealers and Chattel Auctioneers Act 2014.*
[8] Section 51(1) of the *Workers' Compensation and Rehabilitation Act 2003.*
[9] Section 51(2) of the *Workers' Compensation and Rehabilitation Act 2003.*

Including this inquiry there have been three Queensland inquiries over the alleged labour hire crisis. In each one Master Builders has argued for less intervention and better coordination of existing regulators. This would be achieved through the collaboration of the federal and state regulators that oversee employment, taxation, migration, workplace health and safety, workers compensation, corporations and even law enforcement.

As noted above, cooperation between some of the above agencies is standard practice. This should be extended in place of an additional licencing and reporting administration.

Further, the FWO is just about to receive additional powers and more resources through the federal VW Bill. This initiative will provide substantially more protection for vulnerable workers and must not to be overlooked or discounted in the assessment of the Bill.

As a federal regulator FWO has the lawful jurisdiction to inspect and remedy any breaches of employment laws. The same cannot be said of the function of Inspectors proposed for the Bill. For what purpose is the Bill determined to create a lame duck Inspector who has no capacity to enforce employment conditions? The Bill should have an RIS that addresses this concern.

The lack of an RIS means the Committee is now required to decide if the Bill is suitable from the standpoint of governance and costs. For example, will the Bill lead to no change or increase in the regulatory burden on business or the community? Have the proposals undergone an extensive impact assessment process?

7.2 Is the Bill consistent with legislative principles?

The Office of Queensland Parliamentary Counsel (OQPC) has raised some fundamental legislative principles in the Explanatory Notes:

1. Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – LS Act section 4(3)(d)

2. Legislation should not confer power to enter premises, and search or seize documents or other type of property without a warrant issued by a judge or other judicial officer – section 4(3)(e) of LS Act

3. Legislation should have sufficient regard to the rights and liberties of individuals – section 4(2)(a) of LS Act

The legislation treats labour hire employers as a second class type employer, imposing duties and obligations in addition to those that all other employers have to meet.

8. Powers of the Inspectors must be limited

Section 38. Production of License

This requires a licensee to provide a copy of the license to 'another person'. There is no definition of another person. The 'other person' is not required to demonstrate a valid purpose for the request. This section must be amended to limit the production of the license to the immediate parties and the Inspectors. It should be limited to the client, the workers or a person who is the legal representative of the worker. A union representative should only request a copy if it has satisfied the licensee that the worker is a current member of the union, and the worker has authorised the union to inspect the license.

Section 68 – 70 Entry powers of Inspectors

The Bill allows Inspectors to enter business premises and inspect documents that are required to be kept by the business, including documents required by the FWA (wages), WCRA (policy and premiums) and WHS Act (SWMS and incidents). The Dictionary includes a raft of other legislation, defined as 'relevant laws'.

Prior to entry, an Inspector is required to inform the occupier of the powers of the Inspector. What exactly the Inspector can say is currently difficult to predict, as the powers of inspection are ill defined, especially regarding the types of documents that may be examined, copied or even removed from the licensees premises. Section 70(1) refers to 'a document required to be kept under this act" Master Builders is concerned the required documents are not identified.

Under this Bill, an Inspector will be have the façade of authority to enter a premises to inspect documents regulating workplace relations. Does this include time and wages records of the employees of the employer? Does it include contracts of employment and commercial contracts? For what purpose is an Inspector requesting a record of wages? Will the Inspector audit the wages against a modern award?

The purpose of inspecting such documents is questioned. If there are concerns about wages and conditions of employment, the FWO is the proper authority and can investigate and identify any breaches.

Most, if not all the relevant laws prescribe an authority and an investigative process by which the relevant regulators must follow. The laws are framed within the jurisdiction of the agency or the relevant government. The Inspectors or officers from each of the regulators are trained and authorised to identify and act on any breaches of the relevant law. The Inspectors do not wear two or more hats, and each regulator has specific authority – via their statute - to cover its field.

For example, an FWO Inspector is not responsible for inspecting and enforcing allegations of unsafe workplace safety. Even if an alleged contravention of safety was identified during an audit of wages same inspection, the FWO has no authority to bring an action against the employer. Most likely it would be discussed and the issue referred to the proper regulator for further investigation.

If the Inspector (or the Chief Executive) has cause to question the content of a mandatory report, it may arrange for an Inspector from the relevant regulator to examine any suspected contraventions. However, the Inspector cannot and should not pretend to make a judgement on the suitability of a licensee when it is beyond the Inspector's authority and training to identify and prosecute any alleged non-compliance with 'relevant laws'.

Section 72 Seizure generally

The extent of an Inspectors powers to seize 'things' is extraordinary for an agency that purports to manage a register of labour hire licensees. It is also extraordinary that employers licensed by the Bill are subject to inspections and seizures of documents, indeed of anything, just so it may operate as a labour hire business. The Bill must be amended to limit the powers of Inspectors to only the determination of whether the business falls under the scope of the licensing authority. In other words, the Inspectors should only assess the principle purpose of the firms and whether or not the business is engaging in labour hire.

9 Business Register requirements are unreasonable

Section 103 Register of licensees;

Given its significance in the scheme of the Bill, it is curious that the Register of Licences is not given more prominence in the layout of the Bill. It is somewhat ambiguous to label it as 'miscellaneous'.

This Register is a public register. If introduced, the Register will be an unjustified burden for those firms which must also be registered with QBCC on the QBCC register of licences. It is Master Builders preference that the government automatically exempt from the Bill any entity which has a current licence under the QBCC. The QBCC register enables business and community to access a reliable record of suitability and competence for engaging a contractor. The QBCC register will satisfy the purposes of a register envisioned by the Bill.

If an automatic exemption for QBCC licensees is not provided, we strongly oppose any register which is open to change through regulation (see 103 (2) (m)). How can the public and the Committee assess the suitability of the Register if it is unknown what matters may be introduced at a later date? The public interest cannot be satisfied.

The regulations may introduce to the Register all manner of information that have not been laid before this inquiry. For example, the regulations may require the licensee to provide details of employment arrangements, and what awards or enterprise agreements are applied by the licensee. It may require details of the ratio of employees to other workers who are placed with clients. This raises a second but no less important concern.

10 Intrusion into employment related matters

The Register must not require information that is not within the jurisdiction of the Queensland government to regulate. For example, the Chief Executive cannot require a national system employer (as defined under the FWA) to provide any information that relates to national system industrial laws, as defined in section 26 of the FWA.

10.1 The Fair Work Act and Queensland employers

The Bill cannot apply to a national system employer in any circumstances where the Bill is inconsistent with the following definitions of the FWA:

Section 26. Act excludes State and Territory Industrial Laws.

(2) A ***State or Territory industrial law*** is:

(b) an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:

(i) regulating workplace relations (including industrial matters, industrial activity, collective bargaining, industrial disputes and industrial action);

(ii) providing for the establishment or enforcement of terms and conditions of employment;

(iii) providing for the making and enforcement of agreements (including individual agreements and collective agreements), and other industrial instruments or orders, determining terms and conditions of employment;

(iv) prohibiting conduct relating to a person's membership or non-membership of an industrial association;

(v) providing for rights and remedies connected with the termination of employment;

(vi) providing for rights and remedies connected with conduct that adversely affects an employee in his or her employment; or

(c) a law of a State or Territory that applies to employment generally and deals with leave (other than long service leave or leave for victims of crime); or

(d) a law of a State or Territory providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal or comparable value; or

(e) a law of a State or Territory providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;

*(4) A law or an Act of a State or Territory **applies to employment generally** if it applies (subject to constitutional limitations) to:*

(a) all employers and employees in the State or Territory; or

(b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory.

> *For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies*

10.2 Is the Bill a workplace law?

There are indicators in the text of the Bill that the drafters were conscious of this jurisdictional limit for enforcement and reporting. For example, the Bill includes specific reference to the Queensland legislation of WHS and Workers Compensation at section 31 (reporting) and section 103 (Register). On the other hand, it does not identify other legislation, except as a 'relevant law'. The FWA is included in the schedule as a relevant law. This is not useful, and compromises the transparency and presentation of the Bill.

If the sole purpose of this Bill is to licence genuine labour hire businesses, it is of no consequence to the FWA. However, if the purpose includes the inspection and the reprising of convictions, breaches, underpayments, sham subcontracting and employment practices to that extent, the scope is out of jurisdiction.

Where an employer's history of employment practices is under examination by the new licencing agency, and that history is taken into account to refuse a licence, how can the refusal be fair and in the public interest? If the employer is excluded as being not a fit and proper person to hold a licence, the basis of the exclusion is still an action of regulating workplace relations'. If a business in unable to get a licence to trade, and the reason, or part of the reason is due to a noncompliance with an industrial instrument, the Bill exceeds its jurisdiction. This action is covered by section 26, of the FWA, above, where it states:

> *For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies*

To be certain the FWA exclusion is respected, the Bill must remove any semblance of the activities of the Inspectors and Chief Executive that involves investigation, reporting, assessing or sanctions that involve an 'industrial matter 'of a national system employer or employee.

11. Conclusion

The Bill is unnecessary. It has been superseded by the federal *Fair Work Amendment (Protecting Vulnerable Workers) Bill* which is tailor made and provides a jurisdictionally appropriate sound platform to identify and remove unfair and unlawful practices of labour hire.

However, if the Bill is to proceed any further, it must be amended to ensure that;

- Businesses licensed under the QBCC are exempt,
- GTOs are exempt,
- Inspectors be limited to entry and inspection to determine three things:
    - Should the business be covered by the Bill,
    - Does it have a license and
    - Is it submitting reports?
- Reporting should be no more frequent than yearly.

Any inquiries on this submission should be made to Corlia Roos, Director, Construction Policy, and Master Builders.

Grant Galvin

Chief Executive Officer