




Speech By
Hon. Grace Grace

MEMBER FOR BRISBANE CENTRAL

Record of Proceedings, 6 September 2017

LABOUR HIRE LICENSING BILL

Second Reading

 **Hon. G GRACE** (Brisbane Central—ALP) (Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs) (7.45 pm): I move—

That the bill be now read a second time.

The Palaszczuk Labor government came to office with a commitment to restoring fairness in Queensland workplaces. Once again, with this bill before the House, that is exactly what we are delivering. For far too long and far too often we have all heard the stories of vulnerable workers being exploited and mistreated at the hands of unscrupulous labour hire operators.

Just last week a joint operation was undertaken by Queensland Workplace Health and Safety, the Queensland Police Service and the Fair Work Ombudsman at four vegetable farms in the Lockyer Valley after receiving allegations which included underpayment of wages, workers being provided unsafe and very poor accommodation, unsafe drinking water, unregistered transport and workers being charged job-finding fees by the labour hire companies involved.

In June this year a Queensland labour hire company was fined nearly \$450,000 and \$223,000 back pay was ordered after foreign workers on temporary visas were treated as slaves under what was described as a calculated scheme that caused mental, emotional and financial stress and anxiety for those workers. In March a labour hire company was found to have underpaid workers \$77,649 over a seven-week period. Some of these workers were at times forced to work entire days harvesting produce without food or drink and without pay, as well as being forced to live in isolated, transient accommodation. In September last year a Boonah labour hire business was caught ripping off over 100 foreign workers and was forced to pay back \$16,000.

These insidious practices are a national disgrace. They are blatantly unfair to the labour hire workers who are being exploited and mistreated and they are unfair to responsible labour hire providers that are doing the right thing and have to compete with those who base their business models on unlawful activities. To allow this state of affairs to continue in Queensland is not an option. Doing nothing is not an option. Cases like the ones I have just highlighted have been reported time and time again through the media and a stream of reports and inquiries, including through our own parliamentary Finance and Administration Committee, which conducted an investigation into the labour hire industry last year. As the deputy chair of the committee, the member for Mermaid Beach, rightly pointed out in his statement of reservation in response to this bill, 'evidence of the existence of some unscrupulous operators in the labour hire industry is irrefutable', yet still those opposite believe that there is no evidence to warrant a licensing scheme using—wait for it—the union-bashing card.

With this bill we are saying that enough is enough. We will not stand by and allow cheats and rorters to profit from some of the most vulnerable workers in our community. In the continuing absence of federal government leadership on this matter—in fact, the Deputy Prime Minister has confirmed that they want nothing to do with fixing labour hire—the Queensland government will do all it can at the state

level to protect vulnerable workers and clean up the labour hire sector. The only way for state governments to put an end to this appalling record of exploitation at the hands of labour hire companies is through the introduction of a rigorous labour hire licensing scheme, and that is what this bill delivers.

I wish to thank the Finance and Administration Committee for its scrutiny of the bill. It is disappointing that the committee was not able to reach consensus on a bill that is designed to protect vulnerable workers from exploitation and improve the integrity of the labour hire sector. One would have thought this is something all sides of parliament could find common ground on, but unfortunately that was not the case in the committee inquiry process.

I do note that the government members of the committee made clear their strong support for the bill and that the chair of the committee, the member for Sunnybank, commended the bill as an appropriate and much needed response to the irrefutable evidence of exploitation in the labour hire industry. I also acknowledge the contributions of other members of the House such as the members for Mirani and Dalrymple, who over a long period of time have highlighted the problems in the labour hire industry and advocated in support of vulnerable labour hire workers. Many of my colleagues on this side of the House have raised these issues with me.

I have noted the comments made by the committee in its report and I am acting upon these through the revised explanatory notes which have been supplied to the House. As the committee suggested, the revised explanatory notes are designed to provide further clarification and explanation of particular provisions in the bill. The main points of clarification are in relation to the scope of the bill at clauses 7 to 9 and the anti-avoidance provision at clause 12. In response to another committee suggestion, I will be introducing an amendment to the transitional provisions at clause 109 that will allow existing operators 60 days to apply for their licence after the proposed commencement of the scheme, up from 28 days that is currently provided in the bill.

I also wish to acknowledge the work of the committee in its earlier inquiry into the labour hire industry in Queensland. Its report lodged in June 2016 found serious and systemic issues of mistreatment and exploitation related to the use of labour hire arrangements—cases of wage theft and unauthorised deductions, sexual harassment, workers housed in overcrowded and substandard accommodation, lack of proper safety equipment and training, systemic tax avoidance, sham contracting and phoenixing of companies, leaving workers stranded without their entitlements and in danger of their health and safety. In the government's response to that report we said that we would consider further measures to better protect vulnerable workers from exploitation and ensure improved and effective regulation of the labour hire sector. We deliver on that commitment with the bill before the House today.

I now turn to outline the key features of the bill. The Labour Hire Licensing Bill 2017 will establish a mandatory business licensing scheme for all labour hire operators. The two core elements underpinning the scheme are first a requirement that labour hire providers must be licensed in order to operate and supply labour in Queensland. To be licensed, a labour hire provider will be required to establish that they are a fit and proper person to run a labour hire business and that their business is financially viable and they operate in compliance with relevant laws. The second key element of the bill is that persons who engage labour hire providers must only engage a licensed labour hire provider. Users of labour hire will be able to check an online register to help them identify and use legitimate labour hire providers. Similarly, workers will be able to check if a labour hire company is legitimate and law abiding before accepting work. The bill sets out strong penalties for operating without a licence or for using an unlicensed provider. The bill will also create an obligation for licensees to report regularly on their labour hire activities and any associated activities such as the provision of accommodation and in relation to their compliance with relevant laws. These key elements of the bill will help protect workers from exploitation by unscrupulous labour hire operators and promote the integrity of the labour hire industry throughout Queensland. This will be done in a way that minimises the administrative burden on labour hire providers and host employers, particularly ethical operators who are in compliance with their legal obligations.

This bill does not seek to change or take away a particular type of employment arrangement that a business has chosen to use. What it does do, for example, is give cause for a business operator who is not directly employing their staff to stop and ask themselves if they are using labour hire in their operations and, if so, whether the provider is licensed and doing the right thing by its workers in their workplace. End users of labour hire workers should not, and if this bill is passed will not, be able to turn a blind eye to worker exploitation. The scope of the bill is deliberately wide both in terms of the industries that are covered and the types of labour hire arrangements. The licensing scheme is not industry or sector specific and will apply to any labour hire arrangements in Queensland. This deliberately broad approach keeps in scope a range of arrangements which people might enter into which would be

considered labour hire by a reasonable person. It will also improve visibility of the labour hire industry, which until now has been left largely unregulated, and ensure that labour hire providers are held accountable regardless of the sectors in which they operate.

Labour hire arrangements are used across a multitude of public and private sector industries including administration, IT, horticulture, construction and large multinational corporations. While some of these sectors are more high risk than others, it would be naive to assume that there is no risk of worker exploitation in other sectors. The evidence of the committee was that exploitation and poor practices in the labour hire sector extend across a number of industries including, but not limited to, horticulture, meat processing, security, cleaning and hospitality. The labour hire sector as a whole needs to be cleaned up. Regardless of what industry sector we are talking about, the reputation of good, law-abiding labour hire companies is being tarnished by those dodgy companies that continue to exploit their workers and undercut reputable businesses. Furthermore, our strong view is that, regardless of the level of exploitation or otherwise, if you are in the business of selling labour to third parties you should be licensed in the same way you need a licence to sell a house or a car or alcohol.

The meaning of a provider of labour hire services is also purposefully given a broad definition within the bill. Again, this is intended to cast a wide net over the diversity of arrangements that can be properly categorised as labour hire, but at the same time it is not intended to clog up the licensing system with arrangements that fall outside genuine labour hire. The scope of the bill is set out under division 2 at clauses 7, 8 and 9. It provides that a labour hire provider is a person who, in the course of carrying on a business, supplies to another person a worker to do work. As the revised explanatory notes outline, the definition is designed to capture the triangular labour hire relationship between the worker provider and the end user or client that a worker is supplied to, as well as variations on this model which can be used to disguise labour hire arrangements. As I previously made clear to the House when the bill was introduced, businesses that undertake recruitment leading to direct employment or permanent job placement, genuine independent contracting arrangements and workforce consulting services are not in the scope of the bill. The revised explanatory notes make it clear that volunteer or pro-bono work is not labour hire either and neither is work experience or student practical placements organised by an educational institution as part of a course.

Finally, the bill includes a regulation-making provision that can deal with other arrangements which are genuinely not within the scope of labour hire. In this way the bill provides avenues for the scheme to respond to other scenarios where necessary, to provide further clarification on the scope of the scheme. I undertake that the department will continue to consult widely with stakeholders in the development of the subordinate regulation leading up to the implementation of the scheme. I make the point again that a broad scope and a definition of labour hire is necessary and appropriate to achieve the purpose of the scheme. Once you narrow the scope of the scheme, you simply create loopholes for unscrupulous labour hire operators to avoid coverage, and that is not an outcome that we are prepared to accept.

As I already mentioned briefly, the scheme is backed by stiff penalties for labour hire businesses acting unlawfully. The bill introduces three key offences. Firstly, a person must not provide labour hire services without a licence; secondly, a person must not enter into an arrangement with an unlicensed provider; and, thirdly, a person must not enter into avoidance arrangements. The maximum penalty for these offences is 1,034 penalty units or three years imprisonment for an individual, or 3,000 penalty units for a corporation. These penalties are justified as they help create ethical conduct and compliance with the scheme and increase its effectiveness.

The offences are also designed to encourage users of labour hire to use their market influence to improve workplace standards and practices. The creation of an offence for entering into an avoidance arrangement helps support the labour hire providers who do the right thing. Under the scheme, license applications and associated reporting requirements will be done online to reduce the need for hard copy documents. The streamlined online processes will minimise the administrative burden on licence holders. The information requirements in the bill at the application stage and for the purposes of ongoing reporting are common for licensing schemes. When an applicant applies for a licence, they will need to pay the prescribed fee and provide information to satisfy the fit and proper person test and confirm their financial viability in compliance with relevant laws. Given the evidence of exploitation described, these are all perfectly sensible, proportionate and reasonable requirements to place on labour hire providers. In fact, it would be irresponsible for the scheme not to require labour hire providers to provide information to meet these basic conditions.

The dictionary located at schedule 1 of the bill gives examples of the type of laws relevant to the licence. I will be introducing one further amendment to include the Payroll Tax Act 1971 as an additional example of a relevant law. The amendment responds to evidence from the Office of State Revenue that has identified a number of labour hire businesses which appear to be employing people but which did not pay payroll tax. When they began investigations of these businesses, the business was typically

dissolved before they were able to take any action. This is known as phoenixing. By including this act in the list of relevant laws, labour hire inspectors will be able to inspect payroll records and make referrals to the Office of State Revenue if noncompliance is suspected.

Following the initial application stage, licensees will be required to lodge reports on a six-monthly basis on matters like location and type of work, number of workers, disciplinary or enforcement action, and accommodation details. This reporting is crucial to ensure the ongoing eligibility and compliance of licensees with their obligations. It will also provide valuable information on the performance of industry which will be used to inform future policy and compliance activities and provide visibility to a sector that has long been left unregulated.

Ethical operators should have no difficulties meeting the information and reporting requirements under the bill as they are similar to the information required as part of other legal obligations such as for taxation and WorkCover. The bill also recognises this by providing the chief executive with the discretion to waive particular information requirements if the provider has met substantially similar requirements as part of their compliance with other regulatory or accreditation schemes such as an industry certification scheme.

Stakeholder feedback during consultation on the bill revealed a very high expectation for strong enforcement and monitoring of the labour hire licensing scheme. In response, a dedicated licensing unit and inspectorate will be established in the Office of Industrial Relations within the Queensland Treasury to promote awareness of the scheme and ensure compliance. The powers granted to inspectors under the bill are standard across Queensland legislation. Labour hire licensing inspectors will have powers which enable them to enter premises suspected of running labour hire operations, require production of documents, seize evidence, and prosecute infringements. These powers are necessary to ensure action is taken against accounts of worker exploitation. They reflect community expectations that inspectors will have the powers they need to prosecute rogue operators. The licensing unit and inspector will refer any possible offences which they uncover that fall outside the scope of the bill to the relevant authority. In this way, the Queensland labour hire licensing scheme will also assist other enforcement and regulatory bodies such as the Fair Work Ombudsman and the Australian Tax Office in their efforts and investigations to tackle worker exploitation and rogue operators.

Like any licensing scheme, this bill provides a licensee or applicant with the right to review and appeal decisions that are made under the bill. Clause 93 also provides third-party appeal rights for a person or organisation with an interest in protecting workers or the integrity of the labour hire industry. This type of appeal right is appropriate as labour hire workers are some of the most vulnerable workers in the community. It also responds to the broad community interest in protecting workers and promoting the integrity of the labour hire industry. The risk of vexatious appeals is limited as labour hire licensees cannot apply for a third-party appeal review against a business competitor.

The public register of licences under the scheme is an important feature of the bill and will be critical to the success of the scheme. The register will provide a list of licensed operators and their contact information, the industries and locations they service, information on their compliance with relevant laws, work health and safety performance, and the provision of accommodation. These are not commercially sensitive matters. The register will provide users of labour hire with the comfort that they are not entering into an arrangement with an unlicensed provider. For providers, it provides them with an advertisement of their services and is a public recognition of their ethical conduct.

Subject to the passage of the bill, the scheme is intended to commence in the first half of next year and there will be an extensive information and awareness campaign to ensure labour hire users and providers are prepared.

I am proud that the Palaszczuk Labor government is leading the way, becoming once again the first jurisdiction to legislate for a state based labour hire licensing scheme. The sector has been left unregulated for too long. If the parliament is serious about doing something to stop the exploitation of labour hire workers and clean up the sector, then a legislated labour hire licensing scheme is required. If one is in the business of selling labour, one should be licensed in the same way if one is selling a house, selling a car or selling alcohol. Legitimate providers have nothing to fear from this scheme and people will continue to be able to use labour hire arrangements as long as they are using a licensed provider.

The bill is a much needed and appropriate response to the evidence of exploitation in labour hire which has gone on for far too long. The only way to put an end to this appalling exploitation and to take the first step to cleaning up this industry is the introduction of a rigorous labour hire licensing scheme. That is what the state can do, that is what this government will do and that is what this bill delivers. It is interesting that those opposite are not supporting this bill. They have no idea about protecting workers, and I am not convinced that they understand that doing nothing is not an option in this space. I commend the bill to the House.