



Issues Paper - Inquiry into the practices of the labour hire industry in Queensland

On 2 December 2015, the Queensland Legislative Assembly resolved that the Finance and Administration Committee inquire into the practices of the labour hire industry in Queensland.

Terms of Reference

That the Finance and Administration Committee inquire into and report to the Legislative Assembly by 30 June 2016 on the practices of the labour hire industry in Queensland.

That, in undertaking the inquiry, the committee should consider:

a) the extent, nature and consequence of labour hire employment in industries and/or regions, including within industry supply chains and the responsibilities of entities involved;

b) phoenixing, undercapitalisation and undercutting of conditions by labour hire companies ("companies") and their impact on the labour market and business;

c) the social and economic impacts, including on regional communities, of replacing permanent employees, apprentices and trainees with labour hire workers;

d) allegations that labour hire and sham contracting are being used to avoid workplace laws and other statutory obligations, such as:

i. underpayment of wages and entitlements, including superannuation; and

ii. avoidance of payroll tax and WorkCover premiums;

e) the effectiveness of enforcing current industrial relations laws and instruments, occupational health and safety laws and workers compensation laws in the labour hire industry;

f) allegations of exploitation, harassment and other mistreatment of workers employed by companies;

g) whether tendering and employment practices create an uneven playing field for competing businesses; and

h) the regulation of labour hire in Australian jurisdictions and internationally and effective enforcement mechanisms, including bonds, licensing, registration and other forms of compliance.

In order to fully inform itself, the Committee is keen to hear from as many Queenslanders as possible. Submissions are invited by **4pm on 7 April 2016**.

The committee is required to report on the inquiry by **30 June 2016**.

How to get involved

The committee seeks written submissions **addressing any aspect of the terms of reference** by **4.00pm on 7 April 2016**. Guidelines to making a submission are at page 6.

Further inquiry information is available on the committee's website which is regularly updated to include details of the committee's public briefings and hearings: www.parliament.qld.gov.au/FAC.

Submissions should be sent by email to the Committee at fac@parliament.qld.gov.au

or by post to: **Research Director
Finance and Administration Committee
Parliament House
BRISBANE QLD 4000**

or by fax to: **(07) 3553 6699**

The Committee seeks submissions addressing any aspect of the terms of reference for this inquiry.

The labour hire industry

The labour hire industry provides skilled and unskilled labour to client companies, usually on a short-term basis.¹

An example of a labour hire arrangement is where **Company A** (a labour hire company) provides workers to **Company B** to perform work under the direction of **Company B**. Those workers remain employees or contractors to **Company A**.²

There are approximately 5,800 businesses involved in the labour hire industry and around a quarter of those (23.5%) are based in Queensland.³

In September 2014, 103,900 people in Queensland found their job through a labour hire company or agency. Around 13% identified as public sector workers and around 85% identified as private sector workers. Those workers identified their field of work as:

- clerical and administrative (19%)
- technicians and trade (19%)
- professionals (18%)
- machinery operators and drivers (15%)
- labourers (14%).⁴

Extent of the labour hire industry

The terms of reference include consideration of:

the extent, nature and consequence of labour hire employment in industries and/or regions, including within industry supply chains and the responsibilities of entities involved; and

the social and economic impacts, including on regional communities, of replacing permanent employees, apprentices and trainees with labour hire workers.

The Committee seeks submissions on the extent of labour hire employment within Queensland and any social and economic impacts of the industry.

What impacts does labour hire have on regional communities? How should those impacts be addressed?

Alleged mistreatment of labour hire workers

The terms of reference require the Committee to consider allegations of exploitation, harassment and other mistreatment of workers employed by labour hire companies.

A number of issues have been raised in the media regarding the mistreatment of labour hire workers. See for example ABC's Four Corners report '*Slaving Away*'.⁵

Alleged mistreatment of workers is not limited to Queensland. In December 2015, a Victorian labour hire operator was fined \$42,840 in the Federal Court for deliberately under paying two workers.⁶

Labour hire workers include transient overseas workers e.g. backpackers and workers on temporary visas which could lead to cultural and language barriers to those workers understanding their rights, the rights and obligations of their employers and how they can enforce their rights.

Treatment of labour hire workers

The terms of reference require the Committee to consider allegations of exploitation, harassment and other mistreatment of workers employed by companies.

Why are labour hire workers vulnerable to exploitation, harassment and other mistreatment?

What are the risks to labour hire workers in Queensland?

What is best practice regarding the treatment of labour hire workers?

What steps are taken to ensure that labour hire workers understand their rights and the rights and obligations of their employers? How can this be improved?

What issues prevent or reduce the incidence of labour hire workers enforcing their rights as workers? How can these barriers be addressed?

What assistance is provided to workers from culturally and linguistically diverse backgrounds to understand their rights?

¹ IBISWorld, [Temporary Staff Services: Industry at a Glance](#)

² Office of Industrial Relations, Paper 2, page 1, available here: <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I5-LabourHire/I5-bp-25Feb2016.pdf>

³ IBISWorld, [Temporary Staff Services: Industry at a Glance](#)

⁴ ABS data as provided by the Office of Industrial Relation, Paper 2, page 1, available here: <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I5-LabourHire/I5-bp-25Feb2016.pdf>

⁵ <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>

⁶ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/december-2015/20151211-cardamone-penalty>

Regulating labour hire companies' conduct

The terms of reference also require the Committee to consider:

- *phoenixing, under-capitalisation and undercutting of conditions by labour hire companies and their impact on the labour market and business; and*
- *allegations that labour hire and sham contracting are being used to avoid workplace laws and other statutory obligations, such as:*
 - i. underpayment of wages and entitlements, including superannuation; and*
 - ii. avoidance of payroll tax and WorkCover premiums; and*
- *whether tendering and employment practices create an uneven playing field for competing businesses; and*
- *the effectiveness of enforcing current industrial relations laws and instruments, occupational health and safety laws and workers compensation laws in the labour hire industry.*

The current regulatory landscape

The regulatory landscape for labour hire is spread across Commonwealth, State and Local Government jurisdictions. It is administered through separate and diverse regulatory agencies within each tier of Government.⁷

Workplace rights, entitlements and duties of Queensland workers are included in several pieces of Queensland legislation.

Under the **Industrial Relations Act 1999 (Qld)**, 'employer' is specifically defined to include labour hire agencies.⁸

The **Work Health and Safety Act 2011 (Qld)** (WHS Act) requires a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of their workers while at work in the business or undertaking.⁹ The WHS Act defines 'worker' to mean a person who carries out work in any capacity for a person conducting a business or

undertaking, including work as an employee of a labour hire company who has been assigned to work in the person's business or undertaking. Obligations under the WHS Act relating to the safety of a workplace extend to both the labour hire agency and their client, as the host employer. A labour hire agency cannot 'pass on' its legal duty, regardless of whether the host employer may agree to this.

Workplace Health and Safety Queensland provides a guide, *Labour hire agencies: Managing the safety of on-hired workers*, which outlines the workplace health and safety duties of labour hire agencies.¹⁰ Although labour hire agencies generally do not have direct control or management of the workplaces their employees are assigned to, their duty remains as an employer to their on-hired workers. Accordingly, they have a duty to take action to establish that the workplace and its operations are safe before workers are placed with a client, and to continue to monitor workers' safety for the duration of their placement.

The **Queensland Building and Construction Commission Act 1991 (Qld)**¹¹ and the **Queensland Building and Construction Commission Regulation 2003 (Qld)**¹² require all persons carrying out building work to be appropriately licensed. This requirement can apply to labour hire businesses when they carry out building work.

The Queensland Building and Construction Commission (QBCC) provides a licensing information statement, which discusses the licensing requirements relating to labour hire businesses.¹³ A labour hire business that fails to comply with these requirements may not be entitled to payment, and may be prosecuted by the QBCC.

The **Electrical Safety Act 2002 (Qld)** (the ES Act),¹⁴ the **Electrical Safety Regulation 2013 (Qld)**¹⁵ and four electrical safety codes of practice,¹⁶ provide a

¹⁰https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0019/83080/labour-hire-agency-guide.pdf

¹¹<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/Q/QldBuidConCommA91.pdf>

¹²<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/Q/QldBuidConCommR03.pdf>

¹³[http://www.qbcc.qld.gov.au/sites/default/files/LIS-017 Labour Hire Businesses.pdf](http://www.qbcc.qld.gov.au/sites/default/files/LIS-017%20Labour%20Hire%20Businesses.pdf)

¹⁴<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/ElectricalSA02.pdf>

¹⁵<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/ElectricalSR13.pdf>

¹⁶<https://www.worksafe.qld.gov.au/laws-and-compliance/electrical-safety-codes-of-practice>

⁷ Queensland Treasury, Office of Industrial Relations, Briefing to the Finance and Administration Committee, February 2016, <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/15-LabourHire/15-bp-25Feb2016.pdf>

⁸<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IndustRelA99.pdf>

⁹<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WorkHSA11.pdf>

framework for preventing persons from being killed or injured, and property being destroyed or damaged, by electricity. The framework includes the imposition of duties on those who may affect the electrical safety of others, and a system of licensing for electrical workers and contractors. In 2014, amendments to the ES Act came into effect to specifically include in the definition of 'worker' employees of labour hire companies assigned to work in a person's business or undertaking.

The **Workers' Compensation and Rehabilitation Act 2003 (Qld)**¹⁷ and the **Workers' Compensation and Rehabilitation Regulation 2014 (Qld)**¹⁸ establish a framework for managing workers' compensation and rehabilitation in Queensland.

The Office of Industrial Relations (OIR) advised the Committee that labour hire companies pay for workers' compensation insurance policies through WorkCover Queensland.

The current average premium rate paid by labour hire employers is \$1.39 per \$100 of wages paid, compared to the scheme average of \$1.20 per \$100 of wages paid (e.g. for all industries).¹⁹ The Committee understands that the better an employer's safety performance, the lower the premium that is charged to the employer. Employers with a poor safety performance are generally required to pay higher premiums.

The **Private Employment Agents Act 2005 (Qld)** provides for a code of conduct as the main way of regulating the conduct of private employment agents in their relationships with people looking for work or for workers.²⁰ The relevant code of conduct is set out in the **Private Employment Agents (Code of Conduct) Regulation 2015 (Qld)**,²¹ which commenced on 1 September 2015.²²

Labour hire companies are excluded from the application of the *Private Employment Agents Act 2005*, and the code of conduct, on the basis that the labour

hire company is responsible for performing the obligations owed by a person to the worker, including paying the worker for the work.

Regulation of the labour hire industry

The terms of reference include consideration of the effectiveness of enforcing current industrial relations laws and instruments, occupational health and safety laws and workers compensation laws in the labour hire industry.

Is the current regulation of labour hire in Queensland sufficient? Is enforcement of the relevant laws adequate?

Are industry and regulatory codes of conduct sufficient? Please explain why and how.

Phoenixing and sham contracts

Despite the regulation outlined above, the Committee's terms of reference include consideration of a range of activities by some labour hire companies which diminish the rights of Queensland workers.

Some companies try to avoid their obligations by closing a business and subsequently opening another business under a different name. This practice is known as 'phoenixing'.

Phoenixing is the deliberate and systemic liquidation of a corporate trading entity with the fraudulent or illegal intention to avoid tax and other liabilities such as employee entitlements, and continuation of the operation and profit taking of the business through another trading entity.²³

The OIR advised the Committee that some companies with a poor safety performance, and thereby high WorkCover insurance premiums, will phoenix a company in an attempt to reduce their WorkCover insurance premiums by creating a new company. The OIR advised it is able to work with the Australian Taxation Office to monitor such behaviour. WorkCover can then apply an additional premium penalty on any such businesses seeking to evade their responsibilities in this way.²⁴

¹⁷ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WorkersCompA03.pdf>

¹⁸ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WorkersCompR14.pdf>

¹⁹ Finance and Administration, Departmental Briefing, Transcript, 24 February 2016, at page 4.

²⁰ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PrivateMAgA05.pdf>

²¹ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PrivateMAgCCR15.pdf>

²² <https://www.treasury.qld.gov.au/publications-resources/industrial-relations/information-statement-for-work-seekers-other-than-models-performers.pdf>

²³ Office of Industrial Relations, written briefing to the Finance and Administration Committee, Paper No. 1, available at: <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I5-LabourHire/I5-bp-25Feb2016.pdf>

²⁴ Finance and Administration, Departmental Briefing, Transcript, 24 February 2016, at page 4 <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I5-LabourHire/I5-trns-pb24Feb2016.pdf>

*Sham contracting is traditionally one where the proper employer-employee relationship, which has obligations and rights attached to it, is somehow disguised or purported to be something other than that, and that is normally one of independent contractor. In terms of the employment relationship, it attempts to strip away many of the worker's rights and obligations...*²⁵

Sham contracts can be used by companies to avoid their duties with respect to employees. This can include paying less than the minimum wage requirements, not providing entitlements including, for example, superannuation payments.

Companies can also reduce conditions for employers in order to lower their operating costs. This can increase their competitive advantage by allowing them to provide lower tenders for contracts.

Regulation of the labour hire industry

The terms of reference also require the Committee to consider:

phoenixing, under-capitalisation and undercutting of conditions by labour hire companies and their impact on the labour market and business; and

allegations that labour hire and sham contracting are being used to avoid workplace laws and other statutory obligations, such as:

- i. underpayment of wages and entitlements, including superannuation; and
- ii. avoidance of payroll tax and WorkCover premiums; and

whether tendering and employment practices create an uneven playing field for competing businesses.

Does the current regulatory scheme adequately prevent and address phoenixing, under-capitalisation and under-cutting of conditions by labour hire companies? If not, why, and how can this be improved?

What evidence is there of undercutting of conditions by labour hire companies? How can these actions be prevented and addressed?

Do tendering practices and employment practices impact on businesses ability to adequately compete? Why? How? How can this be improved?

Concurrent labour hire reviews in Australia

There are a number of concurrent reviews in other Australian jurisdictions, detailed below.

Victoria - Inquiry into the Labour Hire Industry and Insecure Work

The inquiry was announced in September 2015 and is chaired by Professor Anthony Forsyth of the RMIT University Graduate School of Business and Law. It is investigating the practices of labour hire companies, insecure work, sham contracting and the abuse of visas to avoid workplace laws and undermine minimum employment standards.²⁶

The Inquiry's terms of reference include examination of the social impact of insecure work and assessment of whether the current legal framework meets the needs of Victorian employers and labour hire workers.²⁷

The inquiry released a background paper on 16 October 2015.²⁸ Submissions to the inquiry are available on its website.²⁹ The Inquiry is due to deliver its final report by 31 July 2016.

South Australia – Parliamentary Committee inquiry

On 11 June 2015, the South Australian Economic and Finance Committee, commenced an inquiry into the practices in the labour hire industry in South Australia, including:

1. exploitation, harassment and other forms of mistreatment of workers;
2. non-payment or underpayment of wages and superannuation entitlements;
3. non-payment or underpayment of Return To Work SA premiums;
4. avoidance of taxation liabilities;
5. recommendations to ensure a fairer, safer and more secure industry;
6. support for a coordinated national approach to the issue;

²⁶ <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/inquiry-into-the-labour-hire-industry-and-insecure-work>

²⁷ <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/inquiry-into-the-labour-hire-industry-and-insecure-work/terms-of-reference>

²⁸ http://economicdevelopment.vic.gov.au/data/assets/pdf_file/0015/1215411/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf

²⁹ <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/inquiry-into-the-labour-hire-industry-and-insecure-work/inquiry-into-the-labour-hire-industry-and-insecure-work-submissions>

²⁵ Finance and Administration, Departmental Briefing, Transcript, 24 February 2016, at pages 2-3

7. registration of labour hire businesses and longevity of such;
8. the responsibility of host employment company owners to ensure exploitation is prevented; and
9. any other relevant matter.

The South Australian Committee has called for submissions by Monday 27 July 2016. Further information on this inquiry can be found on its website.³⁰

Regulation of the labour hire industry

The Committee seeks information on how labour hire industries are monitored and regulated in Australian and international jurisdictions.

What lessons can Queensland take from how labour hire companies are regulated elsewhere?

A guide to making a submission

Parliamentary committees welcome submissions to their inquiries. Submissions add to a committee's knowledge and understanding of issues relevant to the committee's inquiry and may influence a committee's recommendations to the Parliament. Any individual or organisation may make a submission.

When can a submission be made?

Submissions should be received by the Committee by **4pm on Tuesday 7 April 2016**.

The Committee has a set date to report and may not be able to fully consider late submissions.

Are submissions public or confidential?

If the Committee accepts a submission, it becomes part of the Committee records and is usually placed on the Committee's website as soon as possible to encourage public consideration. Contact details of individuals are removed before submissions are published.

The Committee may decide that a submission (or part of it) should be kept confidential. **If you want all or part of your submission to be kept confidential, you should state this clearly and explain the reasons.**

What should be in a submission?

Your submission should set out your views on one or more of the terms of reference. Your submission should include facts and evidence on which your views or recommendations are based.

What format is required?

The Committee prefers submissions that:

- are typed (in Word or PDF) or legibly handwritten
- are clearly structured, concise and accurate
- include supporting evidence
- are brief and to the point. If a submission needs to be long (e.g. 10 pages or more) it may assist the Committee to include a brief summary of the main points
- include full website addresses as references to external websites.

Submissions should include:

- the author's name and contact details.
- if the submission is made on behalf of an organisation, the level of approval.

How do committees deal with submissions?

Submissions are acknowledged. After considering a submission's relevance and content, a committee will decide whether to accept it, and whether to publish it. Most submissions are accepted, and most are authorised for publication in full on the Committee's website (personal details e.g. contact numbers and email addresses are removed prior to publication).

A committee may decide not to accept a submission or not to publish all or part of it if, for example, the committee considers the submission is illegible, is not relevant, contains language which is offensive or may be defamatory, *sub judice* or otherwise offends the rules of Parliament.

Can I publish the submission?

After the Committee has authorised publication of a submission, submitters are welcome to include a link from their website to their submission on the Parliament's website.

Where the Committee has not published the submission, publication or disclosure may breach the rules of the Parliament, and be subject to investigation and sanction for contempt of Parliament.

Committee members

Mr Peter Russo MP, Chair
Member for Sunybank

Mr Michael Crandon MP, Deputy Chair
Member for Coomera

Mr Craig Crawford MP,
Member for Barron River

Mr Duncan Pegg MP,
Member for Stretton

Mr Tony Perrett MP,
Member for Gympie

Mr Pat Weir MP,
Member for Condamine

³⁰<https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CId=292>