

THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES' UNION

(Queensland Branch)

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Labour Hire Regulation
Executive Director Industrial Relations
Office of Industrial Relations
GPO Box 69
Brisbane QLD 4001

Dear Sir or Madam

Submissions in response to Issues Paper: *Regulation of the Labour Hire Industry 2016*

The Australasian Meat Industry Employees' Union (AMIEU) has prepared the following submissions in relation to the issues paper published by the Office of Industrial Relations, "*Regulation of the Labour Hire Industry 2016.*"

The AMIEU notes the issues paper is, at least in part, a response to the findings of the Finance and Administration Committee report to the 55th Parliament, *Inquiry into the practices of the labour hire industry*, in June 2016. The AMIEU made submissions to that inquiry in March 2016 and supports the view that the labour hire industry is in dire need of regulation.

The AMIEU considers that the failure of the current Commonwealth government to develop any meaningful regulatory response to the problems of labour hire only increases the need for state legislatures to take what legislative and regulatory measures are available to it. The AMIEU acknowledges that exclusionary provisions in Commonwealth legislation (such as Section 26 of the Fair Work Act 2009) limits the possible scope of measures available to state governments.

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The AMIEU has perused the submission prepared by the Queensland Council of Unions (QCU), and wishes to record its endorsement and support of that document.

The AMIEU submissions below do not therefore, address each of the questions raised in the issue paper. Rather, the AMIEU has generally only responded to those questions where it considered it would be useful to supplement those already made by the QCU.

1. What do you think are the most important features of a system to effectively regulate the labour hire industry in Queensland?

The AMIEU would like to record its support for the introduction of a licencing system for labour hire providers. The AMIEU supports the submissions of the QCU in relation to the features that should be adopted by such a system.

One concern that the AMIEU raised in its submissions in March 2016 is that the introduction of a licencing system and supporting regulatory framework needs to take into account the likely responses of the smaller-scale, lower end of the labour hire market. The AMIEU suspects that smaller scale operators (whose ability to compete in the market seems to be predicated upon their capacity to systematically underpay workers and avoid compliance with legal obligations) will seek to avoid these regulatory burdens by establishing themselves as “contractors” rather than “labour hire” providers. Careful attention needs to be paid, therefore, to how the legislative framework will define “labour hire” operations.

In the AMIEU’s experience, many of the contractors who supposedly supply “self-employed” subcontractors to the meat processing industry are simply engaging in “sham contracting” arrangements. Simply because a “contractor” requires its workers to obtain ABNs, for instance, is not conclusive that these workers are self-employed subcontractors rather than employees. Courts traditionally examine the indicia of the contractual relationship between the parties to determine whether that relationship is properly characterised as a contract for services (principal and contractor relationship) or a contract of service (an employment relationship). The AMIEU considers that, in the context of workers being supplied to perform labouring tasks in a factory environment, it is rare that

such activity would not involve an employment relationship, and attempts to portray these workers as self-employed almost inevitably involve sham arrangements.

One possible approach would be to impose significant penalties upon a person who operates a non-licensed labour hire company or a person who utilises the services of such a non-licensed company. A (non-licensed) business which purports to supply independent contractors but which is actually supplying employees under the guise of sham contracting arrangements would be in breach of such penalty provisions, together with any individual operating such a business. Such an approach however, could only be successful if an active and vigorous approach is taken towards investigating and enforcing compliance.

2. *Fit and Proper Person Test – what criteria do you consider appropriate to include in a fit or proper person test or otherwise to obtain a licence to operate as a labour hire provider?*

The AMIEU supports the criteria proposed by the QCU in its submissions. The AMIEU believes that it is also important to consider to whom the “fit and proper person test” should apply. Presumably, the usual situation will be that the applicant for a licence to operate as a labour hire provider will be a legal person (i.e. a corporation) rather than an individual. The AMIEU believes it is important to consider not merely the circumstances of an applicant corporation, but also the circumstances and record of those individual persons who will be directors of the corporation, or otherwise involved in controlling the operations of the labour hire provider. This is particularly important given that the labour hire industry has seen examples of “phoenixing.” Also, the AMIEU has experienced situations where the directors of labour hire companies are effectively puppets, and the labour hire company is being operated by an individual who is not recorded as an owner or director of the entity.

The AMIEU believes consideration also needs to be given to the consequences of (a) non-compliance with the terms of a licence; and (b) the circumstances in which a labour hire provider which holds a valid licence should be deprived of their licence. Presumably, financial penalties will provide an adequate remedy for a range of infringements. Compliance notices (similar to say, improvement notices issued by inspectors under OHS/WHS legislation may also be a useful remedy in terms of trying to eradicate

unacceptable practices. However, at some point, the record of a labour hire provider may demonstrate that it can no longer be considered a “fit and proper person” to hold a licence. The circumstances under which an existing licence can be reviewed, and the grounds upon which it can be cancelled or revoked need to be clearly identified, especially given the potential consequences for labour hire employees (and the host employers to whom they are supplied).

3. *What level of fee do you consider appropriate to licence a labour hire operator and how would it be collected?*

The AMIEU supports the submissions of the QCU in relation to this item.

4. *What do you consider to be an appropriate amount for the threshold capital requirement and how should it be calculated?*

The AMIEU supports the submissions of the QCU in relation to this item.

5. *How should a bond for a labour hire operator to operate in Queensland be calculated and what would be an appropriate amount for the bond?*

The AMIEU supports the submissions of the QCU in relation to this item.

6. *What type of information do you think would be appropriate to be reported regularly by labour hire providers to demonstrate their compliance with their obligations?*

The AMIEU supports the submissions made by the QCU in this regard. Regardless of what regular reporting timeframes are adopted, the AMIEU would add that matters which are relevant to the question of whether the labour hire provider is a fit and proper person to hold a licence should be reported as soon as practicable after they occur. For instance, if a Court makes a ruling which determines that a labour hire provider has contravened a state or federal industrial law, the provider/licence holder should be required to report this straight away, rather than waiting for the next reporting period.

7. *What additional information and training do you think labour hire firms should receive on their rights, entitlements and obligations and how should this be delivered?*

All employers have an obligation to comply with workplace laws and industrial instruments (awards, enterprise agreements) that apply to those employers and their employees. While the AMIEU accepts a need for additional training, it should be recognised that this has arisen because many of those operating labour hire companies are wilfully ignorant, and quite indifferent to, their legal obligations toward their employees. It is not an industry where the high rate of non-compliance with legal obligations (and exploitation of workers) is due to inadvertence or error. For these reasons, the AMIEU considers that the Queensland government should not be required to effectively subsidise the training of labour hire providers. Any costs should therefore be borne by the labour hire companies themselves (whether the cost is recovered directly, or is taken into account in determining the level of licensing fees).

8. *What information do you consider appropriate to be included in labour hire contracts to ensure that workplace regulations are met?*

In addition to the matters raised in the QCU submission, the AMIEU considers that labour hire contracts should be required to include a term obliging the labour hire provider to supply sufficient information to the host employer to enable the host employer to ensure that the labour hire company is complying with any industrial laws or instruments that apply to labour hire employees. The term could also require the labour hire company to comply with specified requests for information, or to conduct an audit, to ensure the labour hire company is complying with workplace laws.

The AMIEU has had experience of host employers who have been wilfully blind to the practices of labour hire companies they have engaged, and claim ignorance or inability to intervene when concerns are raised. The AMIEU has also dealt with host employers who are genuinely concerned for their commercial reputations and wish to ensure that labour hire employees are being correctly paid, but report contractual obstacles to making necessary inquiries.

9. *Do you think there are circumstances where a labour hire worker should be able to pursue the host employer for their entitlements in the event that the labour hire provider does not meet their obligations?*

The AMIEU supports the submissions of the QCU in relation to this item.

10. *Do you think it would assist the workers, host employers and labour hire operators if there was access to information and referral services by way of a one stop shop?*

The AMIEU supports the “one stop shop” concept.



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