

15 February 2017

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

Dear Executive Director,

Regulation of the Labour Hire Industry 2016 – Issues Paper

Thank you for the opportunity to make a submission on Regulation of the Labour Hire Industry 2016 – Issues Paper (the Issues Paper).

The Queensland Law Society (the Society) is the peak professional body for the Queensland's legal practitioners. We advocate for good law and good lawyers. The Society is an independent, apolitical representative body upon which government can rely to provide advice which promotes good, evidence-based law and policy.

The following answers to the questions raised in the Issues Paper have been developed by our Industrial Law Committee.

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

The Society notes that the labour hire industry is already subject to State and federal regulation, which is enforced by bodies such as the Fair Work Ombudsman.

While there is a need to protect workers and ensure they can access their entitlements, there is debate about whether a licensing scheme is necessary and not duplicating and costly.

As a result, some members of our Industrial Law Committee are proponents of introducing a licensing-scheme and some are not.

Those who favour more regulation proffer that a scheme should:

- require a labour hire provider to hold a licence to operate in Queensland, issued by a licensing body;
- require a host employer to only engage the services of licensed labour hire provider;
- enforce these requirements by way of civil penalties.

In addition, where a host employer:

- has engaged the services of an unlicensed labour hire provider; or
- has knowingly or recklessly engaged the services of a licenced labour hire provider who is not complying with the conditions of their licence;

it may be liable for any outstanding employee entitlements, not paid by that labour hire provider. The rationale for this liability is that the host employer has benefited from the provision of labour in circumstances where it knew, or ought to have known, that proper entitlements were not being paid.

If a licensing scheme is to be implemented, the proposed licensing body should be responsible for:

- approving and revoking licence registration;
- enforcing licence conditions;
- prosecuting contraventions of the scheme.

It would also be beneficial if a proposed licensing body has a research and public policy purpose which could include:

- conducting research on the impact of insecure work on vulnerable groups in the Queensland workforce;
- proposing regulatory reform to protect the rights of vulnerable workers in insecure work in Queensland; and
- engaging with stakeholders such as employers, employees, unions, lawyers and academics.

We suggest that where licensing schemes already exist and are enforced, such as QBCC licensing, any new scheme for labour hire providers should be designed to avoid over-regulation, uncertainty and unnecessary expense.

Regardless of the proposed scheme, the Government should ensure existing bodies are well-resourced and effective in ensuring compliance with existing regulation and should prosecute those who contravene this regulation.

Question 2: What criteria do you consider appropriate to include in a fit and proper person test or otherwise to obtain a licence to operate as a labour hire provider?

We refer to the above comments about whether there is a need for imposing further obligations on labour hire providers. Should such a “fit and proper” test or some other similar criteria be implemented however, the Society submits that the following could be considered by an appropriately appointed body:

- The capacity of the applicant to meet its occupational health and safety obligations;
- The financial security of the licence applicant and its capacity to meet its financial obligations to its workers;
- Whether the licence applicant, or a person who is, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence:
 - has ever been convicted of an offence against an industrial or corporations law;
 - has ever been ordered to pay a civil penalty under the licencing scheme or any other industrial law;
 - whether a licence issued to the labour hire provider has been revoked or suspended previously; or
 - any other matters that the proposed licensing body considers relevant.

Question 3: What level of fee do you consider appropriate to licence labour hire operators and how would it be collected?

The Society does not take a position on the level of any fee for a licence or the manner of its collection save for stating that any fee should be appropriately calculated.

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

The Society does not oppose a scheme that ensures a labour hire provider is adequately able to meet its responsibilities. We do not take a position on the level of capital required for a labour hire operator or the manner of its calculation.

Question 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?

As stated, the Society does not oppose a scheme that ensures a labour hire provider is adequately able to meet its responsibilities. The Society does not take a position on the manner of calculation of a bond or the amount a bond should be set at.

Question 6: What types of information do you think would be appropriate to be reported regularly by labour hire providers to demonstrate their compliance with their obligations?

The Society is conscious of the cost and burden that will be placed on labour hire providers should additional reporting obligations be imposed on them. The Society believes that current reporting obligations should be monitored and enforced such as those relating to workplace health and safety and employee entitlements.

Ideally, labour hire operators should be required to report on:

- compliance with industrial laws, including workplace health and safety laws;
- capacity to meet employee entitlements; and,
- occupational injury and illness, including numbers of ill and injured workers and measures taken to ensure rehabilitation and return to work.

We note that much of this data is already required to be provided. Any regulation should only be put in place to fill gaps where the information is missing.

Question 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?

The Society supports the provision of information to all workers about their legal entitlements and rights. In addition, we propose that if a licensing body is created, there should be stakeholder engagement and an education role which includes producing and disseminating information regarding employer and worker rights, entitlements and obligations under any new labour hire regime.

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

State and federal laws and statutory instruments such as awards and enterprise agreements already prescribe minimum employment standards which employers must comply with. Nominally, all contracts of employment should reflect these.

Compliance with these state and federal laws and statutory instruments needs to be ensured. Again, there ought to be some obligation on a host employer to take steps if it becomes aware that there is non-compliance.

Question 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 the labour hire employer does not meet its obligations e.g. if the host employer was using an unlicensed provider?

As stated above, where a host employer has knowledge of, or in circumstances should have knowledge of, a labour hire provider breaching its obligations to employees, then it is not unreasonable to suggest it bears some responsibility for the breach. It should not be the case, however, that a host employer be automatically liable where a labour hire provider is in breach. Any liability on the part of the host employer needs to be considered based on its acts and omissions.

Question 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'?

As noted above, if a licensing scheme was introduced then the proposed licensing body would ideally have a role in producing and disseminating information regarding the licensing scheme. It would be appropriate for this body to have the capacity to refer identified contraventions of workplace laws to other relevant statutory bodies, as proposed in the Issues Paper.

Question 11: Are there any other issues you would like to raise that are relevant to the Queensland Governments considerations of the labour hire industry and ways to ensure that it operates ethically and meets its legal obligations for workers and the businesses it serves?

There are no other relevant issues which the Society raises at this time. However, we welcome the opportunity for continued consultation in the future.

Please do not hesitate to contact our Policy Solicitor, Kate Brodnik on (07) 3842 5871 or k.brodnik@qls.com.au if you wish to discuss the content of this letter.

Yours faithfully



Christine Smyth
President