

**SUBMISSION on behalf of the
Electrical Trades Union of Employees Queensland**



Submission to the Queensland Government
in relation to the Issues Paper on
Regulation of the Labour Hire Industry 2016

6 FEBRUARY 2017

The Electrical Trades Union (ETU) Queensland and Northern Territory Branch welcomes the opportunity to provide a submission to the Queensland Office of Industrial Relations' Regulation of the Labour Hire Industry 2016 Issues Paper.

The ETU represents over 14 000 members working across Queensland and the Northern Territory in various sectors, including employees employed in electrical contracting, the electrical supply and generation industries, the resources sector and the government sector. ETU members work across various skills, classifications and occupations.

Through our exposure to the electrical industry, we know that the growth in non-standard employment has become prevalent over the last 20 years and labour hire arrangements are a growing feature of employment practices in Queensland and Australia more broadly.

The ETU made comprehensive submissions to the previous *Inquiry into the Practices of the Labour Hire Industry* in Queensland carried out by the Queensland Parliamentary Finance and Administration Committee (FAC), which remain applicable to the current issues paper. Further the ETU supports and adopts the submissions made on behalf of the Queensland Council of Unions (QCU) and the AMWU in response to this issues paper and seeks to supplement these materials.

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

The ETU strongly supports the establishment of a strong regulatory framework in the labour hire industry that includes licensing of labour hire operators and a dedicated regulator to oversee licensing and compliance must be instituted.

The establishment of a Labour Hire Licensing Scheme that incorporates:

- effective market regulation and compliance measures;
- capital requirement to function as a barrier to entry;
- a 'fit-and-proper' person test for all relevant people.
- a bond which is paid to a fund to mitigate risk against liquidation and the failure to pay worker wages and entitlements;
- an annual licence fee requirement to fund a dedicated licensing and compliance unit;
- mandatory workplace rights and entitlements training for labour hire employees;
- a dedicated licensing and compliance unit with the ability to:
 - investigate allegations of breaches and impose penalties;
 - issue improvement and compliance notices
 - prosecute breaches of licences and/or disputes concerning licences before the Queensland Industrial Relations Commission ('QIRC')
 - issue, revoke, suspend and withhold licences
 - audit licensees and labour hire engagement contracts
 - Establish and maintain a public register of all licensed labour hire companies
 - Develop training and information packages for licensees – either directly provided or through accredited trainers
 - Monitor compliance of licensee's reporting obligations
 - Monitor compliance of licensee's legislative obligations

- In conjunction with Workplace Health and Safety and the Electrical Safety Office (where applicable) audit licensee's adherence to Work Health and Safety obligations.
- Substantial penalties for the use of non-licensed labour hire agencies;
- Substantial penalties for licence contraventions
- Investigation and prosecution of licensee breaches be accessible to both the licensing and compliance unit and relevant industrial organisations.
- The QIRC as the tribunal to determine alleged breaches of licence and resolve other disputes about licences including revocation and suspension.
- clear rules for licensees including reporting obligations (see question 6 below)
- clear rules for clients of labour hire operators (i.e. only engaging licensed labour hire companies and consequences for failure to do so)
- Establish public register of all licensed labour hire companies
- Establish a secondary public register of labour hire companies who have their licences denied, revoked and/or breach their licensing conditions;
- Prepare regular and detailed reports to the Queensland Parliament; and
- Refer, where appropriate, discrete matters to Federal Statutory Bodies outside of the scope of the Queensland jurisdiction, including the regulator.

2. Fit and Proper person test - 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?

The ETU supports the introduction of a fit and proper person test for:

- owners,
- partners, directors,
- operators,
- key appointment holders; and
- all other personnel of the labour hire company who make decisions regarding engagement with clients, placement, management, payment of labour hire employees or who make any other decisions that may affect licence compliance.

The 'fit and proper person' test for the purpose of obtaining and maintaining a license should be based on the permit qualification matters required for obtaining a right of entry permit under section 513 of the *Fair Work Act 2009*.

However, the ETU agrees with the submissions of other Unions that this fit and proper person test should also include key features of the ASIC Fit and Proper Person tests, to include consideration for matters that are attributable to running a business and the particular risks and vulnerabilities inherent in running a labour hire business and any other matters the licensing body considers relevant.

The ETU agrees with the QCU regarding the criteria of what should be taken into account as part of the fit and proper person test and add only that where a labour hire company intends to employ people who will perform electrical work that their compliance with their obligations under the *Electrical Safety Act 2002* (Qld) is also a consideration.

A dedicated licensing and compliance unit should be responsible for considering all licence applications.

In considering whether to approve or deny the license, the licensing body should also consider:

- Whether the applicant Company meets the 'threshold capital requirement';

- Whether the applicant Company meets the bond requirements
- The identities of persons who are, or would have, any financial or operational decision making powers in relation to the activities undertaken in exercise of the licence;
- Whether all relevant persons are a 'fit and proper person';
- The provision of all reportable information and satisfactory responses;

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

The ETU supports the introduction of an annual licence fee and consider it to be an essential part of an effective licensing scheme.

The ETU agrees that the fee must be sufficient to fund the licensing and compliance unit. The fee should be payable annually and increase in line with the Consumer Price Index (CPI).

The fee would be collected by the licensing and compliance unit.

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

The ETU submits that in order for a labour hire operator to obtain a licence, they must first meet the threshold capital requirements.

The ETU does not believe that a single figure can be developed to apply to all licensees rather there needs to be the development of a formula that is adequate to cover all financial risks, taking into account the level of exposure the individual labour hire operator.

A threshold capital requirement should include an assessment of the number of employees engaged, as this would increase the threshold capital amount required, to determine a sufficient amount required for a company to meet all of its financial and legal obligations, particularly in respect of employee entitlements, liabilities and insurance costs.

However, final determination of the appropriate capital threshold requirements, initially and on-going, should occur only after more detailed consultation with key stakeholders, including employers and their organisations, unions and other parties with an interest in the operation of the licensing scheme.

The obligation to demonstrate a labour hire company can meet the threshold capital requirement would prevent undercapitalized companies from entering the market and ensure that licensed operators have sufficient capital to meet their financial obligations including ongoing licence fees, tax liabilities and employee wages and entitlements. The imposition of a threshold capital requirement is designed to eliminate the practice of phoenixing in the labour hire industry.

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?

In addition to a licensee having to demonstrate they can meet the threshold capital requirements the ETU believes that licensees must provide a bond, which would act as security for employees' unpaid entitlements in the event of liquidation.

We agree with the AMWU that this security bond must be substantial and held for at least 12 months after the termination or expiry of a licence to ensure any outstanding liabilities have been disbursed. The ETU agrees with the QCU that an amount of 11% of turnover, consistent with the formula used in Luxembourg¹ would be an appropriate bond amount. If the labour hire operator is newly established they should provide an initial financial guarantee of \$125,000.00 for the first 12 months and then revert to the formula that applies to other licensees thereafter.

¹ Luxembourg: Temporary agency work and collective bargaining in the EU. retrieved from <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/luxembourg/luxembourg-temporary-agency-work-and-collective-bargaining-in-the-eu>

As with the capital threshold requirements the ETU believes that final determination of the appropriate bond amounts, initially and on-going, should occur only after more detailed consultation with key stakeholders, including employers and their organisations, unions and other parties with an interest in the operation of the licensing scheme.

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 ETU supports the matters raised by the QCU, AMWU and NUW submissions as a non-exhaustive list of information Labour hire companies should be required to report on:

- Compliance with workplace laws including: industrial laws, health and safety laws, anti-discrimination laws etc.;
- Where employees are placed (host employer)
- Superannuation payments;
- Payment of Workcover premiums, including industry breakdown, as rates vary, to ensure the correct cover is paid for the type of work performed;
- Relevant industrial instruments that govern employee entitlements, i.e. provide copies of any contracts, enterprise agreements, awards or piece rate agreements that workers are paid under;
- Training records, including workplace rights training;
- ATO documents; and
- Number of incidents and injuries sustained, and workers return to work progress;
- The number of employees engaged – including particulars such as the industries they work, age, gender, non-English speaking background, visa status, etc.
- Any breaches in the preceding quarter
- Changes in ownership structures
- Business addresses
- Opening of new branches

In addition, where a labour hire operator provides electrical work they are subject to the legislative requirements of the Electrical Safety Act 2002 (ES Act).

Only employees with an electrical work licence can perform electrical work.

A labour hire operator carrying out electrical work for others must have an electrical contractor licence. To maintain an electrical business licence, a business needs at least one qualified technical person who can perform and supervise the electrical work and at least one qualified business person. They can be the same person and both are endorsed on the electrical contractor licence. An electrical contractor licence will be cancelled if there is no qualified business and/or technical person attached to the licence: the contractor must have a qualified technical person to operate the business.

Compositely these sections of the ES Act mean that a labour hire company cannot undertake (including the advertising making of a statement) to perform electrical contracting work (as defined) without also holding without an electrical work licence.

Accordingly, where a labour hire operator provides electrical work they should also be required to report:

- An accurate register of licensed workers and their corresponding electrical work licence
- A declaration that only employees with valid trade licences/qualifications are performing licensed/trade work.
- The licensee's valid electrical work licence
- The licensee's valid electrical contractors licence

- The licensee's qualified technical person
- The licensee's qualified business person

Labour hire operators should be required to report quarterly and these should be publicly available from the licensing and compliance unit. Licensees should also be required to update information with 21 days of any changes, such as a new industrial instrument, or change in management.

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 licensing and compliance unit should have an educative function. Mandatory training developed and approved by the licensing and compliance unit, should be provided to labour hire employees by accredited trainers.

The training needs to be provided in a means appropriate to the recipient (i.e. culturally and linguistically).

The training should include information about rights, entitlements and obligations to labour hire employees and companies. We support the QCU submission that such information could include but not limited to:

- Industrial instruments including relevant and current minimum rates of pay;
- National Employment Standards;
- Company policies and procedures;
- Host employer policies and procedures;
- Unfair dismissal laws;
- Workplace Health and Safety rights and obligations;
- Workers Compensation;
- Anti-discrimination and sexual harassment laws;
- Superannuation, including choice of funds;
- Freedom of association;
- Taxation as employee (why and how much);
- Limitations of their visa and potential risks associated with a breach of those terms; and
- Complaint mechanisms and remedies for all of the above.

We propose that the training be mandatory and individuals should be required to complete the training at the commencement of their employment and an annual refresher course. Time taken to do the training must be paid by the licensee.

We further propose that where a licensee fails to undertake or complete the training of employees it can attract suspension or revocation of the licence and a civil penalty.

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

The ETU supports the proposal of the Government members on the FAC, as outlined in this issues paper, that labour hire contracts must provide contractual obligations for:

- The payment of wages and conditions in accordance with the requirements of employment laws
- Where an employee is unable to seek recovery of unpaid wages from labour hire employer due to administration, liquidation or an inability to locate the labour hire employer, the employee may recover unpaid wages from the host; and
- The employee can sue upon the terms of the contract.

The licensing and compliance unit should audit these contracts and issue improvement notices for those licensee's that are not compliant. Failure to rectify any identified deficiencies or non-compliance of contract terms should lead to suspension or revocation of the licence and a civil penalty.

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?

There are a number of circumstances when an labour hire employee should be able to pursue the host employer for their entitlements including:

- Where a labour hire employee is unable to seek recovery of unpaid wages from labour hire employer due to administration, liquidation or an inability to locate the labour hire employer
- If the host employer has:
 - engaged an unlicensed operator; or
 - entered into a contract in full knowledge that the labour hire operator could not possibly be able to provide the relevant services at the tendered price and be compliant with the law; or
 - has carelessly or recklessly engaged the services of labour hire provider that is not complying with the conditions of their licence; or
 - knows or ought to know that the operator is breaching workplace laws

In these circumstances, the host employer should be liable for the payment of all entitlements payable to employees of the labour hire operator, to the extent that those liabilities arose from work performed at the host employer's workplace/s.

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 ETU supports the creation of a comprehensive one stop shop (online portal, supported by a call centre). This would be regulated by a licensing and compliance unit.

The Online portal could:

- Provide education tools/materials
- Provide updates of legislative/regulatory changes;
- Referral services
- Licensees can upload their reports and update information.
- Include a public directory of licensed labour hire companies
- Include a public directory of labour hire companies (licensed and non-licensed) who have been issued with compliance notices, had breaches, had their licence suspended, revoked or conditions imposed
- Include a public directory of fit and proper persons in the labour hire industry
- a 'confidential reporting line' which allows people to report breaches, or suspected breaches, of the licence by a licence holder.

11. Are there any other issues you would like to raise that are relevant to the Queensland Government's consideration 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?

The ETU supports the implementation of a fully portable long service leave benefit scheme, through an industry based defined benefit fund, for labour hire workers. A portable entitlement to long service leave is an extremely important workplace right that must be made available to labour hire workers, who are largely employed in insecure work and unlikely to accrue an entitlement to LSL without a portable benefit scheme.