

REGULATION OF THE LABOUR HIRE INDUSTRY 2016

**SUBMISSIONS ON BEHALF OF THE CONSTRUCTION, FORESTRY, MINING AND
ENERGY UNION (MINING AND ENERGY DIVISION)**



The Construction Forestry Mining and Energy Union (“CFMEU”) is one of Australia’s largest trade unions. The Mining and Energy division is principal trade union for mining and energy production in Australia.

As outlined in the CFMEU’s original submission to the inquiry in the practices of the Labour Hire Industry in Queensland last year, the mining industry in Queensland has the highest percentage of labour hire employees at 10.3%,¹ nearly double the nearest industry. The CFMEU highlighted the issues confronting mineworkers employed as labour hire in Queensland.

Whilst it is acknowledged that there are constitutional impediments preventing the Queensland State Government from regulating the majority of private employment and the reluctance of the Federal Liberal Government to confront the issues in this industry, The CFMEU (Mining and Energy Division) strongly supports any regulation of the Labour Hire Industry in Queensland.

To this end, the CFMEU (Mining and Energy Division) and makes the following submissions in relation to the issues paper released by the Minister of Employment and Industrial Relations on 15 December 2016.

The CFMEU has read the submissions of the Queensland Council of Unions and agree and adopt those submissions.

1. WHAT DO YOU THINK ARE THE IMPORANT FEATURES OF A SYSTEM TO EFFECTIVELY REGULATE THE LABOUR HIRE INDUSTRY IN QUEENSLAND?

In its previous submission to the parliamentary enquiry into the labour hire system, the CFMEU supported the introduction of a licensing system to regulate the labour hire system in Queensland. However, it is the Union’s position that a licensing system is only the first point in effective regulation of the labour hire industry and not the complete solution. In addition to the introduction of a licencing system, the CFMEU also supports the introduction of:

- A compliance unit to not only administer the licensing system but to investigate suspected breaches of licensing conditions and monitor compliance with other laws, eg Industrial and WH&S laws.
- Imposing a statutory maximum period of labour hire assignments. The CFMEU recommends that a maximum period of 6 weeks be imposed on all labour hire assignments, but with the ability of the compliance unit to provide an exemption to a licensee, after they have consulted with the relevant stakeholders and Unions.
- A requirement that labour hire employees be paid ‘market rates’ (eg the rate of pay stipulated by an Enterprise Agreement in place for the location) so that labour hire employees are not paid less than permanent employees performing the same work in the same location.

¹ See Page 2 of the briefing papers- Workplace Health and Safety Queensland Labour Hire Industry Trends – table 10.

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?

The CFMEU submission is that the following criteria should be applied to a fit and proper person test:

- Whether or not the person has been convicted of any of the following offences:
 - Theft;
 - Fraud;
 - Dishonesty;
 - Assault;
 - Destruction of property.
- Whether or not the person has been declared a bankrupt or been banned from performing as a company director.
- Whether or not the person has contravened an industrial or workplace health and safety law, including the imposition of any penalties.
- Provision of character references.
- Any previous disqualifications from holding a license.
- Declarations that the person has no conflict of interest in their role as provider of labour.
- Any relevant training has been undertaken.
- Undertakings that the person shall make their best efforts to ensure that the labour hire company shall continue to meet its Industrial, WH&S, Superannuation, Workcover obligations towards their labour hire employees.
- Any other matter that the compliance unit sees fit to consider.

It is the CFMEU's position that the 'fit and proper person' test should be applied to any person who is an owner or director of a company applying for a license as well as any other person who is engaged and or holds themselves out as an authorised representative of the labour hire company.

3. WHAT LEVEL OF FEE DO YOU CONSIDER APPROPRIATE TO LICENCE A LABOUR HIRE OPERATOR AND HOW WOULD IT BE COLLECTED?

The CFMEU has previously submitted that the license fee should be an annual fee collected by the compliance unit. This could be done either upon the approval and subsequent anniversary of the license being granted or at the beginning of each financial year, with a pro-rata fee being paid upon the granting of a license.

By allowing the compliance unit to collect the fee, they can then use the fees to cover the administration and regulation of the licencing scheme, ensuring that the State Government does not have to continue to bulk of the cost of the scheme.

The requirement to pay the fee annually also ensures the bona-fides of the labour hire licensee in entering the labour market.

The fee can be a sliding fee, depending on the licensee being able to show a commitment to complying with their obligations.

4. WHAT DO YOU CONSIDER TO BE AN APPROPRIATE AMOUNT FOR THE THRESHOLD CAPITAL REQUIREMENT AND HOW COULD IT BE CALCULATED?

It is the CFMEU's submission that there should not be a specific threshold capital amount required but that it should depend on the specific circumstances of each application for a licensee. However, the requirement should give consideration to a number of factors such as:

- Capital;
- Assets;
- Liabilities;
- Revenue and cash flow;
- Size of operation;
- Ongoing operational costs, eg wages, licensing fees, bond etc.

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 CFMEU recommends that the bond be calculated based on the amount of wages paid by the licensee to employees over the course of the licence and, similarly to a workcover premium paid by employers, adjusted each year. This methodology should be adopted in order to ensure that the bond is maintained at a sufficient level to be able to be used by the compliance unit to compensate employees who suffer any loss of pay or entitlements as a result of the license holder defaulting or being found to have failed to comply with their licensing obligations.

For example, the bond may be set initially at \$10 dollars each \$100 dollars paid in wages each year under the license and adjusted annually depending on the subsequent wages paid.

The CFMEU recommends that the bond be kept for a period of time after a license holder ceases to operate in order to ensure that the licensee is not attempting to avoid their obligations towards employees.

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 CFMEU maintains its view that the reporting requirements should be as follows:

- Contractual arrangements with the host employer(s).
- Industrial arrangements, eg Enterprise agreements and/or contracts of employment.

- Any Visa requirements or restrictions on employees.
- Workcover premiums and statistics, including injury and rehabilitation figures.
- Training records.
- WH&S compliance information, eg Improvement notices.
- Superannuation payments
- Leave accrual figures.
- Any other statutory reporting obligations.

It is submitted that the labour hire providers be required to report the above information to the compliance unit on a quarterly basis. In addition, the providers should also be required to report any changes to the above within 28 days of the change occurring.

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?

As part of their licensing requirements, licensees should be able to demonstrate an understanding of the Australian Labour Law system including an understanding of the National Employment standards and the relationship between awards, enterprise agreements and contracts.

These should be provided by either the compliance unit, at a cost to the licence holder, or through an approved course or via the person having a relevant university qualification.

8. WHAT INFORMATION DO YOU CONSIDER APPROPRIATE TO BE INCLUDED IN LABOUR HIRE CONTRACTS TO ENSURE THAT WORPLACE REGULATIONS ARE MET?

Providers should be required to ensure that all employment contracts have, as a minimum the following:

- All relevant licensing information of the labour hire provider;
- Contact details of the compliance unit and a statement informing the employee that the compliance unit can be contacted in regards to any concern about their employment;
- The beginning and end of the contract;
- Guarantee that the employee is to receive no less than the market rate of pay for all work performed;
- All relevant leave and superannuation entitlements;

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 EG. IF THE HOST EMPLOYER WAS USING AN UNLICENSED PROVIDER?

An employee should be able to legally pursue a host employer for any lost entitlement under the following situations:

- If the host knowingly or recklessly engaged an unlicensed labour hire provider;
- The host was aware or ought to have been aware that the labour hire provider, whether licensed or unlicensed, was not paying the employees market rates for any work performed;
- The host forced, coerced or misled the labour hire provider to commit any licensing offence;

The CFMEU submits that a Union or the compliance unit should be able to take action against the host employer on behalf of an employee to recover any lost wages or entitlements.

Further it is submitted that, similarly to the General Protections provisions in the Fair Work Act, the Government should introduce civil penalties for any of the above potential offences as well as legislation which stipulates that a “reverse onus of proof” applies to any legal proceeding taken by an employee against the host employer to recover wages or entitlements.

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 outlined in several times in this submission, it is the CFMEU’s view that the bulk of work required to grant, administer, and investigate licensing of the labour hire providers should be carried out by a compliance unit, funded mainly by licensing fees.

This would be a one stop shop, with one or two offices and a large on line presence to cut down on administrative costs for both licensees and the compliance unit.