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Australian Manufacturing Workers' Union

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

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Executive Summary

The Australian Manufacturing Workers' Union ("AMWU") welcomes the opportunity to provide a response to the Issues Paper on *Regulation of the Labour Hire Industry 2016* ("the Issues Paper") released by the Queensland Government's Office of Industrial Relations.

The AMWU provided a comprehensive Submission to *the Inquiry into the Practices of the Labour Hire Industry* to the Queensland Parliament's Finance and Administrative Committee on 7 April 2016. The AMWU seeks for the aforementioned Submission to be read in conjunction with this Submission.

The AMWU's Submission to the Parliamentary Committee clearly and unequivocally articulated the dire need for regulation of the industry. Moreover, the Submission contained a number of proposals with respect to ways in which the industry needs to be regulated. The AMWU notes however that our position in relation to the regulation of the industry, including the licensing of labour hire providers, was not referenced or referred to in the Issues Paper. For the purposes of clarity, the AMWU strongly supports the introduction of a strong and effective regulatory system for the labour hire industry in Queensland.

The AMWU is an affiliate of the Queensland Council of Unions ("QCU"). The AMWU supports and adopts the QCU's Submission filed with respect to this matter. Our Submission below is formatted on the basis of answering the questions posed in the Issues Paper.

The AMWU welcomes any opportunities made available by the Queensland Government to meet and discuss our Submission.

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

The AMWU is a strong proponent of a regulatory system premised upon licensing of labour hire operators. In order to be effective, the system must be built around a dedicated regulator. The AMWU submits that the scope of the regulator would include the central function of licensing and compliance.

The regulation of the labour hire industry needs to be broad ranging in order to be effective. On this basis, the regulator must have broad ranging scope to:

1. Effectively assess licence applications, including the approval and rejection of licence applications;
2. Actively enforce the laws governing labour hire companies, including the ability to investigate concerns and complaints around workplace health and safety and industrial relations laws and regulations and financial viability (both on a proactive and reactive basis);
3. Issue improvement and contravention notices;
4. Prosecute breaches of licences and/or disputes concerning licences before the Queensland Industrial Relations Commission ("QIRC") or any other relevant jurisdiction;

5. Provide education and training;
6. Establish a public register of all licenced labour hire companies;
7. Establish a secondary public register of labour hire companies who have their licences denied, revoked and/or breach their licensing conditions;
8. Capture and gather information pertaining to labour hire in Queensland;
9. Prepare regular and detailed reports to the Queensland Parliament; and
10. Refer, where appropriate, discrete matters to Federal Statutory Bodies outside of the scope of the Queensland jurisdiction, including the regulator.

The issuing of a licence must be on the basis of the following criteria:

1. Fulfil and continue to meet a 'fit and proper person' test;
2. Evidence of completion of the required training with respect to their obligations, including workplace safety, industrial relations and financial responsibilities;
3. Provide evidence of the pay and conditions offered and provided to workers, including copies of the industrial instrument/s and/or employment contracts;
4. The payment of an annual fee, to be used to fund the dedicated regulator;
5. The payment of a bond, to be held by the Queensland Government, to ensure that companies remain solvent until wound down;
6. Evidence of meeting the threshold capital requirement;
7. Pay all employee benefits, including leave, redundancy and other entitlements, into an appropriate trust fund. Nomination of this fund, and compliance with its deed would be a requirement under the above-mentioned licence; and
8. Adherence to a code of conduct, to be developed in consultation with employers and unions, including conversion to the host after a specified period, and ratified by the regulator. Further, labour hire operators must not engage in any practice which would prevent or limit the ability of the host employer to engage a labour hire worker directly.

As part of the regulatory and compliance system, the AMWU supports the QIRC playing a key role within the system. It is proposed this would involve a dedicated panel being established within the QIRC. Further the QIRC's labour hire panel would be provided with the powers to:

1. Resolve complaints and disputes, including the power to conciliate and arbitrate, in relation to the licensing scheme, including matters relating to:
 - a. The 'fit and proper person' test and complaints arising from it;

- b. WHS complaints; and
 - c. Underpayment of wages and entitlement matters on referral from the Queensland Magistrates Court
2. Enforce publishing and reporting requirements of the scheme;
 3. Hold the various declarations and reports required by the scheme; and
 4. Provide reports on compliance to the Queensland Parliament.

In addition to the above, the Queensland Government should:

1. Develop a model labour hire contract for the relationship between the labour hire company and a business seeking to use their services. This model contract should include provisions that:
 - a. requires the take home pay for any labour hire worker to be the same as any employee undertaking a similar role in the host company;
 - b. enable labour hire workers to be directly employed by the host employer at no additional cost to the host employer;
 - c. extend any rights conveyed to workers at the host company under an Award or Collective Agreement to the labour hire workers. In the case of any right for casual employees to convert to permanent employment, specify that those rights would allow conversion to permanent employment with the host employer.
2. Legislate to require labour hire operators to contribute to a portable long service leave scheme for their employees and make these contributions a condition of their licence.

Lastly, the regulatory system must be underpinned by appropriate civil penalty provisions. This will ensure not only adequate punishment for labour hire providers who fail to comply with their legal obligations, but to serve as an effective deterrent.

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?

As detailed above, the AMWU submits that the consideration of a ‘fit and proper person’ test must form a central component of the licensing scheme for labour hire providers. Further, the dedicated regulator should be provided with the responsibility of assessing licensing applications.

The criteria appropriate to the ‘fit and proper person’ test, should include the following matters:

1. Whether the applicant company satisfies the threshold capital requirement;

2. The identities of all persons who are, or would have, any financial or operational decision making powers with respect to the activities of the company;
3. Whether the abovementioned persons who are, or would have, any financial or operational making powers have been:
 - a. convicted of an offence against an industrial law, or carelessly or recklessly breaching an industrial law;
 - b. convicted of an offence involving entry onto premises, fraud, dishonesty, violence against another person or intentional damage or destruction of property;
 - c. ordered to pay a penalty under the Act or other industrial law;
 - d. whether the proposed licence holder has received appropriate training;
 - e. whether a licence issued to the proposed licence holder has been cancelled, suspended or made subject to conditions;
 - f. whether the proposed permit holder has been disqualified from exercising or applying for a licence; and
 - g. whether a licence holder has the attributes of good character, diligence integrity and judgement.
4. Any other matters that the licensing body considers relevant.

In considering any other relevant matters, the licensing body should have regard to conditions laid out in the Issues paper, specifically at page 32.

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

The AMWU firmly believes that the payment of an annual licensing fee is an imperative component of an effective regulatory system. Further, the annual licensing fee should be used to fund the compliance and licensing unit.

In relation to appropriate quantum for the licensing fee, we defer to the QCU Submission. Provision must be made for annual increases to the fee, with a minimum increase being tied to the CPI.

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

As outlined at page 3, the AMWU submits that the satisfaction of a threshold capital requirement must be a pre-requisite for the purposes of a labour hire provider obtaining a licence to operate.

Further, we submit that the appropriate amount for the threshold capital requirement must be equal to a sum that ensures the labour hire provider is able to meet reasonably foreseeable labour costs, liabilities and insurance costs at the time of licensing, and at all times thereafter.

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?

The bond serves as an important security mechanism to ensure the labour hire provider has sufficient capital to operate, and importantly to ensure workers are not left without the payment of wages, and other entitlements. The quantum of the bond must be premised upon an amount which equates to ensuring the labour hire operator remains solvent until wound down.

The AMWU supports the QCU proposal with respect to an amount of 11% of turnover to be used for the purposes of calculating an appropriate amount of bond payable. We further propose that a security bond is held for at least 12 months after the termination, revocation or expiry of a licence to protect against continued liabilities.

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 AMWU submits that labour hire providers, as part of their licensing obligations be required to report to the regulator on the following:

1. Evidence of compliance with all statutory obligations, including workplace laws, industrial laws, health and safety laws, workers' compensation laws, and anti-discrimination laws;
2. The name of the host employer/s and locations of where employees are placed (principle employer);
3. Evidence of superannuation payments made;
4. Evidence of the payment of Workcover premiums, including industry breakdown;
5. The full details of the relevant industrial instruments that govern employee wages and entitlements, that is, provision of copies of any contracts, enterprise agreements, awards or piece rate agreements that they pay under;
6. Evidence of required training being undertaken by way of training records, including workplace rights training;
7. ATO documents; and
8. Number of incidents and injuries sustained, and workers return to work progress.

Reporting by labour hire operators should occur on a quarterly basis. Moreover, updated relevant reportable information (when changes occur within the quarter) is to be provided within 21 days of any changes, for example the use of a new industrial instrument/employment contract.

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?

As outlined above, the dedicated regulator's functions should include education and information delivery. The licensing fee should include provision for this function to be fully funded. The educative function shall include the following:

1. The production and provision of information about rights, entitlements and obligations to labour hire employees and companies. Such materials are to be produced in a wide variety of languages; and
2. Delivering training to labour hire providers concerning a variety of matters, including licensing obligations and workplace rights training to the labour hire company.

We propose that the training be mandatory. As part of their licensing obligations, labour hire providers should be required to provide workplace rights training to employees. Such training must include provision for the delivery of training about the relevant industrial instrument/s covering employees, health and safety laws, Workers' Compensation laws and processes, and the relevant union/s covering their occupation/industry. It is proposed that the training package be formulated by the dedicated regulator, in consultation with unions and employers. This would result in consistency in relation to training outcomes and awareness of their rights for labour hire workers.

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

The employment arrangements offered and paid to labour hire workers obviously need to meet minimum award and employment standards. The AMWU submits however that labour hire contracts and/or industrial instruments must not only adhere to minimum employment standards, but should also reflect established industry standards. As the Queensland Government would be aware, the AMWU Submission to the Parliamentary Inquiry detailed evidence of the undermining of industry standards in the mining industry. Such behaviour not only grossly disadvantages labour workers, but also impacts upon permanently engaged workers by way of loss of employment and/or lowering of wages and conditions workers and their families are reliant upon.

The dedicated regulator should also conduct random audits of the employment arrangements being utilised by labour hire providers, including the ability to access employee time and wages information. This would be additional to the reporting requirements discussed at question 6.

We refer to question 1 with respect to the formulation of a model labour hire contract. This model contract should serve as a guideline for contract/agreements for the industry generally.

The AMWU acknowledges that difficulties and complexities created by the Federal Government with respect to content in agreements, most specifically in relation to the building and construction industry. The AMWU urges the Queensland Government to raise this issue through the auspices of COAG.

Question 9 – Do you think there are circumstances where labour hire workers 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?

In addition to the obligations placed upon labour hire providers, it is submitted that host employers engaging labour hire workers must also ensure the labour hire provider is licenced and is complying with its licensing obligations (for example, having appropriate employment arrangements in place).

In circumstances in which a host employer has engaged an unlicensed hire operator, the AMWU submits that the host employer is liable to pay outstanding wages and entitlements of labour workers engaged within their business. Further, host employers knowingly engaging an unlicensed labour hire provider and/or a provider not complying with the conditions of its licence would also give rise to liability.

Question 10 – Do you think it would assist workers, host employers and labour hire operators if there was access to information and referral services by way of a ‘one-stop-shop’?

The AMWU is supportive of the proposal of a ‘one-stop-shop’. The AMWU proposes that the ‘one-stop-shop’ sits within the dedicated regulator.

Question 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 AMWU has a long held position with respect to all workers, permanent and casual, being provided with the entitlement to at least 3 months’ long service leave (“LSL”) after 10 years’ employment. Moreover, this entitlement should be portable across different employers and industries.

The AMWU’s proposes the best vehicle to achieve a fully portable LSL benefit would be through an industry-based defined benefit fund. A portable scheme for long service leave is particularly important for workers in precarious and insecure employment, many of which are labour hire workers.

The AMWU urges the Queensland Government, when considering regulation of the labour hire industry, to also consider ways in which the employment of labour hire workers can be more secure, by way of ensuring proper wages and entitlements are paid reflective of industry standards. This includes long-service leave. A portable entitlement to long service leave is an extremely important workplace right that must be made available to labour hire workers.

Submission End.