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

By Email: labourhirereg@justice.qld.gov.au

Dear Sir/Madam,

Response to Queensland Office of Industrial Relations' Regulation of the Labour Hire Industry 2016 Issues Paper

1. Maurice Blackburn has been advocating on behalf of Queensland workers regarding their employment rights, workplace safety and workers compensation for almost 100 years. It is in this context that we welcome the opportunity to make a submission to the *Regulation of the Labour Hire Industry*.
2. Maurice Blackburn applauds the Government for initiating the Inquiry and looks forward to the end result of its work.
3. Our response to Chapter Four – Options to better regulate the labour hire industry are as follows:

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

Labour Hire scheme

4. An appropriate labour hire scheme would be licence-based and should have the following features:
 - require a labour hire provider to hold a licence to operate in Queensland, issued by a licensing body;
 - prohibit an end-user enterprise from engaging the services of an unlicensed labour hire provider;
 - require an end-user enterprise to make reasonable enquiries into whether or not the labour hire provider holds a current licence prior to engaging;

- where an end-user enterprise has:
 - engaged the services of an unlicensed labour hire provider;
or
 - has knowingly or recklessly engaged the services of a licenced labour hire provider that is not complying with the conditions of their licence;

the end-user enterprise would be liable to guarantee the payment of any entitlements owed by the labour hire provider to its workers, to the extent that those entitlements arose from the work done for that end-user enterprise; and,
- a contravention of the scheme should be enforced by way of civil penalties.

Licensing Scheme

5. The proposed licensing scheme incorporates:
 - payment of a bond and annual license fee to the QLD government;
 - a threshold capital requirement to operate a labour hire company;
 - fundamental requirements for license holders and related parties;
 - a dedicated licensing body and compliance unit for monitoring;
 - enforcing the rules of the license; and,
 - mandatory workplace rights and entitlements training.
6. The proposed licensing body would be responsible for:
 - approving and revoking licence registration;
 - enforcing licence conditions;
 - prosecuting contraventions of the scheme; and,
 - preparing and table reports of their licensing and compliance activities in Parliament.
7. The proposed licensing body would also have a research and public policy purpose and be responsible for:
 - 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.

8. The proposed licensing body would include a dedicated compliance unit to ensure compliance with industrial laws, including work, health and safety laws. It could be funded by the license fees and the interest received from bonds paid by operators and could be set up within an appropriate existing structure or on a stand-alone basis. The unit would also:
- establish a public register of all licensed labour hire companies to ensure transparency and assist with compliance;
 - develop and manage a online portal that acts as a 'one-stop-shop' for workers, labour hire operators and host businesses;
 - provide the Queensland Government with a strong understanding of the companies operating in the labour hire industry in Queensland;
 - conduct investigations, including by exercising powers of entry and inspection, into allegations of noncompliance with license requirements and share information with the Fair Work Ombudsman and the Fair Work Commission to ensure minimum standards and workplace laws are complied with;
 - determine whether a license holder has, in fact, breached a condition of the license;
 - provide education and conduct targeted campaigns; and
 - audit contracts between labour hire companies and host employers.
9. Any breach of a license requirement should result in the potential revocation or suspension of a license. Where one or more of the license holders has breached the conditions of the license, the compliance unit should have the power to cancel the license.
10. A breach should attract civil penalties and the level of the penalty should reflect the seriousness, persistence and recklessness of the breaches.. Penalties should also apply in relation to other breaches or actions, including:
- engaging as a labour hire provider a company which is not a licensed labour hire company;
 - intentionally structuring an employment relationship to avoid the obligation for a labour hire provider to be licensed;
 - failure by a licensed labour hire company to comply with workplace laws;
 - employing 'authorised representatives' persons who are not fit and proper or have not obtained the relevant license;
 - providing false or misleading information to the compliance unit or failure to provide information required by the compliance unit;
 - failure to provide the required workplace rights and entitlements training; and

- any other breach of license requirements or a condition of the license.
- In the event that a proposed license holder, license holder, worker covered by the scope of the license or a recognised third party wishes to dispute the determination of the compliance unit, it is proposed that this dispute be heard and determined by a 'labour hire industry panel' member of the Queensland Industrial Relations Commission.
 - We also propose that the compliance unit would have educative, advisory and campaigning functions. These functions must be complimentary to the key compliance functions as systems that rely solely on providing education and advice, such as the system that was set up in Japan, have proved insufficient to protect workers.¹
11. Criminal penalties should apply in appropriate cases, including imprisonment in the case of intentional or reckless breaches. This will ensure that the conduct of the applicant is captured under the fit and proper person test.

Fit & 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?

12. Licence applications should be considered by the proposed licensing body. In deciding whether to grant or deny an application for a licence, the body should consider:
- whether the applicant meets the 'threshold capital requirement';
 - the identities of those persons who are, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence;
 - the business record of the labour hire provider;
 - the business record of each person who is, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence;
 - the nature and manner in which work is performed in the industry or sector in which the licence applicant is expected to operate in;
 - 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:

¹ Elsa Underhill, *A review of licensing arrangements for labour hire firms*, Deakin Graduate School of Business, December 2013. p.11.

- has ever been convicted of an offence against an industrial law;
 - has ever been ordered to pay a civil penalty under the licencing scheme or any other industrial law;
 - convicted of an offence involving entry onto premises, fraud, dishonesty, violence against another person or intentional damage or destruction of property
 - whether the proposed license holder has received appropriate training;
 - whether a license applicant has the attributes of good character, diligence integrity and judgement;
 - either has no conflict of interest in performing their role in the labour hire business, or any conflict that exists will not create a material risk that the person will fail to properly perform their role in the labour hire business;
 - whether the proposed licence holder has been, or is bankrupt;
 - 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.
- extended to reflect the nature of running a labour hire business in which the business operators have control over workers' wellbeing. As such, key features of the ASIC Fit and Proper Person should be incorporated into the test.
 - any other relevant matters.

Licensing fees – What level of fee do you consider appropriate to licence labour hire operators and how would it be collected?

13. An annual licensing fee would ensure that the business has the appropriate amount of capital to operate a labour hire company. It may also act as a disincentive to some employers and limited the number of operators in the industry.
14. The payment would also fund the licensing body and the activities of the compliance unit.
15. The licensing fee should primarily be based on the size of the operator, with particular reference to the number of employees on the labour hire company's books. Given that labour hire companies generally only engage casual workers, any assessment must be on headcount and not FTE.
16. A reduction in the annual license fee should occur for good behaviour.

17. The fee should be payable annually and increased annually in line with the Consumer Price Index (CPI).

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

18. The threshold capital requirement should be based on an assessment of assets, revenue and cash flow.
19. This would ensure that small undercapitalised companies do not enter the market without sufficient capital to properly fund the necessary costs of operation, including ongoing licence fees, tax liabilities and employee wages and entitlements, including superannuation payments.

Bond – 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?

20. The payment of a security bond is to be held against liabilities and mitigate risk against liquidation. As such, we propose that it should be a substantial fee.
21. The calculation of a bond should equate to payroll insurance and secure employees against unpaid wages and other outstanding entitlements in the event of liquidation.

Quarterly compliance reports – 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?

22. Labour hire operators should be required to report on:
- compliance with industrial laws, including work, health and safety laws;
 - the number of employees engaged by them;
 - the number of employees from non-English speaking backgrounds;
 - the number of employees engaged through work visa arrangements;
 - where employees are placed (host employer);
 - capacity to meet employee entitlements;
 - occupational injury and illness, including numbers of ill and injured workers, measures taken to ensure rehabilitation and return to work;
 - information regarding payments to Superannuation funds;
 - information of payment of Workcover premiums, including industry breakdown;

- relevant industrial instruments that govern employee entitlements engaged by the labour hire operator, i.e. provide copies of any contracts, enterprise agreements (including those of the host employer if they include “site rates”) , awards or piece rate agreements that they pay under;
 - training records, including workplace rights training; and,
 - ATO documents.
23. This information should be made available for public inspection on the ‘online portal’.
24. If there is a change in reporting information, such as a new industrial instrument, or change in management occurs, the labour hire operator bears the onus of updating the information within 21 days of any change.

Training – 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?

25. The licensing body we propose would have a stakeholder engagement and education role including producing and disseminating information regarding employer and worker rights, entitlements and obligations under any new labour hire regime.
26. The proposed licensing body should have an educative function, including include producing and providing information about rights, entitlements and obligations to labour hire employees and companies.
27. This information should be produced in a broad variety of languages.
28. The licensing body and/or compliance unit should provide mandatory workplace rights training to the labour hire company. In order to make this training cost neutral, the cost of this training can be covered in the licensing fee. A failure to undertake or complete the training should be subject to a civil penalty.
29. The training, at a minimum, would ensure the worker:
- receives information about the minimum wages and conditions that apply to the worker, including superannuation entitlements;
 - has an understanding of the relevant workplace health and safety laws and discrimination and harassment laws (including sexual harassment) and any company policies in relation to these matters;
 - receives information about the role of the compliance unit and the Fair Work Ombudsman;
 - has an understanding of laws that relate to freedom of association and collective bargaining and including the general protections provisions of the *Industrial Relations Act 1999* (Qld); and
 - is introduced to a representative of a trade union as part of the training.

30. The labour hire companies should be required to provide the proposed compliance unit with a statutory declaration confirming workers have received the mandatory workplace rights and entitlements training.
31. No disciplinary action should be taken against workers that fail to comply with contradictory workplace health and safety policies.

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

32. 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.
33. Accordingly, as noted above, the proposed licensing body needs to have a strong compliance role and must be more than a ‘paper tiger’. Part of this function could include auditing labour hire contracts issued by labour hire firms applying for licenses.
34. Otherwise, labour hire contracts should include minimum terms regarding the capacity to pursue the end-user enterprise where entitlements have not been met (in the circumstances outlined above).

Regulating employment – 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?

35. As noted above, where an end-user enterprise has:
 - engaged the services of an unlicensed labour hire provider; or
 - has knowingly or recklessly engaged the services of a licenced labour hire provider that is not complying with the conditions of their licence;

the end-user enterprise should be liable to guarantee the payment of any entitlements owed by the labour hire provider to its workers, to the extent that those entitlements arose from the work done for that end-user enterprise; and,

- A contravention of the scheme should be enforced by way of civil penalties, and in serious breaches, criminal sanctions.

Compliance – 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’?

36. As noted above, the proposed licensing body would have a role in producing and disseminating information regarding the licensing scheme.
37. 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.

38. The licensing body and/or compliance unit should create a comprehensive online portal – or ‘one stop shop’ - that serves as an accessible dissemination point for the materials created in line with their educative function.
39. The portal can be used by license holders to upload their reporting information and to easily update information.
40. The portal would also function as an easy directory of licensed labour hire companies which businesses and the general public can access, allowing employers to manage their supply chain risks and makes it easier to engage workers with peace of mind.
41. In addition to creating an online portal, the licensing body should also manage a ‘confidential reporting line’ which allows people to report breaches, or suspected breaches, of the license by a license holder.

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

42. Queensland Industrial Relations Commission should provide Awards in a variety of languages

Yours faithfully



Giri Sivaraman
Principal
Employment & Industrial Law Section
MAURICE BLACKBURN