



# United Voice, Industrial Union of Employees, Queensland

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## Submission in response to Regulation of the Labour Hire Industry 2016 Issues Paper

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**February 2017**



## **Introduction**

United Voice, Industrial Union of Employees, Queensland (United Voice) makes this submission in response to the Regulation of the Labour Hire Industry 2016 Issues Paper released by the Minister for Employment and Industrial Relations on 15 December 2016.

## **Overview of United Voice, Queensland**

United Voice represents almost 30,000 workers in Queensland across a range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

Our membership includes school cleaners, teacher aides, ambulance officers, health professionals and operational staff, childcare workers, those employed in the contracting industries including but not limited to cleaning, security and hospitality, private prisons and detention centres and aged care workers.

## **Main industries using labour hire (in UV coverage)**

The main industries where United Voice have membership coverage where labour hire arrangements are prevalent are in property maintenance, contract cleaning, security and hospitality related areas. Labour hire arrangements are also found, in manufacturing areas where our union has industrial coverage.

## **QCU proposal**

United Voice supports the QCU proposal made in its submission, in particular the introduction of a licensing and regulatory regime, a 'fit and proper person' test, a system for reporting on industrial breaches and compliance standards on state government contracts.

## **Overview**

It is incontrovertible that an unregulated labour hire industry has resulted in substandard wages, inferior conditions of employment, and the obviation of employer legal responsibility, affecting a great number of workers.

It is important to note, these adverse effects are not caused by the absence of liability. Much of the conduct causing these industrial abnormalities is unlawful, which beggars the question why the existing framework is ineffective.

From our perspective, the deficiency in the existing framework is that liability for non-compliance is generally reactive rather than *proactive*; and over reliant on the courts for remedy.

For example, accountability for engaging in sham contracting and the underpayment of employee wages/entitlements arises from civil penalty liability under the *Fair Work Act 2009* (Cth).

Whilst the consequence of breaching these provisions is severe, the associated prohibited conduct remains prevalent and undeterred in the labour hire industry.

In our experience, effective deterrence is not achieved through civil penalty prosecutions because the high litigation costs associated with such prosecutions are a greater deterrence.

Cost of prosecuting labour hire operators in particular can be especially high, as often such actions require prosecution of multiple parties to unwind complex corporate structures and arrangements, often utilised in pyramid/triangular contracting arrangements.

As a result, few breaches are prosecuted due to limited resources, rendering the balance of the existing framework in favour of unscrupulous operators.

### **Licensing and regulation**

The balance could however be restored through the addition of a robust licensing and regulatory regime together with strong sanctions and strict compliance measures, which undermine unwanted behaviour, remove undesirable operators, and impose significant barriers to entry.

Additionally, we would favour stringent vetting of all operators in the industry current and new, before licenses to operate are issued. Such vetting would include a contemporary and historical review of all relevant industrial instruments and corporate structures relating to the applicant business.

Irregularities, such as the existence of multiple shelf companies, frequent transmissions of business (especially between related owners) and unrealistic tenders should be scrutinised to identify patterns of illegal phoenix activity, sham contracting and other strategies commonly used to avoid paying employee entitlements.

Of course bona fide asset protections strategies not designed to avoid liability for employee entitlements should be carefully distinguished.

Further, maintaining a valid licence should be contingent not only upon compliance with the terms of the license and regulations, but also in respect of self-reporting any changes that could affect a license holder's license.

Penalties for failing to self-report could include loss of license (temporary or permanent) and/or the imposition of financial penalties. Strict penalties should apply in any event.

### **'Fit and proper person'**

We support that a 'fit and proper person' test should be included to complement licensing and regulation as part of a multi-layered approach. Testing the character of the individuals applying for a license may alert the licensing body to problematic individuals whose business otherwise appears industrially sound.

Emphasis should be placed on whether the operator can demonstrate a history of good practice in compliance with industrial, superannuation and tax legislation.

Those who can demonstrate they are good operators should enjoy less stringent reporting and be subject to less compliance measures, and vice versa.

### **System of reporting**

The effectiveness of a licensing body will largely depend on how well it is informed. Overemphasis on information provided by the license holder's themselves may lead to manipulation.

To counter potential manipulation, a system for reporting breaches past and present is desirable.

The opportunity to report should be enlivened when an operator applies for a license. Accordingly, the license application should be publicly available (with the redaction of commercially sensitive information); and the relevant union who has coverage of the affected industry notified and invited to provide feedback.

The opportunity to report should not be extinguished when the license is granted.

The licensing body should be properly resourced to proactively investigate reported breaches and empowered to take decisive action once a breach has been determined.

The terms of each respective license should be publicly available and in a clear and concise form to ensure breaches are easily detected and accurately identified. A centralised national database available publicly online would be preferable. These measures should minimise time wasted in investigating unfounded allegations.

#### **Compliance standards on state government contracts**

The state government could regulate labour hire companies through a licensing system and/or procurement policies. Such regulation would require responsible conduct by labour hire suppliers and adherence to procurement minimum guidelines, including restrictions on pyramid subcontracting and sham contracting.