

29 June 2017

Committee Secretary
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000

Our Ref: KB-ILC

By email: FAC@parliament.qld.gov.au

Dear Committee Secretary,

Labour Hire Licensing Bill 2017

Thank you for the opportunity to provide further comment on the Labour Hire Licensing Bill 2017 (the Bill).

We would like to make some specific comments in respect of the some of the very significant penalties outlined in the Bill. We note our previous submission took issue with some of the offences.

Clauses 10, 11 and 12

We note that clauses 10, 11 and 12 of the Bill impose penalties on someone who provides labour hire services without a license (cl. 10) and/or uses a provider for the provision of labour hire services without a license (cl. 11) and/or enters into an arrangement for the supply of a worker if the arrangement is designed to circumvent or avoid an obligation imposed by the Act (cl 12).

The maximum penalty for breaching each of these provisions is 1034 penalty units or 3 years imprisonment for an individual.

We wish to make three points in respect of these clauses:

1. Based on the current drafting of clause 12, a person can be prosecuted under clause 12 *and* under either clause 10 or clause 11. If this is not the policy intent behind these provisions, we recommend that clause 12 be amended.
2. Clauses 10 and 11 operate when someone either does not have a license or engages someone without a license. There is no intent element involved. Conversely, clause 12 applies to someone who has arranged to avoid obligations under the Act. The law generally treats these types of offences differently and this is reflected in the penalties imposed. We submit that the penalties under clauses 10 and 11 should therefore be lower than those in clause 12.
3. Finally, in respect of the penalties, a penalty unit is currently \$121.90 and is set to increase as at 1 July 2017. Therefore, the penalty for breaching each of these

provisions could, for an individual, be incarceration or a penalty of more than \$162,000. A corporation could have to pay more than \$400,000.

These penalties are extreme and are not commensurate with other offences of a similar type. For example, sections 55, 56 and 57AA of the *Electrical Safety Act 2002* are offence provisions relating to licenses. These sections set a maximum penalty of 400 penalty units (currently \$48,760) and there is no term of imprisonment. We note that the purpose of this Act is “directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity” (section 4), whereas this Bill, though important, relates to a licensing scheme for labour hire providers to ensure workers are not exploited.

Further we note that the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, currently before the federal parliament, amends the *Fair Work Act* to, inter alia, introduce a higher scale of penalties for ‘serious contraventions’ of prescribed workplace laws. In this case, the Bill seeks to increase the penalties for a serious contravention of the Act to 600 penalty units.

We submit that the Committee should recommend that the penalties under these clauses of the Bill be reduced in accordance with other like statutes.

Clause 89

Clause 89 of the Bill provides that if, in the exercise of a power under this Act, an inspector makes a requirement of a person, the person must comply with the requirement unless the person has a reasonable excuse. This requirement carries a maximum penalty of 200 penalty units.

By contrast, the *Electrical Safety Act 2002*, has maximum penalties of 100 penalty units for provisions similar to those captured by clause 89 such as a requirement to give reasonable help and to produce documents and answer questions. Similar penalties and provisions are also found under the *Workplace Health and Safety Act 2011*. Again we note that both of these Acts are about preventing incidents and injuries and promoting safety. The main purposes of this Bill (clause 3) do not justify the imposition of the severe penalties currently contained within the clauses.

Regulation

The other issue we wish to raise arises from the Society’s attendance at the public hearing for this Bill. We were asked by the Committee to advise which aspects of the Bill, that are currently to be defined in a regulation, should be in the Act itself.

Clause 7(3) states that a person does not provide labour hire services merely because the person is, or is of a class of person, prescribed by regulation. Clause 7(4) provides that a regulation may prescribe a person, or a class of person, under subsection (3)(c) only if the supply of a worker by the person or class of person is not a dominant purpose of the business ordinarily carried on by the person or class of persons.

We submit that the “dominant person test” should be contained within the Act given the considerable discretion involved in this test and impacts flowing from the exercise of this discretion. Further, we believe consideration should be given to an inclusive list of discretionary matters to be taken into account.

Further, the classes of individuals who are not workers under clause 8 also needs to be set and determined. Whilst it is appropriate to enable prescription of classes by regulation, this should preclude the inclusion of classes in the legislation, where appropriate.

Thank you again for the opportunity to highlight these issues with you. Please do not hesitate to contact our Policy Solicitor, Kate Brodnik on (07) 3842 5871 or k.brodnik@qls.com.au if you wish to discuss the content of this letter.

Yours faithfully

A handwritten signature in cursive script that reads "Christine Smyth".

Christine Smyth
President