Ai GROUP SUBMISSION

Queensland Parliament
Finance and Administration Committee

Labour Hire Licensing Bill 2017

June 2017

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Ai Group contact for this submission

Stephen Smith, Head of National Workplace Relations Policy
Telephone: 0418 461183 or 02 9466 5521
Email: stephen.smith@aigroup.com.au

Summary of Ai Group's position

The Australian Industry Group (**Ai Group**) makes this submission on the *Labour Hire Licensing Bill 2017* (QLD) (**Bill**).

We oppose the Bill. Many of the provisions are unbalanced and would operate unfairly upon labour hire providers and on businesses that use labour hire.

In addition to the adverse impacts on labour hire businesses and their clients, the Bill would have adverse impacts upon a very large number of other businesses. Numerous genuine contracting arrangements would be covered by the legislation; far beyond any reasonable notion of 'labour hire'. Within industry, businesses provide a huge array of different services to other businesses, and often labour is involved to a greater or lesser extent. The Bill would lead to the disruption of countless business to business services, and expose businesses, their owners and managers, to significant risks and added costs.

The Bill would impose unreasonable costs and regulatory burdens on not-for-profit group training providers (e.g. Ai Group Training Services) which coordinate the training of tens of thousands of apprentices and trainees. The Bill would impose significant barriers to the employment of apprentices and trainees and consequently:

- Exacerbate the current youth unemployment problems in Australia;
- Reduce the career opportunities for many thousands of young Australians; and
- Lead to skill shortages in numerous industries.

Not-for-profit group training arrangements are not 'labour hire'. These arrangements need to be excluded from the Bill.

Ai Group is the main industry group which represents the labour hire industry in respect of industrial relations matters. Ai Group has a large number of labour hire companies as Members – small and large. We have represented the industry in numerous Federal and State Industrial Commission cases, inquiries and other forums over many years.

Ai Group also has a large membership in industries which use labour hire and it is important that the interests of both labour hire companies and users of labour hire are kept foremost in mind when considering this Bill.

The interests of both groups, as well as the interests of the broader community, are best protected by ensuring that a competitive market is maintained for the provision of labour hire services and that an unnecessary regulatory burden is not imposed.

Ai Group opposes unlawful labour hire practices. However, in Ai Group's experience, the vast majority of labour hire companies are reputable in their employment practices and comply with relevant laws and regulations. Many established labour hire companies have developed progressive

and sophisticated employment practices, and often provide superior wages and conditions. Labour hire companies are subject to the same industrial instruments and employment obligations as other employers.

Ai Group's position on further regulation of the labour hire industry is clearly set out in the following earlier submissions. We urge the Committee to consider these submissions for the purposes of this inquiry:

- Ai Group's submission to the Queensland Parliament inquiry into the Practices of the Labour Hire Industry in Queensland (7 April 2016); and
- Ai Group's response to the Queensland Government's Issues Paper, 'Regulation of the Labour Hire Industry 2016' (February 2017).

In both of the above submissions Ai Group has expressed the view that a licensing system for the labour hire industry is unnecessary and we continue to hold this view.

The Bill, if enacted, would impose significant barriers to businesses entering the labour hire industry thereby diluting competition. The Bill would also impede the legitimate outsourcing of business operations by companies in numerous industries.

The Bill would have a negative impact an employment, training, and business confidence; all which have a direct impact on the Queensland economy.

The Bill would impose very onerous arrangements on reputable and lawful labour hire providers and their clients, by increasing regulation, red tape, and the cost of doing business.

We urge the Committee to recommend that the Bill not be passed by the Queensland Parliament.

If the Bill is to be passed, despite Ai Group's opposition, this submission identifies a number of specific concerns about various provisions of the Bill.

Part 1, Division 1 – Preliminary

Section 3 sets out the main purposes of the Bill.

Ai Group proposes that proposed s.3(1)(a) be deleted from the Bill. This paragraph implies that providers of labour hire services exploit workers. This is clearly untrue in the vast majority of cases.

Ai Group proposes the following amendment:

> *(1) The main purposes of this Act ~~are~~is to~~—~~*
>
> > *~~(a) protect workers from exploitation by providers of labour hire services; and~~*
> >
> > *~~(b)~~ promote the integrity of the labour hire industry.*

(2) The main purpose~~s~~ ~~are~~is to be primarily achieved by establishing a licensing scheme to regulate the provision of labour hire services.

Part 1, Division 2 – Interpretation

Section 7 - Meaning of 'provider' and 'labour hire services'
Section 8 - Meaning of 'worker'

The proposed meanings of 'provider' and 'labour hire services' in s.11 are extremely broad and inappropriate. These definitions would capture a vast array of arrangements beyond the provision of on-hire employees by a labour hire company to a client company.

The proposed maximum penalties within Part 2 (Prohibited Conduct) are harsh and include imprisonment. Given the magnitude of the penalties for engaging in 'Prohibited Conduct' it is imperative that the scope of the Bill is clear, workable and fair.

Within industry, businesses provide a huge array of different services to other businesses, and often labour is involved to a greater or lesser extent. The definitions in sections 7 and 8 of the Bill would disrupt countless business to business services, and expose businesses, their owners and managers, to significant risks and added costs. Numerous genuine contracting arrangements would be covered by the legislation; far beyond any reasonable notion of 'labour hire'.

The Bill would impose major impediments to innovation, entrepreneurship, the sharing economy and employment growth.

During the development of the modern award system under the *Fair Work Act 2009* (**FW Act**) between 2008 and 2010, there was considerable focus on an appropriate definition for labour hire. Ultimately, a seven Member Full Bench of the Australian Industrial Relations Commission decided upon the following definition, including the use of the term 'on-hire' rather than 'labour hire':

> *"**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client".*

The above definition is included in nearly all modern awards. This definition would be a far more appropriate means of identifying labour hire providers and labour hire services, than the definitions in the Bill.

Not-for-profit group training companies

Group training schemes operated by not-for-profit bodies like Australian Industry Group Training Services (**AiGTS**) coordinate the training of over 25,000 apprentices and trainees Australia-wide. They fulfil a vital role in the community.

Ai Group's group apprentice and trainee scheme has been providing apprentices and trainees to businesses in the manufacturing and other industries for many decades. Our apprentices and trainees have won many awards.

In addition to the group apprenticeship and traineeship scheme operated by AiGTS, in 2016 Ai Group established a graduate employment service to assist graduates to transition to professional employment. The graduates are employed by Ai Group but placed with businesses for periods of between three months and two years. During this period, mentoring is provided to each graduate and there is close interaction with the host employers to ensure a successful outcome for both parties.

The Bill would increase costs for group training providers like AiGTS and Ai Group's graduate employment service and lead to higher costs for host employers. These costs, and other aspects of the Bill, would increase barriers to the employment of apprentices, trainees and graduates.

Imposing barriers to the employment of apprentices, trainees and graduates would:

- Exacerbate the current youth unemployment problems in Australia;
- Reduce the career opportunities for many thousands of young Australians; and
- Lead to skill shortages in numerous industries.

Not-for-profit group training arrangements are not 'labour hire'. These arrangements need to be excluded from the Bill.

Part 2 – Prohibited Conduct

The proposed penalties within Part 2 for breach of Prohibited Conduct are excessive and should be reviewed.

Section 11 of the Bill prohibits a person from entering an arrangement with an unlicensed provider without reasonable excuse. Section 11 does not make clear what a 'reasonable excuse' would be, other than to suggest that it may include a circumstance whereby the person entered the arrangement at a time when the 'labour hire provider' was shown to be licensed on the register. This infers that prior to engaging the services of a labour hire provider a person must, up until immediately before each worker is provided, check the register, even in circumstances where the labour hire provider holds out that it is licensed. This would impose an unreasonable burden on clients of labour hire providers.

The threshold of 'reasonable excuse' is vague and would expose clients of labour hire providers to harsh penalties, including imprisonment. An element of 'knowledge' needs to be inserted in s.11 as follows:

> *11 Person must not enter into arrangements with unlicensed providers*
>
> *(1) A person must not, knowingly and without a reasonable excuse, enter into an arrangement with a provider for the provision of labour hire services to the person, unless the provider is the holder of a licence*

Section 12 should also be varied as follows:

> *12 Person must not enter into avoidance arrangements*
>
> *A person must not enter into an arrangement with another person (an avoidance arrangement) for the supply of a worker if the person knows~~, or ought reasonably to know,~~ the arrangement is designed to circumvent or avoid an obligation imposed by this Act, unless the person has a reasonable excuse.*

Definition of '*executive officer*' (Schedule 1)

Section 15 enables the 'Chief Executive' to grant an application for a labour hire licence only if the Chief Executive is satisfied of a number of factors, including that each 'executive officer' of a corporate applicant is a 'fit and proper person', in additional to any 'nominated officer' for the applicant.

Similarly, s.20 (Decision on renewal and restoration) enables the Chief Executive to grant the renewal or restoration of a labour hire licence only if the Chief Executive is satisfied of a number of factors, including that each 'executive officer' of a corporate applicant is a 'fit and proper person', in additional to any 'nominated officer' for the applicant.

'Executive officer' of a corporation is defined in Schedule 2 of the Bill to mean: '*any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation*.'

The definition of 'executive officer' is extremely broad. The definition includes all persons involved in the management of a company. When considered in the context of a large Australian or multinational labour hire provider, an 'executive officer' would include scores of people, including middle managers.

The requirement that all persons concerned with or that participate in the management of a company must satisfy the 'fit and proper person' test is too onerous, and is unnecessary.

The definition of 'executive officer' in Schedule 1 needs to be amended. A definition based on the concept of 'Key Management Personnel' in the *Corporations Act 2001* and in relevant Accounting Standards would be more appropriate, as follows:

> ***'Executive officer'**, of a corporation, means a person who has authority and responsibility for planning, directing and controlling the activities of the corporation.*

Financial viability requirement

Sections 15 and 20 of the Bill require that the labour hire business, to which the application relates, is financially viable. Ai Group is concerned that applicants, in the satisfaction of this requirement, will be forced to divulge to the Chief Executive financial and other information that is confidential.

Subsection 15(b) and s.20(2)(c) should be amended so that the requirement that a company be financially viable is satisfied by the making of a statutory declaration by the applicant to that affect.

Part 3 – Divisions 3 and 4

Sections 24 (Cancellation), 27 (Fit and proper persons), 28 (Condition – compliance with relevant laws), 31 (Obligation to report to the chief executive) and 32 (Prescribed matters for reports) all reference compliance with *'relevant laws'* (also see ss.102 and 104). 'Relevant law' is defined in Schedule 1 of the Bill as including laws imposing an obligation on a person in relation to workers, including, for example, obligations about:

- keeping records about workers;
- the payment of tax or superannuation for workers; and
- ensuring the health and safety of workers.

The definition goes on to list several laws including the FW Act, Commonwealth and Queensland discrimination laws, and work health and safety laws.

The provisions in Part 3, Divisions 3 and 4 of the Bill, which link with the definition of 'relevant laws', would have a significant and unfair impact on licensees.

Section 24 empowers the Chief Executive to cancel a licence if the Chief Executive '*is satisfied*' that a licensee, employee or representative of the licensee, has contravened a 'relevant law', '*whether or not the licensee, employee or representative has been convicted of an offence for the contravention'.* This provision is unfair and unbalanced. The loss of a licence would, in many cases, result in a labour hire provider going out of business with the loss of all employees' jobs. Any consequences associated with breaches of laws should not arise unless the person has been convicted of an offence in a relevant court and only after appeal rights have been exhausted.

Section 24 enables the Chief Executive to cancel a licence for a breach of a 'relevant law', regardless of whether the breach is historical, inadvertent or immediately rectified by the licensee.

If a person's licence is cancelled, the person cannot apply for a new licence for two years from the time of cancellation (s.14(1)).

Subsection 24(b) needs to be amended as follows:

24 Cancellation

(1) After complying with section 23, the chief executive may cancel the licensee's licence by giving the licensee an information notice for the cancellation, if the chief executive is satisfied—

(a) the licensee, or an employee or representative of the licensee, has contravened a condition of the licence; or

(b) the licensee, or an employee or representative of the licensee, has been convicted of a contravention of ~~contravened~~ a relevant law and an appeal against the conviction is not underway *~~whether or not the licensee, employee or representative has been convicted of an offence for the contravention~~; or …*

Also, the two year exclusion period under s.14(1) is excessively long. The Chief Executive should have the discretion to decide what period of time is appropriate, with a maximum of six months.

Part 4, Division 1 – Licence conditions

Section 29 gives the Chief Executive broad and unfettered powers to impose conditions on a labour hire licence including (amongst other conditions):

- requiring a licensee to hold insurance of a stated kind and in a stated amount. This would include a threshold capital requirement as a condition to entry into the industry; or
- requiring a licensee to lodge with the Chief Executive a security that complies with stated requirements.

Such conditions are not appropriate. They could impose a significant barrier to entry to the industry, particularly for new entrants and smaller businesses, and would consequently impede competition.

Part 4, Division 2 – Reporting

Section 31 requires that a licensee provide a report to the Chief Executive every six months (see s.31(3)) on matters including (but not limited to):

- the number of workers (the relevant workers), supplied by the licensee to another person, who do work for the other person during the reporting period (s.31(2)(d));
- a description of the arrangements entered into between the licensee and the relevant workers, for example whether the relationship is casual or permanent, a contractual arrangement, or an apprenticeship or traineeship arrangement (s.31(2)(e));
- details of the type of work carried out by the relevant workers, including the industry in which the work was carried out (s.31(2)(f));
- the locations in Queensland where work was carried out by the relevant workers (s.31(2)(g));

- matters relation to any accommodation provided to workers either by the licensee or another person, including who provided the accommodation, the address of the accommodation, whether the relevant workers paid a fee for the accommodation and the number of relevant workers that used the accommodation (s.31(2)(h) and s.31(2)(i));

- whether any other services were provided to the relevant workers by the licensee or, to the best of the licensee's knowledge, by a person to whom a relevant worker was supplied (s.31(2)(k));

- information about the licensee's compliance with relevant laws for the reporting period (s.31(2)(k));

- disclosure of any disciplinary action or enforcement action taken, or started, against the licensee by a regulatory body under a relevant law during the reporting period (s.31(2)(l));

- to the best of the licensee's knowledge, the number of incidents involving a relevant worker notified under the *Work Health and Safety Act 2011* (s.31(2)(m)); and

- to the best of the licensee's knowledge, the number of applications for compensation made by a relevant worker under the *Workers' Compensation and Rehabilitation Act 2003* (s.31(2)(n)).

Section 32 goes on to identify further matters a regulation may prescribe in relation to reporting requirements.

Ai Group holds significant concerns about the frequency of reporting, the level of detail, and the nature of the information required to be provided by a licensee to the Chief Executive.

Sections 31 and 32 would impose very burdensome, and costly reporting requirements upon licensees, including large labour hire providers which at any point in time would have thousands of employees placed in clients' workplaces.

For some, the onerous reporting requirements would operate as a barrier to entering or remaining in the labour hire industry, which by its nature operates on tight margins.

Just as concerning is the confidentiality of the information required by ss.31 and 32. Some of the information sought (for example the number of workers supplied, the description of arrangements, the details of the work carried out, the industry that the work was carried out in, and the location of the work) would be of significant commercial value to competitors of the businesses that provide the information.

Also, if unions gained access to the information provided under ss.31 and 32, they could use it as an industrial weapon against the businesses that provided the information. This is a significant risk given unions' widespread opposition to labour hire, casual employment and independent contracting arrangements.

The requirement that the licensee provide information about compliance with relevant laws and other details regarding work health and safety and workers' compensation is overly burdensome. Other well-resourced and effective regulators are responsible for ensuring compliance with these laws, and there is no need for duplicate regulatory processes.

The Bill defines 'confidential information' in s.104(5) as "*information given to an official under this Act, if the information identifies a person*". This definition should be expanded to include information that is 'commercial in confidence'.

In addition to significantly reducing the amount of information required to be provided, an annual reporting period would be more appropriate than six monthly.

Part 4, Division 3 – Nominated officers

Section 34 requires that nominated officers be 'reasonably available' to be contacted by the Chief Executive and members of the public during business hours. Failure to be 'reasonably available' attracts a civil penalty.

This is an onerous and unfair requirement on nominated officers.

The concept of 'reasonably available' is not sufficiently clear. A nominated officer may be ill and unable to attend to telephone calls or emails at times. Further, a nominated officer may be on annual leave, or overseas, or in an area without mobile phone or internet access.

The extension of the obligation in s.34 to a nominated officer's dealings with any member of the public is highly inappropriate. Section 34 could be used vexatiously by, for example, a former customer, a former worker, a competitor, or a union official pursuing a claim against the company.

Section 34 should be deleted from the Bill.

Part 6, Division 2 – Powers of entry, Division 3 – Powers after entering places

Part 6, Division 2 of the Bill deals with the powers of an inspector to enter premises of a licensee by consent or with a warrant. Part 6, Division 3 deals with powers of an inspector after entering the premises of a licensee.

Some of the powers are inappropriate and overly heavy-handed. At the very least, the provisions should be redrafted to require that:

- Inspectors generally give licensees seven days' notice of entry; and
- Warrants not be issued unless a licensee has refused access.

Part 7 – General offence provisions

Section 90 requires a 'client' or 'potential client' to report 'avoidance arrangements' (see s.12) by a labour hire provider to the Chief Executive or be subject to a civil penalty of 200 penalty units.

The reporting obligation is too broad and vague. The obligation should be removed from the Bill. If it is to be retained, at the very least paragraph 90(1)(b) should be amended to exclude the words "*or ought reasonably to be aware*", and s.90(2) should be amended to remove the words "*or ought reasonably to have become aware*".

Part 8 – Reviews and appeals

Subsection 93(2) would enable an 'interested person' to apply for a review of a decision to grant a licence, suspend a licence, or impose a condition on a licence. An 'interested person' is defined as a '*person or organisation, other than a licensee, who has an interest in the protection of workers or the integrity of the labour hire industry*'.

Section 93 has the effect of enabling virtually any person or entity to influence who participates in the labour hire industry in Queensland. For example, this power could be used inappropriately by unions against a licensee for reasons unrelated to the Act, such as the licensee's decision to not agree to negotiate an enterprise agreement with the union.

Subsection 93(2) needs to be amended to remove the concept of 'interested person' and replace it with '*a person directly affected by a decision of the chief executive*'.

AUSTRALIAN INDUSTRY GROUP METROPOLITAN OFFICES
SYDNEY 51 Walker Street, North Sydney NSW 2060, PO Box 289, North Sydney NSW 2059 Tel 02 9466 5566 Fax 02 9466 5599
CANBERRA 44 Sydney Avenue, Forrest ACT 2603, PO Box 4986, Kingston ACT 2604 Tel 02 6233 0700 Fax 02 6233 0799
MELBOURNE Level 2, 441 St Kilda Road, Melbourne VIC 3004, PO Box 7622, Melbourne VIC 8004 Tel 03 9867 0111 Fax 03 9867 0199
BRISBANE 202 Boundary Street, Spring Hill QLD 4004, PO Box 128, Spring Hill QLD 4004 Tel 07 3244 1777 Fax 07 3244 1799
ADELAIDE 45 Greenhill Road, Wayville SA 5034 Tel 08 08 8394 0000 Fax 08 08 8394 0099

REGIONAL OFFICES
ALBURY/WODONGA 560 David Street Albury NSW 2640 Tel 02 6041 0600 Fax 02 6021 5117
BALLARAT Suite 8, 106-110 Lydiard St South, Ballarat VIC 3350, PO Box 640, Ballarat VIC 3350 Tel 03 5331 7688 Fax 03 5332 3858
BENDIGO 87 Wills Street, Bendigo VIC 3550 Tel 03 5440 3900 Fax 03 5444 5940
NEWCASTLE Suite 1 "Nautilos", 265 Wharf Road, Newcastle 2300, PO Box 811, Newcastle NSW 2300 Tel: 02 4925 8300 Fax: 02 4929 3429
WOLLONGONG Level 1, 166 Keira Street, Wollongong NSW 2500, PO Box 891, Wollongong East NSW 2520 Tel 02 4254 2500 Fax 02 4228 1898
AFFILIATE: PERTH Chamber of Commerce & Industry Western Australia
180 Hay Street, East Perth WA 6004, PO Box 6209, East Perth WA 6892 Tel 08 9365 7555 Fax 08 9365 7550

www.aigroup.com.au