

28<sup>th</sup> March 2018

Ms. Analena Gilhorne  
Contact Officer  
Economic Regulation Authority  
PO Box 8469  
PERTH BC WA 6849

Delivered via email: [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Dear Ms. Gilhorne,

**RE: Urgent licencing and regulation reform for Labour Hire businesses in Western Australia.**

I write to bring to your attention the exploitation of workers in the employ of Labour Hire companies within our state.

Reports of labour hire companies exploiting their workers are widespread throughout our industry and prioritising the mandatory licencing and strict oversight of labour hire companies in this state is a necessity. An independent report, commissioned by the Victorian Government, labelled "Labour Hire Industry and Insecure Work", uncovered serious breaches by labour hire companies with underpayment of award wages, tax avoidance, non-payment of superannuation, poor occupational health and safety practices, maltreatment of workers and backpackers on visas named among other illegal activities.

The report, written by Professor Anthony Forsyth, makes 35 recommendations and outlines a framework to protect workers against these illegal actions. The Victorian Government is now establishing a Labour Hire licencing scheme based on the report's findings, however, they are lagging behind other states that have already acknowledged the issue and moved to rectify it.

South Australia has recently introduced legislation for the licencing of labour hire businesses with all licence holders expected to demonstrate fiscal responsibility, satisfy minimum education or experience requirements and hold National Police Clearances.

Queensland Premier Anastacia Palaszczuk, is due to implement a mandatory licencing scheme in April 2018 following on from her comments last year about the lack of responsibility and regulation for these operators.

*"Despite widespread evidence of rorting and the growing exploitation of Queensland workers employed through labour hire companies, Malcolm Turnbull refuses to act [on a national licencing scheme]. ... You need a licence to operate a real estate agency or to be a motorcar dealer, so why shouldn't you need a licence to run a labour hire firm?"*

*Just last month a Queensland labour hire company was found to have underpaid workers \$77,649 over a seven week period."*

Our state has enjoyed a long period of growth within the Construction, Oil, Gas & Mining industries leading to the creation of labour hire companies to fill the abundance of employment opportunities. This growth period has now passed, unemployment is at 5.57% and the practice of companies using labour hire, instead of direct hire, is breeding a culture of unsafe working environments through insecure work. Worker's are afraid to speak up or 'stick their neck out' in fear of being fired due to their casual employment contract.

We asked our membership for their experiences with labour hire companies; below are some responses -

*"It's a constant battle to get paid, and paid correctly"*

*"I suffer from anxiety, when I have to take time off for treatment I don't get sick leave being casual, which causes me more anxiety"*

*"They hold over your head that you are disposable, stop bringing safety issues to me or you're down the road"*

*"The safety on my job is appalling, but I've seen guys being sacked already for bringing up issues"*

*"No leave, flat rate, told work hard and you'll get full time employment, I'm doing 12 hours a day 6 days a week, no full time employment offered"*

*"I've had no full time work for 5 years, but work full time hours"*

*"Safety is being ignored by the host employer, when I bring it up with my Labour hire company they won't or don't help. Surely they are responsible for a safe workplace?"*

*"I have no predictable week to week roster, I sit by the phone waiting for calls"*

*"They won't supply PPE, even when I directed them to sect. 19 of the OSH act, they say it's not their responsibility"*

*"My wife and I had our first baby, I was told if I had time off I wouldn't have a job"*

*"I've been ripped off with my superannuation several times by different Labour Hire mobs"*

*"I've been on sites where apprentices are running jobs telling tradesmen what to do, when I asked about this I was threatened with sacking"*

*"Because I'm casual I can't get a bank loan"*

*"I had to pay my own air fares to get to a job in the North West, was told no job unless I paid for them"*

The overwhelming theme is concern for workplace safety and job security and we believe regulating the Labour Hire industry will begin to address these issues of full-time employment with 'casual worker' conditions.

We would like to see the removal of the specific exemption for labour hire companies in the Employment Agents Act (1976).

**5. Employment Agents (3) states:**

'A person who, as principal, is the employer responsible for the payment of wages or other lawful obligations to an employee and who, as such employer, provides to other persons the services of his employees to perform tasks of a temporary nature on the basis of predetermined rates agreed between those other persons and himself as such employer, no fee or expense being incurred by the employee in or in relation to the performance of such tasks, shall not be deemed by reason only of that fact to be an **employment agent**.'

Under the definition of 'becoming an employment agent', found on the Department of Mines, Industry Regulation and Safety website, exemptions are stated as;

'The following are specifically exempted from the need to be licenced;

- newspaper publications
- people licenced under other Acts of Parliament to handle the employment of seamen
- State or Federal Government departments or instrumentalities
- **Labour Hire companies.'**

We propose the Employment Agents Act 1976 be amended to provide more stringent regulations for labour hire and give more regulatory power to Department of Mines, Industry Regulation & Safety to govern them. We would also like Labour Hire companies to be charged licencing fees and expect the licencing fees will be structured in a way that will give provisions to employ designated 'Labour Hire' Inspectors.

We also propose Labour Hire companies be subject to the following conditions:

- Pass a fit and proper person test (this is in the Act).
- Comply with strict workplace laws, including workers' compensation, wages, superannuation and long service leave.
- Report regularly on their operations.
- Divulge the number of employees they have engaged, including the number of employees engaged through work visa arrangements.
- Pay a licence fee (as stated above).
- Be subject to Right of Entry and Inspection provisions contained in the Industrial Relations Act 1979 section 49J and;
- Ensure they understand their responsibilities under the OSH Act section 19 in regards to the provision of Personal Protection Equipment to their employees. *This is a very grey area with host employers regarding it as a Labour Hire issue and Labour Hire companies regarding it as the host employer's obligation. This is very similar with worker's compensation too.*

To be clear, our issue is not the role Labour Hire businesses have within the industry. They are a necessity to ensure short-term projects have adequate manpower for completion. Our issue is they are being used to fulfil the long-term needs of the companies they are engaged with and casual work has now become the norm. We request an inquiry into the Labour Hire industry, to regulate their practices and ensure compliance with Modern Awards and Workplace Acts.

We look forward to your response, thank you for your time and consideration.

Yours sincerely,



Peter Carter  
WA State Secretary  
Electrical Trades Union