

Article Information

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Service: Employment & Labour

A call for licensing and registration in the labour hire industry

The Victorian and Queensland governments have recently announced that they are committed to reforming the labour hire industry in their states. On 25 May 2017 the Queensland government introduced the Labour Hire Licensing Bill 2017 (Qld), which seeks to establish a mandatory licensing scheme for labour hire companies operating in Queensland and create a number of offences relating to this scheme.

The introduction of this Bill follows the announcement by the Victorian government on 5 May 2017 to accept 33 of 35 recommendations from the Victorian Inquiry into the Labour Hire Industry and Insecure Work, which occurred in October 2016. This Inquiry attracted much attention because it reported that there were 'rogue' labour hire companies operating in Victoria. These companies were found to be exploiting workers, including migrant workers, through the underpayment of their wages, failures to pay superannuation and meet work health and safety standards and by providing below-standard accommodation.

The attention given to the issue by state governments suggests that these practices remain at the centre of political narrative.

What is a labour hire company?

A typical labour hire scheme involves a triangular relationship, whereby workers are not employed by the company to whom they provide their labour (referred to as the host organisation), but rather by a third party (the labour hire firm) who is paid a fee by the host organisation to source the labour. Under this arrangement, the labour hire firm is responsible for meeting the legal minimum wages and conditions for the workers as the employer. Such an arrangement however can make it difficult for workers to identify and attribute their employment-related rights and entitlements correctly. For example, locating the labour hire firm and chasing unpaid wages can be difficult where a worker is unsure who exactly is responsible for their entitlements and they do not 'see' the labour hire firm in their day to day work.

The unclear nature of the relationship also can lead to instances of sham contracting whereby the labour hire firm misclassifies the employment relationship as an independent contracting arrangement. There have also been instances of corporate phoenixing whereby labour hire firms liquidate, only to reopen as a new company under a different name in order to evade its legal obligations to its employees, such as unpaid entitlements.

Why do State governments say a registration and licensing system required?

Governments have determined that legal reform is required in the labour hire industry.

Currently, the *Fair Work Act 2009* (Cth) authorises the Fair Work Ombudsman (**FWO**) to investigate and deal with workplace breaches, and its teeth may soon be sharpened, as the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (Cth) is seeking to enhance the FWO's power to investigate and prosecute employers in serious cases of worker exploitation. However the current regulatory powers are only really useful in dealing with exploitative practices *after* evidence of worker exploitation has arisen.

The approach proposed by the Queensland government attempts to deal with this issues by requiring labour hire companies to be licensed and registered. The proposed system would require a company to first meet set criteria in order to be licensed and operate as a labour hire firm. These include passing a 'fit and proper' test, having a history of compliance with the relevant laws and providing evidence that the business is financially viable. This approach would help to identify legitimate businesses seeking to register as a labour hire firm, whilst prevent the registration of unscrupulous

ones. That said, the question remains whether a comprehensive scheme sweeping up the majority and legitimate operators is necessary to deal with the labour hire “bad apples”.

Next steps

Entities operating as labour hire companies in Queensland should monitor the progress of the Queensland Bill and, if passed, will need to ensure that they adequately meet the requirements of the law.

Although Victoria is yet to introduce a Bill in Parliament mandating the licensing and registration of labour hire firms in the state, labour hire companies and the business that employ their services should be aware that the regulation of the industry is likely to increase, both through increased regulatory powers and the possibility of state licensing schemes.

Piper Alderman will provide an update if and when the Bill is passed.