FINANCE AND ADMINISTRATION SUBCOMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr DC Janetzki MP
Mr LP Power MP

Staff present:

Ms M Johns (Acting Committee Secretary)
Ms H Rae (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE LABOUR HIRE LICENSING BILL 2017

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 22 JUNE 2017

Brisbane

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Subcommittee met at 10.00 am

CHAIR: I declare open this public hearing for the committee's inquiry into the Labour Hire Licensing Bill 2017. On 25 May 2017 the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, the Hon. Grace Grace, introduced the bill into the parliament. The parliament has referred the bill to the Finance and Administration Committee for examination with a reporting date of 24 July 2017.

My name is Peter Russo, member for Sunnybank and chair of the committee. With me here today is David Janetzki MP, member for Toowoomba South, and Linus Power MP, member for Logan. Ray Stevens MP, member for Mermaid Beach and deputy chair of the committee, and Steve Minnikin MP, member for Chatsworth, extend their apologies that they are unable to be here. The purpose of today is to hear evidence from stakeholders and those who made submissions as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you may be filmed or photographed during the proceedings. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's web page and there are hard copies available from committee staff.

BEYNON, Ms Imogen, National Union of Workers

MARTIN, Dr John, Queensland Council of Unions

MARKS, Mr Jared, United Voice

CHAIR: I now welcome representatives from the union organisations. I invite you to make an opening statement after which committee members may have some questions for you.

Dr Martin: Thank you, Chair, for the opportunity to appear today. As was mentioned off the record, we put in an apology for Ms Allan from the Australian Manufacturing Workers' Union. The AMWU has asked me to appear on its behalf as well in these proceedings. The submission that we put in is relatively brief in terms of the legislation. The reason for that is that we have previously made submissions with respect to inquiries that have been conducted by this parliament and would rely upon those in a broader sense to establish the mischief that we say is to be dealt with by the legislation which, by the way, we do support. In that regard, as we say in our submission, the abuses that have taken place within the scope of labour hire employment have been established. They have been established here and they have been established in other jurisdictions. We are relying upon that evidence as justification for our submissions. That largely demonstrates significant noncompliance, whether that be with industrial regulation, occupational health and safety, taxation or migration laws. The whole gamut of noncompliance has been identified, as I said, here and in other jurisdictions.

A scheme of licensing appears to be, in our submission, the most effective way in which a state government can deal with the issues with which it has been presented. Included with that is, obviously, the fit and proper person test which we say is appropriate. I do recall the conversations that this committee had in the public hearing where the department addressed these issues. Whether it will solve every problem remains to be seen, but in terms of a way forward it appears to be the best course of action: have the licence and have the character of those persons associated with the licence subject to some form of scrutiny in terms of the other types of conduct that I have discussed.

There is, I guess, the imposition to business, from what I see as the opposition to this form of regulation. In particular, it would appear that cost and administrative burden have been what has been identified as the reasons not to proceed with legislation of this nature. What we say is that they

pale into insignificance compared to the costs that have been associated with labour hire employment for employees. We say it is commensurate with the problem that exists. If this industry had been able to regulate itself, obviously this sort of legislation would not be necessary. The cost, which would be in terms of licensing, we consider to be appropriate. That would be a means which, aside from anything else, would demonstrate that any labour hire operator is of significance; they are not, as we have described in our submission, operating out of the boot of a car with a mobile phone, which is what we have seen evidence of in the earlier inquiries with respect to labour hire.

In relation to the administrative burden, any of the information that is to be sought by virtue of the legislation as drafted should not be a difficulty to anyone who is operating appropriately. The sorts of records that are being asked for would pose no difficulty for any organisation that was complying with other laws. We do not see that as being a particular difficulty.

Those would be our submissions in support of the bill as it stands. I would be happy to answer any questions that I can off the top of my head. If I am not able to answer those immediately I would seek to take them on notice.

CHAIR: Thank you.

Mr POWER: Dr Martin, because I was not on the committee for the original inquiry—it was Mr Pegg, the member for Stretton—feel free to go into some of the evidence about the practices for my benefit. The market for labour hire is very competitive, would that be fair to say, and often labour hire companies are contracted for the lowest price they can deliver which often must be suspiciously close to the actual cost of labour or below it.

Dr Martin: That is the sort of scenario the legislation would seek to overcome. Where a client of the labour hire company is paying less than the labour costs that would be somewhat suspicious.

Mr POWER: Probably it is suspicious now for the employer.

Dr Martin: Labour hire has been in existence for a very long time. What has become evident over recent years is its expansion into what it should not be doing, what it was never intended to do. The purpose of labour hire is to fill the gaps. To take it back to its most simple form—I see the chair so I think of a solicitor's office—a solicitor has one receptionist who is entitled to four weeks annual leave. It would not be feasible to employ two receptionists for 52 weeks to cover that four weeks annual leave so you may wish to bring in a temporary for that four weeks. That would be the normal or the traditional means by which labour hire is used.

What we have seen the expansion of is to either replace a workforce in its entirety, for reasons that you can only speculate, and in some cases you can ascertain. One of the examples which has a certain amount of resonance is the CUB dispute which you would be aware of when you would have ceased drinking their products last year. That particular one enabled the avoidance of collective agreements that had been entered into in good faith over the years and enabled what was a very peculiar arrangement whereby a labour hire firm was able to use an agreement that was voted upon by employees in another jurisdiction that would not even know where Abbotsford was and apply that to the terms of the maintenance personnel at that particular brewery thereby bringing about a 55 per cent reduction in their income. That is what we say is a misuse of labour hire.

You also see the arrangements that have occurred—bringing it back to closer to home—in agriculture. Perhaps Ms Beynon might be better placed than me to provide you with some examples. What the Queensland Council of Unions also did was post on a website the ability for employees of affiliated unions to tell their stories, of which there were hundreds, in terms of, 'This is what happened to me.' Largely those were substantial reductions in income and conditions of employment, but also in terms of the migrant or the guest worker where you see the layered effects of, firstly, insecurity in employment by virtue of the labour hire arrangement. I would just add there, the figure that we have used no-one has corrected us on, but it was a figure that came out of an AIG paper some time ago. It was that in the order of 90-plus per cent of employees of labour hire companies are casual. No-one has ever said that is not right.

Mr POWER: To take you back to that example of a person relieving in the member for Sunnybank's solicitor's office, in his previous life, it used to be that that person was a permanent employee of a labour hire company and would do four weeks here, four weeks there and four weeks somewhere else?

Dr Martin: Not necessarily. It may have been someone who only worked for four weeks of the year. It was truly temporary in nature. One of the examples that we used in our earlier submission in relation to the issues paper was simply drawn from an unfair dismissal case where someone had been working for at least 38 hours per week every year as a casual employee. What I am suggesting is that the casual employment associated with labour hire is in terms of industrial discipline, not

because of the nature of the employment. Going back to the member for Sunnybank's previous existence, if you were employing someone for four weeks to fill that gap, it might make sense for that to be of a casual nature, but when someone is working consistent rosters year in, year out that is different. An associated problem was one that came out through the evidence that we adduced through the website—that is, there are circumstances where employees were afraid to take leave. Leave aside other suggestions that have been made about making complaints about occupational health and safety or their conditions of employment, they were not game to take annual leave because if they took annual leave they might be replaced. Those are the sorts of consequences of this expansion of labour hire into areas that it otherwise has not been in. Those are the general forms.

I was about to get to the layers of precariousness that are associated with having someone who is casually employed by a third party to start with. Their presence in the workplace is at the whim of either their employer at law or their employer at law's client who can remove them for whatever reason they choose. On top of that you add a migrant status wherein not only whether you have a job but also whether you have residence is subject to the whim of these people.

The other possibility that we have seen some evidence of, too, is student visas where there is a maximum number of hours that can be worked. That is three layers in that case—not only being employed casually, and you could be dispensed with at a moment's notice, but also having a visa status and education status, all of which create issues if you have been worked in excess of the hours that are able to be worked under a student visa. The anecdotal evidence is that that happens from time to time and is in fact encouraged by some employers. There are three layers of precariousness, not only to lose your employment and your visa status, but also to lose your education as well.

Mr POWER: Sometimes reputable companies that want to maintain their customer and brand relationship can therefore use disreputable labour hire companies to do activities that, if attached to their brand and company, would do them quite a lot of damage but they can hold them at arm's length. Is that the same problem?

Dr Martin: Yes, that varies that scenario. The immediate ones that spring to mind—it obviously was not terribly successful and that goes to another issue that we have seen emerging—are where organisations with national brands are being associated with what we describe as wage theft. That is a worrying concern.

Mr POWER: Deeply concerning.

Dr Martin: Yes, that goes to the entire process of shifting legal obligations.

Mr POWER: Do we go far enough in attaching the legal obligation to the company that is effectively outsourcing? Surely, when they do the HR calculations about cost and benefits, they must have a realisation that these abuses are going on?

Dr Martin: Bearing in mind—

Mr POWER: Or a wilful blindness to them.

Dr Martin: That is an entire possibility, yes.

Mr POWER: Do we go far enough in attaching a responsibility to the company that engages these companies knowing that they are not fulfilling their charter?

Dr Martin: The legislation, as I understand it, attempts to introduce those obligations as best it can through a licencing process, which is what we are limited to. I understand that you would like to do more. I guess the question is what else could be done within this jurisdiction? If you are using labour hire, you are obliged to use, by the scheme in the proposed legislation, a licenced firm. If you do not, you are subject to penalties. I am not sure what else could be done.

Mr POWER: Within the framework of this legislation. Ms Beynon, did you want to add to that?

Ms Beynon: Mr Power, I think you articulated it quite well that labour hire operates in supply chains so it is often connected to large and reputable companies. For the work that I do in my job, we represent workers throughout the food supply chain in Australia. A lot of evidence that we have been able to give to date has focussed on people who work in that fresh food industry—so people who work on farms, picking food that we ultimately buy from Coles, Woolworths or ALDI. These are companies that often supply to those big retail operators, and most of those workforces are on the farms and are actually in the processing chain as labour hire workers. There is a very large number of those workers who are labour hire workers.

We do think that it is important that legislation addresses that supply chain aspect. We have noted in our submissions that there are some attempts in this licensing scheme to ensure that employers who are using labour hire have to use a licensed operator, which we think is absolutely

appropriate. There is also a further general offence about having to report to the chief executive, I believe, if they reasonably ought to suspect that there is an avoidance arrangement occurring. We have made one note in our submissions that there could be some clarity brought to that offence about whether an avoidance arrangement is the appropriate terminology or whether it could perhaps say, 'is aware that they are breaching or are in breach of a condition of the licence'.

It is exactly that type of harm that we want to remedy. If an employer is using a labour hire provider and perhaps the employees of that labour hire provider are going to that client or to that host employer and saying, 'We have not been paid recently, my firm has lost all the pay slips, I cannot check my things' or 'I need to make a workers compensation claim but the company I work for is refusing or has given me false advice about that,' they should be reasonably on notice that there is something dodgy or unscrupulous going on. In those circumstances, we think it is entirely appropriate that they be proactive. It is very problematic within the labour hire industry, of which both the labour hire companies and the clients themselves are part, that the blind eye doctrine operates too effectively, quite frankly. We need to make sure through this licensing scheme that that stops.

Dr Martin: We are grateful to Ms Beynon for assisting, but you may wish to look at clauses 12, 90 and 92 of the bill. As far as I understand, it has been the intention of the drafting to capture the scenario that you are talking about.

Mr JANETZKI: I want to go to a provision in the definition of the bill. I understand the anecdotal evidence. Like Mr Power, I was not present for the evidence relating to the worst of the excesses of some labour hire companies. I am just trying to get to the bottom of perhaps what could be termed the unintended consequences of who might be caught by this bill. I am interested in your views. Obviously the evidence supports that there have been problems in the horticultural industry. The definition labour hire services does appear to leave it open. Even, say, IT workers working for a government department, that may have on-supplied one of their contractors from their company that has been incorporated, may be caught by this legislation. What is your view on that in the context of the behaviours we are trying to address here?

Dr Martin: I guess immediately one does not jump to the conclusion of the types of abuse that we have been talking about by virtue of the way in which the IT professional might be able to behave within the labour market, but that is not to say that that could not possibly exist, particularly if they were the guest worker as we have previously suggested. This is easier to talk about than it is to put on paper. It is when you are supplying the labour as opposed to providing a finished product. I guess with respect to the IT person, it would be what they are there to do. That would determine whether or not they are a labour hire worker. Let us compare that to building a fence, because that is a little easier to explain. What would not be covered by this, as far as we understand, is if you say to a contractor, 'Build me a fence,' and there is a finished product that is a fence. If you say to a labour hire provider, 'Provide me with the labour and I will build a fence,' that would be covered. I guess one would have to apply those same principles to the ICT space where it would very much be determined on whether or not you are providing that service or whether they are providing labour that would be otherwise under the control of the client.

Mr JANETZKI: That will probably be at the discretion of the chief executive in some respects, because we are lacking a little detail on how that particular question might be interpreted.

Ms Beynon: You have given an example. It is difficult to speculate on whether that example would be included or not, because we are not really looking at the actual employment arrangements. It is hypothetical. I think that is difficult. When you do generally sit down and look at those employment relationships of labour hire providers as defined here in section 7, they do readily become apparent in those cases.

In many circumstances where there is a labour hire arrangement with a company that may have contracted out, that is the type of worker and the type of relationship and arrangement that we say is appropriate to be captured by this legislation. I also think horticulture is often cited as the most egregious of the arrangements that exist in labour hire companies. Having a lot of firsthand experience with that, I can say that that is certainly the case. Unfortunately, despite all of these inquiries, it is not going away.

We represent workers in a lot of industries. We represent pharmaceutical manufacturers and distribution workers. We represent people who work in defence, who work in distribution, in logistics, in poultry, in market research. Throughout all of those industries—it is a very broad church—they all have their own problems with labour hire. It is not just confined to a sectoral arrangement. I think the definition should capture those outside of what we see as the big problem areas because those areas

are equally as problematic. We supplied in the first instance to this inquiry over 100 submissions that came from those cross sectors as well. In my view, the meaning of 'provider' and 'labour hire services' in the definitions is appropriate.

Mr JANETZKI: I hear what you are saying. There are various third-party opportunities to be involved in licensing and review processes in the bill. In representing those workers you have mentioned, under what circumstances would you perhaps seek to involve yourselves in those particular processes?

Ms Beynon: I suspect you are talking about the ability of somebody who has a particular interest in vulnerable workers to appeal a decision of the regulator.

Mr JANETZKI: I think it is proposed section 98.

Ms Beynon: In my view there are some companies that I deal with that I know are not complying with the laws. If I were to see that they had attained a labour hire licence, I would suspect perhaps that the chief executive had not had all of the information to hand because if they had they may have made a different decision. I think it would be my role to ensure that those vulnerable workers were protected to essentially say that we think there could have been a mistake made as to the facts in this situation and to supply the chief executive with what we would say are the relevant facts.

Mr JANETZKI: Would there be any other circumstances that come to mind where you would be involved?

Dr Martin: No. It would be where the decision of the chief executive is clearly erroneous on the facts that are available to them or where the facts that, as Ms Beynon—

Ms Beynon: May have been omitted.

Dr Martin: Yes—where the facts that are not available to them may more be the issue.

CHAIR: The issue is that someone can apply for a licence and answer all the questions correctly, but what they are physically doing in that space is different. When you apply for a licence, if you have had no adverse findings against you and you provide the information on the form, you could be granted a licence, but the reality could be that you are not complying. It is quite easy to answer a question the correct way.

Ms Beynon: A history of compliance may mean that you have had decisions made against you. However, it may also involve circumstances where there have been quite substantial underpayments but perhaps where no decision has been entered against you as there have been other ways of resolving the underpayment issue, for example.

CHAIR: In the exchange of information or the information that is available, there was a distinction drawn between being charged with an offence and being convicted of an offence which we all understand is a different scenario. Is there any concern that someone who may be charged with an offence but never convicted may then be excluded from getting a licence?

Dr Martin: That will be a decision for that chief executive if and when that occurs. That is somewhat hypothetical. A range of factors will go into who is a fit and proper person.

CHAIR: As you would be aware, there has been some movement in the space of the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, which has had its second reading in the Australian Senate. Do you see any issues with this licensing scheme, if passed, and what they are trying to do in the fair work space? Is that perhaps an unfair question to be putting to the panel?

Dr Martin: I think that could be complementary to a certain degree in that the Commonwealth now has the jurisdiction over industrial relations. From that aspect, they and they alone can deal with those issues. That legislation is not specific to the labour hire industry. Its application would be far broader in that sense. What this legislation seeks to do is to license labour hire which is not within the same jurisdiction. I would see them as potentially being complementary. I am not entirely sure to what extent that bill is a priority to the Turnbull government.

CHAIR: No, especially with them going into the winter recess.

Dr Martin: There has been some very interesting movement with respect to bills concerning industrial relations this week.

CHAIR: It is fair to say that the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, the federal legislation, definitely does not deal with labour hire licensing.

Dr Martin: No.

CHAIR: That is a fair statement, isn't it?

Dr Martin: As we said in our submission, the Deputy Prime Minister said that there is no appetite from the Turnbull government to regulate labour hire.

Ms Beynon: They said specifically that it was a matter for the states.

Dr Martin: It is back to you.

Mr POWER: We recently put the Ai Group's submission up on the website. I do not know whether you have had a chance to read it.

Dr Martin: That is not one that I read.

Mr POWER: It has only recently been put up there. I wanted to get some feedback on this. In part 1, on page 8, in relation to the main purposes of the act, their suggestion is that proposed subsection (1) (a), which states 'protect workers from exploitation by providers of labour hire services', be deleted, so there will only be one purpose. Do you want to give me any feedback on that?

Dr Martin: That speaks volumes. Clearly that organisation has no concern for protecting workers from exploitation it would appear.

Mr POWER: Does anyone else want to comment? Would your organisation support deleting 'protect workers from exploitation by providers of labour hire services'?

Ms Beynon: No, certainly we would not. I think the argument has been won in that there has been overwhelming evidence in this jurisdiction, in the federal jurisdiction and in two other states that labour hire workers are particularly vulnerable to exploitation at the hands of labour hire providers. To say that that is not a harm that needs to be remedied is very problematic from my point of view at this point in time. It has been absolutely overwhelming. It has been called a national disgrace. To delete that is counterproductive to moving forward to protecting those workers and, indeed, promoting the integrity of an industry which that organisation represents.

Mr Marks: I think that the proposed amendment seeks to downplay and minimise what this is all about. I think that would change the whole tone. There is a lot of discretion imported into this legislation. To downplay the purpose of the entire scheme would be contrary to the interests and the motivation behind this bill. Part of that is picked up in the submission from United Voice. It talks about a fairly extreme example where we had a primary contractor who had used a subcontractor. Again, it is inconceivable that they would not be aware that the deal that they would have got out of that would be in any way legitimate. You could say that the individuals that they were using, in terms of the fit and proper test, certainly would not come within a mile of that. These individuals use intimidation and bribery to dominate and instil fear into these workers as a means of preventing them from engaging the assistance of the union and from taking any type of stand—

CHAIR: I am sorry to interrupt. There is a lot of evidence of the examples that you are giving. Do not think I am trying to cut you off for that reason. From what I have read and seen—

Mr POWER: It is extensive.

CHAIR:—and accurate. Do you agree that this legislation, if passed, would deal with both of those problems—with the person who engages the labour hire company to find people to do the work for them and also with the labour hire company that does not do the right thing? Is it my interpretation that what this legislation, if passed, would hope to do is capture both of the parties?

Mr Marks: Yes, I understand.

CHAIR: I do not know if the right word is 'head contractor', but the person who—

Dr Martin: The principal.

CHAIR: Yes. Is that summation correct?

Mr Marks: I think the way to look at it is that it is not necessarily: do we take a punitive approach to all parties concerned or can we achieve the same results through simply removing the opportunity? What I see the bill achieves is that it takes away that opportunity to use those types of subcontractors. That is one side. If you were to take a more punitive approach, I think that perhaps the inclusion of some accessorial liability provisions would assist. I do not think they are necessary. I think that, if you remove the opportunity, those companies simply would not be able to do what it is you are seeking to prevent. I think that there would be sufficient deterrents, if not the removal of that opportunity altogether.

Mr JANETZKI: I am always concerned about the dead hand of regulation on good corporate citizens. I have actually worked as in-house counsel for labour hire companies so I know some of the concerns you are talking about, but I am also concerned at the vast law-abiding recruitment companies and labour hire companies that this bill will now capture. Have you analysed what

bureaucratic burden that may place on recruitment companies in an engineering space or an accounting space or, for that matter, the bureaucratic burden in terms of the licensing process and then the 12-monthly reporting? Have you done any analysis on what that may mean for those types of companies?

Dr Martin: When you say 'analysis', the suggestion was made earlier in our submission that the type of information that is being provided should not be onerous unless you are not keeping proper records. It will be particularly onerous to a dodgy labour hire company that is operating out of the back of their Commodore with a mobile phone. That is the precise intention of the legislation: to make it overly onerous for those dodgy companies.

Mr JANETZKI: Do you think, then, that perhaps the legislation should be just limited to those particular industries?

Dr Martin: No—

Mr JANETZKI: I will have to familiarise myself with the hundreds of submissions that were tabled in earlier hearings. Sorry, Dr Martin, I interrupted your train of thought.

Dr Martin: The question was should it only have application to the 'bad guys'—

Mr JANETZKI: Or those risky industries—

Dr Martin: I see what you are saying. I cannot imagine how that would operate. In our submission, it will only adversely impact those who either do not have sufficient means to pay a licence fee—which means how on earth are they covering all of the entitlements for employees that they should be covering if they cannot afford the licence fee—or cannot provide what is reasonable information to be provided in that reporting system. I do not see either of those being onerous for a professional organisation that is keeping proper records.

Ms Beynon: I did say earlier that we represent workers across a very broad range of industries. The harm that we see to vulnerable workers being caused by labour hire providers is across all those industries, so it is really not sectorial. For that reason we say that it must apply across all industries. Secondly, I think it is very difficult to restrict regulation to certain industries. As you know, Mr Janetzki, labour hire providers operate across a range of industries, which would make a licensing scheme difficult to compartmentalise.

With respect to reporting obligations and administrative work, we have said in our submission, as the QCU has, that we do not think these reporting conditions would be onerous to a reputable labour hire company. It is just things like the names and details of the company, how many workers they have and some details about the industrial instruments that they pay under as well as, very importantly, whether they provide accommodation or transport services, because that is an area of exploitation. We do not believe they are onerous.

I also note that what this licensing bill is aimed at doing is promoting the integrity of the industry itself. We have respectful relationships with labour hire companies in my union because we have a very large percentage of our membership who are labour hire workers. We know that there are absolutely some reputable companies out there, and informally they have all said to me that they are happy to undertake this work because this type of bill will remove the bottom feeder type labour hire companies out of the market. That is a real problem for reputable companies who are doing the right thing and complying with workplace laws. They are making sure they are by the book, and then somebody comes in and goes to that host employer with a very attractive looking headcount-per-employee rate, and suddenly they are booted off. They are gone because they are doing things properly and somebody else has come in and undercut them.

We are talking about a massively disaggregated industry—nobody actually knows how many players there are—that IBISWorld is saying has a growth of 1.4 per cent per annum and is up to $18.5 billion per annum. We do not think these are very onerous burdens at all. In our view, this is what you should be doing if you are running a business.

Mr POWER: The Ai Group says that the vast majority of labour hire companies are reputable, and you spoke of reputable labour hire companies. Those companies will actually be enhanced by the fact that, in keeping with fair labour practices, they are not undercut by those who are not. Would that be fair to say?

Dr Martin: Absolutely.

Mr Marks: Absolutely.

Mr POWER: In terms of those reputable labour companies that the Ai Group identifies, it is actually a positive to ensure that they are not unfairly competed against with some of the labour hire services that they seek to provide.

Dr Martin: It is well worth completing a form every year, I would have thought. If that is the price to pay to ensure that you are operating in a market that has a proper floor, in terms of a cost-benefit analysis I would have thought that would be quite reasonable. Perhaps I will return to the earlier question about the dead hand of regulation. Could I say that, by comparison to the regulation of trade unions, this pales into insignificance.

Mr JANETZKI: I will pick up on the flip side of Mr Power's question—and this is always the challenge of regulation. The bottom feeders of the industry that we are talking about here, as always, will probably just ignore these laws in the first place. We can debate that. I think the department said how much is proposed to be invested to set up the office. My question is: will there be sufficient ways in which to collect that bottom end of the industry or, if this bill is passed, will they just continue operating out of the boot with their mobile phones and just completely ignore it?

Mr POWER: That is a good question.

Dr Martin: Yes, it is a good question. I think that they would probably do that at their peril. Being parochial, which I think we are entitled to be today, perhaps the best course of action would be for them to pack up and move over the border to a state where there is no regulation and they can feed along the bottom as much as they like.

Ms Beynon: I think what you are referring to is essentially the enforcement of the bill. In every submission that we have made we have reiterated that enforcement is key to ensuring that vulnerable workers are protected. A lot of committee members have previously asked, 'What about the Fair Work Ombudsman? What about these other enforcement bodies that already exist?' I think again that that has been an area where overwhelming evidence has been supplied that they just do not have the resources. In fact, by the FWO's own admission they do not have enough resources to do this. We note that in the explanatory notes to the bill the government said that the stakeholders anticipate there will be a high level of compliance. If this gets off the ground, that is certainly something that we would support. We would try to make available to the enforcement arm of the compliance unit any details that we have of those very illegal type operators which are difficult to capture, but I certainly have some details of those that they could follow.

Dr Martin: My understanding is the reason there are substantial penalties associated with the bill is to make it a real deterrent. I think if you are to look at it objectively—and in answering a range of your questions—if the licence fee is reasonable from everyone's point of view, that is, it is substantial enough to fund the policing of this but not overly onerous, but you do have good, strong penalties, then I think that goes some way to regulating in the way that you suggest. So it is not overly onerous for those legitimate operators, but very much so for those who are not. That is how I would see the scheme of the operation of the bill.

Mr POWER: Hopefully New South Wales can follow our lead, as they tried and failed to do on the football field last night.

Dr Martin: Correct.

Mr POWER: I have a question for you of a technical nature to do with the legal phrasing. Clause 11(1) relates to technical requirements; is that right?

Dr Martin: Yes.

Mr POWER: There has been a suggestion that a person must not, without reasonable excuse, enter into an arrangement with a provider unless the provider is the holder of a licence. I imagine these days we are going to have a website where the department lists the licensees so it will not be arduous. There was a suggestion that it be phrased 'must not knowingly and without reasonable excuse'. I have a concern about that. We already see that people who do the cost-benefit analysis of getting labour hire in must question how they are within award arrangements for the workers to be able to provide those labour services but still go ahead with it. I worry that it is not very hard to check on someone who has a licence and that we put further burdens where someone can be wilfully blind to those things. I am not sure what that language would do. Can someone give me some feedback on that?

Dr Martin: I think that the fear of that language 'not knowingly' might be that no-one ever asks a question.

Mr POWER: That is what I am concerned about.

Dr Martin: Yes. I think the scheme of the legislation is to let everyone know, whether you are providing labour hire or using labour hire, that there is an obligation to use a licensed provider. If the word 'knowingly' were there, I could imagine the clever client who never asks the question and

therefore never knows. Whereas I think if they do say, 'You've got a licence, haven't you?' or 'Provide me with evidence of your licence,' I would assume that that would be their obligation discharged in terms of clause 11(1).

Mr POWER: As is?

Dr Martin: Yes, as it is. My concern would be that to insert the word 'knowingly' would dilute the meaning of that, and the meaning is that if you are using labour hire in Queensland, you are expected to use a licensed provider. You are not expected to; you are required by law to use a licensed provider.

Ms Beynon: Mr Power, you are 100 per cent right, but the legislation itself actually provides for the government to create a website.

Mr POWER: So you would be able to check it on your phone?

Ms Beynon: Yes. 'Labour hire website' is in the legislation. There are some fantastic models out there internationally. The Singaporean website for labour hire companies is absolutely brilliant and it is very easy to use. It would literally just be a Googling exercise to find out whether or not the person had a licence. I do not think that inserting 'knowingly' into that provision makes any sense based on the ease by which you would be able to ascertain whether or not the provider had a licence.

Mr Marks: The point being that there should never be a circumstance where you do not know.

Mr POWER: It does not seem a hard thing to find out.

Mr Marks: No.

Mr POWER: Clause 12 is about avoidance arrangements, where an arrangement has been made where presumably they are going to some lengths to avoid being captured under the act. The suggestion was that the phrase 'or ought reasonably to know' be taken out of the clause which reads—

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 to avoid an obligation imposed by this Act ...

This is about those who can be wilfully blind to the arrangements that are presented to them.

Dr Martin: That is correct.

Mr POWER: Would it be useful to take out 'or ought reasonably to know'?

Dr Martin: Only if your intention was, as you have described, to be intentionally blinded. I think that would be similar to the 'knowingly'. It could potentially encourage not asking the question.

Mr Marks: Yes, that is right. It encourages you being reckless to the fact that you might be dealing with someone you should not be.

Mr POWER: I could not understand how that would benefit. If you ought reasonably to know through the facts presented that you have in your knowledge because you have a responsibility when you are hiring a labour hire company under this act then I thought that should be kept. I wanted to get your feedback on that.

Dr Martin: Our submission would be similar to the concerns you have raised.

CHAIR: Another theme that has come out in some of the submissions is that this legislation will impact on the ability for people to find employment in the regions. Do you have a comment on that assertion?

Ms Beynon: Chair, did any of those submissions provide any evidence as to why that would be the case?

Mr POWER: From what I have read it was an assertion.

CHAIR: They talked numbers but they did not, from memory, identify it further. It was a general claim.

Ms Beynon: From my perspective, I would have great difficulty comprehending why that would be the case. I think that this bill, if it had an impact on employment, would only have a positive impact on employment because it would drive potential black market jobs into the real labour market and the jobs that would be there under reputable labour hire companies would be jobs that are decent jobs because the employer would be paying wages in compliance with award minimums or other industrial minimums and would be required to meet their WorkCover obligations and their workplace health and safety obligations. I think if there were any impact on employment, and I am not convinced that there would be, I think it could only be a positive impact.

Mr POWER: Again, when we talk about the reputable labour hire companies that we recognise do have a role within our system, pay tax, register the employment and pay superannuation, they would probably benefit from driving out unscrupulous labour hire providers. Would that be fair to say?

Dr Martin: Yes. We would give the same answer that we provided before, that if your competitor is not playing by the same rules as you are then it is hard to compete.

Mr Marks: On that point, it has been said a few times that the approach is to drive out the unscrupulous providers. I do not think it is necessarily to drive them out, it is to get them to act in compliance. Some might go, some might stay, and the ones that stay can become good operators.

Mr POWER: Again, the principal company that is seeking to do the central activity, those that choose to try to find reputable labour hire companies in the current market environment will benefit because they will not be competing against those who choose to find those that are clearly unscrupulous; would that be fair to say?

Dr Martin: Yes, absolutely.

CHAIR: It has also been suggested that this legislation, if passed, will disadvantage charitable organisations that do some work in this space in relation to labour hire. Does anyone have a comment on that?

Dr Martin: Again, I cannot imagine how. I would have presumed that charitable organisations would have complied with the law—I am assuming.

Mr Marks: A just cause does not justify other unjust causes.

Mr POWER: Generically, we have seen very low wage growth in the last couple of years where workers' wage growth has been suppressed. Do unscrupulous labour hire practices in a marketplace contribute to that low wage growth and the low share of workers' wages?

Dr Martin: Wage growth itself has been decoupled from most of the economic indicators that you would normally associate with a return from—

Mr POWER: Productivity, all those sorts of things?

Dr Martin: Yes, labour productivity, terms of trade and employment. The suggestion with respect to the third element—that is, employment—is normally when you see employment recover, and nationally it is down to about 5.5 per cent seasonally adjusted, you would expect that wage growth would increase. One of the theories as to why that is not the case is the high level of underemployment that is euphemistically described by economists as labour market flexibility. What employers are doing is, rather than reducing the headcount, they are reducing the hours worked. Obviously the high proportion of casual employees within labour hire is contributing to that. Whether or not we fix wage growth through this bill might be another matter, but it certainly would have contributed.

CHAIR: One of the other things that came up during our first inquiry was the issue of the use of the Partnership Act in relation to the Maritime Union's issues and contracts being used for tugboat operators. Has anyone turned their mind to how to deal with that issue? This is a double-barrelled question: first, do you think that there is something that could be done with this piece of legislation to assist that type of going on?

Ms Beynon: I am probably not familiar enough with the Partnership Act. That is, I think, regulated by a separate piece of legislation. I do not even know if it is state or federal. I am happy to make a comment more broadly on the use of the partnership arrangement for 200 seafarers. I think it is creative, I will give it that, but I think it is a completely unjust way to frame an employment relationship.

CHAIR: There have been suggestions on how to do it and I am just asking if you have turned your mind to whether this current bill could be amended or a new clause put in to cover the situation that these people find themselves in.

Dr Martin: I think that would be a question best taken on notice, Chair. I am happy to do what we can to answer it.

CHAIR: Could it be covered under the avoidance arrangements?

Dr Martin: Perhaps. Whether or not it is actually a labour hire arrangement might be another matter. It may form part of some other breach of legislation.

CHAIR: I accept that. It was just something that has been raised.

Dr Martin: It is a good question to raise.

CHAIR: I do not want to ignore it. I may not come up with the answer, but there is nothing to stop us from talking about it. Whether I have the answer at the time of our report or whether I do not have the answer it can still be noted and hopefully someone can fix it up in the future if we cannot.

Thank you for your time. This brings this part of the hearing to a conclusion. Can we have the answer to the question taken on notice by next Monday? Is that too soon?

Dr Martin: I will attempt to do that.

CHAIR: If you need more time contact the secretariat.

HOLMES, Ms Neroli, Deputy Commissioner, Anti-Discrimination Commission

CHAIR: I invite you to make an opening statement if you so desire, after which the committee members will have some questions for you. I should outline that Mr Ray Stevens, the deputy chair, is an apology, along with Steve Minnikin, the member for Chatsworth.

Ms Holmes: Thank you very much, Chair, for the opportunity to speak to this committee today. Very briefly, the Anti-Discrimination Commission supports the regulation of labour hire, particularly in the horticultural industry. We have made a couple of submissions to this committee before about the issue and I am sure you recall some of those. Our support is based upon the information and consultation that we have done mainly in the Lockyer Valley, but also in other areas around Queensland, and within a range of different stakeholders involved with horticultural workers.

Our concerns are based mainly on human rights issues, particularly the sexual exploitation that sometimes occurs of very vulnerable workers working in the labour hire industry. That is directly an issue that we deal with under our anti-discrimination act, but, unfortunately, because the workers have very little knowledge of the laws and procedures in Australia we receive very few complaints. We do know that sometimes the police receive complaints of allegations of rape of this vulnerable group of people occurring in remote areas involving labour hire contractors or their staff.

The other issues of concern to us are exploitation and breaches of human rights. There is exploitation in the payment of wages. We are also very concerned about exploitation where people are accommodated. We are very fearful that there could be another backpacker fire incident similar to the fire that happened at Childers. We know that the fire service is very active in prosecuting accommodation providers in these areas where they know and they get information about breaches of fire safety, but they are very reliant on the community reporting those issues and knowing about those issues. Very often the backpackers or the 417 visa holders do not report. It is not something that they will do. It takes members of the other community to report. Often they are mopping up rather than preventing breaches of the law.

For those reasons, we think the fit and proper person test being the criteria for someone being able to employ labour in the horticultural industry is a very important safeguard. We would like to see the safeguards extend to things such as the provision of accommodation and also the requirement sometimes that they use the transport provided by the labour hire accommodator. Sometimes we have also heard word that the transport they offer workers to move around between places of work is quite substandard and unsafe. For those reasons, we are supportive of the labour hire bill.

Mr POWER: As a general issue for the record, I refer to those workers who are on holiday visas, 417 visas, other temporary visas in an irregular immigration circumstance, refugees and inclusive of those irregular things are people, for instance, on holiday visas who have overstayed their visas. They are very vulnerable to exploitation. You mentioned sexual exploitation in terms of those vulnerabilities. One requirement is that labour hire providers supply the details of the people working with them. Earlier the member for Toowoomba South worried that some of the very unscrupulous ones and those who do some of the things spoken about would fly under the radar or slip through the net. Firstly, do you have a comment on that? Secondly, is there a way that we can strengthen it to try to include those people whom the member for Toowoomba South had concerns about?

Ms Holmes: Do you mean the victims flying under the radar or the unscrupulous labour hire contractors?

Mr POWER: I guess there are two things, but those who have overstayed a visa probably do not want their names being included on lists of people employed by labour hire companies. There is an incentive for both of them to—

Ms Holmes: To opt out of trying to—

Mr POWER: Although the power relationship obviously changes when the threat of exposing them for breaking the law is mutual.

Ms Holmes: That is a real issue. I am not quite sure what the answer is. I suppose the remedy that we see is that the person who is contracting with the labour hire operator only contracts with reputable labour hire operators. I think that is one safeguard. The fit and proper person test and having the licence means that if everyone plays by the rules then people who are contracting with the labour hire contractor who is employing the people will only negotiate and do business with people who have got past the fit and proper person test. Sometimes people who do not have up-to-date visa requirements may still get on those books. I guess we are not quite so concerned about that. We are simply concerned about the human rights of every human being being protected. We would like to ensure that those people's human rights, regardless of whether or not they are here on a current visa, are protected from human rights abuses.

Mr POWER: But it does not make them vulnerable when they are not—

Ms Holmes: It makes them very vulnerable, and I really do not quite know what the solution is, other than the fit and proper person test. It is about being a fit person and making sure that you are not exploiting because you have been assessed as being a fit and proper person. Then the associated part of that compliance being the people who are employing or contracting with labour hire people contracting only with people who have passed that fit and proper person test. That should hopefully eliminate a lot of that exploitation.

Mr POWER: Further to that, Mr Cocks made note that it is important that the compliance unit has sufficient resources to promote awareness of the scheme, awareness of workers' rights and can ensure compliance. Given that some of those workers have low English language skills and also feel vulnerable for various reasons, are there special ways in which we could note how the compliance unit promotes to those vulnerable people an awareness of their rights?

Ms Holmes: I think there will have to be multiple ways they do that. One of the points of entry is where people are looking to come to Australia, looking at visa requirements and looking through their consular agencies for information about coming to Australia—

Mr POWER: Difficult for the state government in this act—

Ms Holmes: That is a little bit difficult for the state government. That might be a federal government responsibility. It is about trying to get some of those linkages or agreements with the federal government to try to put in some more information when people are looking to apply for visas about their rights and where to find out that sort of information. When people get into strife, that information could be with the consulates. Often people do not read that information when they are thinking about coming to Australia. They are looking forward to a nice adventure and they do not usually look for information about trouble until they are in trouble. People usually go to consular information when they do not understand the language or do not have the knowledge of the rules of a country. We need to provide information to the groups that are coming to Australia so that that is provided in the language that they are familiar with so they can read that and understand their rights when they come across that issue.

There is a lot of social media that is used by these young people. The police are using very interesting social media in order to inform them about their rights in regard to crime and policing issues. They have employed some nationals or people who speak other languages and they have put out some great social media responses letting people know the distances they are driving, making sure they have a current licence and making sure they know the road safety rules.

Mr POWER: That could be shared within the workers' language group community?

Ms Holmes: That is right. It is using that language. People have social media platforms that they like to use and they share and circulate a lot. If a compliance unit were set up, they would need to get that intelligence of where that social media place is. It is about employing people with that sort of skill level to be able to put out the information so people are frequently reminded that they do have rights and if they come across an issue that means they are being exploited and they know where to go to for help. Sometimes seeking help is scary for them because they are worried about their visa status, so there might need to be some sort of arrangement where prosecutions or information and intelligence is gathered that still gives some level of protection. That is a more complex area that probably needs some careful thought.

Mr JANETZKI: Forgive me if this question is outside your remit, but I did notice in your submission that you referred to the Gangmasters (Licensing) Act 2004 from the UK. That particular act came off the back of a significant tragedy involving agricultural workers. In fact, that act is confined to agricultural workers, the collection of wild creatures and plants, and certain packaging and processing. It is quite specific. That involves industries similar to the industries where we have observed across Australia the most significant bad practice. You are supportive of this bill but would you also be supportive of a bill, such as the Gangmasters (Licensing) Act, that limited this to particular at-risk industries?

Ms Holmes: We are supportive of people's human rights being protected wherever they work. That is a very basic premise for where the commission comes from. We have direct knowledge about the horticultural industry, so that is why we have made such strong submissions about that area. We have been working with people in that field and we know from people on the ground exactly what is going on. We have very direct and personal knowledge about that area, so we feel we have something to say in that area.

I am familiar from news reports where other people are being exploited. We have seen issues about shopping trolley workers—and, again, sometimes they are very vulnerable people or newly arrived migrants or people who have do not have very much knowledge of their rights. We also are aware from newspaper reports of exploitation in the cleaning industries. We have also seen what has happened in stores, such as 7-Eleven and others, where people are vulnerable, because of their student status or other reasons, to being exploited. We support the human rights of anyone. It does not matter what your visa status is. We would like to see all those vulnerable workers, wherever they are working, being protected. I do not know if we would see it necessary to name the industries to get that protection or if you just have a broad labour hire contracting bill and provisions such as this one. We would like to see all the most exploited workers captured by whatever labour hire contracting bill is put on the table and passed by parliament.

Mr POWER: This might be beyond the scope, but it might be important for future discussions. We saw that workers who do not have current visas or never had current visas were being exploited in sexual slavery situations. It is a very different scope from this one, but there was discussion of provisions that protected the person to be a witness about those circumstances. In these circumstances, there is a fear of reporting your labour hire company if you wish to stay in Australia. Is that something that might keep information from coming forward for the people who are worried about their immigration status?

Ms Holmes: I think so.

Mr POWER: For instance, there might be a student who is actually working longer than they should, is worried about not being about to graduate from their course and therefore cannot reveal exploitation?

Ms Holmes: I think that is very likely. Some of these amnesties to being prosecuted in some circumstances, such as having your visa removed, may be helpful to look at for people to report information. Gathering evidence about exploitation might be quite challenging. I know Fair Work Australia sometimes has a great deal of difficulty finding exploited people out in the field because they are very transient and move around a lot.

Our experience in Gatton was that there were some very trusted members of the Gatton community who had good relationships with people coming through the community who would often report to that person what was going on. The intelligence was often gathered by trusted local community members who would then pass it on either to police in some instances or to Fair Work Australia. We have also seen prosecutions happen under the fire services act where the local community through their trusted relationships with the transient population have gotten to know the local individuals who are doing the exploitation. That may not be sufficient evidence to mount prosecutions in every instance, but that is another avenue for intelligence to be gathered by the authorities. Again, it may not be enough for criminal prosecutions. However, it may be sufficient in a civil sort of arrangement to work out who is a fit and proper person.

CHAIR: Thank you for your time today and thank you for your ongoing contribution to this issue. We will now move on to the next witness from the Ai Group.

SWAN, Mr Maurice, Special Counsel, Ai Group

CHAIR: I now welcome Mr Maurice Swan from the Ai Group. I invite you to make an opening statement after which the committee members may have some questions for you.

Mr Swan: Mr Chairman and committee members, the Australian Industry Group thanks you for this further opportunity to address the committee on proposals to regulate the labour hire industry. The Australian Industry Group represents the interests of more than 60,000 Australian businesses in a broad and expanding range of industry sectors. Ai Group opposes unlawful labour hire practices but it also opposes this legislation.

The bill is not an effective antidote for the workplace wrongs it seeks to remedy. It intrudes upon and impairs businesses and methods of conducting business which have no relationship to the wrongdoings of a fringe sector of the business community. It imposes unreasonable costs and regulatory burdens on not-for-profit group training providers which coordinate the training of tens of thousands of apprentices and trainees. It provides very loose definitions of coverage and unnecessarily broad discretions to regulators. These are sure signs of bad law.

Ai Group has considered the bill from three perspectives relevant to three roles Ai Group performs. Firstly, Ai Group has a large number of labour hire companies as members and is the main industry group which represents the labour hire industry in respect of industrial relations matters. Secondly, a significant proportion of Ai Group members are frequent users of the labour hire services made available by those providers. Thirdly, Ai Group is itself a not-for-profit group training provider.

Since the proposal for labour hire licensing was first put forward, Ai Group has consistently opposed such legislation as unnecessary. It is important that competitive markets be maintained in industry in general and in the labour hire industry specifically. This bill, with the financial and regulatory burdens it imposes, creates barriers to entry into the labour hire market. This reduces competition in the labour hire sector. Reduced competition in the labour hire sector would affect other industrial sectors in one direction only: it would increase the costs of conducting business and make them less competitive in the global economy.

The bill would increase costs for training service providers like Ai Group Training Services and Ai Group Graduate Employment Service and lead to higher costs for host employers. These costs and other aspects of the bill would increase barriers to employment for apprentices, trainees and graduates. This 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.

If the bill is to be passed despite Ai Group's opposition, the written submission by Ai Group identifies a number of specific concerns about various provisions of the bill and proposes some specific amendments. I commend the Ai Group's submission to the committee.

Mr POWER: I noticed that the Ai Group's submission states that if the bill were to be passed it proposes an amendment to the purposes of the act to take out proposed subclause (a) so that the bill would not have the purpose of protecting workers from exploitative providers of labour hire services. Subclause 1(a) was seen by the government as being central to the purposes of the act but not central to the Ai Group's submission.

Mr Swan: One of the first things I said was that Ai Group opposes the unsavoury and unlawful practices of that fringe element of the labour hire sector. It has been reported, presumably accurately and reliably, that there are a number of such operators who persistently and habitually breach workplace laws.

Mr POWER: I applaud the Ai Group and I note that you said they oppose unlawful practitioners. In a marketplace where there are multiple providers of labour hire services including many of your members, where there are unlawful practitioners who undercut lawful practitioners, your members who are doing the right thing—and we spoke before of reputable providers—are effectively being undercut by unlawful and non-reputable providers. Would it be fair to say that they are being unfairly undercut?

Mr Swan: It would probably be fair to say that, but the remedy is not to spread a vast, broadly and, in fact, vaguely defined net of intrusion by legislation over not just the labour hire sector but many other sectors of industry when the real solution is to detect, investigate and prosecute breaches of the current workplace laws without creating a vastly intrusive new set of legislation and vastly intrusive regulators who will not be investigating the breach of the existing workplace laws but the breaches of the new set of laws which have been proposed.

Mr POWER: We heard in the inquiry that where those breaches are investigated and attempted to be prosecuted, labour hire companies can quickly fold and 'phoenix', again providing unfair competition for the reputable providers of labour hire services. It seems to me that protecting those reputable and law-abiding providers within a marketplace against those that are not reputable and are breaking and breaching and then quickly collapsing and restarting—there needs to be a mechanism in order to protect them.

Mr Swan: There may well be, and that should be a mechanism that is available to the existing regulators to sharpen their detection and monitoring practices. The solution is not to create at the state level a very vaguely defined legislative scope and create new regulators who will be investigating not those breaches of the law, which are the cause of the problem, but breaches of the new law. It is just a misdirection of energy and effort.

Mr POWER: If this has been raised as a problem for some years and existing laws are sufficient, why have these breaches continued and the reputable members of the Ai Group who seek to provide reputable labour hire been markedly undermined by those who do not wish to provide reputable labour hire?

Mr Swan: Perhaps that is a question that ought to be directed to the regulators and their political masters.

Mr POWER: You spoke about group training. The suggestion is that the legislation would be arduous on group training organisations and thousands of Australians who enter into those. To put it a different way, the suggestion would be that the principal of the organisation providing group training be a fit and proper person to be doing that. The alternative suggestion is to say that young Australians—vulnerable and uncertain of their workplace rights—be put into an organisation where the person is not fit and not proper to be running that type of labour hire organisation.

Mr Swan: With respect to group training, my understanding is that those providers are already subject to a set of regulations. If there is a problem of the nature that you suggest, again, it is a question of perhaps just making adjustments, if necessary, to those laws and making adjustments, if necessary, to the way that the regulator of those laws monitors and detects breaches of those laws.

Mr POWER: The suggestion is not that regulation is not important in that sector, but that it be covered under a different act?

Mr Swan: My understanding is that it is covered under a different act. If that needs attention, I am not here today to talk about attention to that act.

Mr POWER: What is your understanding of the annual reporting requirements for a labour hire company?

Mr Swan: They are very extensive and very onerous. In relation to some of them it is difficult to see how they are going to be a solution to the fundamental problem that everyone recognises, that is, that there are some dodgy operators out there who need to be closed down. I do not think those reporting requirements will stop that.

Mr JANETZKI: I wish to take you to a couple of provisions of the proposed bill. In particular clause 7, and your words 'vaguely defined' seem to ring true here. I spoke with the trade union representatives earlier about the definition of labour hire services. I do think there are going to be unintended consequences here or particular relationships that will be captured, which may not be the intention of the bill. In particular, I used the example earlier of perhaps IT workers contracting to the government. They might have a brother or a sister who also works for their particular company from time to time. Under this bill I believe they would be caught. You could perhaps apply the same to contract teachers who might work for the education department. All of a sudden we see some of these unintended relationships being caught by this bill. The trade union representative suggested that it was good to have a broad definition. In the opinion of the Ai Group what other unintended relationships may be caught?

Mr Swan: You have put your finger on a couple. I might say that the issues with clause 7 and clause 8 are that basically it is not parliament who will be defining the scope of this legislation; it is a minister who makes a regulation under the legislation who will be defining the limits of the application of the legislation. I would have thought that as parliamentarians, you people at that table there would be concerned about that prospect. You have pointed to a couple of instances, and Ai Group agrees that those sorts of situations are probably part of the unintended consequences of the bill.

Earlier this morning as I was sitting here listening I thought of what you might call the loose alliances of small businesses out in the suburbs—tradesmen: the local plumber, electrician et cetera. The plumber has his plumber mates who own their own firms who will back him up and attend to a

customer of his if he is too busy. That would seem to me to be caught by this legislation. None of those guys will probably even be aware of this legislation, but they will be contravening it. That is an unintended consequence.

Mr JANETZKI: I think in those other examples it could be used as well. I am interested in your opinion in relation to clause 98 which allows a person or organisation to apply for a review of a decision at QCAT. In what circumstances do you think a third party may intervene in the licensing process?

Mr Swan: There are several dozen unions out there that would like more information about where workers are located et cetera and how many workers there are et cetera. They will have an active interest in what is on the register and who gets on the register. My understanding of the legislation in terms of standing to apply for a review of the grant of a licence would cover those industrial organisations. That has the potential to tie up businesses in review proceedings for what might be inordinate lengths of time or, in any event, lengths of time which distract the businesspersons from attending to their business and increases the costs of the business. As we said, this will impose further costs on not just the labour hire sector but a lot of sectors of industry.

Mr JANETZKI: In your submissions there have been a number of comments made about the cost to businesses of regulation and resources. Has the Ai Group undertaken any analysis of the potential additional costs that businesses may incur through this regulation?

Mr Swan: I am unaware of any modelling that has been done by Ai Group in that respect.

Mr JANETZKI: Are you aware of any other organisations that have done any?

Mr Swan: No, I am not, but you might ask some of those other organisations who appear here.

CHAIR: I understand there are no more questions, Mr Swan. Thank you for your attendance.

CARROLL, Ms Lindsay, Workplace Relations Lawyer, AMMA

CHAIR: I invite you to make an opening statement if you so desire, after which the committee members will have some questions for you.

Ms Carroll: Thank you and good morning. Thank you for the further opportunity to provide feedback to the committee today in relation to the Labour Hire Licensing Bill. AMMA is the peak resource industry employer group representing businesses involved in major resource projects throughout Queensland. AMMA members operate across the entire resources and energy sector and across multiple states and territories. This includes companies that operate within the broader supply chain, with many AMMA member companies utilising labour hire arrangements in both the construction of a project and also during its operation. AMMA also has labour hire and manning agent firms among its members.

Our submission highlights the areas of the bill which we consider are unclear, uncertain or place an unjustified burden on businesses engaged in the provision of labour hire services and businesses that utilise them. AMMA submits that the licensing scheme must be aimed at identifying and eliminating practices of exploitation and must not impose an undue burden on legitimate labour hire businesses that operate in high compliance and in highly paid sectors such as the resource sector. To do so would otherwise adversely impact Queensland business.

It has always been AMMA's position that regulatory efforts should be targeted towards areas where exploitation has been shown to occur to ensure workers in those industries are protected from exploitation and paid their due entitlements. With regulatory efforts appropriately targeted towards this aim, businesses which are highly compliant can be assured that they will not suffer from undue interference and regulatory burden and be able to continue operating lawfully. I am happy to take questions.

CHAIR: In your report you have asked that the minister progress the issues through COAG, but how is that even possible when the Deputy Prime Minister has openly come out and said he has no appetite to do anything in this space and it is up to the states to do it?

Mr POWER: Or be instructed to.

CHAIR: I do not know if we could call it an instruction. Obviously there is no appetite for the federal government to even work in this space and, to be fair to them, I have a follow-up question, but for the moment I am wondering why AMMA thinks that there is anything further that can be done through COAG.

Ms Carroll: It is really something that has come through the membership, particularly members who operate across all states and territories of Australia who have observed other state governments undertake inquiries and express a similar interest in introducing licensing type schemes for labour hire industries. That is probably as much as I can say without taking it back to the membership on notice.

CHAIR: I do not require you to take it back to the membership on notice. As you may be aware, there has been movement in relation to the Fair Work Amendment (Protecting Vulnerable Workers) Bill. Do you have any view about how that piece of legislation and the labour hire legislation, if passed, would function?

Ms Carroll: Only to say that I support the comments of Mr Swan earlier that ultimately I think, whilst we do not oppose this particular piece of legislation, there is an opportunity for regulators to fairly do a better job of enforcing the existing laws that are in place. That is probably as much as I can say about that.

Mr JANETZKI: Thank you for your submission. It is comprehensive. You probably heard me speak to the Ai Group representative about the clause 7 definition. You go into quite a hefty analysis of clause 7 as well. Can you outline your concerns with the definition and perhaps those unintended consequences?

Ms Carroll: In short, I think the definition as it is currently drafted has the capacity to capture a whole bunch of other arrangements which the ordinary person would not understand to be a labour hire arrangement. A number of the attendees today have touched on different examples of what arrangements that might be, such as secondment arrangements.

Mr JANETZKI: I am probably interested in those that will directly impact the resources industry.

Ms Carroll: Secondment arrangements are common. I guess they might also be captured by secondments, but transfers of employees between related entities. I think the biggest concern amongst our membership is that it might capture ordinary contracting arrangements—contracts for services—for which skilled and qualified people are assigned to particular projects to undertake specific work.

Mr JANETZKI: Clause 103 talks about the register of licences. I think it pretty much reflects the requirements of disclosure under clause 31, those particular matters that are required to be reported under this bill. Clause 103 talks about the register of licences and lists all the information that must be on the public record and readily available on the website. Some of the matters that must be disclosed include the locations in Queensland where work is carried out by workers supplied by the licensee, whether accommodation is provided for workers supplied by the licensee and on it goes. From the perspective of the resources industry, will that be problematic?

Ms Carroll: It is incredibly onerous, particularly having regard to the fact that when labour hire is engaged through the companies that operate in our space, who we say are highly compliant companies, labour might be engaged for one shift or one swing, which might be seven days, it might be 14 days, and there might be a situation where in the six-month period, which is the reporting period in the legislation, a labour hire employee might be assigned to a number of different projects and in circumstances where they might be engaged for a short term or are working on different projects around the state. You can imagine, for example, for companies that might have 3,000 employees working in the resource sector—labour hire companies—compiling and maintaining a register for that sort of information for the purposes of reporting on it every six months will be quite onerous.

Mr JANETZKI: I presume that kind of information is quite sensitive to the various companies as well?

Ms Carroll: That is right, yes.

Mr JANETZKI: So there is an additional layer of complexity there.

Mr POWER: I note in point 16 of your submission that you commend the objective of preventing the behaviour of the unscrupulous few who do not comply with their legal obligations. Further, I noted that you stated that there are other acts under which unscrupulous providers could be stopped. Given that we have identified with labour hire pretty gross breaches of employment practices, is it not pretty vital that that information is there for the investigators so that they, when hearing of a complaint, can reach out to the workers in the workplace, understand the type and nature of the work that they did on the record and therefore be able to, as we have seen with other legislation, clean up this industry?

Ms Carroll: I think there is a distinction between as a condition of the licence being required to provide that information on a six-monthly basis and the regulator having the capacity to require that information in the event that a complaint is made.

Mr POWER: That is noting that a reasonable labour hire company would have all of this information. Obviously when you are entering into a contract you record all of that information. It is important that it is put on the record for the investigators because we have seen that it has been difficult for people to investigate these breaches.

Ms Carroll: I appreciate what you are saying, but I think the point of AMMA's submission is that the regulatory burden associated with compiling that information, particularly for employees in the resources sector, is burdensome. That information is there, yes, but it is the compiling of the degree of information that is required. I guess there are some matters which might require clarity in the legislation about whether all of those things listed in the legislation are required per employee or something of that nature. Many would be burdensome.

Mr POWER: Your suggestion is that it could be asked for later so that businesses would as a matter of course collect that information. Presumably they could reasonably easily set up a system of extracting that information for the creation of reports. When we are talking about the businesses that contract to the mining industry, often they use spreadsheets or databases. They could easily extract the information to create the reports.

Ms Carroll: That has not been the feedback from our membership. One of the biggest concerns with the legislation is the capacity to fulfil those reporting requirements. It has not been the case that members have told us that it would be a relatively easy process.

Mr POWER: Within the industry obviously there are reputable companies that provide an important stopgap where labour is not available. We heard the example earlier of when someone goes on leave and they need to be replaced or in the case of sickness or special projects. Those reputable companies obviously have to compete with companies that take short cuts and do not provide labour within the law. Those companies that are reputable will get an advantage in the marketplace through this process. Would that be fair to say?

Ms Carroll: I agree with that, subject to what you might consider to be an advantage. While the opportunity for new work to appear as the unscrupulous providers are pushed out of the market might of itself create an advantage, there are also all of the other regulatory matters that they need to comply with in order to win that work.

Mr POWER: They need to comply with those to maintain their licence.

Ms Carroll: That is right.

CHAIR: I am interested in part of your submission on page 7. I am trying to understand your submission. You state, 'Clause 7 of the Bill is expressed in very broad terms as to what constitutes labour hire services.' You go on to quote the clause. Then you state, 'The note following this definition identifies three presumably non-exhaustive examples ...' Where does that presumption come from?

Ms Carroll: Just bear with me while I turn to the bill. I think the words 'presumably non-exhaustive' follows the note in clause 7(1), which says, 'Examples of providers—' which we have taken not to be an exhaustive list of examples of who might be excluded from the definition in clause 7.

CHAIR: Who would you suggest should be included?

Ms Carroll: We have touched on a couple of different examples earlier. Secondment arrangements should be excluded.

CHAIR: When you are talking about secondment, can you give an example of where a secondment could be caught?

Ms Carroll: Ultimately this definition captures anyone or a provider who provides a person to another person to do work. That can capture any contract for services arrangement where, for example—

Mr POWER: It cannot capture any contract for services arrangement surely. Many contract for services arrangements are not under the direction of the principal employer. They are a contract to provide a service where—

Ms Carroll: They are overseen by a principal in many cases in the resources industry.

Mr POWER: That is not in all cases. You said it would capture all cases. Where the service is directed by the principal, those things begin to become labour hire. Is it a question of where they become labour hire?

Ms Carroll: That is unknown currently as the bill is drafted.

Mr POWER: We obviously want to include where those services become labour hire because they are under the direction of the principal. Is there a test that would more adequately describe that?

Ms Carroll: I can take that on notice.

CHAIR: Thank you for your time today. Thank you for your attendance today.

Proceedings suspended from 12.04 pm to 12.33 pm

HOCKADAY, Mr Cameron, Group General Manager Commercial, WorkPac

HOURIGAN, Ms Sinead, Queensland Director, Robert Walters and Vice-President, Recruitment and Consulting Services Association Australia and New Zealand

REARDON, Mr Tom, Managing Director, AWX

STEWART, Ms Natalie, General Manager Safety, Quality and Employment, Protech

CHAIR: Good afternoon. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Hourigan: Good afternoon all and thank you for the opportunity to present at this Finance and Administration Committee public hearing on the draft Labour Hire Licensing Bill 2017. My name is Sinead Hourigan. I am presenting here today in my capacity as Vice-President of the Recruitment and Consulting Services Association as well as in my capacity as the Queensland Director of Robert Walters, an international recruitment firm with over 30 years global experience in the provision of permanent placement and on-hire services to industry.

The RCSA represents in excess of 3,000 corporate and individual members. In Queensland we represent the interests of over 470 corporate members who are providing ethical and professional recruitment and on-hire services to our clients every day. Every day, over half a million workers go to work as a result of the work of professional labour hire providers, and our industry is worth in excess of $18 billion to the Australian economy. Here in Queensland over 100,000 labour hire workers rely on professional labour hire providers to find work each day.

At the outset I would state that we strongly support any initiative that protects genuinely vulnerable workers from exploitation. However, we do have real concerns that this bill will not do that and will only further encumber the vast majority of professional businesses in this sector with additional compliance requirements, directly increasing the cost of doing business. The direct correlation that we can draw from this is that reputable companies that are overburdened with additional and unnecessary compliance and regulatory requirements may well determine that Queensland is too difficult to continue to do business in and close their doors.

The Queensland inquiry conducted last year into exploitation in the labour hire sector failed to report on exploitation of any significance outside of the horticultural sector. In fact, the exploitation which was uncovered in the horticulture sector was a result of the actions of unscrupulous individuals who provided workers directly to employers at a low cost base and not those of reputable and professional labour hire firms that simply do not work that way.

As the peak body for the recruitment and employment sector in Australia and New Zealand, the RCSA sets the benchmark for industry standards. Our members abide by a code of professional conduct and we are committed to enhancing and promoting the reputation of the industry through delivery of best practice employment services. One of our initiatives to further enhance the delivery of services is our RCSA workforce services accreditation program. This program is an audit based certification for workforce services providers that will support the integrity, compliance and professionalism of the industry—one of the objectives of this bill—and, importantly, provides end users with a very easy choice between good practice and malpractice. Certification has been developed in consultation with the NUW and the AWU and is supported by the Migrant Workers' Taskforce. Certification goes into more depth than the key requirements of this draft legislation. Certified companies will be listed in an online register, where end users can access this information and make an informed choice about the appropriate employment services partner for their business.

This program has already been trialled in Victoria and Queensland in the horticultural sector, where exploitation of workers has been identified. It allows for the closer governance of these markets without overburdening providers of employment services in other sectors with another layer of legislation which will add no value and will merely increase the difficulty of doing business. We will be pleased to make our evaluation report available to the committee when the pilot is completed in early August.

The RCSA would make the following recommendations to the committee today to ensure that, if the draft bill is to pass—and we would suggest that it is not yet in a fit state to be approved into legislation—it is limited to achieving the outcomes the government has stated are at the core of its intent in the introduction of this bill, that is, addressing the exploitation and mistreatment of vulnerable workers.

Firstly, we believe that a better approach to resolving any perceived or genuine issues of exploitation of workers is to limit this type of additional legislative burden directly to the sectors, for example horticulture, impacted by this exploitive behaviour. Secondly, we believe that the bill should recognise in full the RCSA workforce services certification program as meeting all the requirements of the proposed licensing scheme. This will prove to industry that the government is genuine in its intent of improving the industry rather than creating further obstacles for reputable providers.

Thirdly, we have also noticed in the draft legislation the capacity of interested parties to invoke reviews of licensing. This is a highly subjective concept and would be open to abuse by those who might seek to further damage the reputation of an industry or indeed individual workforce service providers for no other purpose than to inhibit the proper operation of a free marketplace. We would recommend the removal of this clause from the legislation.

Fourthly, we would recommend the inclusion of strict criteria around the appointment of the chief executive officer of the licensing authority and any other officer with decision-making powers to prevent the appointment of persons with interests other than the appropriate governance of this scheme.

The bill also provides for a reporting framework which requires information that would not normally be in the public domain and may well have unintended consequences around the accessibility of information regarding worksites that may lead to a breach of the privacy and safety of those present at those sites. This reporting framework should be reviewed and reduced to the extent of what is reasonable and relevant for workers and employers to determine that they are working with a professional labour hire provider.

Finally, we would suggest that the passage of this bill is delayed until a proper regulatory framework has been scoped appropriately. As we are all keenly aware, uncertainty is the enemy of economic growth, and the Queensland economy is in need of initiatives that stimulate growth and do not stymie it. I would like to thank the committee for the opportunity to present at this hearing today and welcome any questions you might like to pose based on our submission.

Mr POWER: Page 7 of your submission states—

The Bill, though apparently drawing from the definitions used in the UK *Gangmasters Licensing Act* does not distinguish between the *supply* of a worker and the *use* of a worker.

Would you like to speak further to that? Was there a problem with the gangmasters act that you anticipate being a problem here?

Mr Hockaday: No, it has drawn on that for inspiration in terms of the definitions. We say that those definitions in the proposed bill are dramatically broad such that they do not hone in on the issues that the bill is trying to address.

Mr POWER: Would you have any suggestions for different definitions?

Mr Hockaday: We do, and we have given examples of definitions that we use in our industry. The approach that the drafters of the bill have taken is to cast a wide net and then allow exclusions. They have included some exclusions in the draft bill and then have essentially said, 'If we think of anything else, we will put it in the regulations.' In the absence of those regulations or any other definitions, it is very hard to give you information on whether we think that definition is true or not. An example is that in the ICT industry it is common for people to operate as an on-hire worker. Many could be small businesses; many could be independent operators—one-man bands. However, this bill as it is drafted would pick up that entire category of worker. As we were waiting to come in we were estimating that probably 30 per cent of the ICT industry operates under that arrangement.

Mr POWER: Those submissions could be put in through regulation to address that?

Mr Hockaday: The bill provides for that, but it is difficult to comment without seeing any of that regulation.

Mr POWER: Also on page 7 it says that we need to address other problems where—

… a worker may experience exploitation before ever starting to do work. It has missed the risk of exploitation at sourcing and selection, migration, training, accommodation and during demobilisation of workers.

Would the act would need to go further to address that exploitation?

Mr Hockaday: That area is then moving outside of the employment relationship. It would be difficult for the bill to govern that when it relates to things such as immigration law and the like. I am not sure how you could extend the bill to cover those activities.

Mr POWER: I was not sure what the comment meant. Does the comment mean that in the case of overseas supply workers there is a risk of exploitation—that is kickbacks in the home community, away from Australian jurisdictions—

Ms Hourigan: That would be correct.

Mr POWER:—and this bill does not address that? I just did not know what that meant without context.

Ms Hourigan: A lot of the exploitation that was referenced with regard to the horticulture sector is exploitation that would not be covered under the remit of this bill at all, because the people undertaking the exploitation are undertaking it offshore in many instances and are not ever going to be recognised as labour hire providers.

Mr POWER: Where there is an Australian principal who acts as the labour hire provider they could be addressed, but you are saying that those who organise visa applicants are not covered by this and would need to be covered by Commonwealth legislation?

Mr Reardon: Additionally, in the contracting space a lot of those people are classed as contractors; they will not be classed as labour hire people—

Ms Hourigan:—which the bill does not cover.

Mr Reardon: It still does not capture the situation which is predominantly in the horticultural sector. They will have a team of 20 people coming in to do the work who are classed as a contractor, not a labour hire provider. The bill completely misses that.

Mr POWER: Fair enough.

Mr JANETZKI: Ms Hourigan, you were talking about the risks. If you go to clause 31 of the bill, it talks about a whole range of matters that will need to be disclosed and then will ultimately come into the public domain under the public register and section 103. Can you expand a little more on the concerns you have or particular examples that may be enlivened in the event that the whereabouts of particular locations where people may be working may become known?

Ms Hourigan: I suppose this is what we are referencing as the potential unintended consequences of this bill. As it is currently drafted, there is a requirement to report on the worksites of all workers. In the instance that a worker was providing in-home care services to an elderly person or somebody suffering from a level of disability, it may well be that the information is provided in a relatively public domain and it could be used for purposes other than the protection and support of those people, so it is a genuine concern.

Mr JANETZKI: I have asked the question a number of times about the definition—and you have mentioned it already—of labour hire services. Can you provide examples of unintended consequences of particular relationships that may be captured outside of the examples that are given under clause 7 of the bill?

Ms Hourigan: I am happy to give you some, and I am sure the other panel members would also have other areas they could comment on. I think some of the areas that may well be covered which I would anticipate are unintended would certainly be those organisations such as consulting engineering firms that may well be in the business of providing workers for the purposes of doing work, which is as broad as the definition is, whereas they are not in a labour hire relationship with that worker. They are direct employees but they are being on-hired, in effect, to do work for the government, for example, or for other clients. I would suggest they would certainly be one that would be captured unintentionally by this bill as it currently stands.

Mr Hockaday: There are also legitimate arrangements where a company may structure their operation to have a centralised servicing area of their business that then supports the other operating parts of their business, so internal on-hire arrangements between related entities could potentially encapsulate this. I know that BHP Billiton made a submission to the committee on those grounds. Professional services firms do rent out their engineers and architects on a schedule-of-rates basis—that is quite common in a contracting sense—which could be encapsulated by this bill. Also the exclusion in terms of the building and construction industry we find is an odd one, because a labour hire arrangement still occurs even though a contractor might have a builder's licence or a trade contractor's licence. Often a lot of those projects are done on a schedule-of-rates basis or a day-rates basis, so it excludes a category of labour hire that potentially it should be including. The definition needs a lot of work, in our opinion.

Mr Reardon: For example, one of our business entities has a building licence and does exactly that. We supply building works but outside of that we supply on a labour hire perspective as well, so does that mean that everyone that I have working on my other entities, if they are working under that entity, needs to be covered by a licence? It is quite interesting from that perspective.

Mr JANETZKI: There are avenues available for interested persons to involve themselves in the licensing process under the proposed bill. Under what circumstances do you think third parties may involve themselves in matters of that nature?

Mr Hockaday: I think there are two parts to your question. The first part is in terms of the licensing application process itself. Certainly we understand there should be an opportunity for people to provide alternative information to the chief executive to make a decision. However, the bill is quite open in terms of allowing a single person or an organisation or a body to lodge an appeal to that. Rather than just being a particular body, there could be an unlimited number of people who could potentially challenge a licence decision. It actually goes beyond that to the point where it does not actually fix a window of time. You would probably expect that there would be a date set where you make an application, the chief executive or his delegate receives all the information in during a period of time—much like you would in a commission hearing—everyone has a set period of time to lodge their information, they make an informed decision on that information at a point in time, and then we can all move on for the next year of the licence period or whatever the licence period is. However, in section 94(2) an interested party has 28 days from when they 'otherwise become aware of a decision'. In practical terms, how does the chief executive determine that someone has 'otherwise become aware'? If I am an interested party I could just say, 'I only just found out about it yesterday,' so the 28 days start. How does anyone know that they only just found out about it yesterday?

The 'interested party' definition aside and who that could be defined as, is open to abuse. In a sense, we are all going to be licensees. These requests could come in any day and every day during the life of your licence and the chief executive would be required to respond to those potentially on a daily basis. There is an error there in terms of the drafting. As far as 'interested parties' goes, again it could be individuals, it could be aggrieved workers who did not like being dismissed, so they have an avenue through the courts—it may be that we go through the court system or the commission—and the dismissal has been found to be for totally legitimate reasons. As employers, we all have disputes with our employees and there are mechanisms to address that, but this mechanism would then allow that aggrieved employee an opportunity and the chief executive would be required to hear that appeal. I think the estimate of $2 million in running costs would be grossly underestimated if you have the provision for any number of individuals or bodies to lodge appeals on any day for all licence holders. You could be looking at running costs 10 times that amount or you will have a very busy QCAT.

Mr JANETZKI: Other submitters have referenced the Gangmasters Licensing Act 2004 from the UK. I do not believe you have done so in your submission in respect of the correct model of potential regulation over recalcitrant labour hire firms. However, you have proposed an expansion of your accreditation process. What is your submission as to the ideal regulatory environment to address the poor behaviour of a small number of sectors here?

Ms Hourigan: I think there are a variety of means by which better outcomes can be achieved. One of them we firmly believe is that the end user—in effect, host employer—has to be engaged in the process. The act does not really give us enough clarity around how that can be achieved. We also believe that investment should be in the enhancement of the industry, and one of the objectives of the act was clearly to improve the reputation and delivery of the industry. We believe that a more well-defined certification program such as the one that we are recommending allows for ongoing education and development within the industry, as well as a certification program which ensures that employers can easily access information about who a certified provider is and therefore make informed choices about who they determine they should do business with. It is just that investing in regulation over investing in development is probably not how we see the industry progressing.

Mr JANETZKI: We have heard evidence from witnesses today about bottom feeding labour hire providers who operate with mobile phones from the boots of their cars. What is your opinion in relation to the best way to regulate that illegality? Firstly, in your experience or understanding are those providers prevalent? If so, what is the best way to ensure that they are regulated out of the market?

Ms Hourigan: They are not prevalent in the areas of the market that I operate in. We operate a professional services labour hire and permanent placement firm, and I would suggest that from what we understand the only industry that we have been able to see any evidence of where labour hire could be at all implicated in exploitative behaviour has been horticulture. A lot of the references that were made even earlier today by the Deputy Anti-Discrimination Commissioner were in relation to direct hire employment such as 7-Eleven and those types of engagements that do not actually involve an intermediary such as a labour hire provider. That is not an area that we can regulate, nor is it an area that this bill touches on.

We believe that there are absolutely those that should be extricated from the market but, as with everything, no matter how much regulation you put on they will always try and find a way. As I said, investment in industry, investment in the education of employers and dragging them into the supply chain so they understand that they are implicated just as much as anyone providing labour will be a better approach.

Ms Stewart: Just to add to that, from the blue-collar end of the spectrum, we would be regularly in receipt of clients who are actively involved as a supply chain mechanism in terms of their tendering process, the building code obligations that we share and other factors such as that which do force an element of self-regulation in terms of our approach. Those high-risk and vulnerable workers are working in sectors where that approach to engagement with clients is not the norm, so I think investment in focusing on enforcement in those sectors where the vulnerable workers are really at risk is going to give the outcomes of the bill a much higher success rate than looking at industries that do particularly self-regulate through mechanisms that already exist at a federal level.

CHAIR: When you say that systems exist at the federal level, what at the federal level covers exploited workers?

Ms Stewart: I am particularly referencing the building code—which is also in place at the state level for a large proportion of the workers whom we provide—in terms of the obligations that we have for ensuring that our employment engagement obligations are met, that we are operating in line with the Fair Work Act, that we are operating in line with all of our obligations from a tax, superannuation and safety perspective, and that we are providing an opportunity for engagement with the workforce that is consistent with the recognised standard.

Ms Hourigan: I would say from my perspective that we would be in receipt of regular audits from the Fair Work office to ensure that we are paying workers in line with all appropriate award rates and standards. Any reputable labour hire organisation would have the same processes in place, so we feel that they govern the manner in which we engage with our workers.

CHAIR: I would like to ask some questions about clause 12 of the bill. You raised specific concerns regarding the avoidance arrangement provisions. Can you outline your concerns?

Ms Stewart: The concern that we share, as Ms Hourigan pointed out, is that unscrupulous operators do tend to find a way. As much as clause 12 points to the requirement not to avoid the broad base, the definition provides opportunities for them to step outside of that and not be caught up by the avoidance clause.

Mr Hockaday: The concern is more so in reverse in that the definition is so broad it is difficult to apply, whether an avoidance arrangement has occurred or not. It is very difficult to know the nature of the work the bill is trying to apply to. The bill specifically excludes building and construction contracting. If I then supply people under a labour hire arrangement under a building and construction arrangement, that is something that the bill legitimises, yet it could potentially also be an avoidance arrangement. It is at odds through the nature of the drafting.

Mr POWER: We have gone through a period of education and awareness. You spoke about the reputation of the labour hire sector and how it was being brought down by some. If we have gone through this period of attempting to clean up the industry by having professional associations and trying to set standards, surely you would welcome the idea of some form of legislation in order to ensure that the high standards are maintained by those who are reputable operators.

Ms Hourigan: As indicated in our initial response, we absolutely welcome any capacity to improve the professionalism of the industry as a whole. It is what the RCSA has been established to do. However, our concern is that this bill will tie up reputable, professional and ethical providers in further legislation where there is absolutely no evidence of any exploitation or any issues in the sectors in which they operate. We genuinely believe that, considering the course that had been associated with the establishment of this body, if it is to be passed into legislation—and it probably needs some amendment in advance of that—it should only be targeted at the sectors that are evidently suffering at the moment from the exploitation of workers.

Mr Hockaday: We did make a submission to the committee—No. 25. Similar to what Sinead said, we are not opposed to legislation and licensing—absolutely not. What we are saying is that, as a company that will need to comply with the bill, we have major concerns with the bill in its current form. It gives absolute power and discretion to the CEO, with limited information on how that power will be applied. The criteria for how a licence would be granted is very loose. It is a fit and proper person test. Other than talking about a criminal history check, there is no other detail about what that

means. The fit and proper person test can apply very broadly in an organisation. It is also unclear about how far through the organisational layer it goes in terms of the executive officers—it talks about people who could affect control of the company. That could be 20 or 30 people in a company of our size. It talks about financial capacity. There is no definition of that. Is that based on revenue? Is it based on profit? Is it based on liquidity? Is it based on capital? How is that test going to be applied?

Mr POWER: How would you like it to be applied? When it comes to phoenix companies that leave people exposed in relation to their superannuation and payments, we do want to have a capacity to hold them in check through legislation.

Mr Hockaday: Alternatively, instead of being a positive test, perhaps it could be a negative test, where if you have been convicted of these offences or if you are not able to make your payments then you are not a fit and proper person. It could be a test in the negative as opposed to offering the chief executive absolute discretion. Alternatively, he or she could have absolute discretion in terms of the appeal mechanism or when a licence may be suspended. There are very few rights of appeal in that process or little transparency of the process. Yes, there is QCAT, but QCAT is an appeal tribunal. The bill does not provide for the grounds on which that appeal can be made. How can QCAT even make a decision if there are no criteria that it can reference against in terms of that appeal?

For many reputable businesses that would go for a licence, having to go for a licence every year would be quite an onerous cycle, depending on what the application process is and what information needs to be provided. What happens if a licence is suspended and the show-cause—I know that some submissions, such as AiG and AMMA, went into some detail on the legalities of the bill and noted some errors there. For us, there could be 5,000 employees in limbo while we are going through an appeal process. What happens to those workers while that happens?

In short, we are not opposed to the legislation or a bill going through. It is more that there is a lot of detail in there that does not exist or needs to be refined for this to be pragmatic. I think in its current approach the cost of administering it is far greater than the estimated $2 million. There are far more than 1,500-odd companies that would fit the definition than what is being suggested.

Mr Reardon: It is all about the vulnerable workers here. The $2 million will not make an impact unless it is specific to the industry that is in the limelight for this, which is the horticultural industry. It will not make a splash in the pond if everyone is going to be running around after every single organisation that is classed as a labour hire organisation, whether it is a law firm or whether it is anyone who is sitting on the panel here. The concentration needs to be in that specific area or it will just not have any impact.

Mr POWER: The information that is provided by labour hire companies would give greater clarity to those companies that wished to work with reputable companies and to ensure that the workers they are directing under labour hire are paid in accordance with the law. That information is pretty vital for the principal company to receive and to understand. This bill helps do that, I think.

Ms Hourigan: Is that a question?

Mr POWER: Yes.

Ms Hourigan: The information with regard to the manner in which people are paid is currently available through the fair work mechanisms. That body is absolutely capable of identifying that information to ensure that workers are being paid at the appropriate rates.

Mr POWER: Often with unreputable providers, where and when and whether liabilities and taxation have been paid is not clear. Therefore, they are registered and that information is then available to be scrutinised. There is a lot more clarity for the industry. I think the industry should welcome that information being made available. Do you agree in principle?

Mr Hockaday: Yes. If you are referring to publishing a register of licensed providers as a reference point—absolutely.

CHAIR: A labour hire arrangement really is a triangular relationship. You have the labour hire business that supplies the labour of a worker through a third party. In your submission you talk about a range of examples. I will choose one of them: 'A worship leader "supplied" under a "pulpit exchange" programme.' Who is hiring and who is paying in that arrangement?

Ms Hourigan: Our reference there relates to the current definition in the context of the legislation—that it is unclear in its intent of what a labour hire worker is.

CHAIR: I have chosen that example. Everybody knows what a labour hire company does.

Mr Hockaday: The bill states—

Meaning of *worker*

(1) An individual is a ***worker*** for a provider if the individual enters into an arrangement with the provider under which—

(a) the provider may supply, to another person, the individual to do work; and

(b) the provider is obliged to pay the worker, in whole or part, for the work.

The paying of the person is irrelevant.

CHAIR: You say it is irrelevant.

Mr Hockaday: The bill says it is irrelevant.

CHAIR: Where?

Mr Hockaday: In clause 8(1) (b) on page 10.

CHAIR: Doesn't that read 'obliged to pay the worker, in whole or part, for the work'?

Mr Hockaday: Yes.

CHAIR: How is that not referring to pay?

Mr Hockaday: I am saying that that does incorporate the example that you spoke about. It could be a pastor or a chaplain. It could be an engineer. It could be anyone. They are being deployed to another person to perform work. If his business is to be a chaplain—

CHAIR: Isn't the operative word there 'supply'? You have a business that is supplying a worker, whether he is a chaplain or a mine worker. I am not trying to be tricky.

Mr Hockaday: No. I understand that could be an extreme example, but that is another issue where the bill is not clear on what arrangements are picked up or not.

CHAIR: We have to write a report. I am just trying to understand some of those examples. I am sorry that we do not have more time to go through the rest of them. Thank you for your time this afternoon.

HUMPHREY, Mr David, Senior Executive Director, Housing Industry Association

ROBERTS, Mr Michael, Acting Executive Director, Housing Industry Association

CHAIR: I welcome David Humphrey and Michael Roberts from the Housing Industry Association. I invite you to make an opening statement, if you so desire. After that, the committee will have some questions for you.

Mr Humphrey: HIA thanks the committee for the opportunity to appear today. HIA is the nation's peak body for the residential building industry. Our membership comprises a spectrum of businesses across the residential building sector including builders, independent contractors, property developers and building product manufacturers and suppliers.

We have provided a submission setting out our views on the bill. We do not seek to repeat the submission at length at this time. HIA's first point is that labour hire arrangements are not commonly used in the residential detached housing sector as much as they may be in other sectors, but they do facilitate a group training model under which group apprenticeship schemes directly employ apprentices and on-hire them to trades and builders. This model supports apprenticeships and facilitates much needed skill development in the industry. Many small business employers in the industry wanting to be involved in training the industry's future workforce are unable to commit to the obligations associated with a full term, being a three- or four-year indenture.

Group training organisations such as HIA are subject to requirements under legislation such as the Further Education and Training Act, which sets out strict standards including auditing requirements. Further regulation under the bill will ultimately add to the cost of hiring an apprentice and negatively impact on skills development in the state. Additionally, it has been suggested that the proposed licensing scheme is no different to licensing real estate agents and motor traders. Unlike the licensing of these businesses or occupational licensing of, say, builders, there are no prescribed skill, training or occupational standards required to be met to obtain a licence.

The fit and proper person criteria largely relates to compliance with existing laws. In this regard, workers engaged under labour hire arrangements are employees of the labour hire firm. They are not unregulated or unprotected. These employees are covered by the relevant modern awards and/or instrumental instruments, the Fair Work Act and other related acts. They have access to unfair dismissal, anti-discrimination and other rights. In turn, labour hire businesses, as the employer, are responsible for compliance with relevant industrial law instruments in the modern awards. If they are a corporation, they are subject to the requirements of the Corporations Act. There are Commonwealth agencies responsible for enforcement of these obligations. We do not consider additional regulation at a state level is really necessary or desirable. We are happy to respond to any of the committee's questions.

Mr POWER: The critique is that there is not enough criteria on the licensing other than compliance with the existing labour laws? You want more criteria to be applied to it?

Mr Humphrey: Rather than saying we want more criteria, what we were pointing out is that the criteria seem to be showing that you can comply with the existing laws as opposed to, say, the criteria that is needed for a builders licence which is that you have the necessary skills and experience, have completed the technical training and all those types of things. It comes down to the point and purpose of having this licensing arrangement.

Mr POWER: For a reputable builder in the building industry, when they seek labour hire in all of its forms, they would of course seek reassurance that the company employing the people whom they will be directing were employed in compliance with existing laws. That is what this bill does.

Mr Humphrey: Probably the building industry example is a difficult one because in the detached housing market the majority of workers are subcontractors. There are employed workers—apprentices are of course employed, and that is one of the points in our submission—but when we are talking about our concerns we are talking about the group training proposed regulation in a broad sense. When builders are engaging workers, it depends on what type of work they are doing. There are strict licensing requirements. I know with the QBCC legislation that often you cannot provide that work unless you are a licensed builder or a licensed contractor yourself. That is because of the definitions of contracting to do work and things like that. The building industry does have a lot of regulation already and having that additional labour hire licence just duplicates a lot of what is there. It is not targeted at labour hire type issues, but there is a lot of regulation already there.

Mr POWER: You understand that in the inquiry we heard that reputable companies, which no doubt you represent through the building industry, were sometimes engaging labour hire companies that were less reputable and did not have the knowledge of whether the people they were engaging

to get labour hire followed the very basics of our employment law. This legislation would have a mechanism where a fit and proper person and the labour hire company would be able to be checked by reputable companies, such as the building companies you represent, to know that they did that and therefore proceed with confidence that those employees they have engaged through a labour hire arrangement are employed in fulfilment with the laws that already exist?

Mr Humphrey: I am not really sure how to respond to that. We know that when a business is engaging a worker or an employee through a labour hire kind of arrangement there are a lot of motivations as to why they are doing that. Certainly, there would be a desire to know that that worker is being properly paid by the person they are paying money to.

Mr POWER: And their superannuation and taxation is being paid.

Mr Humphrey: Ultimately, the employment relationship relates back to that labour hire provider and that employee.

Mr POWER: Absolutely.

Mr Humphrey: What businesses want is quality work and to get what they paid for—that is, they paid for a service which is a labour hire worker and the labour hire worker delivers on that service. At the end of the day, that is what the existing regulation is there for—to make sure that if people are being ripped off under the fair work system that the Fair Work Ombudsman does its job and chases it up and prosecutes those people who are not doing the right thing. If it is the case that they are not deploying their resources in the most effective fashion, that might be a separate thing. We do know that the Commonwealth government does have the vulnerable workers legislation to amend the Fair Work Act before parliament at the moment. It is very likely to be passed. It addresses the vulnerable workers issue in a broad sense. It is targeted at franchising type things, but there is nothing stopping that being expanded in future to tackle labour hire because we do know it is on the Commonwealth government's agenda as well.

CHAIR: Barnaby Joyce has openly stated that he has no appetite for licensing labour hire and that we would leave it to the states. I have a couple of questions, not to get away from the subject you are talking about, but if you want to come back to it, you are welcome to. As a group training organisation, which I understand the HIA is, could you outline for the committee what licences and reporting obligations you already work under or comply with?

Mr Humphrey: To be eligible for funding—and the Queensland government does provide funding to GTOs—there is criteria to meet specifically under the legislation. I can take you to the parts of the Further Education and Training Act that set out the auditing and compliance obligations. Section 84 sets out what are called the GTO standards. They set out standards in relation to recruitment, employment and induction, monitoring and supporting apprentices and trainees to completion, and GTO governance and administration to make sure that proper businesses are GTOs. They need to obtain a certificate under that process and, in turn, they are subject to regular auditing and compliance obligations. It is very heavily regulated. There are Commonwealth standards as well. In terms of HIA's business, it is a small part of our business in terms of our broad offering of what we do for our members, but we consider it an important function and role to play in terms of skills development.

CHAIR: You talked about audit, but is that the reporting obligation? Someone does not come and audit you; you provide that information as part of an audit process?

Mr Humphrey: It is not a random audit type process that, for instance, that Workplace Health and Safety or WorkCover would do. It is a positive obligation to report.

CHAIR: Do you have a view in relation to this bill duplicating in the group training space? Do you feel this bill is duplicating?

Mr Humphrey: It is duplicating because there are quite onerous requirements under that existing legislation. There is duplication because you have to obtain an additional kind of accreditation or the labour hire licence. On top of that, there is the requirement for the reporting and also the payment of the licence fee. The other challenge is the uncertainty created with the ability of these interested parties to potentially object to the issue of the licence through that appeal process. There is some uncertainty associated with that as well. Whether or not those objections are bona fide or not remains to be seen, but that is one of the risks we see with the legislation.

CHAIR: Do you pay a fee for the group training licences?

Mr Humphrey: I can provide an answer on notice to that. My understanding is that there is no fee associated with that.

CHAIR: We do not need any more details than that, thank you.

Mr JANETZKI: I detect an underlying concern in your submission relating to section 103 on the public register and the right of review and appeal from third party. I detect your members are concerned about that. Can you perhaps expand on how that publicly available information may be used to the disadvantage of your members?

Mr Humphrey: Turning first to that issue of the register, that is providing an extremely expansive amount of detail relating not just to the name of the business that is licensed but also locations of where they are working and all those types of things. It could potentially be used for industrial purposes. For instance, target a particular site or something like that, otherwise you may not know where the works are being undertaken. What I am referring to there is sites where there are no members of a particular industrial association but then all of a sudden we know that there are people there. It is somewhere we can either use as a recruiting ground or something else. There is a lot of detail there. Going to that secondary question, again, it is relating to the uncertainty. It is a very broad class of people who could object. It is not just necessarily industrial parties. It could be a competitor who does not like competition. At the end of the day, a licensing arrangement, whether it is for labour hire or something else, essentially creates a closed pool of people offering the services. The natural kind of response to restricted competition is for prices to go up. Obviously some competitors will potentially try to make some objections and do some things to maintain their protected status via the licence.

CHAIR: Thank you for your time this afternoon.

MACKENZIE, Ms Rachel, Chief Advocate, Growcom

CHAIR: Good afternoon. I welcome Ms Rachel Mackenzie from Growcom. I invite you to make an opening statement if you so wish after which the committee members will have some questions for you.

Ms Mackenzie: We represent the production and horticulture sector, so fruit, vegetable and nut growers. We all can acknowledge that there have been some serious issues in our sector, many of which occurred in that interface between growers and the labour hire community. In a general context, our growers are supportive of better oversight of labour hire. The key comment that they have come back to us with—and we have consulted widely around Queensland—is that they want a national approach.

Mr POWER: We all do.

Ms Mackenzie: Yes, and I appreciate that the federal government has said that that is not really on the table, but I also am aware that the RCSA, which I am sure have spoken to you as the peak body for the labour hire industry, is looking at a national certification scheme. I was wondering if there was any appetite within the Queensland government to look at a co-regulatory model as is occurring in things like the reef space, because I think we can be a bit more creative around this. I cannot emphasise enough that labour hire is fundamental to the success of our industry. We need labour hire. Basically, the way our industry is with the ebb and flows of workers—you can have six one week, 60 the next, 120 the next—labour hire is absolutely essential. There are a lot of really good, legitimate labour hire operators operating on very thin margins in our industry.

Anything that creates a barrier and makes it less competitive for them to work in Queensland is a problem for our growers. We are a price-taking industry. Prices get pushed back down to our growers and access to those important labour hire sources is a problem. Whilst we respect that there is a need for better oversight, we think that there is a strong need for better enforcement of the existing regulations which do cover off on a lot of these issues. We realise that the issue of phoenixing is a big problem, so there is a need for some kind of register. In summary, yes, we think something should be done. We think that there should be a greater examination of the certification approach because it is national, and we do have some concerns about some specific elements of the bill which we raised in our submission.

Mr POWER: It is probably outside the scope of this bill, but you may wish to get it on the record—should national certification be administered by the peak organisation, or how would it be structured?

Ms Mackenzie: It is my understanding that that is how it would be structured. In the horticulture industry we actually have that model for food safety whereby you have a third-party certifying organisation. That is pushed through the supply chain and we have good compliance. They did a big analysis of it and they basically said there is no need to regulate; there is good compliance. I think there are models where that approach works. The legislation already covers off on accessorial liability. We have had growers who have been caught up and charged under those provisions within the Fair Work Act. We already suggest to our growers that they have a labour hire contract. That is something that protects them from that accessorial liability. Working with a labour hire company that is certified would be something else that would go towards protecting them.

Mr POWER: Industry certification would have a process of having a certified company, therefore, a lease that would be accessible to growers and recommended by a peak organisation and presumably also checks to ensure that compliance and a mechanism for listening to individual workers' complaints and investigation? There would be costs involved in that?

Ms Mackenzie: There are costs involved in that. I think that it is a third-party audit approach, similar to what we have with the food safety. Yes, there would be costs, but if it is national, at least those costs are consistent nationally rather than Queensland growers and potentially Victorian growers paying more to access the same services. I guess that is where the argument is. It will not be cost neutral.

Mr POWER: Whether it is a self-certification process or a process of government providing that, both of them have costs?

Ms Mackenzie: Yes.

Mr POWER: Given the circumstances where we heard a really emotive thing from a grower saying, 'Do we treat workers like slaves?' I would say yes. 'Do we abuse them?' I would say yes. That is out of their control. I do not think any grower wants that to be at arm's length, but the nature of labour hire means that there is not a transparent relationship with what payments and relationships are going on. I appreciate it is very difficult for the growers in those circumstances.

Ms Mackenzie: Yes, it can be. As we have seen, there is that accessorial liability. If it is too good to be true, then it probably is. We are—

Mr POWER: As you said, as a price taker it must be very tempting to wish to believe that they are doing the right thing.

Ms Mackenzie: I think there is the full spectrum: we have those who are knowingly doing the wrong thing; we have those who are turning a blind eye; we have those people who are being ripped off because they pay the right money and then it does not get to the workers. Yes, like I said, I think they are keen for some oversight of labour hire companies, but I think that the coverage of the bill is a little broad. I was talking to a pineapple grower the other day. He said, 'We have five full-time staff in the Sunshine Coast area of high unemployment. We want to keep our guy on all the time but sometimes we don't have enough work for him, so we loan him to Fred down the road. Would that mean we then have to register as a labour hire company?'

CHAIR: Who is paying his wage?

Ms Mackenzie: There are different arrangements; that is the thing. Where the wage is paid by the—

CHAIR: In your example—I know it was hypothetical—

Ms Mackenzie: It was not hypothetical, but I do not know the specifics of the exact chain of payment.

CHAIR: That is why I raised it, because labour hire is that triangular thing where the company supplies the worker—

Ms Mackenzie: I think there are a range of different payments. Obviously he is on the payroll for Fred, so it is easier for Bill to pay Fred than the worker directly. It would be captured, is my understanding, because it would be a triangular scenario.

CHAIR: If, for example, he goes down the road and works for the other farmer and the other farmer pays him, it is not captured by this legislation.

Ms Mackenzie: No, but that would create issues in terms of managing payroll, putting him on the books and all of the bureaucracy around that, which—

CHAIR: That is a separate issue, is it not?

Ms Mackenzie: It is and it is not. I think we are talking about a flexible arrangement which works well for all parties involved being caught up in what is not really in the scope of what this legislation is trying to manage, which is labour hire companies exploiting workers.

CHAIR: What this legislation is trying to manage is the triangular relationship, not the farm labourer who goes down the road and works for the other farmer.

Mr POWER: In that case, it is an exception where a permanent employee fulfils a contract that was let to the primary employee.

Ms Mackenzie: Yes. It tends to be fairly, shall we say, loose. Like I said, you have an employee who goes and works on your mate's farm. Your mate pays you and you pay the employee because he is on your payroll. It is only for a few days. It might only be for a few hours. They are your permanent employee; it meets all the rules and obligations of the tax office et cetera. I do not want to focus on the exception rather than the rule. I am just saying that the scope of the bill captures situations that are outside of what the bill intends to capture—I am assuming you are not actually trying to manage the triangular relationship; you are trying to manage the issues that emerge as a consequence of the triangular relationship. The relationship itself can work very well and function very effectively.

CHAIR: I am worried about something you raised in your submission which would tend to indicate that you are concerned that unscrupulous labour hire people would try to find a way to work around this licensing scheme by providing the difference between service provision and labour hire.

Ms Mackenzie: I think it is again highlighting that the issue that you are trying to manage is the mistreatment of workers on farms. You have a definitional problem at the beginning that captures a whole heap of people whom I do not think are an issue, but perhaps it could create a situation where you are pushing the issue somewhere else. I think that the definition needs to be looked at and really tightened up so it manages your concerns and does not capture people outside of your concerns.

CHAIR: I am concerned about service provision. I think you used the example where someone could contract out to—

Mr POWER: To pick the pineapples.

CHAIR: Yes.

Ms Mackenzie: I think we already see it in broadacre—

CHAIR: Yes, we have.

Ms Mackenzie: It is not that you say, 'We want 20 workers to work six hours a day.' It is, 'We want you to harvest that crop.' That could be done—

CHAIR: Outside this proposed legislation.

Ms Mackenzie: Yes. I think that is the problem. We do not want to then capture a whole heap of people we do not want to capture because they are just one harvester contract harvesting a crop. I guess our plea is to please make sure that the definitions and things are clear.

CHAIR: There are some people who work in the horticultural industry who basically go out to the farmer and say, 'We'll harvest your crop for X dollars,' and the farmer—

Ms Mackenzie: It is less common, but I would suggest that it would become more common.

Mr POWER: And effectively not captured in workaround arrangement provisions?

Ms Mackenzie: Yes. I guess we need to work out what the consequences of that are.

Mr POWER: Understood.

Ms Mackenzie: Can I quickly highlight the issues around section 93 and concur with the previous speaker. We feel that that opens the door for vexatious and mischievous complaints. We do not have an issue with the complaints process.

Mr POWER: Possibly even between competing—

CHAIR: Competing interests.

Ms Mackenzie: There are a whole lot of issues in there.

CHAIR: We will now move on to the Salvation Army.

HARLUM, Captain Craig, Salvation Army Lockyer Valley

RAHILL, Ms Alison, National Networks Coordinator, The Freedom Partnership to End Modern Slavery, Salvation Army

CHAIR: I welcome representatives from the Salvation Army Lockyer Valley. I invite you to make an opening statement and then we will have some questions from the committee.

Capt. Harlum: I want to thank the members of the Finance and Administration Committee for the opportunity to speak in support of the Queensland Labour Hire Licensing Bill. We strongly support this legislation and encourage the Queensland government to pass and strengthen the proposed bill. The Salvation Army is an international movement and an evangelical part of the Universal Christian Church. Our mission is to preach the gospel of Jesus Christ and to meet human needs in His name without discrimination.

The Salvation Army supports the enactment and implementation of labour hire licensing as we have witnessed firsthand the exploitation of vulnerable workers. The Salvation Army's interests in this legislation stems from our experience with migrant workers we encounter through our welfare centres and those we assist through our program for victims of modern slavery, which includes enforced labour, human trafficking, deceptive recruitment for labour and services, and debt bondage. The Salvation Army promotes policies that uphold protections for individuals who are most vulnerable to severe forms of exploitation in the global economy, particularly migrant workers. We therefore take the responsibility to give hope where it is needed most.

In the Lockyer Valley some farms manage their own recruitment and supervision of workers. Labour hire contractors have increasingly become more established as a source of seasonal labour. It is these relatively unregulated contractors who are primarily the source of reports of exploitation, harassment and other forms of mistreatment which are commonly shared with our Salvation Army services, especially when providing a backpacker barbecue once a month in conjunction with the Lockyer Valley Regional Council. Often the provision of accommodation and transport is attached to the work situation and controlled by the contractor.

The Lockyer Valley council reports that in some cases houses are overcrowded and do not comply with council's local laws. In some cases contractors may attract workers from other parts of the country or from overseas with the promise of work, transport and accommodation provided. The Salvation Army also supports the Lockyer Valley council's recommendation that a clear and enforceable separation of labour provided by employers to hosts from the provision of other services to contracted employees must exist, especially for those services pertaining to placement for employment transport to and from the worksite and/or accommodation. We believe the current business model of gouging back a large portion of the farm worker's wages through the charging of overpriced, overcrowded accommodation exploits, harasses and mistreats workers. Labour hire licensing should be to achieve the sustainable flourishing and wellbeing of all Australians and of all global neighbours.

Mr JANETZKI: I appreciated your submission. I do not have any questions.

Ms Rahill: Could we table a document and speak to that?

CHAIR: Leave is granted. I put a proviso on it: if there is anything in the document which the committee would find unparliamentary—and I am not suggesting there is because I have not seen it—we reserve the right to redact, especially anything that might identify individuals or organisations. I just want to forewarn you.

Ms Rahill: Thank you for the opportunity. The Salvation Army acknowledges the forced labour servitude and enslavement of Aboriginal and Torres Strait Islander people and Pacific Islander peoples in Australia's history and recognises the trauma and long-term impacts of those injustices on individuals, their families and communities. We value our relationship with the Australian South Sea Islanders association to raise awareness about the practice of historic slavery in Australia.

We have been working directly with victims since 2008, when the Salvation Army established the first—and still only—safe house in the country for women who have experienced trafficking in slavery. During that time we have supported hundreds of individuals, including migrant workers who have experienced slavery in a variety of industries, but not limited to, domestic work, cleaning, construction, aged care, hospitality and agriculture.

I specifically want to talk to a couple of issues around the working hostel model. In our submission, this particular case study we think is one that can still exist after the implementation of the legislation. Of course we do welcome that as a necessary measure. This particular example of a

labour contractor, we will call him Mr Van—that is not his real name—runs a working hostel with a motel and a caravan park. He is a labour hire contractor in the Wide Bay area. He contracts to large growers in the area that are part of the big supermarket supply chain. On page 3 you can see a copy of a deidentified pay slip where the deductions are quite substantial for the various costs of accommodation. For the backpackers who are staying at this facility—it is both the Seasonal Work Program and backpackers, no tourists are allowed to stay there, nobody else is allowed to access the work in this town, they have to essentially buy the bed to get the work; you have heard of this particular model—even when it is raining and there is no transport to and from the farm, have deductions of up to $210 a week.

The caravans are obviously similar to the ones in the Lockyer Valley in that for each of those vans it is $150 per worker. On page 7 you can see there is at least $600 for very cramped conditions. There are only two gas burners. None of the facilities in the caravan park inside the caravans are working. There are also many stories of backpackers being lured to remote areas of Queensland with the promise of work and having to wait five or six weeks before getting such work and then ending up over $1,000 in debt and having their passport seized so that they cannot leave. It is particularly problematic during times of rain.

The difference here with the seasonal workers and the 88-day requirement is just being bonded to the employer. They do not really have a choice of where to stay. The Pacific Island workers are here for six months with the one employer and they do not have the freedom to move around. The particular issue here is what happened during Senate estimates recently. The Department of Employment revealed that seven Pacific Island workers have lost their lives in Australia doing farm work recently. We think this often could be attributable to the lack of care and wellbeing for the workers, poor nutrition and the unsanitary conditions that they are living in, the pressure for remittances to send back home and the fact that often during the day they are just eating the fruit that they are picking and are reliant on our church volunteers who in some instances are doing food drops every week. The workers are essentially eating mandarins, bread and rice and not much else. A Tongan man, Vakameilalo, was left for eight days without medical care in this caravan park. All of the other workers knew that he was sick and he ended up in an induced coma in a Brisbane hospital and died three weeks later after a bedside vigil by the Tongan community from the Uniting Church.

I think it is a poor reflection of the cramped conditions and the ultimate power that the labour contractors have over the lives of many of these workers from developing countries in particular. Just recently, last week, the Tongan government has advertised for a Tongan liaison officer to be based in Queensland. There are only 2,000 workers in the whole of Australia from Tonga so the situation has become quite bad back home that there is pressure in the source country to actually have somebody here in Australia to provide that pastoral care for the workers while they are here. That is our presentation today. We are concerned about the oversight and the inclusion of the accommodation part of the Labour Hire Licensing Bill.

Mr POWER: Clause 31(h), related to the obligation to report, states—

If the licensee provided accommodation to the relevant workers in connection with the provision of labour hire services—

(i) the address of the accommodation; and

(ii) whether the relevant workers paid a fee for the accommodation; and

(iii) the number of relevant workers that used the accommodation.

We have heard critiques about the obligations to report. Is that particular one that you have spoken about important to the reporting process, in your opinion?

Ms Rahill: Yes, I think the lack of awareness of workers about exactly where they are living and working is an issue. I think the publishing of those details will be helpful, particularly for the pastoral care side of things. We are seeing more and more on the Seasonal Work Program in particular that the employer, the labour contractor, is listing themselves as a church and saying that they will be the ones who provide the pastoral care. If we are able to know where the workers are in particular communities we can do outreach and wellbeing visits.

Mr POWER: In some cases there is not a lot of clarity around where they are being accommodated and what proportion of their wage they feel forced to pay for that accommodation and the standards of it.

Ms Rahill: Particularly the weeks when there is no pay and it is raining, we are really feeling as though without our volunteers on the ground delivering food the workers are not eating.

Mr POWER: In relation to the powers to inspect, you have made the recommendation that an inspector should be able to enter an accommodation premises in accordance with the respective authority to enter the workplace as delineated under this section. Is it of concern to you that the act does not have that?

Ms Rahill: It did not seem to be particularly clear to me that the inspectors could freely enter the accommodation in the same way that they would access the workplace. I suppose for things like the overcrowding, the health and safety, we know that it is often falling between that cracks of the local council, whether there is an inspector. Being able to go in is important because that is obviously where the workers might have their own copies of pay slips and things like that.

Mr POWER: It is a complexity where the employment relationship mandates a particular accommodation. It is not just that triangular relationship that the chair spoke about, it also locks them into a particular accommodation which should be captured under this legislation.

Ms Rahill: In this instance Mr Van has five companies and has a different company name for the caravan park, but essentially he is the owner of it and so in the contract he says he has inspected the accommodation and deemed that it is suitable accommodation and the fact is that he owns it himself. The employer having responsibility for health and safety training, accommodation, wages, work, amount of work, transport with no other oversight is problematic.

Mr POWER: That is why subclause (i) is important, where it can be constructed to be a different company but still have the same beneficiary or a family member as a beneficiary?

Ms Rahill: Yes.

CHAIR: That brings to a conclusion this section of the hearing

BRODNIK, Ms Kate, Policy Solicitor, Queensland Law Society

CAMERON, Mr Dean, Industrial Law Committee Member, Queensland Law Society

STEVENSON, Mr Rob, Industrial Law Committee Member, Queensland Law Society

CHAIR: I invite you to make an opening statement after which the committee members will ask some questions.

Mr Stevenson: Thank you and good afternoon, Chair and committee members. Thank you for inviting the Law Society to appear at this public hearing today. As members of the committee would be aware from previous attendances, the society is the peak professional body for the state's legal practitioners. The society advocates for good law and good lawyers and is an independent, apolitical representative body on which the government can rely to promote good evidence based law and policy.

The society supports the main purposes set out in the bill, particularly that of protecting workers from exploitation by providers of labour hire services. It is clear that labour hire workers are in a more precarious legal position than employees in a traditional employment relationship. Unfair dismissal claims, for instance, can be particularly problematic as the concept of dual employment is not one that features in the law of our land at this stage.

Labour hire has a proper role in the industrial relations landscape, but the reality is that a number of providers and their clients push the envelope and use labour hire workers in an effort to further casualise their workforce and distance themselves from their direct workplace law obligations. There is an increasing use of labour hire in the modern day workforce and the reality is workplace relations laws have struggled to address the issues which are inherent in this type of relationship.

The bill under consideration by the committee attacks the problem from a different angle, namely, that of a traditional regime of licence and regulation of labour hire providers. The society considers that some caution should be exercised to ensure that the net of regulation is not cast too broadly and too heavily. The submission of the society raises some detailed concerns. My colleague, Mr Cameron, will make comments about particular aspects of the bill. I wanted to make a comment about one topic, if I may, and that is the general nature of the definition of who is considered to be a provider of labour hire services.

Clause 7 subclause (4) of the bill provides for an exemption if the labour hire is not a dominant purpose of the business but that is dependent on it being prescribed by regulation, which may be arbitrary in nature.

Mr POWER: What was that clause, again?

Mr Stevenson: Clause 7 subclause (4) of the bill. There is a widespread practice amongst professional firms, including law firms, to provide professional staff on secondment to their clients from time to time. Several firms have expressed their concerns to the society about compliance with the bill in this regard. Apart from secondment to clients, a number of firms also provide staff to carry out work for charitable organisations as part of their pro bono scheme commitments. These aspects will be caught by the legislation as currently framed unless there is specific regulation to exclude them. It is likely that there are other sectors that are in a similar situation. It is also still commonly the case that a number of businesses operate with an employing entity and an operations entity wherein the employing company provides employees for the operational entity, although the two entities have common ownership—the use of a trust, for instance, is fairly common. Also a related aspect, particularly for larger companies, is where they operate as a group of related entities and shift employees from time to time around the various entities depending on operational demands. That may also involve some internal accounting which may bring them within the terms of the bill.

It does not appear that those types of arrangements fall within the main purposes of the draft legislation and in the society's view some further consideration should be given to refining the relevant definitions such as by including that dominant purpose test in the legislation itself, perhaps by including an applicable remuneration threshold, perhaps by excluding professional employees. That is the comment that I wish to make from the society and I might hand over to Mr Cameron now to address his couple of issues.

Mr Cameron: We want to address some issues in our submission. In terms of the publishing of material, we understand that geographical locations would be included. The society's preference is that it be broader geographical locations. We have indicated that ABS statistics be used, which have been commonly used for labour market statistics. That may provide sufficient information for

organisations that need to go out and interact with these clients. However, it will provide some privacy in relation to individual companies' activities and some privacy for communities that may have large changes in labour hire. It will give you the region, but not the actual town. That may have flow-on consequences should that information be published, which is a concern to the organisation.

The other issue that has not been addressed in the bill is out of state and interstate workers. This may be where a labour hire company based in Sydney brings 200 workers to Brisbane for, say, the Ekka. That would not be covered by this legislation. Out of state and interstate workers are currently contemplated in other bills such as the workers compensation bill—that is, they have out of state and interstate provisions—but something like that would need to be considered in relation to this bill in order to provide some equity in how labour hire was organised in Queensland.

The other issue we had was obviously once again with the joint ventures or one entity employer and group employers which is a big issue. That is reiterating my colleague's comments in relation to that. Obviously that flows through to lots of organisations such as lawyers and engineers and accountants and so on. Obviously, it is difficult to give a full judgment on the bill because of the number of regulations attached to the bill. They are primarily our concerns with the bill. We certainly support the goals that the government is trying to achieve in relation to fruit pickers and the problems that they have faced in their community. We just think the definition, the application and the reality of some group employers may have some unintended consequences.

Mr POWER: You had concerns with clause 7(4). You say that that could be more transparent. We were given the example of pulpit chair programs where a religious organisation provides a religious person on a Sunday. Obviously, those examples could easily be covered by regulation, but your concern is that the clarity is not there because they will be contained in the regulations?

Mr Stevenson: Yes, that is correct. Regulations can be changed. It is a little bit harder to change legislation. The concern is a fairly basic one. Regulations are arbitrary in nature. There is no cause to think that proper regulation would not be made, but it is a further basic protection if, in this case, the dominant purpose test is in the legislation itself. That is the concern we are expressing.

Mr POWER: The dominant purpose is one thing, but we have also seen that these types of unscrupulous labour hire providers are very fluid and manipulative in the way they construct the employment relationship. It may be that we have to react to alternate forms of structures through regulation and, again, find ways to exempt particular types of workers, for want of a better terminology. We need that flexibility so that there are pros and cons to this method of constructing the law.

Mr Stevenson: I understand the issue. If I perceive it correctly, it will take a little bit of time to see how the legislation operates in practice and perhaps what mechanisms are put in place by persons who may wish to seek to avoid the legislation. The society certainly understands that practical issue, if I can put it that way, but nonetheless the basic principles of the concept should be included in the legislation. In the society's view, the inclusion of a dominant purpose test, which would ultimately be interpreted by the courts of the state, would not operate against the outcomes which the member is referring to.

Mr POWER: The previous witness brought up the circumstance where someone who has four permanent employees on a pineapple farm lends out an employee or multiple employees during a peak to a neighbour and they could have clarity through the dominant purpose test being in legislation rather than regulation?

Mr Stevenson: The society certainly supports that view.

Mr JANETZKI: It has been a consistent theme today—the definition in clause 7 on labour hire services and also the information that may well be placed on a public register under clause 103. I appreciate the QLS—

Mr Stevenson: The first section of the act that we read.

Mr JANETZKI: I appreciate the QLS turning its mind to these issues as well. My question relates to point 25 of your submission which refers to clause 98 which gives the opportunity for interested persons to, as you would prefer, appeal a decision. Is the QLS concerned that that provision may permit a circumstance where an industrial matter or a matter significantly pertaining to industrial matters will be heard before QCAT? It has been a long time since I have sat through a QCAT hearing and I am not sure whether that is the right forum.

Mr Stevenson: In answer to that question, that certainly had not occurred to me. Perhaps the basic concern was more of consistency of terminology, but I am happy if any of my colleagues wish to make a comment about that.

Mr Cameron: Terminology consistency as opposed to—

Mr JANETZKI: I am breaking away from your submission, with respect. It was more just a general thought. I am not sure whether QCAT is appropriately resourced or equipped to deal with industrial matters that would ultimately arise if that provision were enlivened.

Mr Stevenson: In the society's view, the Industrial Relations Commission is the primary venue in which matters involving industrial matters should be dealt with. As committee members would be aware, recently the discrimination jurisdiction in relation to work matters has been transferred to the industrial commission from QCAT. I do not know that I can comment specifically on that issue, but as a general statement the society would certainly support anything that looks like an industrial matter going over to the commission.

Ms Brodnik: We as the society do not take a position on whether an interested person should or should not be given the right. We are just happy that the person affected by the decision has the right to review.

Mr POWER: Clause 98 seems to relate to the review of a review decision. The decision is specifically about the granting or taking away of the licence, is my reading of it correct?

Mr Stevenson: If I can paraphrase it this way, we have the heading of who may appeal but it is worded as seeking a review of the review decision.

Mr POWER: That was my getting at. I was not certain what industrial—

Mr Stevenson: That is perhaps where our society's submission is coming from in terms of consistency of terminology and that if something is an appeal it should be called an appeal.

CHAIR: Do you have any view about the penalty provisions?

Mr Stevenson: In terms of quantum?

CHAIR: Yes.

Ms Brodnik: I do not know that the society has looked into that, except in so far as we attended a stakeholders meeting just days prior to the bill's introduction into parliament and were advised that they were commensurate with other penalties for like matters. If that is the case, we do not have an issue with that.

Mr Stevenson: The society is not in a position to make significant submissions on that point. The penalties certainly are significant, but arguably justifiably so. Again, it is perhaps a matter that needs to be monitored once the legislation is implemented—that is, in terms of the types of penalties that are handed down.

CHAIR: One of the issues that you raise concerns regulation and/or legislation. There is a huge difference in how they operate and how they are used. Are you prepared to say—and I will not be offended if you do not want to engage—what you feel should be in the act and what should be in the regulation? You do raise it in your submission, but I am just trying to get my head around what you would be comfortable with being in the regulations and what you think should not be in the regulations but should be in the legislation.

Mr Stevenson: There is the historical tension between lawyers wanting as much detail in the legislation as possible as against the inherent flexibility which is often needed in these matters. From the society's point of view, the example in terms of the dominant purpose test is something that should be in the legislation. There is considerable discretion provided to decision-makers under the legislation and, arguably, there is an understandable reason for that. There is some further consideration to be given to an inclusive list of discretionary matters to be taken into account. Beyond that, I apologise that we are not in a position, with the benefit of the attention that has been given to the matter, to assist you further.

CHAIR: Do you want to add anything else? We have run out of questions.

Mr POWER: It has been a long day for us.

Mr Stevenson: We appreciate that we were the last on the list.

Ms Brodnik: Just to take up the final point about regulation, it is not just a matter of wanting substantive provisions in an act as opposed to a regulation, it is just that legislation introduced into parliament and referred to a committee such as this is open for public consultation and that is not available for a regulation. If the regulation is to deal with substantive issues which will have a significant impact upon how legislation actually operates, the opportunity to have that same consultation process would be welcomed.

Mr Cameron: That goes to the timing issue. If you go through a parliamentary process, then lawyers have an opportunity to advise their clients in relation to possible or pending change, whereas if it is regulation it happens a lot quicker and you do not get that lead-up time.

Mr POWER: Competing obviously with the need to adapt to unscrupulous and manipulative types of arrangements that some can engage in.

Mr Cameron: That is correct. Obviously they are not across the entire industry; they are across particular industry segments.

Mr Stevenson: Sometimes there is also a provision to review legislation within a particular time as well. I am not suggesting that should necessarily be the case.

CHAIR: That concludes this hearing. Thank you very much to all of the witnesses and stakeholders who presented today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the public hearing of the committee's inquiry into the Labour Hire Licensing Bill 2017 closed.

Committee adjourned at 2.16 pm