



CCIQ SUBMISSION

**Finance and Administration Committee
Queensland Parliament**

***Inquiry into the practices of the Labour Hire
Industry in Queensland***

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

7 April 2016

Overview

1. CCIQ is Queensland's peak industry organisation for small and medium businesses. We represent over 25,000 businesses on the local, state, and federal issues that matter to them.
2. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.
3. CCIQ welcomes the opportunity to provide feedback to the Finance and Administration Committee (the Committee) on the *Inquiry into the practices of the Labour Hire Industry in Queensland*.
4. This inquiry is occurring in the context of a challenging economic environment for Queensland businesses. Indeed, Queensland's economic position is fragile, with softening labour market and employment conditions.
5. CCIQ's recent Pulse survey showed business confidence for the Queensland economy falling with businesses citing concerns in relation to China, lack of state government investment in infrastructure, the downturn in the resources sector, and financial market volatility. Many businesses are also facing difficult trading conditions due to strong international competition.
6. Given the challenges facing Queensland's economy at this time, it is important the Queensland Government ensure they fully consider the negative impact that any increased regulation of the employment relationship will have on business hiring intentions.
7. This submission will also respond to the terms of reference for consideration by outlining:
 - Queensland's forfeiting of regulatory reach in this space due to the referral of industrial relations powers to the Commonwealth;
 - Flexibility in the current workplace relations framework;
 - The benefits of non-standard forms of work;
 - Notions of managerial prerogative and its centrality to the employment relationship;
 - The effectiveness of existing legislation governing the employment relationship;
 - The importance of legal concepts such as freedom to contract and competition policy; and
 - The need for an objective analysis of the practices of the labour hire industry in Queensland.
8. Lastly, it would benefit the Committee to look closely at the Productivity Commission's Inquiry into Australia's workplace relations framework, which includes a detailed analysis of the dynamics of the Australian labour market, the use of temporary forms of employment, and issues impacting migrant workers.
9. CCIQ recommends the Queensland Government consider the valuable work conducted by the Productivity Commission in its decision-making when considering labour hire in Queensland.

Referral of industrial relations powers to the Commonwealth

10. On 1 January 2010 Queensland (along with all other Australian States with the exception of Western Australia) referred its industrial relations powers to the Commonwealth.
11. CCIQ believes the State Government effectively forfeited the right to legislate any aspects that go to the employment relationship at the point in which referral of its powers to the Commonwealth took place.
12. To the extent that any outcomes of this inquiry seek to institute laws and/or regulations with respect to labour hire arrangements, CCIQ urges the State Government to resist legislative overreach regarding matters over which the Commonwealth ultimately exercises jurisdiction under the Fair Work Act 2009 (FWA).
13. Despite the shortcomings of the Fair Work framework for Queensland small businesses, CCIQ strongly believes the State Government should strictly observe current arrangements whereby Queensland's industrial relations powers are referred to the Commonwealth with respect to private sector employees.
14. In this light, CCIQ argues that the regulation of the labour hire industry ultimately rests with the Commonwealth, and urges the State Government to exercise caution when seeking to regulate labour hire arrangements as part of this Inquiry.

Flexibility in the current workplace relations framework

15. Modern workplaces must allow employers and employees to negotiate individual arrangements that meet both parties' needs and allow for the adoption of workplace arrangements to the circumstances of a particular business.
16. While flexibility is important in all workplaces, it is key in small and medium enterprises (SMEs) in Queensland, which often have 'niche' requirements that derive from financial or operational considerations.
17. As it stands, IFAs are the key mechanism to deliver flexibility in employment arrangements, and have significant potential to deliver this flexibility to both employers and employees. This potential is being stifled by strict limitations on their use and their narrow scope. However, at the same time unions also seek to introduce matters that fall outside the employer/employee relationship. It is essential that the mechanisms put in place to improve productivity and deliver flexibility achieve the desired results to ensure businesses and their employees can adapt to new and changing circumstances.
18. While flexibility is an intended goal of the workplace relations system, feedback from Queensland businesses suggests that this outcome is not being achieved. Workplace flexibility has decreased or substantially decreased for 45 per cent of Queensland businesses

as a result of the Fair Work laws and a further 42 per cent of businesses have noticed no improvement at all.¹

19. The lack of workplace flexibility at a firm level has directly affected business productivity. Only 5 per cent of Queensland businesses recorded improvement in productivity under the current Fair Work laws.² This is an alarming result given the fundamental aim of the workplace relations system is allocation of labour resources to their most productive use. Business owners need freedom to identify arrangements that increase the take-up of innovative practices that make best use of workers skills and expertise.
20. The existing problems with the FWA namely, the inherent lack of flexibility it affords employers, gives rise to the utilization of temporary forms of work such as labour hire.
21. CCIQ argues that the FWA ought to get the balance right between employers and employees by introducing options for greater flexibility within the current framework.
22. If the State Government wishes to reduce the number of persons in Queensland that are temporarily employed, CCIQ suggests the FWA undergo a process of reform to introduce greater flexibility with respect to the employment relationship in the first instance.

Benefits of non-standard forms of work to a modern economy

23. A modern and dynamic 21st century economy requires a flexible and adaptable labour market. The decline in income generated from the resources sector has not yet been effectively offset by growth in other sectors, highlighting the fact that Queensland and Australia's economy are facing a time of significant transition.
24. Additionally, the ongoing growth in service sector industries, predominately in response to the growing Asian middle class and the strength and reliability of Australia's tourism industry indicates that a significant proportion of the jobs of the future will be primarily in the service sector.
25. Such industries no longer operate in a 9am-5pm, Monday to Friday paradigm, typically responding to consumer demand and increasing global interconnectedness by operating on a 24/7 basis. Additionally, technological changes have never been as advanced or disruptive than at present, thereby changing consumer expectations with respect to the delivery of products or services.
26. As a result of such significant transitions in Queensland and Australia's economy, the nature of work has changed in the modern economy. More flexible types of employment have become an established part of the economy, with independent contractors, labour hire, and casual employees now comprising around 40 per cent of the total workforce.
27. Although permanent forms of employment remain in the slight majority throughout Australia's workforce, businesses operating in a modern and dynamic 21st century economy with greater

¹ CCIQ Workplace Relations Survey – February 2015

² Ibid.

global market connectivity require higher levels of labour market flexibility and adaptability; and these needs are being met by the type of flexible and temporary employment arrangements that is offered by labour hire.

28. For example, businesses in the service sector operating in key industries such as tourism, retail and hospitality must be able to respond to varying demand, while businesses operating in high-skill high-wage sectors, such as information communications and technology must be able to compete. Across the spectrum of Australia's workplace landscape, businesses in the new economy are undoubtedly benefiting from the type of flexible and temporary employment offered by labour hire.
29. Regrettably, non-standard forms of work are often described deleteriously by unions as 'insecure' and 'precarious'. Indeed, some contributors to this inquiry will no doubt perceive all forms of work performed outside of a 'permanent employment relationship' as a one-sided bargain favouring the employer.
30. CCIQ argues that this perspective towards non-standard forms of work is excessively negative, with research concluding that workers on fixed-term contracts are found to have more job satisfaction than other workers.³
31. Further, people employed in non-standard forms of work are highly heterogeneous, with such jobs suiting people's circumstances well and often acting as stepping stones for more secure work.

Fixed term contracts and labour hire (2013)		
Employment category	Number	Share of employed
	('000s)	(per cent)
Fixed term contract prevalence (a)		
Employees on fixed term contracts	367.2	3.2
Employees not on fixed term contracts	9 267.8	80.1
Non-employees	1 931.6	16.7
Labour hire prevalence (b)		
Employed people who are in labour hire	144.4	1.2
Employed people who are not in labour hire	11 429.3	98.8

Source: a) From ABS 2014, *Forms of Employment, Australia*, Cat. No. 6359.0, released 7 May b) The share of total employment was obtained from ABS 2011, *Forms of Employment*, Cat. No. 6359.0, released 28 April and applied to total employment for November 2013. See also Productivity Commission Inquiry into workplace relations framework (2015) Final Report.

32. According to the Productivity Commission, the majority of non-standard work is casual employment, with labour hire and subcontracting rare in most industries. As evidenced in the above table, labour hire employees make up around only one per cent of the workforce.⁴
33. Notwithstanding that such forms of employment are not the "norm"; non-standard forms of work such as labour hire play a critical role in ensuring a flexible and productive workforce. This also highlights the need for this inquiry's recommendations to be proportionate to the size of the sector and the number of workers at risk of being adversely impacted.
34. In a dynamic economy where varying types of people will work under an assortment of arrangements, whether as an employee or through self-employment, it is regressive to craft employment policies that position temporary and flexible working arrangements as inferior.

³ Warren, D and Wooden, M. 2004. 'Non-standard Employment and Job Satisfaction: Evidence from the HILDA Survey'. *The Journal of Industrial Relations*. 46(3): 275-297.

⁴ Productivity Commission Draft Report 714, citing Shomos, Turner and Will 2013.

This has the unfortunate consequence of relegating such types of employment as unproductive and uneconomic, which is quite simply not the case.

35. CCIQ maintains that the workplace relations framework acts as an impediment to flexibility, and the current framework needs adjustment to better deal with emerging economic, social, and demographic trends facing Australia's working landscape.
36. To this end, governments looking to further regulate the employment relationship through the imposition of stronger regulatory oversight of the labour hire industry are out of step with the changing demands of Australia's workforce.

Freedom to contract and anti-competitive policy

37. Freedom to contract is a fundamental concept upon which Australia's laws of commerce and industry operate. Businesses and/or individuals freely entering into contracts for the provision of services should not have those arrangements interfered with by bodies who are not a party to the contract (i.e. governments, courts, tribunals, regulators, or other persons), with the exception of anti-competition provisions.
38. Further to this point, the Productivity Commission Inquiry into the workplace relations framework argued against so-called 'jump-up' clauses that require businesses to engage subcontractors on the same terms as employees, or that limit the employment of casual and labour hire employees.
39. The Productivity Commission cited 'jump-in' clauses as contrary to the spirit of the *Competition and Consumer Act 2010*, and made recommendations to amend the *Fair Work Act 2009* (FWA) to prohibit restrictions on employers using casual and labour hire employees as suits their business operations and the workers themselves.⁵ Employers should be fully equipped to exercise their managerial prerogative to choose an employment mix suited to their business operations.
40. Terms that purport to regulate the engagement of labour hire should not unduly restrict an employers' ability to manage and allocate resources. Any term that purports to regulate such matters necessarily limits the capacity of employers to respond to changing market conditions or to make best use of the skills of their employees.⁶
41. Contractual arrangements in which workers provide services on commercial terms to companies on a short-term contract or project basis through an intermediary are contractually legitimate and economically beneficial forms of commercial arrangements that add value to Australia's economic and workplace mix.
42. Labour hire is no less appropriate than other types of commercial arrangements for work. Labour hire arrangements grant businesses the flexibility and adaptability to fill temporary positions and/or meet fluctuations in demand, and ought to remain a workable option for

⁵ Productivity Commission Inquiry into workplace relations framework (2015) Final Report found at <http://www.pc.gov.au/inquiries/completed/workplace-relations/report>.

⁶ Productivity Commission, Draft Report, p. 60.

businesses to draw upon in order to meet their labour needs as they evolve in the business cycle.

43. It is critical that Australia's entire workplace framework actively enables a broad range of options for participation in the workforce to meet the diversity of needs in our current and future workforce. Non-standard forms of work such as labour hire and independent contracting plays a critical role in achieving this outcome.
44. CCIQ believes the Committee ought to consider any *further* regulation of labour hire within the context of Australia's broader economic and workforce needs, as opposed to reflexively moving to regulate an industry that serves a legitimate and important purpose.

Effective safety net under existing employment legislation

45. Within the modern award system under the FWA, labour hire companies are subject to the same legal obligations as employers with respect to the National Employment Standards (NES) conditions, entitlements, and protections of people in their employ via a labour hire agreement.
46. Although there is scope for labour hire companies to negotiate with employees under an enterprise agreement, the law clearly disallows the rolling-up of entitlements, which was previously found to have undermined Fair Work requirements in the labour hire context.⁷
47. Enterprise agreements must be assessed by the Fair Work Commission as having passed the Better Off Overall Test (BOOT) and must also ensure their terms do not contravene section 55 FWA, which deals with the interaction between the NES and enterprise agreements.
48. Further, it is not solely the FWA that regulates employment in Australia. The protection of temporary or other employees also occurs through the following legislation:
 - *Anti-Discrimination Act 1991* (Qld);
 - *Criminal Code 1995* (Qld);
 - *Competition and Consumer Act 2010* (Cth);
 - *Independent Contractors Act 2006* (Cth);
 - *Industrial Relations Act 1999* (Qld);
 - *Migration Act 1958* (Cth);
 - *Superannuation Guarantee (Administration) Act 1992* (Cth) and the *Superannuation Guarantee (Charge) Act 1992* (Cth);
 - *Tax Administration Act 1953* (Cth);
 - *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015* (Qld); and
 - *Work Health and Safety Act 2011* (Qld).

⁷ Application for approval of the *Canavan Building Pty Ltd Enterprise Agreement 2013* [2014] FWCFB 3202, Fair Work Commission, Decision.

49. With varying accountability mechanisms worked into existing legislation, CCIQ is not convinced that labour hire poses a unique set of challenges beyond the capacity of existing legislation to manage, and therefore does not believe labour hire warrants a prescriptive series of legislative responses or increased regulation.
50. Indeed, with respect to the high profile cases involving employees engaged in temporary work that have been adversely impacted, it has overwhelmingly been the case that workplace laws have been breached. Such cases are not representative of the broader practices of businesses using labour hire and do not represent the conduct of the significant majority of businesses in Queensland and Australia.
51. The prospect of having to comply with an additional regulatory scheme targeting the labour hire industry is particularly daunting for businesses already suffering from the cumulative compliance burden of workplace relations laws, workplace health and safety laws, and other legal requirements.
52. Greater regulation of the labour hire industry would impose significant additional costs on already compliant firms. If the state government is focussed on job creation and growth, imposing another layer of regulation on businesses in Queensland would be a counter-productive measure towards achieving this goal.
53. To this end, CCIQ believes any additional regulatory scheme as an outcome of this inquiry would add to an already significant compliance burden for businesses using labour hire and labour hire companies, undermine job growth, and create an unnecessary layer of legal requirements to which a sufficient safety net for temporary forms of employment already exists. Furthermore, this would be directly at odds with the State Government's referral of industrial relations powers for private sector employers to the Commonwealth.

The importance of objectivity in analysis

54. While CCIQ welcomes any measures that improve the landscape for employers, employees and temporary workers in Queensland, the Chamber expresses some concerns in relation to the professed objectivity of this inquiry.
55. Specifically, the language used in the terms of reference and issues paper infers that temporary forms of work such as labour hire is an undesirable model of employment, with full-time arrangements implicitly preferred over more non-standard types of work.
56. CCIQ has argued throughout this submission that non-standard forms of work such as labour hire perform an effective function in Queensland's economy and the type of workplace flexibility labour hire affords also acts as precursor to encouraging greater workforce participation.
57. CCIQ urges the Committee to consider the employer perspective while conducting this inquiry, and also encourages the Committee to acknowledge the role alternative forms of employment play in Queensland's diverse economic and workplace make-up.

Conclusion

58. Throughout this submission, CCIQ has sought to highlight the benefits of non-standard forms of work to a modern and dynamic economy, the importance of observing freedom to contract as a foundational legal principal in commerce and industry, and the existing safety net for temporary workers under operating employment-related legislation.
59. To this end, CCIQ is opposed to the introduction of any additional state or federal regulatory scheme for labour hire operators. CCIQ do not consider there sufficient evidence of widespread problems in the labour hire sector to warrant the introduction of any new regulation.
60. Furthermore, CCIQ argues that jurisdiction ultimately rests with the Commonwealth with respect to labour hire arrangements as Queensland referred its industrial powers at the inception of the FWA. To this end, CCIQ urges the State Government to exercise caution when seeking to regulate labour hire arrangements to avoid legislative overreach in this space.
61. CCIQ would welcome the opportunity to appear before the Committee to further explain the arguments contained herein.