Labour Hire Task Force grapples with new job contracts

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Eighteen months ago, ALIA made a submission to the New South Wales Government's Labour Hire Inquiry. Soon after, I gave an oral presentation to the Task Force that had been appointed to look into the effects on employment arrangements of the huge surge in use of labour hire companies and employment agencies. Terms of reference and ALIA's submissions can be found at http://www.alia.org.au/submissions/nsw.inquiry.html. The Task Force completed its report early last year but it was not released. Now, a year later, the Government has finally made it available.

The report notes rapid growth in labour hire over the past decade has spawned new forms of employment, with many people forced into casual and contractor work. The Task Force finds that labour hire companies have been a prime factor in the casualisation of the workforce in New South Wales. The library and information sector has been significantly affected. The report confirms that most labour hire companies are reputable and well-run. But concerns are expressed at strong evidence of failure by a minority to observe their full legal responsibilities. The Task Force endorses the flexibility offered by new work forms as potentially beneficial for both business and workers. But the report argues strongly for a better balance between fairness and equity, on the one hand, and efficiency and competition on the other.

There are now major uncertainties about the respective roles of labour hire companies and host organisations when employees are 'hired out'. There are far more cases where hire companies are taking over the role of employer, and more recently, they seem to have been used to dispense with the employment relationship itself through artificial independent contractor arrangements. Responsibility for occupational health and safety has been a source of much confusion, with several legal cases highlighting an unsatisfactory situation. The labour hire company is often the legal employer owing a duty of care to its employees; yet the work is carried out at the host organisation's premises, under that organisation's direction. In those circumstances, how can either accept real responsibility for the safety of the worker? How can the duty of care be observed properly if neither is sure of who has it? These, and other difficulties, are made worse by a lack of real regulation of the industry. There are, for example, no clear codes of practice.

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Faced with this dilemma, the Task Force has attempted to strike a reasonable legislative balance. It recommends major statutory amendments: first to the *Industrial Relations Act 1996* to bring employment agencies into the definition of 'employer' so that the Act would fully regulate their operations. Secondly, to the *Occupational Health and Safety Act 2000* to clarify the responsibilities of labour hire companies and host organisations. In particular, proposed changes would legislate for the concept of 'joint responsibility' for the duty of care. And thirdly, changes are proposed to rehabilitation regulations to make that also an area of mandatory joint responsibility.

Further recommendations call for a firm licensing regime to control and clarify all labour hire activities. A formal working party would develop the system in consultation with all affected parties. Major education campaigns are suggested, especially in regard to the rights and responsibilities of each party in the three-way relationship of host organisation, labour hire company and worker. Particular attention would be given to health and safety aspects, with close involvement of WorkCover, trade unions and various industry groups.

There has been little public response to the report from industry. The NSW Labor Council has called the report 'a good start', but wants stronger action on what it describes as the key issue — the lack of regulation of the industry. The Council has repeated its call for 'a comprehensive strategy to ensure community employment standards are not undercut by labour hire'. From ALIA's perspective, any trend toward taking workers outside the industrial instruments that regulate their workplaces is disturbing. Having recently secured long-overdue pay increases, library workers in New South Wales are entitled to expect that the award which confers them will continue to apply. Heavy future use of library workers engaged as employees of a labour hire company will be regarded with suspicion as merely a device to 'avoid the provisions of an industrial instrument'. Such action is, of course, illegal under the unfair contracts provisions of the *Industrial Relations Act*.

Workers employed or supplied by labour hire companies can now be found in almost a quarter of all New South Wales enterprises. Many are library workers. For most, their work falls outside the legal regime that has regulated employment for decades. This is becoming a major issue for governments, trade unions, employer groups, employers and workers. Effective regulation of this type of relationship will need innovative approaches. Currently, many legal vacuums are evident. The Government's response to the Task Force Report will give some indication of whether or not uncertainty will continue. ■