

## Consultation Paper 2: Possible treatments to refine the scope of the labour hire scheme

**Please note: All responses will be treated as confidential and will not be published.**

Organisation/Business Name: Australian Information Industry Association (AIIA)

Overview: the AIIA applauds the Queensland government on its second-round consultation exploring appropriate scope and possible exclusions to the scheme that AIIA and others have put forward.

The AIIA recommends that secondments, consultants, owners of a businesses and corporate groups / employing entities not be considered part of the scheme. Where appropriate, publishing supporting policies clarifying each situation is a good way to achieve this and avoids the need to develop legally binding definitions in regulations which may be highly contentious. We provide more detail on each category below and highlight considerations for the supporting policies.

Overall the AIIA remains unconvinced that a broad scheme covering all industries is in the best interest of Queensland's workers. The scheme was introduced following reports of workers being systematically exploited on Queensland farms. There is no question that such exploitation needs to stop and that labour hire practices need to change in industries where problems exist.

The problem with a broad scope that captures all is that it puts downward pressure on industries where no abuse has been raised without a corresponding benefit to workers in that industry. For example, the scheme imposes substantial licensing fees and regulatory burden on the ICT sector, but ICT workers are not traditionally viewed as vulnerable and in fact are usually highly-skilled professionals. This means the scheme provides very little additional benefit to the worker while imposing a very heavy cost to the employer – delaying investments in growth and jobs. The cost of the scheme then, is more than the benefit it provides.

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### 1: Secondments

Please provide feedback on:

- If it is appropriate that genuine secondments are considered arrangements that are not intended to be captured by the scheme?
- If the proposed policy treatment is effective in clarifying the scope of the scheme in respect of genuine secondments?
- If the alternative regulation treatment is necessary and, if so, effective in clarifying the scope of the scheme in respect of genuine secondments?
- If there are possible unintended consequences of this treatment?
- Could any unintended consequences be overcome through a different treatment?

The AIIA agrees that 'genuine professional secondments', either within corporate groups or to external entities, are not intended to be captured by the scheme. The AIIA agrees that a published policy is probably the most suitable approach to clarifying this issue.

A regulation may in time prove useful, but the difficulties which may be presented in attempting to quickly develop a legal definition of a 'secondment', or a 'genuine professional secondment', in a way that is acceptable to all stakeholders, and without the benefit of first seeing the scheme in operation, may prove time-consuming and counterproductive at this stage. An alternative may be not to define these terms in the regulation and to supplement it with the proposed policy.

For the purposes of the proposed policy, which the AIIA recommends be provided first in draft to stakeholders, an example of a type of secondment which would not be 'genuine' may be a situation where a worker is supplied by an entity, other than one within a corporate group, which is concerned *solely* with the supply of workers for 'secondments', in circumstances where the

workers employed by that entity undertake no other type of work for the entity other than secondments (for example, when their secondment ends). The duration of the secondment may be a factor, but should not be a deciding one.

## **2: Consultants**

Please provide feedback on:

- If it is appropriate that consultants/consultancy arrangements are considered arrangements that are not intended to be captured by the scheme?
- If the proposed treatment is effective in clarifying the scope of the scheme in respect of consultants?
- If there are any unintended consequences of this proposed treatment?
- Could any unintended consequences be overcome through a different treatment?

The AIIA strongly supports the exclusion of consultants who provide expert professional advice. As with the concept of a 'secondment' (see above), we would caution an attempt to legally define the term 'consultant' in a regulation without an opportunity for extensive consultation, although a regulation which does not attempt such a definition, and is supplemented by a policy publication, may be appropriate, provided that there is adequate consultation with stakeholders about the wording of the policy.

Any such policy should also recognise the various ways that ICT consultancy services are provided, which are sometimes required to be provided on site for extended periods in order to, for example, implement solutions or change management. The use of expert consultants to supplement customer teams on site also occurs and the AIIA is concerned that the agile approach taken by our members to meet client requirements, particularly those of larger clients, not be unduly restrained.

## **3: Worker is 'director' or owner of business**

Please provide feedback on:

- If it is appropriate that a director or owner of a business who hires themselves out are considered as a class of person who do not provide labour hire services?
- If the proposed treatment is effective in clarifying the scope of the scheme in respect of these arrangements?
- If there are any unintended consequences of this proposed approach?
- If there are any alternate means to achieving this effect?

It is already clear that the scheme does not apply to sole traders who may hire themselves out in this way, because in that case the individual is the same legal entity as the 'business' – the new Act requiring at least three parties (the labour hire business, the customer of that business to which the worker is supplied and the worker). Such workers, and those that hire them, may of course face separate regulatory challenges.

For those individuals operating through a corporate structure, which is indeed a common approach by SMEs in the ICT industry in Australia, we recommend some clarification. Such structures are unlikely to be, in effect, labour hire arrangements and the individuals involved will usually have received advice from lawyers and accountants as to the benefits or otherwise of such an approach.

The regulatory treatment proposed by the consultation paper is to list specific excluded scenarios, such as medical practitioners. We would support that approach, asking that it include 'information and telecommunications industry professionals' operating under similar structures – namely where the individual is a sole employee undertaking work for clients. Where the services are expert consultancy services (see above), this would also operate as a separate exclusion.

#### **4: Corporate group/employing entity exclusions**

Please provide feedback on:

- If the proposed treatment is effective for dealing with common corporate group/associated entity arrangements such as shared payroll which are not labour hire?
- If there are any unintended consequences of this treatment?
- If there are any alternate means to achieving this?

As the paper outlines, the use of one entity to employ staff within corporate groups is common, even in the case of SMEs. Many companies (including AIIA members) also operate nationally and internationally. Adding a requirement to have what are in most cases innocent and entirely appropriate structures approved by the regulator in Queensland is a burden on business and is likely to be a source of delay, given that it would oblige the regulator to scrutinise and approve complex corporate transactions (some members may have hundreds of subsidiaries worldwide), even where there is no actual suspicion of wrongdoing. Such an approach has the potential to delay legitimate mergers or restructures, which is likely to have a direct impact on jobs and investment in Queensland. It will also divert the regulator's resources away from its other priorities.

A better approach, we would suggest, would be for the regulator to issue, following consultation with stakeholders, a detailed policy discussing the kinds of arrangements it would consider to be covered by the scheme and to investigate and enforce those by means of regular audits or in the event of a complaint.

#### **5: Where workers are supplied to a person in a domestic setting (not to a business or undertaking)**

Please provide feedback on:

- If it is appropriate that the supply of workers to persons who are not a business or undertaking (domestic setting) be considered as arrangements that are not labour hire and not intended to be captured by the scheme? And if so, what the specific instances should be and under what conditions?
- If the proposed regulation treatment is necessary and effective in clarifying the scope of the scheme in respect of these arrangements?
- If there are any unintended consequences of considering this treatment?
- If there are any alternate means to achieving this?

No comment.

**Other scope considerations**

Your feedback is welcome on any other arrangements that would not be commonly understood as providing labour hire services. Please provide any details of arrangements you propose as being appropriate for possible regulation or policy treatment which would help clarify the scope of the scheme. In your comments, please consider any unintended consequences or different ways to treat the proposed group, again, where the arrangements are not what is commonly understood to be labour hire. Once again, please note the clear policy intention for a broad scheme to apply to all industry sectors and occupations.

The AIIA's position is that the ICT industry, being a knowledge-based industry, employs professionals who are much less likely to be exploited in the same way, for example, as agricultural labourers, and so ought to be excluded from the scheme altogether by regulation.