

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

Dear Mrs Jones

I refer to *Scrutiny Report 40* of the Standing Committee on Justice and Community Safety (the Committee) which discusses the Labour Hire Licensing Bill 2020 (the Bill).

This Bill delivers on the ACT Government's commitment to encourage responsible employment practices in the ACT labour hire sector and I would like to thank the Committee for their consideration of the Bill.

In establishing a new licensing scheme, it is necessary to create an effective and comprehensive framework that prevents and responds to non-compliance with workplace standards in the labour hire industry. This is achieved by establishing a licensing scheme that allows for the auditing of providers' history of compliance with other workplace laws and obligations before allowing them to operate in the ACT's labour hire industry. As part of establishing an effective licensing scheme it is also necessary to ensure the ongoing suitability of labour hire providers, which is achieved through a responsive and appropriate enforcement framework. Together, these would provide an effective disincentive to non-compliance in the industry.

The Bill is clear in establishing offences for non-compliance by labour hire providers and to compliment that, regulatory actions that may be taken in relation to a provider's license in response to non-compliance and a civil penalty as a financial disincentive to continuing to use unlicensed labour hire providers. In this way, the Bill will ensure workers in the labour hire industry can have the same expectations as other Territory workers that workplace standards and obligations will be met.

In relation to the issues raised by the Committee, the Explanatory Statement has been revised, including the error on page 5, and I attach a copy for your reference.

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There are a number of other matters on which the Committee has also sought clarification. Specifically:

- the civil penalty applied under section 35 of the Bill and whether it is appropriately characterised; and
- the use of information under section 38 of the Bill.

In relation to the civil penalty, it is applied as the explanatory statement explains, as part of the effective compliance design of the new regulatory scheme. In doing so it provides a disincentive to engaging unlicensed labour hire providers that would otherwise undermine the intent of the scheme. In doing so it sets a civil penalty as a financial disincentive. The level of the penalty is *up to a maximum* of 800 for individuals and 3,000 for companies as set out in section 35 (3) of the Bill. In this way, noting it does not impose a term of imprisonment for non-compliance and is being applied in a regulatory context, I consider it appropriately characterised as a civil penalty.

The Committee has also sought clarification on the operation of section 38 of the Bill and its abrogation or otherwise of common law privileges. The Committee is correct in its understanding of the provision such that it does not abrogate the common law privileges and the explanatory statement has been amended to clarify this.

Thank you for raising these matters about the Bill. I trust the above information and revised explanatory statement provide the justification and explanation sought by the Committee about the provisions in the Bill that will establish a new regulatory scheme for the labour hire industry.

Yours sincerely

Suzanne Orr MLA  
Minister for Employment and Workplace Safety