

The following are our responses to the questions .

a) Could you explain what joint employment legislation is?

Joint employment legislation is currently operating in countries overseas including the US.

The basic proposition is that where two employers employ the same labour, for instance a labour supply agency and a host employer, the employee is considered to be employed by both simultaneously and therefore the conditions and entitlements of the employee are the direct responsibility of both employing entities.

This also means that the conditions of employment are those applicable to either entity so that if, for example, the host employer has an enterprise agreement in place then that agreement will apply to the employee regardless of the employment contract with the labour supply entity.

The US model places a major emphasis on control of the employee when testing the relationship between the entities. The more control over the employee the entity has the greater the chances are that the relationship is deemed to be joint.

b) Could you explain how you see joint employment legislation operating in Australia and how it would help prevent phoenixing?

If the Australian parliament introduced joint employment laws we believe phoenixing would certainly be reduced for the following reasons:

- *Companies would have a legal responsibility to all workers engaged at their establishments, who are subject to their control and direction, whether they employ them directly or not. This responsibility would extend to site wages, conditions of employment and unfair dismissal.*
- *Labour hire companies and sub-contractors would likely need to provide securities when tendering for labour agreements with companies.*
- *If the host employer can be held liable for non-payment of conditions and entitlements then it is doubtless that contractual arrangements between the host employer and labour supply agencies would be strengthened and 'bad risk' agencies would be unlikely to strike supply arrangements with host employers.*

These arrangements would weed out shady 'fly-by-night' operators in preference to respectable employment agencies, and because it is predominantly the 'fly-by-nighters' who are more likely to attempt to dodge liabilities by closing down their agency and then phoenixing, industry would in all likelihood take care of itself.

I use the recent example of the Baiada case .

*We have the largest poultry processor in the country with a total workforce of approximately 6000. Of those 6000 approximately 2000 are labour hire. AMIEU members have enterprise agreements across NSW and QLD however based on the recent FWO findings (**AMIEU evidence**) into labour practices in NSW, the report uncovered over 50 contracting companies providing 1000 employees in labour services across the 3 Major sites. The majority of the 1000 workers who have been grossly exploited are from international backgrounds on temporary work visas. We estimate these workers across NSW are owed \$millions in underpayments of wages, entitlements and superannuation, not to mention the*

frequency of tax evasion or manipulation by some agencies based on our investigations in Newcastle NSW.

The chances of these workers receiving there lawful entitlements are very slim to say the least due to the time constraints of visas durations and our lengthy existing legal system.

I hope this information is of assistance to the inquiry.

Kind regards

Grant Courtney

Branch Secretary AMIEU newcastle and Northern NSW Branch