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Contractors: mining union open to deal

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Labour hire

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The mining union is open to the idea of excluding legitimate service contractors from Labor's same job, same pay laws as long as it does not open up further loopholes for labour hire firms to undercut workers' pay.

Workplace Relations Minister Tony Burke has confirmed the government is considering a "multifactor" test put forward by the Australian Resources and Energy Employer Association (AREEA) to distinguish between firms providing specialist services and those simply providing supplemental labour.

The test could ensure major service contractors like CIMIC and Downer escape the brunt of the same job, same pay laws, which will require employers to pay labour hire the same as a host's direct workforce. Businesses warn the laws are otherwise framed so broadly they could shut down the resources industry.

Mining and Energy Union (MEU) general secretary Grahame Kelly said the rules should apply to labour hire

workers doing the same work as permanents, and this should include "fully owned labour hire subsidiaries".

"We do not expect that same job, same pay laws would cover contractors performing genuinely specialist or short-term work," he said. "However, the laws must be designed to prevent employers misrepresenting long-term labour hire arrangements as specialist contract work."

Mr Burke said: "A multifactor test is one of the things that we're considering as part of ongoing constructive consultation with industry.

"I've been crystal clear with all stakeholders that there are legitimate uses for labour hire that we don't want to get in the way of. They include for specialist workforce, for surge workforce and for temporary replacement.

"The problem that we're trying to solve is where an enterprise agreement has been put in place, where there

are agreed rates of pay and then an employer uses a labour hire firm to undercut those rates of pay."

AREEA led a delegation of senior executives from member companies to Canberra to speak with Mr Burke about the laws.

They proposed a test that includes whether an employer is providing only contingent labour or performing independent scopes of work; if a contractor's employees are using the host's equipment; if the client is directly supervising the contractor's employees; and whether the contractor has autonomy over their work.

AREEA chief executive Steve Knott said "in both the mining and energy sectors, it is very common for project owners to outsource the ongoing maintenance of their assets to specialist engineering and maintenance firms".

Minerals Council of Australia chief executive Tania Constable called for a direct, economy-wide carve-out rather than a list of criteria. "A simple and effective approach is to have a clear ... definition of a service contractor that would exclude them from the same job, same pay legislation."

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Tony Burke, Workplace Relations Minister