Parliamentary Committees



Labour Hire Licensing Bill 2017

Report No. 41, 55th Parliament
Finance and Administration Committee
July 2017

Finance and Administration Committee

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Acknowledgements

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Abbreviations

ADCQ	Anti-Discrimination Commission Queensland
Ai Group	Australian Industry Group
AMIEU	Australian Meat Industry Employees Union
AMMA	Australian Mines and Metals Association
AMWU	Australian Manufacturing Workers' Union
APSCo	Association of Professional Staffing Companies
AWU	Australian Workers' Union
the Bill	Labour Hire Licensing Bill 2017
the committee or FAC	Finance and Administration Committee
CCC	Crime and Corruption Commission
Decision RIS	Decision Regulatory Impact Statement
the department	Office of Industrial Relations, Queensland Treasury
explanatory notes	Explanatory notes to the Labour Hire Licensing Bill 2017
FWA	*Fair Work Act 2009* (Cth)
FWO	Fair Work Ombudsman
GTO	group training organisation
HIA	Housing Industry Association
Inquiry	Inquiry into the practices of the Labour Hire Industry in Queensland
MBQ	Master Builders Queensland
MUA	Maritime Union of Australia
NFF	National Farmers' Federation
NUW	National Union of Workers
PMA	Produce Marketing Association
QCAT	Queensland Civil and Administrative Tribunal
QCU	Queensland Council of Unions
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
RCSA	Recruitment and Consulting Services Association

Chair's foreword

This report presents a summary of the Finance and Administration Committee's examination of the Labour Hire Licensing Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

In June 2016, the Finance and Administration Committee handed down its report on its Inquiry into the practices of labour hire industry in Queensland. At the time of that earlier inquiry, the committee was aware that other jurisdictions had also commenced investigating the labour hire industry, however Queensland is currently the only state to have introduced legislation to protect all workers in the labour hire sector.

In its 2016 report, the committee made one recommendation; that the Government progress through the Council of Australian Governments the issue of labour hire, including requiring casual workers to obtain ABNs and work as 'contractors' rather than an employees. It has however become abundantly clear that despite its vulnerable workers legislation, the Commonwealth Government believes it is the states' who should be working in this regulatory space. I strongly disagree. The Commonwealth has primary responsibility for industrial matters under the Fair Work regime, hence the policing and licencing of labour hire companies would be far better managed at a national level by the Fair Work Ombudsman.

I acknowledge the majority of labour hire companies appear to be acting in compliance with their legislative requirements as responsible employers. However, evidence received by the committee during the previous inquiry highlighted concerning incidents of phoenixing, sham contracting, the exploitation and mistreatment of workers, the undercutting of employment conditions, and a range of other illegal or questionable practices. There seems to be no evidence to indicate that these practices have ceased since 2016. Accordingly I support the need for the Queensland Government to introduce a labour hire licencing regime, as is proposed by this Bill.

On behalf of the committee, I wish to extend my sincere thanks to the individuals and organisations who lodged written submissions and participated in the committee's briefings and public hearings.

I also thank the committee's secretariat, the Queensland Treasury's Office of Industrial Relations and the Parliamentary Library and Research Service for their assistance to the committee.

I commend this Report to the House.

Peter Russo MP

Chair

1 Introduction

1.1 Role of the committee

The Finance and Administration Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Premier, Cabinet and the Arts
- Treasury and Trade and Investment, and
- Employment, Industrial Relations, Racing and Multicultural Affairs.

Section 93 (1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Labour Hire Licensing Bill 2017 (the Bill) was introduced into the House and referred to the committee on 25 May 2017 with a reporting date to the Legislative Assembly by 24 July 2017.

1.2 Inquiry process

The committee sought and received a written briefing on the Bill from the Office of Industrial Relations, Queensland Treasury (the department). The committee also invited stakeholders and subscribers to lodge written submissions and received 41 submissions (see Appendix A). The committee also received written advice on 22 June 2017 and 5 July 2017 from the department in response to matters raised in submissions.

The committee held a public briefing with the department on 14 June 2017 (see Appendix B) and received further information from the department on 19 June 2017. A public hearing was held on 22 June 2017.

1.3 Policy objectives of the Labour Hire Licensing Bill 2017

The objectives of the Bill, as set out in clause 3, are to establish a licensing scheme to regulate the provision of labour hire services to protect workers from exploitation by providers of labour hire services and promote the integrity of the labour hire industry.

1.4 Consultation on the Bill

As set out in the explanatory notes, the Queensland Government considered the committee's June 2016 report *Inquiry into the practices of the labour hire industry in Queensland*.[2] In December 2016, the government released an issues paper seeking stakeholder feedback on a labour hire licensing scheme and other matters, including minimum standards for labour hire service providers and the

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 Finance and Administration Committee, Report no. 25, 55th Parliament – Inquiry into the practices of the labour hire industry in Queensland, 30 June 2016.

integrity of labour hire in Queensland.[3] The government received around 40 submissions most of which can be accessed online.[4]

In its written briefing to the committee, the department advised:

> *…submissions to the Issues Paper supported reform to address exploitation of labour hire workers. However, a state based licensing scheme was not unanimously supported with some stakeholders expressing a preference for a national approach or self-regulation.*[5]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives and consideration of the information provided by the department and from submitters, the committee was unable to agree that the Bill be passed.

[3] Explanatory notes, p 1.

[4] See https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations/regulation-labour-hire-industry/review-submissions.php

[5] Queensland Treasury, correspondence dated 8 June 2017, p 1.

2 Background

2.1 Finance and Administration Committee's inquiry into the practices of the labour hire industry in Queensland

In 2015-16, the committee inquired into the practices of the labour hire industry in Queensland.

The committee's report tabled on 30 June 2016, highlighted a diverse and burgeoning labour hire industry in Queensland and found there to be evidence of exploitation and mistreatment of workers occurring across industry sectors. Evidence included cases of underpayment of wages and unauthorised deductions, sexual harassment, workers housed in overcrowded and sub-standard accommodation, lack of proper safety equipment and appropriate training, systematic tax avoidance, sham contracting and 'phoenixing' of companies leaving workers stranded without their entitlements and uncertainty about the identity of their employer.

In its report, the committee made one recommendation; that the Government progress through the Council of Australian Governments (COAG) the issue of labour hire, including requiring casual workers to obtain ABNs and work as 'contractors' rather than an employees.

In statements of reservation, Government members recommended a labour hire licensing system including bond payments, license fees etc.; non-Government members considered a holistic approach, coordinated by the Federal Government, could deal with the relatively small number of sham operators and a state-based licensing regime would not address the issues.

The Government accepted the committee's one recommendation. It also undertook to consider measures to improve the protection of vulnerable workers and a licensing regime, released an issues paper[6] and published around 40 submissions.[7]

The department advised that on 23 March 2017, Hon Grace Grace MP, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs (the Minister) wrote to Senator the Hon. Michaelia Cash[8] to request consideration of the use of ABNs for the purposes of managing labour hire practices be progressed to the COAG agenda as part of a broader discussion around labour hire licensing.[9]

2.2 Government issues paper

The issues paper provided details of the Government's views around the regulation of the labour hire industry and sought stakeholder feedback including on the necessary components of a licensing scheme and other measures to address the concerns identified within the industry.

The paper provides background information about the labour hire industry, including the prevalence of the industry in the labour market, the concerns that have been identified given the nature of such work, and that the regulatory framework of the industry is spread across multiple jurisdictions. It noted labour hire workers receive a lower hourly rate of pay than direct hires, are more likely to be injured, are less likely to be offered employment post-injury and generally remain in this insecure employment arrangement, rather than gain direct employment.

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6 Office of Industrial Relations, Regulation of the Labour Hire Industry 2016, Issues Paper, December 2016, https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations/regulation-labour-hire-industry/documents/labour-hire-issues-paper-december-2016.pdf

7 See the Queensland Treasury website: https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations/regulation-labour-hire-industry/index.php

8 Minister for Employment, Minister for Women and Minister Assisting the Prime Minister and the Public Service.

9 Queensland Treasury, correspondence dated 8 June 2017, p 1.

The issues paper refers to work undertaken in Queensland (including the committee's June 2016 report) and other Australian jurisdictions around the labour hire industry. All of which identified the above concerns and documented evidence of the mistreatment and exploitation of workers, despite the regulatory framework protections. The paper also examines the experience of other countries that have introduced regulations around the labour hire industry (including Singapore, Japan, South Korea, United States, European Union countries and the United Kingdom), considering the purposes, structures, monitoring and enforcement of the respective regulatory frameworks.

The paper identified a series of options to better regulate the labour hire industry including around:

- Introducing a licensing scheme coupled with a public register of licence holders in Queensland
- Including a 'fit and proper person' test in applying for and a condition of a licence
- Applying a licensing fee to operate as a labour hire provider that is ongoing, payable annually and designed to help fund the administration of the scheme
- Provision of annual reports on compliance with industry standards as a means of monitoring compliance without being overly burdensome; the information could be made publically available
- Setting up a compliance unit responsible for issuing licences, ensuring compliance with requirements and monitoring, maintaining a licence register and providing information/advice
- Introducing a threshold capital requirement to operate in the labour hire industry
- Requiring the payment of a bond to operate in the labour hire industry
- Regulating the contractual employment relationship (between the host employer and labour hire workers)
- Imposing mandatory workplace rights and entitlements training.

2.3 Regulatory Impact Statement

The department completed a decision regulatory impact statement (Decision RIS) for the Labour Hire Licensing Scheme in March 2017, considering submissions provided to the department's Issues Papers as well as input from other stakeholders and the findings of the previous inquiries into the labour hire industry, including the inquiry undertaken by the committee. The Decision RIS considered the 'problem' of labour hire arrangements noting they are a growing part of the employment placement services industry and that the issue of exploitation of labour hire workers across all forms of employment and work is a significant problem for regulatory and compliance bodies.

To address the problem, consideration was given to four options, including no regulation, self-regulation, an independent body administering a licensing scheme, and a government department administering a licensing scheme, with the last option identified as the preferred approach. An impact analysis identified the following positive impacts of the scheme:

- *a reduction in the form and scale of exploitation (fewer abuses, increased transparency in employment conditions)*
- *forging positive relationships with LHPs[10] and host employers in order to uncover and terminate malpractice*
- *providing valuable intelligence to other government departments (e.g. FWO, and police) in order to exert pressure on exploiters*
- *improving working conditions for workers in the labour hire sector and at the same time creating a more level playing field for legitimate LHPs and host employers*
- *promoting a consistent and transparent landscape to help identify and deal with the minority of LHPs who wilfully break the law*

[10] Labour hire providers (LHPs)

- *streamlined administrative and operational requirements through the online 'one-stop shop' could be expected to deliver costs savings to government, licensees, host employers and consumers, and*
- *greater employer and consumer confidence that licensees are ethical and have satisfied an appropriate and consistent set of requirements and obligations to be licensed and to remain licensed.*[11]

The following negative impacts were also identified:

- *restricting competition or entry due to the financial cost of fee as well as need to satisfy other requirements to apply for the licence*
- *as the scope of the scheme is targeted at LHPs, some unscrupulous LHPs may try to find regulatory loopholes, for example, classifying themselves as 'contractors' and operating in sectors where their operation is not monitored*
- *as the proposed scheme is not a national approach and would only apply to work performed in Queensland, some LHPs may choose to move their operations to other jurisdictions where there is no comparable LHP regulation*
- *any licensing scheme will lead to further red tape and increase government and business costs to some extent, and the state-based nature of the scheme potentially increases this burden as LHPs may have to comply with different schemes in other jurisdictions in the future. (However, it is considered that mutual recognition arrangements may be able to minimise regulatory burden arising from other schemes if they are implemented in the future)*
- *an increased regulatory burden may not deter some LHPs and host employers from breaching their obligations if there is not a strong enforcement presence*
- *some unethical LHPs may choose to ignore the scheme and undercut the price of those who operate ethically and in compliance with their obligations, and*
- *adding to regulatory burden for LHPs.*[12]

The Decision RIS identified proposals to address the negative impacts. This included providing for recognition under the scheme where comparable licensing requirements are met, reducing the regulatory burden and administrative costs of the scheme for businesses and the government. With respect to costs, the Decision RIS states that establishing and administering the compliance unit is intended to utilise existing resources, consequently, the cost to the government will be relatively low with funding drawn from licensing revenue.

Further, it was noted that it is difficult to quantify the costs and benefits associated with worker exploitation however, the benefits of measures to prevent harm and abuse to workers far outweigh costs. The decision to proceed with regulatory reform for labour hire was also "*informed by a number of reviews conducted over time by both academics, other State governments, the FAC, the Commonwealth Government and union and employer groups.*" In this context it was noted that the Decision RIS provided a qualitative rather than quantitative analysis of the costs and benefits of implementing the scheme.

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11 Labour Hire Licensing Scheme, Decision Regulatory Impact Statement, March 2017, Office of Industrial Relations, Queensland Treasury, pp 39-40.

12 Labour Hire Licensing Scheme, Decision Regulatory Impact Statement, March 2017, Office of Industrial Relations, Queensland Treasury, p 40.

3 Examination of the Labour Hire Licensing Bill 2017

3.1 Objective and intent of the Bill

A total of 41 submissions were received by the committee for the inquiry into the Labour Hire Licensing Bill 2017. Submitters generally supported the need to ensure that workers were not exploited however, submitters expressed concerns with whether a government operated licensing scheme was the most appropriate approach, as well as with the way in which such a scheme was to be established under the Labour Hire Licensing Bill 2017.

Submitters in support of the Bill generally did not deal in detail with the provisions of the Bill. However, they noted the importance of the objectives of the Bill, not least with regard to protecting vulnerable labour hire workers from exploitation.[13]

While recognising the work undertaken in this space by the committee and in other jurisdictions, and acknowledging practical steps that have been taken to improve the situation for labour hire workers, some submitters, noting the complexities of the industry also recognised that the steps taken to date have not been successful. In this respect the Australasian Meat Industry Employees' Union stated in their submission:

> *There is an ample and ever-increasing body of evidence indicating widespread non-compliance with legal obligations on the part of many labour hire operators. Such non-compliance generally arises from blatant disregard for the law, and a preparedness of many operators to engage in exploitation and intimidation of vulnerable workers.*
>
> *The existence of such exploitation and illegality in the labour hire sector has been apparent for some time. The Fair Work Ombudsman commenced an inquiry into labour hire practices at poultry processing establishments in New South Wales in November 2013, following the exposure of those practices by a union campaign. The FWO inquiry delivered a damning report in June 2015. Since that time, exploitative labour hire practices and deliberate, systematic underpayment of employees has been found across a range of industries.*
>
> *There is simply no indication that such public exposure has done anything to diminish the brazenness of labour hire suppliers, or to generate any effective attempt at self-regulation by the labour hire sector. Equally, the continued presence of these arrangements in the meat industry suggests that meat industry employers have failed to adopt any measurers, or any adequate measures, to address the problem. Experience has also shown that, given the heavy reliance by labour hire operators on vulnerable workers (whether due to language barriers, or visa status, or ignorance of workplace rights), many problems in the sector remain undiscovered without some active external intervention.*
>
> *In such circumstances, the AMIEU considers that a system of licensing labour hire providers to be both justifiable and sorely needed.*[14]

Submitters acknowledged the impact that failing to protect workers also has on businesses. The Salvation Army noted in this respect that:

> *…failing to effectively address illegal conduct against workers carries negative impacts on business and communities, where employers using exploited labour are undercutting honest competitors and placing downward pressure on wages. Exploitation most commonly occurs toward the bottom end of the supply chain, typically below one or more layers of sub-contracting. Indeed, the role of labour hire companies in committing and facilitating exploitation and forced*

[13] QNMU, Submission 1, p 4; QCU, Submission 24, p 2; NUW, Submission 28, p 2.

[14] AMIEU, Submission 15, pp 2-3.

labour of migrant workers was a primary reason why the ILO established a global program on fair recruitment, the Fair Recruitment Initiative (FAIR).[15]

Related to this the National Union of Workers stated during the public hearing on 22 June 2017:

I think that this bill, if it had an impact on employment, would only have a positive impact on employment because it would drive potential black market jobs into the real labour market and the jobs that would be there under reputable labour hire companies would be jobs that are decent jobs because the employer would be paying wages in compliance with award minimums or other industrial minimums and would be required to meet their WorkCover obligations and their workplace health and safety obligations. I think if there were any impact on employment, and I am not convinced that there would be, I think it could only be a positive impact.[16]

Considering the provisions of the Bill, some submitters have identified the essential or key elements to a successful licensing scheme and have stated that they are included in this Bill. The Anti-Discrimination Commission of Queensland identifies the essential elements for a licensing scheme which have been included in the Bill as:

- *mandatory licensing of labour hire providers*
- *a fit and proper person test for license holders*
- *requiring those engaging labour hire providers to only engage a licensed provider*
- *regular reporting by license holders*
- *strong penalties for breaches of obligations and license conditions*
- *a public register of licensed providers.*[17]

Submitters who did not support the licensing regime suggested alternatives to the proposed licensing scheme in written submissions and during the public briefings.

- Strengthening the existing regulatory regime

  Some submitters,[18] noted that a substantial legislative and industry regulatory framework already exists to protect workers, which are both industry specific and general in nature. Further, that the framework will be strengthened through the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (Cth).

  Submitters also noted that the creation of another regulatory regime will impose an additional burden on compliant businesses, and is unlikely to improve the compliance of parties that are currently in breach of compliance obligations under other regimes.

  In this respect submitters requested that emphasis be placed on enforcement and compliance with the existing obligations.

  Master Builders Queensland state in their submission:

  … the federal Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (VW Bill) will provide the FWO with more investigative powers, more resources, and higher penalties for breaches of wages, and sham subcontracting. All workers, not just those engaged by labour hire business, will have enhanced protections under the VW Bill. Indeed, FWO is the only regulator which has authority to investigate and prosecute industrial

15 Salvation Army, Submission 26, p 2.

16 Ms Beynon, Growcom, public hearing transcript, Brisbane, 22 June 2017, p 9.

17 ADCQ, Submission 11, p 2.

18 Growcom, Submission 20, p 1; CCIQ, Submission 27, pp 1-2; Master Builders Queensland, Submission 30, pp 2-3; AMMA, Submission 31, p 6.

matters on behalf of vulnerable workers - no matter who they are engaged by. The [Labour Hire Licensing] *Bill is therefore unnecessary.*[19]

- National Industry-led certification program/self-regulation

  The Recruitment and Consulting Services Association (RCSA) has proposed a national industry certification program, the key features of which include an online register of Certified Workforce Services and an independent standard-based certification and audit process covering six key areas:

  - Fit & Proper Person
  - Work Status and Remuneration
  - Financial Assurance
  - Safe Work
  - Migration
  - Decent Accommodation

  The RCSA submission states:

  At present, the certification program is undergoing pilot testing. RCSA strongly recommends the Committee consider how the certification programme might be prescribed or approved in order to improve the workability of the Bill and the protection against exploitation that it seeks to afford.

  RCSA's Workforce Provider Certification program has the support of a Working Group comprising: NFF, Growcom, AWU, NUW, Voice of Horticulture and PMA, as well support from the Migrant Worker Taskforce through the Department of Employment, and aligns closely with the objects of the Bill, and findings from the Inquiry into the practices of the labour hire industry in Queensland.[20]

  Other submitters[21] indicated broad general support for an industry led self-regulatory approach.

  The government's view of an industry-led self-regulation approach, as expressed in the Decision RIS was:

  … Without the provisions of a regulatory framework to support the effectiveness of a self-regulation scheme, there is a likelihood that labour hire workers' would continue to be exploited. Any benefits employers receive from self-regulation will be outweighed by the risk to the safety, well-being and fair treatment of labour hire workers.[22]

The following sections discuss the substantive issues raised during the committee's examination of the Bill as they relate to specific provisions. These issues are set out in the order appearing in the Bill.

3.2 Part 1, Division 2 Interpretation

3.2.1 Meaning of provider, labour hire services and worker

The Bill proposes to establish a mandatory business licensing scheme to apply to 'persons' who provide 'labour hire services' in Queensland. These terms, and hence the scope of coverage for the licensing scheme, are defined by reference to clause 7 (Meaning of provider and labour hire services) and clause 8 (Meaning of worker).

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19 Master Builders Queensland, Submission 30, p 2.

20 RCSA, Submission 37, p 17.

21 Agforce, Submission 18, p 2; APSCo, Submission 29, p 4; NFF, Submission 34, p 7; Ms Mackenzie, Growcom, public hearing transcript, Brisbane, 22 June 2017, p 31.

22 Labour Hire Licensing Scheme, Decision Regulatory Impact Statement, March 2017, Office of Industrial Relations, Queensland Treasury, p 22.

Submitters[23] noted that the Bill uses a very broad and ambiguous definition of the arrangements that will make an individual and/or business a 'provider' of 'labour hire services'.

The concern is that current drafting does not make it easily identifiable what business and employment arrangements are intended to be captured by the licensing obligation and does not appear to limit application to the 'triangular' labour hire relationship.

The ambiguity in scope and coverage caused submitters to speculate the types of employment arrangements and occupations which possibly may fall within the scope of the Bill. Without clarification, industry was particularly concerned the proposed licensing scheme may capture unintended occupations and employment arrangements, including contractors, sub-contractors and franchise businesses.

Given the magnitude of the penalties for engaging in prohibited conduct (for both a potential provider and client/host company) it is important that the scope of the Bill is clear and workable.

Growcom stated during the public hearing on 22 June 2017:

> *You have a definitional problem at the beginning that captures a whole heap of people whom I do not think are an issue, but perhaps it could create a situation where you are pushing the issue somewhere else. I think that the definition needs to be looked at and really tightened up so it manages your concerns and does not capture people outside of your concerns.* [24]

The Ai Group note in its submission the definition for labour hire developed and adopted by the Australian Industrial Relations Commission:

> *During the development of the modern award system under the* Fair Work Act 2009 *(**FW Act**) between 2008 and 2010, there was considerable focus on an appropriate definition for labour hire. Ultimately, a seven Member Full Bench of the Australian Industrial Relations Commission decided upon the following definition, including the use of the term 'on-hire' rather than 'labour hire':*
>
> > *"on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client".*
>
> *The above definition is included in nearly all modern awards. This definition would be a far more appropriate means of identifying labour hire providers and labour hire services, than the definitions in the Bill.*[25]

The RCSA advised during the public hearing on 22 June 2017:

> *I think some of the areas that may well be covered which I would anticipate are unintended would certainly be those organisations such as consulting engineering firms that may well be in the business of providing workers for the purposes of doing work, which is as broad as the definition is, whereas they are not in a labour hire relationship with that worker. They are direct employees but they are being on-hired, in effect, to do work for the government, for example, or*

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23 Allens Linklaters, Submission 2, pp 3-7; ASMC, Submission 7, p 1; Chandler Macleod, Submission 10, pp 2-3; Anonymous, Submission 14, pp 2-21; BHP Billiton, Submission 17, pp 1-2; AgForce, Submission 18, pp 2-3; Growcom, Submission 20, p 2; Apprentice Employment Network, Submission 21, pp 1-2; CCIQ, Submission 27, pp 3-4; APSCo, Submission 29, pp 5-7; Master Builders Queensland, Submission 30, pp 3-5; AMMA, Submission 31, pp 7-9; QLS, Submission 32, p 2; NFF, Submission 34, p 7; HIA, Submission 35, pp 3-9; RCSA, Submission 37, pp 7-14; Ai Group, Submission 38, pp 5-6.

24 Ms Mackenzie, Growcom, public hearing transcript, Brisbane, 22 June 2017, p 32.

25 Ai Group, Submission 38, p 5.

for other clients. I would suggest they would certainly be one that would be captured unintentionally by this bill as it currently stands.[26]

Notwithstanding that clause 7 (4) provides an ability to prescribe by regulation a person or class of person to be 'exempted' if the supply of a worker is not a dominant purpose of the business ordinarily carried on by the person or class of person, the QLS was of the view that the meaning of 'provider' should reflect the 'dominant purpose test'. The QLS stated during the public hearing on 22 June 2017:

Clause 7 subclause (4) of the bill provides for an exemption if the labour hire is not a dominant purpose of the business but that is dependent on it being prescribed by regulation, which may be arbitrary in nature.[27]

And,

Regulations can be changed. It is a little bit harder to change legislation. The concern is a fairly basic one. Regulations are arbitrary in nature. There is no cause to think that proper regulation would not be made, but it is a further basic protection if, in this case, the dominant purpose test is in the legislation itself.[28]

The NUW advised the committee during the public hearing on 22 June 2017:

We represent workers in a lot of industries. We represent pharmaceutical manufacturers and distribution workers. We represent people who work in defence, who work in distribution, in logistics, in poultry, in market research. Throughout all of those industries—it is a very broad church—they all have their own problems with labour hire. It is not just confined to a sectoral arrangement. I think the definition should capture those outside of what we see as the big problem areas because those areas are equally as problematic. We supplied in the first instance to this inquiry over 100 submissions that came from those cross sectors as well. In my view, the meaning of 'provider' and 'labour hire services' in the definitions is appropriate.[29]

In her introductory speech, the Minister spoke to the matter of scope and coverage of the proposed licensing scheme:

The definition of 'labour hire' in the bill is one where a person or business supplies workers to do work for another person, regardless of how the activity might be described. This definition will cover the traditional and well-understood on-hire labour hire arrangement as well as group training schemes. It will also ensure that pyramid labour hire arrangements, where there may be several layers of labour hire providers, and sham contracting out labour placement arrangements will also be captured in the licensing scheme, so if a labour hire provider enters into an arrangement with a client or end user to provide workers but they source the workers from another entity then that entity also needs to be licensed.

The intention of the bill is to cast a wide net over labour hire arrangements but not clog up the licensing system with other arrangements that fall outside genuine labour hire. Genuine recruitment, permanent placement and workplace consulting arrangements are not within the ambit of the licensing scheme. If a business supplies workers, whom the end user then employs themselves, that is not an arrangement that the bill is designed to capture. Neither does the bill intend to cover genuine subcontracting where, for example, a builder subcontracts a plumber to do the plumbing work on a small construction site.

The basic features of labour hire that the bill intends to capture are where a person supplies workers to another person—the end user, or client—the client pays the provider for that service,

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[26] Ms Hourigan, RCSA, public hearing transcript, Brisbane, 22 June 2017, p 23.

[27] Mr Stevenson, QLS, public hearing transcript, Brisbane, 22 June 2017, p 37.

[28] Mr Stevenson, QLS, public hearing transcript, Brisbane, 22 June 2017, p 38.

[29] Ms Beynon, NUW, public hearing transcript, Brisbane, 22 June 2017, pp 4-5.

and the labour hire provider pays the workers for that work. The bill also makes provision for regulations to be made to provide further clarification on the scope of the bill to ensure that coverage does not capture unintended classes of providers or workers. We are confident that the definition does what it needs to do to cover labour hire, but we acknowledge that there are a multitude of arrangements out in the labour market and we fully expect that we will get further submissions on these matters through the committee process.[30]

In its response to issues raised in submissions concerning definitions and scope the department advised:

The Government's policy position is for the implementation of a mandatory business licensing scheme covering all labour hire providers in Queensland.

The Bill does not seek to change or challenge a particular type of employment engagement arrangement that a business has chosen to utilise. It does however give cause for that business to consider, in cases other than a direct employment relationship, the nature of the employment/engagement arrangement and if it is labour hire as generally understood. In this way the Bill and licensing scheme places obligations on those who are engaged in labour hire, be it the labour hire provider or the user of those services to protect workers from exploitation and promote the integrity of the labour hire industry.

Recruitment services leading to direct employment/permanent placement, genuine independent contracting arrangements, contractor management and workforce consulting services are not in the scope of the Bill and do not fit the definitions of a labour hire provider, service or worker as provided at s7 and 8.

It is considered that the use of the term 'supply', and the drafting of the meaning of provider and labour hire services provided at s7 (and used in conjunction with the meaning of a worker at s8) adequately captures the business of labour hire however it may be described. The definition describes labour hire arrangements which are those that characteristically involve a 'triangular relationship' in which a labour hire business supplies the labour of a worker to a third party (host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships, whereby:

- *the host employer pays the labour hire agency for the labour provided by the worker and*
- *also has a direct contractual relationship with the labour hire agency;*
- *the worker is under the direction or control of the host employer for the performance of work, but is not engaged in any contractual or employment relationship with the host employer; and*
- *the worker is paid by the labour hire agency.*

The labour hire agency retains the contractual or employment relationship with the worker. As the employer of the worker the labour hire agency is responsible for ensuring the worker's entitlements are met as well as the full range of associated employer responsibilities and liabilities, including legal requirements for workplace health and safety, workers' compensation and taxation.[31]

The department also noted the provisions allowing for subordinate legislation to limit and/or change to the scope of licensing and compliance obligations:

Section 8(2) provides that 'an individual is not a worker if the individual is, or is of a class of individual, prescribed by regulation.' The regulation making power is provided as a practical inclusion to allow for the scheme to be contracted, for example in response to improved practices

30 Queensland Parliament, Record of Proceedings, 25 May 2017, p 1446.

31 Queensland Treasury, correspondence dated 5 July 2017, pp 3-5.

in particular industry or occupational sectors, or for other exemptions should it be considered warranted.

Section 102 of the Bill provides for the ability to waive a relevant information requirement if the chief executive is satisfied the applicant or licensee has already satisfied the requirement through another regime. This allows the Chief executive to give recognition to a business that is licenced or accredited under another suitably rigorous scheme.

… The Bill, at s108, does provide a regulation-making power in regard to fees payable, which does include waiver.[32]

The department further advised of its intent to inform stakeholders of the new licensing scheme and associated obligations:

The inspectorate will also coordinate an extensive awareness and education campaign. The inspectorate will be responsible for administering an extensive on-line presence through the Government's labour hire website, to be used for the dissemination of information to providers, end users and workers (including people for who English is not their first language), and the publishing of the register of licenced labour hire providers and applicants.[33]

And:

It is anticipated that there will be an extensive awareness campaign in the lead-up to the proclamation date of the Bill, including any provisions contained in subordinate legislation.[34]

Committee Comment

In terms of the scope of labour hire providers covered under the scheme, the committee notes the concern of some of the submitters about the intended coverage of the scheme. However, the committee also notes the Minister's speech was clear in confirming the Bill was to have wide coverage, whilst also providing examples of a number of arrangements that are not intended to fall within the scheme. In this regard, the committee suggests the department clarify through amendments to the explanatory notes or at the time of the second reading debate to what employment arrangements and providers the licensing scheme and compliance obligations apply.

Further, the committee notes there may be individuals and businesses unaware of the proposed licensing scheme, particularly where 'labour hire' is not how they would identify their primary occupation or purpose. Given the magnitude of the penalties for non-compliance, the committee suggests the department conduct further consultation with businesses across all industry sectors to ensure awareness of the licensing scheme. The committee further suggests the marketing and communication campaign associated with the new scheme must go beyond an online presence and include more traditional methods of communication including direct mail out to registered businesses and radio and print advertising.

3.2.2 Inclusion of group training organisations

The inclusion of group training organisations (GTOs) as an example of providers of labour hire services within the scope of the licensing scheme was also raised as a concern. Submitters[35] noted that GTOs were already regulated under several areas of state and commonwealth legislation and subject to licensing/registration, quality assurance and industry standards, and reporting and audit obligations making the proposed labour hire licensing scheme duplicative and unnecessary.

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32 Queensland Treasury, correspondence dated 5 July 2017, pp 5-6.

33 Queensland Treasury, correspondence dated 5 July 2017, p 30.

34 Queensland Treasury, correspondence dated 5 July 2017, p 40.

35 Anonymous, Submission 14, pp 2-21; Apprentice Employment Network, Submission 21, pp 1-2; Master Builders Queensland, Submission 30, p 5; HIA, Submission 35, p 3; Ai Group, Submission 38, pp 5-6.

The Housing Industry Association (HIA) stated during the committee's public hearing on 22 June 2017:

> *Group training organisations such as HIA are subject to requirements under legislation such as the Further Education and Training Act, which sets out strict standards including auditing requirements. Further regulation under the bill will ultimately add to the cost of hiring an apprentice and negatively impact on skills development in the state. Additionally, it has been suggested that the proposed licensing scheme is no different to licensing real estate agents and motor traders. Unlike the licensing of these businesses or occupational licensing of, say, builders, there are no prescribed skill, training or occupational standards required to be met to obtain a licence.*
>
> *…*
>
> *To be eligible for funding—and the Queensland government does provide funding to GTOs—there is criteria to meet specifically under the legislation. I can take you to the parts of the* Further Education and Training Act [2014] *that set out the auditing and compliance obligations. Section 84 sets out what are called the GTO standards. They set out standards in relation to recruitment, employment and induction, monitoring and supporting apprentices and trainees to completion, and GTO governance and administration to make sure that proper businesses are GTOs. They need to obtain a certificate under that process and, in turn, they are subject to regular auditing and compliance obligations. It is very heavily regulated. There are Commonwealth standards as well.*[36]

On the matter of GTOs, the department provided the following comments:

> *Section 102 of the Bill provides for the ability to waive a relevant information requirement if the chief executive is satisfied the applicant or licensee has already satisfied the requirement through another regime. This allows the Chief executive to give recognition to a business that is licenced or accredited under another suitably rigorous scheme. The registration requirements for recognition as a Group Training Organisation may be an example of this. It should be noted however that a Group Training Organisation is considered to be a labour hire provider within the meaning of the Bill and would still fall within the ambit of the scheme… The Bill, at s108, does provide a regulation-making power in regard to fees payable, which does include waiver.*[37]

3.3 Part 2, Prohibited conduct and avoidance arrangements

A specific concern for submitters was with respect to avoidance arrangements. Clause 12 states it is an offence to enter into an arrangement designed to circumvent or avoid an obligation imposed by the Act. Submitters stated that it is unclear under the Bill what conduct ought to be viewed as an avoidance arrangement.[38]

The department advised that a person who does not comply with relevant laws, which is a condition of a license under clause 28, may be found to have entered into an avoidance arrangement at clause 12. Specifically, the department advised the committee during the public briefing into the Bill on 14 June 2017:

> *At section 12 the act also incorporates an anti-avoidance provision, and that effectively means that users of labour hire services and the labour hire service providers cannot conspire to avoid their obligations under other relevant laws. 'Relevant laws' are defined specifically in this*

[36] Mr Humphrey, HIA, public hearing transcript, Brisbane, 22 June 2017, pp 28 & 29.

[37] Queensland Treasury, correspondence dated 5 July 2017, pp 5-6.

[38] AMMA, Submission 31, pp 9-10.

legislation in the dictionary at the back, and it lists a host of employment, taxation and other related laws.[39]

In its response to submissions, the department further clarified what constitutes an avoidance arrangement:

An 'avoidance arrangement' is defined within section 12 and is an arrangement with another person for the supply of a worker if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed under the Bill. It is unlikely that such provision could be interpreted to capture 'legitimate and lawful business arrangements'.

Placing an obligation within the supply chain upon parties who become aware of an arrangement to deliberately avoid an obligation imposed by a relevant law, where such an arrangement is not a legally proper arrangement, is considered a cornerstone of the design of the regulation of the labour hire industry. It goes to the object of promoting the integrity of the labour hire industry.

…

Bona fide business decisions to utilise licenced labour hire or to enter into genuine independent contracting arrangements are not affected by Sections 12 or 90 of the Bill.[40]

Imposing a penalty under clause 12 where there is a breach of a relevant law also gives rise to a question of whether the penalty under clause 12 is fair and just. In this respect, the Association of Professional Staffing Companies (APSCo) raised the concern that providers may be found to have engaged in prohibited conduct for minor compliance issues.[41]

A failure to comply with a provision of a relevant law may not automatically give rise to an offence for which a penalty is applied under that relevant law, or where a penalty for breach does arise under a relevant law, that 'breach' may be comparatively small, for example:

- where a compliance issue is identified under Part 5, Division 7 of the *Work Health and Safety Act 2011* (Qld) a provisional improvement notice can be issued (as opposed to a penalty applied), and
- where there is a failure to maintain stated records under the *Industrial Relations Act 2016* (Qld), the maximum penalty is 40 penalty units.

If a labour hire service was issued a provisional improvement notice or failed to maintain records under the above Acts respectively, it appears they may also be found to have entered into an avoidance arrangement and therefore be subject to a maximum penalty, in the case of an individual, of 1034 penalty units. This is a significantly higher penalty that only applies to labour hire arrangements, and in circumstances where the relevant laws do not apply anywhere near the degree of punishment or censure for the acts or omissions in question. Consequently, the penalties may be considered unfair and unjust.

On this matter, Allens Linklaters raised a related concern about double punishment in their submission, stating:

…non-compliance with Commonwealth laws would expose the licensee to punishment under those laws and the additional punishment of license cancellation under the Bill (effectively, double punishment that would prohibit the licence holder from carrying on its business).[42]

The department advised on 19 June 2017:

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39 Mr James, Queensland Treasury, public briefing transcript, Brisbane, 14 June 2017, p 2.

40 Queensland Treasury, correspondence dated 5 July 2017, pp 35-36.

41 APSCo, Submission 29, pp 7-8.

42 Allens Linklaters, Submission 2, p 8.

…the Bill does not seek to impose a double penalty for breach of a relevant law. Investigations and prosecution for suspected breaches of the Fair Work Act 2009 *or other relevant legislation remain matters for the relevant enforcement authority. The Bill does allow an inspector or other person who has knowledge of a suspected breach to provide advice to the relevant authority (see s104).*

Section 12 provides that a person must not enter into an 'avoidance arrangement'. An 'avoidance-arrangement' is an arrangement with another person for the supply of worker if then person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation under the Bill. A person must also report avoidance arrangements (see s90). It is not uncommon for a licence to require compliance with regulatory requirements. In the case of this Bill a condition of holding a licence is that a licensee must comply with all relevant laws (see s28). The offence and associated penalty is made upon the action of entering into an anti-avoidance arrangement, not for the breach of the relevant law itself.

…

Insofar as the application of s12, the fact of a conviction of breach of relevant law is not directly relevant to establishing an anti-avoidance related offence. Rather it is a matter of establishing if an anti-avoidance arrangement between a person and another person had been entered into.[43]

Committee Comment

The committee notes the broad general intent of including a general avoidance provision within the Bill. Despite the department's advice the committee remains concerned that it is not sufficiently clear as to what conduct or actions ought to be viewed as an avoidance arrangement and may give rise to a penalty under the Act.

It is reasonable to expect that the legislation provides certainty to licensees and industry so they can be confident of their compliance obligations. This is important also given the magnitude of penalties associated with the prohibited conduct.

The committee suggests the department clarify either through amendments to the explanatory notes or at the time of the second reading debate what situations or actions may give rise to an avoidance arrangement. The committee also suggests that guidelines and other information developed for stakeholders address this area of concern.

3.4 Part 3, Licences

3.4.1 Information required of applicants

Clause 13 identifies the details which must be provided by an applicant when making an application for a labour hire licence. Clause 14 describes those persons who cannot apply for a labour hire licence. Clause 15 outlines the criteria about which the chief executive must be satisfied when granting an application for a licence.

Broadly submitters raised issue with the extent of, and limited detail concerning, evidentiary information requirements for applicants and the associated administrative burden and cost of applications and renewals. Specific concerns were raised in relation to the 'disciplinary action' requirement at clause 13[44] and the 'financial viability' requirement at clause 15 of the Bill.[45] In both

[43] Queensland Treasury, correspondence dated 19 June 2017, p 4.

[44] CCIQ, Submission 27, p 4; Master Builders Queensland, Submission 30, pp 6 & 7; AMMA, Submission 31, p 10; QLS, Submission 32, p 4; Ai Group, Submission 38, pp 8-9.

[45] WorkPac, Submission 25, p 1; APSCo, Submission 29, pp 8 & 9; Master Builders Queensland, Submission 30, p 6; Ai Group, Submission 38, p 8.

cases there was concern the Bill lacked sufficient clarity around what information ought to be provided to satisfy that a person is a suitable licensee.

The department advised on 5 July 2017:

> *The introduction of a licensing scheme presents administrative obligations to licence applicants and licensees and therefore be an addition burden on business.*
>
> *It is proposed that the licensing system be a digital on-line system allowing business to apply, review and report on-line. Consultation with stakeholders, and in light of the disturbing evidence of exploitation and avoidance practices revealed through the State and Commonwealth Inquiries and investigation by the FWO has informed the application and reporting requirements.*
>
> *The Government has sought to balance the administrative burden with the requirements to protect workers from exploitation, promote the integrity of the industry and also to properly and efficiently manage the licensing scheme.*[46]

And,

> *The Bill does not set out detail of minimum financial requirements as a hurdle to be met, rather the Bill provides for the requirement for the Chief executive to be satisfied that the business to which the application relates is financially viable (sections 13(3)(c)(ii) and 15(b). This recognises that while an existing business can declare their financial bona-fides upon which evidence may be sought and tested, a new business may require an alternative to this approach. To this end a new business may establish their viability by declaration as to their financial backing, their business plan or other evidence such as having appropriate insurances or worker's compensation policy in place.*
>
> *To allow the Chief executive to make a determination as to the applicant or licensee's business viability, the applicant or licensee will be required to declare relevant evidence to support their application for a licence.*
>
> *If the Chief executive has concerns about the adequacy or accuracy of the information provided, the Chief executive may require further information.*[47]

Several possible drafting issues were also identified including at clause 13 (1) and (2) where it refers to a person who intends to carry on 'a business' rather than applying consistent terminology of a 'provider' or 'licensee' providing a 'labour hire service' as used elsewhere in the Bill which could be interpreted as meaning the obligation is intended to apply broadly to all businesses; the Bill also refers to applicants and licensees as being either an 'individual or a corporation' which may be interpreted to exclude unincorporated businesses from the requirement to obtain a licence or comply with other key obligations.

Clauses 17 and 21 provide that a licence may be granted, renewed and/or restored for a term of 'up to one year'. The term for a licence of one year is considered by some stakeholders to be short given the nature of the majority of companies working in the industry.[48] Requiring annual renewal of a licence increases the regulatory and compliance burden significantly, when considered alongside the biannual reporting obligations which have not been structured as complementary to the licence renewal process. There are some components to the annual reporting requirements that would duplicate information requirements for licence renewal.

The department has provided the following comment:

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46 Queensland Treasury, correspondence dated 5 July 2017, pp 15-16.

47 Queensland Treasury, correspondence dated 5 July 2017, pp 14-15.

48 Chandler Macleod, Submission 10, p.3; APSCo, Submission 29, p. 9; AMMA, Submission 31, p 12.

There may be merit in providing flexibility for the period of the licence for low-risk businesses with a strong record of performance, supported by ongoing reporting. This will require further consideration of s17 and 21.[49]

Submissions commented in relation to 'relevant laws' as they apply broadly across several key provisions and compliance obligations:[50]

- some submitters supported the inclusion of the 'relevant laws' requirement;[51] Maurice Blackburn Lawyers stated that, in order to provide greater protection to workers from exploitation, it would be beneficial to "*to provide clarity that contravention of a relevant law by a provider is an offence under the Act*" and recommended the inclusion of a further seven laws in the definition of relevant laws.[52]
- other submitters[53] were concerned that the 'relevant laws' go well beyond whether a person is likely to exploit vulnerable workers, submitting that the conduct and compliance by licensees should be limited to their legal obligations as employers and the requirements of the industrial relations legislation, with other matters such as compliance with local laws, building regulations, disability discrimination laws or taxation compliance left to relevant authorities to police and oversee.
- submitters argued that any consequences associated with breaches of 'relevant laws' should not arise unless the person has been convicted of an offence in a relevant court and only after appeal rights have been exhausted. The validity of a decision – made by an officer of executive government – that a person has contravened a relevant law under clause 24 (1)(b) without having had been found guilty in a competent court of relevant jurisdiction under that relevant law.
- submitters were concerned with the role of the chief executive, and delegates, making a determination around compliance with relevant laws, questioning whether the decision-makers would have the appropriate knowledge of relevant laws to make a determination[54] The role of chief executive, and delegates in decision making is discussed further below at section 3.8.3.

Broadly, the department advised:

The FAC Inquiry report, submissions to the Issues paper, inquires in other states and consultation with stakeholders … provided consistent evidence of ongoing and serious allegations of exploitation of workers in labour hire arrangements.

Given these findings, and the ambition of the licensing scheme to protect workers and promote the integrity of the labour hire industry it is appropriate that the entitlement to hold a licence to operate a labour hire business be linked to licensee's compliance with legal obligations towards workers (and to the community through the payment of appropriate taxes and compliance with immigration laws etc.)

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49 Queensland Treasury, correspondence dated 5 July 2017, p 17.

50 Refer to *'relevant laws'* at clauses 13 (Application and grant of licences – whether a person has been subject to disciplinary action under a relevant act), 24 (Cancellation), 27 (Fit and proper persons – subject to a person's history of compliance with and ability to comply with a relevant law, and whether someone has been convicted of an offence under a relevant law), 28 (Condition – compliance with relevant laws), 31 (Obligation to report to the chief executive) and 32 (Prescribed matters for reports).

51 QNMU, Submission 1, p 3; QCU, Submission 24, p 2.

52 Maurice Blackburn Lawyers, Submission 22, pp 2-3.

53 CCIQ, Submission 27, p 5; Master Builders Queensland, Submission 30, pp 7 & 8; AMMA, Submission 31, pp 11 & 13; Ai Group, Submission 38, pp 8-9.

54 Master Builders Queensland, Submission 30, p 7; AMMA, Submission 31, p 13.

Review and appeals processes are available to conditions, as well as for decision not to grant a licence.[55]

The department has also provided comment with respect to:

- the recommendation that the Bill be amended to make it an offence under the proposed law to contravene a relevant act:

  The department considers that the current treatment where failure to meet a condition of a licence can result in administrative sanctions (e.g. condition, suspension, cancellation) is appropriate rather than applying an offence provision to the obligation to comply with conditions. This is also the usual approach taken in licensing legislation, and also avoids the possibility of applying a double penalty under two different jurisdictions.[56]

  Note the concerns raised about double penalty and the advice provided by the department at section 3.3.

- cancellation under clause 24 (1)(b) where a person has not been convicted of an offence under a relevant law (also see section 3.8.3):

  While it is reasonable to consider such drastic action only after conviction, there are circumstances where, for example a labour hire provider systematically and repeatedly over a prolonged period has not meet their obligations under employment law (underpayment for example) and, follows a strategy of 'settlement on the court-house steps' to avoid prosecution/conviction. It may be such a circumstance warrants proper consideration of a cancellation of the licence.[57]

- the knowledge of decision-makers:

  While compliance with the obligations of other relevant laws underpins the labour licensing system and a an entitlement to hold a labour hire licence, the enforcement and ensuring compliance with other Acts are matters for the relevant competent authority.

  …

  It is proposed that the compliance unit will work in cooperation with established investigation programs currently undertaken by relevant agencies such as the Fair Work Ombudsman (FWO) in the annual Harvest Trail audit campaign; and with the Horticultural Workers Industry Group (HWIG) consisting of Department of Justice and Attorney-General, Queensland Police Service, Transport and Main Roads, Department of Agriculture and Fisheries, Safe Work Australia, Department of Immigration and Border Protection and FWO.

  It is anticipated that the compliance unit will establish these co-operative relationships, underpinned by Memorandums of Understanding (MOUs), with those agencies for the exchange of information and the investigation of complaints or suspicious activity.[58]

Committee Comment

The committee is satisfied with the department's advice clarifying the information requirements for applications and renewals. The committee is also pleased to note the advice that the department has considered the administrative burden and sought to implement systems that limit the application and reporting burden for licensees.

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55 Queensland Treasury, correspondence dated 5 July 2017, p 24.

56 Queensland Treasury, correspondence dated 5 July 2017, p 38.

57 Queensland Treasury, correspondence dated 5 July 2017, p 18.

58 Queensland Treasury, correspondence dated 19 June 2017, p 7.

In regards to licence terms, the committee supports the department's further consideration of a longer term and/or risk based approach. Whilst there are well established schemes which have longer licence terms, at this early stage of implementation a shorter, one year term is appropriate.

3.4.2 Fit and proper persons (Part 3, Division 4)

A number of submitters supported the fit and proper person test at clause 27.[59] In this respect the AMIEU stated in its submission:

> *The provisions of the Act dealing with a licensing system allow the decision maker to take into account a broad range of information in determining whether or not a person is a fit and proper person to hold a licence as a labour hire provider. The AMIEU considers that the criteria specified in clause 27 of the Bill encompass appropriate considerations in determining fitness to hold a licence. Importantly, the AMIEU notes that the criteria addresses [at clause 27(1)(h] the issue of an applicant who is being put forward as a puppet of the real operator of a business, where the real operator would not be considered a 'fit and proper person' to hold a licence. This is definitely a situation that the AMIEU has encountered in the meat industry, where the real controller of a labour hire agency seeks to insulate themselves from legal consequences.*[60]

Other submitters expressed concern for the test primarily on the basis that it provided the chief executive with a broad scope of very subjective criteria by which to assess the suitability of an applicant.[61]

In view of the information requirements of applicants as provided at clause 13, Master Builders Queensland (MBQ), for example, stated that it was not clear to submitters how the chief executive could have regard for '*a person's character, including their honesty, integrity and professionalism*' or '*demonstrate an ability to comply with relevant laws*'.[62]

Further clause 27 (1)(b)(i) provides that the chief executive have regard to whether a person 'has a history of compliance with relevant laws', whilst clause 27 (1)(d) provides that the chief executive have regard for whether a person has been convicted of an offence against a relevant law. These seem to duplicate the same assessment criteria and leaves open the extent to which the chief executive can assess a person's compliance history or ability to comply by reference to any evidence other than a conviction notice.

Clause 27 (1)(h) provides that the chief executive may also have regard for 'whether the person is under the control of, or substantially influenced by, another person whom the chief executive considers is not a fit and proper person to provide labour hire services'. Again it is unclear how the chief executive is able to consider this matter with the information available.

Submitters also raised concerns that clause 15 (a)(iii) requires that each person who is an 'executive officer' of the corporation be assessed as a fit and proper person and it is unclear how sufficient evidence or information could be provided to the chief executive to enable a reasonable assessment for all 'executive officers'.

The department provided the following comment:

> *Section 27 is considered appropriate to ensure the chief executive, in making her/his decision whether a person is fit and proper to provide labour hire services, is able to have regard to a fulsome range of an applicant's attributes, characteristics and history.*

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59 QNMU, Submission 1, p 3; AMWU, Submission 4, p 4; AMIEU, Submission 15, pp 3-4; QCU, Submission 24, p 2; Salvation Army, Submission 26, p 4; NUW, Submission 28, p 4.

60 AMIEU, Submission 15, pp 3-4.

61 CCIQ, Submission 27, p 5; APSCo, Submission 29, pp 9-10; Master Builders Queensland, Submission 30, p 6; AMMA, Submission 31, pp 14-15; QLS, Submission 32, p 3; HIA, Submission 35, p 11.

62 Master Builders Queensland, Submission 30, p 6.

The Bill also provides robust mechanisms to review and appeal a chief executive's decision (see Part 8).[63]

Further:

A fit and proper person test is not uncommon in a licensing scheme. There are many examples of this test being applied including, the Australian Securities and Investment Commission for granting a credit licence, for recognition as a registered Training Provider; or to hold a weapon under the Queensland Weapons Act*.*

…

Section 27 sets out what the chief executive must consider for a fit and proper person to provide labour hire services. The criteria provided, being personal integrity, compliance with laws relevant to the labour hire industry, criminal history or history of bankruptcy or corporations offences, or whether the person is subject to the control of another person, are considered appropriate and sufficient to ensure the chief executive, in making her/his decision whether a person is fit and proper to provide labour hire services, is able to have regard to a range of an applicant's attributes, characteristics and history. Subsection (2) ensures the chief executive may also have regard to other matters considered relevant to the application which is not otherwise provided for in the remainder of the section. This may include membership (or disqualification) of a professional association or body.[64]

3.4.3 Information obtained to determine if a person is fit and proper and financially viable

Clause 44 permits the chief executive to make enquiries to determine whether a person is fit and proper and financially viable. This includes requesting the police commissioner to give the chief executive a report on a person's criminal history and a brief description of the nature of the offence or alleged offence giving rise to a conviction or charge in a person's criminal history.

Several possible issues regarding drafting inconsistency and relevance of criminal information against its intended purpose have been identified.

In terms of drafting inconsistencies, clause 44 (1)(a) provides that information can be obtained about a person for the purposes of determining if they are fit and proper in relation to an applicant or licensee. However, the fit and proper person test when applying for a licence extends to other persons (i.e. nominated officers and in some instances executive officers) and these have not been provided for. Additionally, information can be obtained under clause 44 (1)(b) for determining financial viability about a licensee only, not an applicant, despite financial viability also being a criteria for determining whether to grant a licence.

The information contained in a Queensland criminal history check is also limited to the extent it will not include, for example, criminal history information held in other jurisdictions, spent convictions or information about breaches for which a civil penalty was applied.

Clause 44 (2) also does not include a requirement to obtain the consent of the person about which the criminal history information is being sought. Consent appears to be a standard requirement across legislation; the *Police Service Administration Act 1990* (Qld) at section 10.2A relating to disclosure of criminal history for employment screening requires a person's consent, as does the *Victims of Crime Assistance Act 2009* (Qld) at section 69 (relating to the victim's criminal history).

Concerns were identified by submitters about use of irrelevant criminal history.[65] The Queensland Law Society stated in reference to the collection of charge information that they:

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63 Queensland Treasury, correspondence dated 22 June 2017, p 7.

64 Queensland Treasury, correspondence dated 5 July 2017, p 20.

65 AMMA, Submission 31, p 18.

> *... do not consider that the chief executive should be able to use alleged offences to determine whether someone is a "fit and proper person". Consideration should be given to offences that the person has been convicted of.*[66]

The department advised on 19 June 2017 that:

> *Legislating for the use of charge information for sanctions is uncommon… Relying on convictions for action is the default approach and is more appropriate for natural justice. The information the police commissioner might supply about a charge could however inform the chief executive in relation to a pattern of behaviour (for example an earlier conviction and a more recent charge for a similar offence) and this pattern of behaviour if established rather than the charge itself could be relied upon for suspension, cancellation or other steps where the action being taken related to the fitness and propriety of the person. However, it is still considered necessary and appropriate to request information about a person's history including charges.*
>
> *…*
>
> *Charge history can be relied on for cancellation for the contravention of a relevant law at 24(b) rather than in relation to fit and proper test, and also history of charges informs in this regard if for example there is a conviction for underpayment of wages and a history of similar charges without convictions (where matters may have been settled during proceedings), the charge history may be relevant… It is considered of limited utility in consideration around business viability.*[67]

The provisions of the Bill restrict the use of a person's charge history to financial viability only. Clause 45 states that criminal history reports and information obtained under clause 44 may only be used for making a decision mentioned in 44 (1). Clause 45 (3) goes on to state that a charge mentioned in a person's criminal history cannot be used to make a decision to suspend a licence under section 22 or whether a person is/continues to be a fit and proper person to provide labour hire services. Accordingly the department's abovementioned advice that such information could be used to 'inform a pattern of behaviour for the purposes of suspension' or to make a determination under clause 24 (b) rather than in relation to a person being fit and proper to cancel a licence is not accurate

Given these limitations, there may not be any basis for obtaining a person's criminal charge history for the purposes of the proposed Act.

Committee Comment

The committee notes the department's advice that use of a person's charge history is uncommon and that there is limited utility in using criminal history information for determining financial viability. The committee suggests the department clarify for what purpose the criminal records and charge information can and will be used in accordance with the Bill.

The committee further notes there are not associated provisions dealing with consent to obtain a person's criminal and charge information, and the storage, disposal and protection of confidential information relating to a person's criminal and charge history. It is the committee's view that these should be provided for in the legislation.

3.5 Part 4, Division 1 Licence conditions

Clause 29 provides that a licence may be subject to conditions imposed by the chief executive, and may include requiring a licensee to hold insurance (clause 29 (2)(a)), lodge a security (clause 29 (2)(b)) or to provide information or access for inspection. Clause 29 (3)(b) enables the chief executive to impose, vary or revoke conditions on a licensee at any time during the term of the licence by notice.

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66 QLS, Submission 32, p 4.

67 Queensland Treasury, correspondence dated 19 June 2017, p 9.

Submitters raised issues around the types of conditions which may be placed on businesses and the way that conditions may be imposed. In this respect, submitters noted in their submissions[68]:

- MBQ states that it is left to the discretion of the chief executive in the Bill to decide whether or not a licensee must lodge a security, without providing any information on how this decision will be made, what amount of security is under consideration, who will hold the security, whether it will earn interest, and if so, who will receive that interest.
- HIA notes that the examples of conditions a chief executive could put on a licence at clause 29 (including a requirement to take out insurances or provide a security) could significantly add to the cost of licensing. Additionally, while clause 30 requires a show cause notice be issued where a condition is imposed, etc., there is still a very broad discretion to exercise this power and the Bill should be redrafted to contemplate the circumstances when a condition is imposed.
- AMMA also notes that there are no legislative checks to ensure that a decision to impose a condition has been arrived at fairly, and that while there is a requirement to issue a show cause notice under clause 30 if there is an intention to impose a condition on a licence, there is a level of uncertainty that could cause unease about what conditions could be imposed and why.

Additionally with respect to conditions requiring payment of a security at clause 29 (2)(b), whilst the intent is understood to deter the practice of 'phoenixing' and ensure that there is a safety net of wages for employee conditions in the event of liquidations (supported broadly by MUA and NUW[69]) there is an omission in the Bill providing for the mechanisms by which the chief executive may hold a security.

The department has provided the following comment:

> *Clause 29 provides that the chief executive may apply conditions to a licence. This is not uncommon in a licensing scheme. Business licence schemes, such as WorkCover may seek solvency and Australia Prudential Regulation Authority requirements, the provision of financial statements, or recording of information. Types of conditions are (without limiting) described at subsection (2) and include holding insurance, offer a security or report at specified intervals. The provision of condition attached to a licence will strengthen the scheme while allowing persons to operate where their application may have otherwise failed. As with the all the powers granted to the chief executive, these will be administered appropriately and be subject to review and appeal.*[70]

Committee Comment

On the matter of security bonds, the committee notes there are not associated provisions in the Bill to provide authority to the chief executive to request and hold a security. It is the committee's view that these should be provided for in the legislation.

3.6 Part 4, Division 2 Reporting

Clause 31 requires a licensee to provide a report to the chief executive every six months. Clause 31 (2)(a) – (n) at least 14 matters which must be included in the six monthly reports including the number of relevant workers supplied, a description of the employment arrangements entered into between the licensee and the relevant workers, details of the type of work carried out, the locations where work was carried out , details of any accommodation provided, information about the licensee's compliance with relevant laws, disclosure of any disciplinary or enforcement action taken, any notifiable incidents under the *Work Health and Safety Act 2011* or applications for compensation made under the *Workers' Compensation and Rehabilitation Act 2003*.

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68 Master Builders Queensland, Submission 30, p 11; AMMA, Submission 31, p 16, HIA, Submission 35, p 11.

69 MUA, Submission 33, pp 5-6; NUW, Submission 28, p 5.

70 Queensland Treasury, correspondence dated 5 July 2017, p 23.

Some submitters including QNMU, AMWU, ADCQ, Salvation Army and others stated that the reporting requirements were appropriate, further that:

- for existing compliant labour hire providers the information required should already be recorded, and
- the requirements could be expanded upon, including recoding visa information and accommodation information.[71]

The QCU stated in their submission:

> *The information that is required by the proposed section 31 would not be difficult to establish for a legitimate operator. If an organisation would struggle with providing the details proposed it would be reasonable to assume that they are not keeping proper records as would be required by a range of other existing legal obligations, particularly in terms of the FWA. The details that will be provided by labour hire operators and collected by government will also be of use to gain a better understanding of the industry and its scope. Information about operators will be useful to potential clients as well as potential employees who will have access to understanding of the track record of the respective labour hire providers.* [72]

Other stakeholders raised concerns about the frequency of reporting, the level of detail, and the nature of the information required to be provided by a licensee.[73] Numerous submitters argued that there is considerable burden in compiling information for provision to the regulator.

The department responded to the issues of reporting as follows:

> *Reporting is considered a crucial component of the scheme, both to ensure ongoing eligibility and compliance; and to provide information on the performance of the industry to inform future policy and compliance activities.*
>
> *It is noted that the information requested should not be unduly onerous for providers who are compliant with relevant legislation. On balance, self-reporting on a six monthly basis, with annual renewal of a licence, is considered appropriate. It is anticipated all reporting will be done on-line, removing the need for a hardcopy report to be provided.*
>
> *…*
>
> *The information sought in relation to accommodation is to be provided 'to the best of the licensee's knowledge'. It is not envisaged that the licensee would need to interrogate workers in relation to their accommodation if the licensee genuinely has no knowledge of the accommodation arrangements to report on this provision.*
>
> *Section 32(a) also provides that further matters may be prescribed in regulation in regards to what a licensee must report on under Section 31(2). The Bill provides examples of what might be specified in a regulation including: the number of workers the licensee has supplied who are of a non-English speaking background (i.e. English is not the first language spoken at home), the number of workers the licensee has supplied who hold particular types of visas under the* Migration Act 1958 *(Cwlth), information required about the licensee's compliance with a relevant law.*

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71 QNMU, Submission 1, p 3; AMWU, Submission 4, p 4; ADCQ, Submission 11, p 2; AMIEU, Submission 15, pp 4-5; United Voice, Submission 23, p 3; QCU, Submission 24, p 2; Salvation Army, Submission 26, p 5; NUW, Submission 28, p 4.

72 QCU, Submission 24, p 2.

73 Chandler Macleod, Submission 10, p 4; AgForce, Submission 18, p 3; Growcom, Submission 20, p 2; APSCo, Submission 29, p 10; Master Builders Queensland, Submission 30, pp 8 & 14; AMMA, Submission 31, p 16; QLS, Submission 32, pp 3-4; NFF, Submission 34, p 7; HIA, Submission 35, pp 11-12; RCSA, Submission 37, p 19; Ai Group, Submission 38, pp 9-11.

This could provide for reporting to include for example: the number of workers on visas, what types of visa the workers held, countries of origin, if a language other than English is the worker's primary language.

…

Confidential information will not be disclosed other than as expressly provided for in the Bill at Section 104(3), for example with the written consent of the person to whom the information relates or if the disclosure is authorised under an Act or law.[74]

With respect to the obligation to notify the chief executive of particular changes in circumstances at clause 40 in addition to six monthly reporting required at clause 31, the department stated:

The ordinary turnover of labour hire workers would not ordinarily be a matter anticipated to be notifiable other than at regular reporting intervals. While the specific information will be prescribed in subordinate legislation, it is anticipated that such information would relate to the identity of the licence holder for example, has an executive officer of the corporation changed; has there been a conviction of a serious offence such as fraud, assault or breach of workplace law; or bankruptcy or insolvency.[75]

With respect to clause 102, the waiver of particular requirements to give information, the department advised:

Section 102 of the Bill provides for the ability of the Chief executive to waive a relevant information requirement if the chief executive is satisfied that the applicant or licensee has satisfied another scheme (whether it be another licensing regime or a professional accreditation scheme) and the requirement is substantially the same.

This is an appropriate approach to reduce the administrative burden of applying for a licence or reporting on activity by recognising the information those applicant and licensees have already established and/or report on particular matters.

The Chief executive may make a policy about such a waiver and if so, must publish that policy.[76]

Committee Comment

The committee is pleased to note the advice that the department has considered the administrative burden and sought to implement systems that limit the application and reporting burden for licensees.

The committee also notes the intent of government to recognise compliance with information requirements under other regulatory or non-regulatory accreditation schemes as provided for by clause 102 which provides the chief executive with authority to waive information requirements.

Further, given the intent to prescribe the details about how a licensee is to report in regulation, the committee encourages the department to consult with industry as it develops its reporting framework.

3.7 Part 8 Reviews and Appeals

Clause 93 (2) provides that an interested person may apply to the chief executive for a review of a decision to grant a licence, suspend a licence or impose, vary or revoke a condition of a licence. An interested person is defined at clause 93 (3) as:

interested person *means a person or organisation, other than a licensee, who has an interest in the protection of workers or the integrity of the labour hire industry.*

74 Queensland Treasury, correspondence dated 5 July 2017, pp 24-26.

75 Queensland Treasury, correspondence dated 5 July 2017, p 29.

76 Queensland Treasury, correspondence dated 5 July 2017, pp 38-39.

The intent of this provision is to enable those with information relevant to the conduct of a particular operator to report conduct which may be contrary to the integrity of the labour hire industry.

In terms of the use of this provision the NUW advised the committee during the public hearing on 22 June 2017:

> *In my view there are some companies that I deal with that I know are not complying with the laws. If I were to see that they had attained a labour hire licence, I would suspect perhaps that the chief executive had not had all of the information to hand because if they had they may have made a different decision. I think it would be my role to ensure that those vulnerable workers were protected to essentially say that we think there could have been a mistake made as to the facts in this situation and to supply the chief executive with what we would say are the relevant facts.*[77]

Other submitters were significantly concerned about the unfettered ability of any person or organisation to interrupt the carrying on of a lawful business.[78] Workpac stated during the public hearing on 22 June 2017:

> *…there should be an opportunity for people to provide alternative information to the chief executive to make a decision. However, the bill is quite open in terms of allowing a single person or an organisation or a body to lodge an appeal to that. Rather than just being a particular body, there could be an unlimited number of people who could potentially challenge a licence decision.*[79]

The department advised:

> *Providing review and appeal rights for a person or organisation with an interest in the protection of workers is appropriate for the protection of vulnerable workers.*
>
> *…*
>
> *Section 93(2) 'interested person' does not include another licensee. A labour hire licensee is not an interested person and cannot seek a review or appeal of a decision. This will remove the risk of malicious commercial intent be industry competitors.*[80]

A further concern was raised with respect to the issue of decision notices. Whilst clause 97 (1)(c) provides that the chief executive must issue a decision notice within 21 days after receiving the review application, clause 97 (6) states that if the chief executive does not provide a review notice of a decision within that 21 days, the chief executive is taken to have made a review decision confirming the decision.

The QLS indicated that allowing a decision to be confirmed simply due to the passage of time is unjust and unfair.[81]

The failure of a decision-maker to provide reasons for a decision within 21 days under clause 97, means a person may wait significantly longer – to obtain reasons for a decision – to be able to decide whether they wish to appeal to QCAT against a review decision.

The department advised on 19 June 2017 that:

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77 Ms Beynon, NUW, public hearing transcript, Brisbane, 22 June 2017, p 5.

78 Growcom, Submission 20, p 3; Ai Group, Submission 38, p 12; CCIQ, Submission 27, p 3; AMMA, Submission 31, p 19; NFF, Submission 34, pp 7-8; HIA, Submission 35, pp 15-16.

79 Mr Hockaday, Workpac, public hearing transcript, Brisbane, 22 June 2017, p 24.

80 Queensland Treasury, correspondence dated 5 July 2017, pp 36-37.

81 QLS, Submission 32, p 5.

Further consideration will be given to the drafting of this provision to ensure that, where a decision is not the decision sought by the applicant, a QCAT notice is provided in such cases, including where a review notice is not given within 21 days.[82]

Committee Comment

The committee notes the advice of the department in relation to the review and appeal provisions. In regards to the provisions at clause 97 (6) allowing for a decision to be confirmed due to passage of time, the committee regards this provision to be superfluous and may reasonably be removed.

3.8 Other matters

3.8.1 Register of licences

Clause 103 provides that the chief executive must keep a register of licences and make the register available on the labour hire website. The primary purpose of the public register is to enable entities engaged in the hire or workers or employed as labour hire worker to execute their legal responsibility to ensure the person with whom they are dealing are appropriately licenced. The Bill provides for a list of 14 matters which must be reported in the public register.

Some submitters supported the publication of information on a public register of licences. For example the Salvation Army stated they:

… strongly support the provision to make the list of licences publically available as an effective means to increase transparency across the industry and to better inform potential jobseekers.[83]

Similarly the NUW stated:

The public register of licenses available through the 'labour hire website' will further support the transparency of the industry and activate community trust in the systems by allowing potential workers and clients to view the credentials of a provider.[84]

Other submitters[85] raised concern that the information required to be published on the register may be confidential and in some instances providing this information on a public register may breach their privacy responsibilities to their contractors and employees. For example, the HIA stated:

…why does information about "the locations in Queensland where work is carried out by workers supplied by the licensee" need to be published? Similar to concerns raised above regarding privacy of client details, it would also allow any potential interested parties, such as competitors or unions to interfere with host businesses.[86]

Additionally, the AMMA stated:

It is incredibly onerous, particularly having regard to the fact that when labour hire is engaged through the companies that operate in our space, who we say are highly compliant companies, labour might be engaged for one shift or one swing, which might be seven days, it might be 14 days, and there might be a situation where in the six-month period, which is the reporting period in the legislation, a labour hire employee might be assigned to a number of different projects and in circumstances where they might be engaged for a short term or are working on different projects around the state. You can imagine, for example, for companies that might have 3,000

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82 Queensland Treasury, correspondence dated 19 June 2017, p 15.

83 Salvation Army, Submission 26, p 6.

84 NUW, Submission 28, p 4.

85 Anonymous, Submission 14, p 22; APSCo, Submission 29, pp 10-11; Master Builders Queensland, Submission 30, p 12; AMMA, Submission 31, p 20; QLS, Submission 32, pp 3-4 & 5; HIA, Submission 35, p 12.

86 HIA, Submission 35, p 12. The submission raises concerns about reporting of information under clause 31, specifically in regard to group training organisations, that it would be inappropriate to require disclosure of the work location of an apprentice, particularly if that information is subsequently published on a website.

employees working in the resource sector—labour hire companies—compiling and maintaining a register for that sort of information for the purposes of reporting on it every six months will be quite onerous.[87]

The department advised:

The Bill at Sections 103 and 104 provides for the establishment and maintenance of a Labour Hire website and a register of licenced **providers***. It is anticipated that this will be a 'dynamic' site able to inform potential uses of labour hire services and workers about the location and (in general) performance of a licenced labour hire service provider.*

…

Addresses of workplaces, beyond broader geographical location (postcode or region) and accommodation are not published.[88]

Further:

Recording matters listed under s103 is considered necessary and appropriate to ensure the objects of the scheme are achieved and to administer the labour hire licensing system.

…

It is considered these matters are not likely to be commercially sensitive. Commercially sensitive matters are not included in the register.

Providing a listing of licenced operators, with contact information, information of the industries and locations serviced, compliance with relevant laws, work health and safety performance, the provision of accommodation and benefits and any conditions imposed are seen as vital for transparency. The availability of such information to inform users of labour hire services and workers is also a cornerstone of the labour hire licensing scheme.[89]

3.8.2 Protection against self-incrimination

The QLS raised concerns in its submission with regard to the protection against self-incrimination, specifically in regard to clauses 70, 71 and 101 of the Bill, stating:

Clause 70(5) waives the right against self-incrimination. The Society is very concerned by this. Any breach of a fundamental right, such as the right to claim privilege against self-incrimination, should be a last resort and we can see no justification for it in this Bill. Fundamental rights of this nature underpin the rule the law and the justice system as a whole. As stated below, we do not consider that clause 101 is strong enough to protect this right by preventing self-incrimination and the derivative use of evidence.

The Society expresses serious concerns with respect clause 71 on the same basis. It compels people to give evidence about offences in the same way that the CCC does. Even though there is protection against self-incrimination, this is not justified by the objects of the Bill, specifically because it does not state that there are other protections in place for persons compelled by this provision.

…

87 Ms Carroll, AMMA, public hearing transcript, Brisbane, 22 June 2017, p 19.

88 Queensland Treasury, correspondence dated 5 July 2017, p 26.

89 Queensland Treasury, correspondence dated 5 July 2017, p 39.

> *The Society is concerned that clause 101 does not adequately protect someone from self-incrimination. Sub-section (1) should not limit the types of documents covered by this immunity.*[90]

The department provided the following comment:

> *The waiver of the defence of self-incrimination in regard to the production of a document required to be kept under the legislation is not uncommon. It ensures that an inspector is able to inspect a document that is required to be kept by the person under that legislation. The protection against its derivative use is also not uncommon and provides suitable protection against self-incrimination.*
>
> *An example of similar provisions are in the* Fair Trading Inspectors Act 2014 *at s57, s58 (relating to the production of document) and s72 (the evidential immunity provision).*
>
> *Clause 101(2) applies if an individual gives or produces information or a document, other than a document, required to be kept or given under this Bill, to the chief executive. Clause 101(2) provides that the information or document, and other evidence directly or indirectly derived from them, obtained under clause 43 or 70 is not admissible against the individual in any proceeding to the extent that it incriminates the individual, or exposes the individual to a penalty, in the proceeding.*
>
> *This provision is considered to mitigate the impacts of the Bill on abrogating the common law self-incrimination protection as it prevents a person from being providing evidence of their own failure or guilt. Further, in* Trade Practices Commission v Abbco Iceworks Pty Limited and Others *the majority of the court found that the penalty privilege is not available to corporations at common law. Further, the privilege against exposure to forfeiture has limited application in Queensland by virtue of the* Evidence Act 1977 *section 14 (1)(a) which provides:*
>
> > *(1) The following rules of law are hereby abrogated except in relation to criminal proceedings, that is to say—*
> >
> > > *(a) The rule whereby, in any proceeding, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose the person to a forfeiture.*[91]

3.8.3 Powers of the chief executive and the delegation of powers

The chief executive is given the discretion to consider additional matters with respect to a number of provisions. Some provisions which grant the chief executive a discretion also state how that discretion may be exercised, for example with regard to waiving an information requirement under clause 102, but many other significant provisions provide little to no limitation or guidance on the exercise of the discretion.

The discretion under these provisions can subsequently be delegated under clause 106 which states:

> *The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified officer of the department*.

Submitters raised concerns about the degree of discretion granted to the chief executive under the Bill as noted in the clauses about relevant laws and imposing conditions. Including that:

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90 QLS, Submission 32, p 5.

91 Queensland Treasury, correspondence dated 5 July 2017, pp 32-33.

- decisions could be made, not least relating to relevant laws, by people with no experience or expertise in the relevant law and without the affected party having been found guilty of that relevant law[92]
- the Bill does not include any parameters around the imposition of conditions at clause 29.[93]

MBQ stated:

> *27(2) should be deleted. It grants far too wide a discretion to an officer to the executive government without any oversight from parliament. Especially considering that the Chief Executive may at any time suspend or cancel a licence if he considers the person no longer is a fit and proper person.*[94]

The department advised with respect to:

- the chief executive powers:

  The administration of the Act, in terms of decision making is vested in the Chief executive. Part 3 of the Bill deals comprehensively with the powers of the Chief executive to grant, renew or restore, suspend, or cancel a licence. Part 8 deals with the review and appeal of a decision of the Chief executive.

  It is not uncommon for a Chief executive to be provided with powers to grant or not grant permissions. For example, the Chief executive is the decision-making authority for the purposes of the Child Employment Act 2006*.*

  The Chief executive, as a very senior public official, is bound by the Government's Code of Conduct and must act with proper process, due diligence and in good faith. As Chief executive, she/he is bound to act on behalf of the Government as a model litigant ensuring natural justice in all dealings. These are in addition to, or underpin the relevant legislative prescriptions.

  The ability of the Chief executive to inform her/himself in relation to a decision and to take into account a range of factors is considered necessary and appropriate in light of the range of businesses which will seek to be licenced under the scheme and also to allow for discretion to deal with new start-up businesses and mature/established businesses.[95]

- the discretion under clause 27:

  The provision is considered appropriate to ensure the chief executive, in making her/his decision whether a person is fit and proper to provide labour hire services, is able to have regard to a fulsome range of an applicant's attributes, characteristics and history. The Bill also provides robust mechanisms to review and appeal a chief executive's decision (see Part 8).[96]

- the discretion in clause 24:

  The cancellation of a licence is a serious matter. In addition to the processes set in the Bill, the chief executive must be mindful of the government as a model litigant at QCAT and for ensuring natural justice is provided.

  Allowing the chief executive to consider a contravention of a relevant law, rather than being contained to only conviction of an offence, is considered appropriate. For example, the chief

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92 Master Builders Queensland, Submission 30, p 7.

93 Master Builders Queensland, Submission 30, p 11; AMMA, Submission 31, p 16, HIA, Submission 35, p 11.

94 Master Builders Queensland, Submission 30, p 6.

95 Queensland Treasury, correspondence dated 5 July 2017, p 15.

96 Queensland Treasury, correspondence dated 19 June 2017, p 7.

executive may consider the circumstances where the Fair Work Ombudsman has advised that they had established non-compliance with the Fair Work Act 2009 *(i.e. significant or deliberate underpayment of wages), but the matter was settled prior to the completion of any prosecution action or was outside of its litigation policy.*[97]

3.8.4 Transitional provisions

Clause 109 is a transitional provision and provides that labour hire providers are not subject to a contravention of the Act up to 28 days after commencement, or if after the 28 days has passed the provider made an application within that 28 day period, even if the application has not been decided. In accordance with clause 2, the Act would commence on a day to be fixed by proclamation.

Submitters were concerned that 28 days following commencement was insufficient time for industry to be made aware, and given the magnitude of information requirements, is not sufficient time to make an application.

APSCo stated:

28 days is not a sufficient transitional period for existing providers to ensure compliance with the Bill and to compile the necessary information to make an application. The period should be extended.[98]

AMMA stated that given the breadth of information sought, making an application within 21 days will create significant strain on their resources. This also affects clients who will rely on the publishing of the register to ensure they are not entering into an arrangement with an unlicensed provider.[99]

The QLS stated that the timeframe under clause 109 may not be sufficient to allow businesses to apply for a licence (28 days from commencement). Businesses may have some knowledge of the proposed scheme, but they will not know the particulars until it commences. There may be a genuine inability to meet this timeframe which will then put them in breach of the legislation and may impact their contracts with other businesses.[100]

The department advised:

This transitional provision provides for existing operators to not be in breach of the Bill from its proclaimed date by allowing current providers 28 days to lodge their application for a licence.

It is anticipated that there will be an extensive awareness campaign in the lead-up to the proclamation date of the Bill, including any provisions contained in subordinate legislation.[101]

Committee comment

Whilst the committee acknowledges the concern for vulnerable workers in the labour hire industry, the committee agrees that 28 days is an unusually short transitional period. The committee suggests a longer transitional period is necessary. Forty (40) to sixty (60) days is considered appropriate, and consistent with transitional arrangements in other legislation where new obligations have been introduced for industry.

97 Queensland Treasury, correspondence dated 19 June 2017, p 6.

98 APSCo, Submission 29, p 10.

99 AMMA, Submission 31, p 20.

100 QLS, Submission 32, p 5.

101 Queensland Treasury, correspondence dated 5 July 2017, p 40.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- The rights and liberties of individuals, and
- The institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the House.

4.1.1 Rights and liberties of individuals

Section 4 (2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

The committee identified three areas of concern with regard to the rights and liberties of individuals.

Obligations of licensees

Proposed Part 4 of the Bill provides for obligations of licensees. This includes permitting the imposition of conditions on a licence at Clause 29 (as noted at 3.5). Reasonableness and fairness of treatment of individuals are relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The power granted to the chief executive by clause 29 appears broad. It can be exercised for the reasons, and in the circumstances, the chief executive considers appropriate, and may have a significant impact on a licensee. Its use is restrained by:

- subsection (4) which provides that nothing in clause 29 authorises the chief executive to impose a condition that is inconsistent with the Bill
- clause 30 which requires that the chief executive provide the licensee with a show cause notice before imposing or varying an existing condition on a licence (and similarly clause 16 where a condition is imposed as part of initial grant of a licence)
- the imposed condition requiring the licensee to give information or allow inspection of the premises is limited to 'stated reasonable intervals', and
- clause 104 'Disclosure of confidential information' which will apply to information provided by the licensee.

Although clause 29 allows for the imposition, variation or revocation of licence conditions, the power is tempered as outlined and clause 30 provides for a show cause process whereby a licensee can challenge a proposed variation if required.

Obtaining and using information

Part 5 of the Bill provides for obtaining and using information, including criminal history information. As noted above at 3.4.3, clause 44 allows the chief executive to make inquiries to determine if a person is a fit and proper person to be a licensee or whether the business to which the licence relates is financially viable. Inquiries can include asking the Police Commissioner for a criminal history report about the person, including a brief description of the nature of an offence giving rise to a conviction or charge noted in the criminal history.

The explanatory notes advise:

> *Clause 45 requires that information obtained under clause 44 may only be used by the chief executive for making a decision about whether a person is, or continues to be, a fit and proper person to hold a licence. However, if the information relates to a charge rather than a conviction, the chief executive may not use the information to suspend a licence under clause 22 or for*

making a decision as to whether the person is, or continues to be, a fit and proper person to provide labour hire services.[102]

Unlawfully disclosing criminal history information will be an offence under s.46.

Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. This includes the reasonable and fair treatment of an individual's personal information and regard for a person's right to privacy.

Clause 44 empowers the chief executive to procure personal and, potentially, sensitive information about an applicant or licensee. Although, as noted, the use of the procured information must be limited to the purposes outlined (to determine if a person is fit, proper and financially viable) and clause 45 (3) restricts the use of information about a person's charge history.

General power of an inspector to require information or attendance

As noted at 3.8.2, clause 71 provides a general power of an inspector to require information or attendance from a person; compelling a person's attendance before an inspector at a stated time and place to answer questions or produce documents related to an offence under the bill, as well as providing information related to the offence.

The power to compel attendance to answer questions and produce documents to investigate an offence under the Bill relates directly to, and potentially impinges on, the rights and liberties of a person, which must be had regard to under the fundamental legislative principles. The QLS has expressed concerns about clause 71 (also referred to at 3.8.2), noting that this provision compels people to give evidence about offences in the same way that the CCC does and questioning the justification for such a power with reference to the objects of the Bill.

There are some safeguards on the use of the powers under clause 71 such the power cannot be exercised unless an inspector reasonably believes an offence under the proposed Act has been committed and that a person may be able to give information about that offence. There is also a protection against self-incrimination, to the extent it is a reasonable excuse not to provide information where self-incrimination arises.

Departmental response

The department advised the committee on the 14 July 2017:

The Explanatory Notes for the Bill note that 'The Bill is generally consistent with fundamental legislative principles (FLP) and gives sufficient regard to these principles. Legislation establishing a licensing scheme and inspectoral powers will generally have provisions which by their nature touch on FLP. Any provisions which could potentially breach FLP are considered justifiable to achieve the Government's objective to protect labour hire workers from exploitation and restore confidence in the labour hire industry. The Government has sought to mitigate the potential for FLP breach.'

In relation to the FLP issue 'rights and liberties of individuals' (section 4(2)(a) Legislative Standards Act 1992 Does the Bill have sufficient regard to the rights and liberties of individuals, and the clauses and provisions discussed above, the department responds:

Part 4 Condition provisions clauses 29 and 30

The inclusion of an ability for the chief executive to impose conditions is considered necessary for the effective operation of the proposed labour hire licensing scheme, and an ability to impose conditions is a standard component of licensing schemes generally. This power, which sits with

[102] Explanatory notes, p 16.

the chief executive, would allow for risks to be managed in specific high risk areas rather than applying all obligations broadly by legislative provision.

These provisions allow the chief executive some flexibility to grant licences or allow a licensee to remain licensed while being able to address identified issues or risks, where in the absence of an ability to impose a condition the chief executive might decide not to grant a licence or not to allow a licensee to remain licensed.

As discussed in the comments above, the Part which allows the chief executive to impose conditions (clause 29) includes a show cause process (clause 30).

The decision to impose, vary or revoke a condition of a licensee's licence is also reviewable under the review and appeals provisions of the Bill (Part 8).

Also as noted in the above comments, any information provided as part of a show cause process would be subject to the confidentiality provisions of the Bill, e.g. clause 104.

The inclusion of specific examples in the Bill at clause 29(2) is intended to be informative as to types of conditions which might be applied but as provided in that clause; it does not limit the conditions the chief executive considers appropriate in the circumstances to allow for flexibility given the broad scope of the Bill and the various issues or circumstances which might cause the chief executive to consider imposing a condition. For example, the 'stated information' could be additional addresses or preliminary visits for a business with no or limited physical presence.

Clause 29(4) provides a limiting measure: that the chief executive is not authorised to impose a condition that is inconsistent with the Bill.

The chief executive would be mindful of providing natural justice to applicants and licensees in the exercise of all the functions and powers of the chief executive under the Bill, and of the obligation for the government to be a 'model litigant' at QCAT.

Part 5 Criminal history check provisions *As discussed in the comments above, the powers to seek a criminal history check are provided in order to assist the chief executive determine whether the person is a fit and proper person to provide labour hire services or, if the person is a licensee, whether the business relevant to a licence is financially viable, and there are restrictions and protections in place limiting the use of the information and its confidential treatment (clause 45(3) and clause 46). The fit and proper test is a key element of the Bill and is one of the factors the chief executive must be satisfied of to grant a licence. Criminal history checks are a feature of other business or occupational licensing schemes such as Debt Collectors (Field Agents & Collection Agents) Act 2014, s 109; Second-hand Dealers & Pawnbrokers Act, s 9A; Tattoo Industry Act, s 16A(3); and the Security Providers Act, s 12B*

The inclusion of an ability to seek a criminal history check is necessary to ensure that the chief executive is able to verify information provided by applicants to demonstrate that they are a fit and proper person to hold a licence. If the Bill is passed, it is envisaged that as part of the online application process, applicants would be advised and acknowledge that the information they are providing must be true and correct and may be verified including by criminal history check.

Clause 71 *includes an express protection against self-incrimination and the powers are considered necessary as part of a strong compliance function to be able to require a person to provide information or attend a meeting where an inspector reasonably believes an offence against the legislation has been committed and a person may be able to give information about the offence. The ability to require a person to provide information or attend a meeting is appropriate for inclusion in the Bill given the seriousness of issues which arise in the labour hire industry, and is also consistent with other Queensland legislation for inspectoral powers (more below).*

Clause 71(2) provides that the 'inspector may, by notice given to the person, require the person to –

a) give the inspector information related to the offence by a stated reasonable time; or

b) attend before the inspector at a stated reasonable time and place to answer questions, or produce documents related to the offence'.

Clause 71(4) provides however that 'for an offence under section 89 (failure to comply with requirements of inspectors), it is a reasonable excuse for an individual not to comply with a requirement made under subsection (2) if complying might tend to incriminate the individual or expose the individual to a penalty.

In relation to the powers of an inspector under this clause to require information or attendance, the provisions of the Bill place obligations to comply with the administrative and enforcement functions of the scheme. Given the seriousness of the allegations of abuse or exploitation related to the labour hire industry, strong enforcement powers are necessary including to require a person to comply with an inspector's written notice to provide information or attend a meeting at a stated time and place. These provisions are also consistent with other Queensland legislative provisions where strong inspectoral powers are needed, for example, the Liquor Act 1992 Part 7, section 183AA. The Fair Trading Inspectors Act 2014 which applies to Office of Fair Trading Inspectors in their capacity as inspectors under a range of other portfolio legislative schemes (for example for Security Providers, Motor Dealers, Property Occupation) includes similar powers – see Part 3 of Fair Trading Inspectors Act 2014, section 60 specifically.

The provisions and offences and penalties attached are considered necessary to ensure the effective operation of the scheme and are comparable with similar offences and penalties introduced under other Queensland legislation, for example Property Occupations Act 2014, the Motor Dealers and Chattel Auctioneers Act 2014, the Debt Collectors (Field Agents and Collection Agents) Act 2014 and the Liquor Act 1992.

The Bill provides for protections and limits around self-incrimination as discussed in the comments above. The Queensland Law Reform Commission (QLRC) in its reports has considered that the privilege against self-incrimination may be abrogated by statute where the legislature considers that it is outweighed by other factors 103, and that whether legislation does abrogate the privilege against self-incrimination will be interpreted 'if the intention to do so is clearly apparent in the legislation itself' 104.

The same report notes that 'legislation that abrogates the privilege against self-incrimination … may restore some measure of protection to an individual compelled to provide information by imposing limits on how that information may be used'105. The drafting of the Bill has sought to impose limits in this way through the interaction of clauses, including 70, 71, 89 and 10.[106]

4.1.1.1 Natural justice

Section 4 (3)(b) of the *Legislative Standards Act 1992* requires legislation be consistent with principles of natural justice.

As noted at 3.7, Clause 97 (6) provides that if the chief executive does not give the review notice within the required 21 day period (as per clause 97 (1)) period, the chief executive is taken to have made a review decision confirming the original decision. This potentially means that a decision on a review,

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[103] Queensland Law Reform Commission, Report no 59, *The abrogation of the privilege against self-incrimination* (2004), p 15.

[104] Queensland Law Reform Commission, Report no 59, *The abrogation of the privilege against self-incrimination* (2004), p 15.

[105] Queensland Law Reform Commission, Report no 59, *The abrogation of the privilege against self-incrimination* (2004), p 17.

[106] Correspondence from the Office of Industrial Relations, Queensland Treasury, 17 July 2017, pp 3-6

including one that is detrimental to the applicant, may be made as a result of inaction on the behalf of the chief executive.

The QLS submitted:

> *The Society is concerned about clause 97(6) of the Bill. If a party has a right of review, then that party should be afforded that right by their review being progressed and determined within an appropriate timeframe. Allowing a decision to be confirmed simply due to the passage of time is unjust and unfair.*[107]

The question arises as to whether a deeming provision which results in an unfavourable result to an application for review is an appropriate mechanism to include in the Bill, including whether such a provision does not afford an applicant sufficient procedural fairness.

Departmental response

The department advised the committee on the 14 July 2017:

> *The concerns raised are noted. Section 97(6) is a protection provision to ensure that review processes do not lag beyond the statutory limit of 21 days, creating uncertainty or potentially the inability to operate as a labour hire provider for an applicant or licensee. In the event that a review decision is not made the provision enables the applicant to progress directly to QCAT for appeal. This is an appropriate process. This construction is used elsewhere across the Queensland legislature, for example Guide, Hearing and Assistance Dogs Act 2009 – Section 69; Petroleum and Gas (Production and Safety) Act 2004, section 818.*
>
> *The operation of this provision ensures that the chief executive must review the decision and provide a response as required at clause 97(1). It is envisaged that the chief executive would meet their obligations to review the decision, make a decision, and give notice of the decision consistent with the requirements of clause 97(1).*
>
> *The approach provided for in drafting is to protect an applicant or licensee and their right to a prompt review and appeal if necessary. If the chief executive for some reason does not advise of a review decision in the time required under clause 97(1), the effect of 97(6) is that the person who sought the review may proceed to QCAT for an appeal rather than having to wait any longer for the chief executive to provide a decision.*[108]

4.1.1.2 Power to enter premises

Section 4 (3)(b) of the *Legislative Standards Act 1992* requires legislation confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Obtaining information

Proposed Part 5 of the Bill provides for obtaining information. Clause 42 'Chief executive may enter applicants' place of business for particular purposes' applies to an applicant for a licence and an applicant for renewal or restoration of a licence.

Subsection (2) provides that the chief executive may enter and inspect the applicant's place of business for the purpose of ascertaining whether the applicant is a fit and proper person to provide labour hire services. Under subsection (3) the entry must be made at a time the applicant's business is being carried on or with the consent of the applicant. A place of business does not include a part of the place where a person resides (subsection (4)).

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107 QLS, Submission 32, p 5.

108 Queensland Treasury, correspondence dated 17 July 2017, pp 6-7.

This means clause 42 will allow entry to the applicant's place of business without notice and without consent or a warrant, at a time when the applicant's business is being carried on. Consent would be required if entry was to occur at a time when the applicant's business was not being carried on (eg. outside usual trading hours).

This does not accord with section 4(3)(b) of the *Legislative Standards Act 1992*. Entry to business premises without consent or a warrant is not particularly unusual, although the more intrusive the search powers once inside the business the greater the potential infringement on a licensee's rights.

Powers of entry

Proposed Part 6, Division 2 of the Bill provides for powers of entry. Clause 55 provides general powers for an inspector to enter a place, including instances where consent is given by an occupier, where the place is a public place and where entry is authorised by a warrant.

If the inspector enters with consent or under a warrant, then the inspector must comply with any conditions of the consent or with the terms of the warrant.

Additionally, clause 55 (1)(d) provides that an inspector may enter a place if it is a workplace and, when entry is made, the workplace is required to be open for inspection under a condition of a licence, or it is open for business or work is being carried out there. Entry under clause 55 (1)(d) may be made with or without the consent of an occupier or a warrant.

Clause 56 proposes to limit entry powers in relation to any part of a place where a person resides, except with (a) consent, (b) under a warrant or (c) for the purpose only of gaining access to a place suspected to be a workplace where the inspector reasonably believes that no reasonable alternative access is available, and access is at a reasonable time having regard to the times it is believed that work is being carried out.

Under the fundamental legislative principles, legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[109] Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.[110]

The explanatory notes state:

> *Part 6, Division 2, Subdivision 1 of the Bill provides inspectors with general powers to enter any premises, including residential premises in limited circumstances, i.e. if they reasonably believe the residential premises to be a workplace or for the purposes of gaining access to a suspected workplace. Entry may be by consent, without consent or by warrant.*
>
> *The power to enter premises without consent or a warrant is considered justified as the prevailing public interest is to protect the vulnerable workers from exploitation. Labour hire workers may work in homes (e.g. cleaning) and may be accommodated in residential premises, and some labour hire providers do not operate from a separate business premises. These powers allow inspectors to enter residential premises to determine if labour hire work is being undertaken, or if the work being done is pursuant to the conditions of the licensee's licence. The provisions of the Bill balance the competing interests of an individual's right to privacy in their residential premises while seeking to guard vulnerable workers against exploitation*.[111]

The QLS submitted:

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109 *Legislative Standards Act 1992*, section 4 (3)(e).

110 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 46.

111 Explanatory notes, p 4.

As to clause 55(d), the Society considers that this power for entry seems extremely broad. It states the workplace "is required to be open for inspection under a condition of a license". This is too broad and does not specify what the license authority is, or whether a license has actually been issued to the workplace in question.

The requirement that workplace simply has to be "open for carrying on a business" or that "work is being carried out at the workplace" is far too broad, in our view, for entry to be authorised. There is the potential that this power will be abused by investigating officers. Further, this power is far broader than police powers of entry under the Police Powers and Responsibilities Act without evidence of the overriding privacy concerns and our right to privately enjoy premises. This is concerning as many businesses will be in possession of commercially sensitive, private, and confidential information including medical practices and law firms.

The Society has these same concerns with respect to clause 56(c) as this provision authorises entry into residences under the conditions in subsection c.[112]

Powers after entering places

Proposed Part 6, Division 3 of the Bill provides for powers after entering places. In this regard, clause 68 (1) provides an inspector with general powers to:

(a) search any part of the place;

(b) inspect, examine or film any part of the place or anything at the place;

(c) take for examination a thing, or a sample of or from a thing, at the place;

(d) place an identifying mark in or on anything at the place;

(e) take an extract from, or copy, a document at the place, or take the document to another place to copy;

(f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this subdivision;

(h) remain at the place for the time necessary to achieve the purpose of the entry.

Clause 68 (2) provides that the inspector may take a necessary step to allow the exercise of a general power.

Clause 67 clarifies that the powers under this clause may be exercised if an inspector enters a place under clause 55 (1)(a), (c) or (d), being with consent, a warrant or without either. Entry under clause 55 (1)(a) or (c) is subject to any conditions of the consent or terms of the warrant. Entry under clause 55 (1)(d) may occur without consent or a warrant when the place is a workplace and entry is made when the workplace is open for business, or when work is being carried out there, or when it is required to be open for inspection under a condition of a licence.

Additionally, clause 72 provides for the seizure by an inspector of evidence of a suspected offence against the Act, as part of the powers an inspector may exercise after entry has been effected without consent or a warrant.

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer under the fundamental legislative principles.

[112] QLS, Submission 32, p 4.

The QLS submitted:

> *We are concerned that clause 68(1)(c) and (e) give the investigator power to take a thing but there do not appear to be any provisions covering return of property taken. An appropriate mechanism should be inserted into these provisions. Similarly, clause 68(3) does not specify a date or period for return of a document. Feasibly, this could result in inspectors taking documents indefinitely. "As soon as practicable" is not defined. A date period (and procedures for seeking an extension) should be preferred.*
>
> *We are also concerned about what will be interpreted by an inspector as a "necessary step" per clause 68(2). Examples should be provided about what the government will accept as a "necessary step". Additionally, we believe that clause 68(1)(h) should have a caveat as to the time an inspector can be on private property. "Time necessary to achieve the purpose of the entry" is too vague and leaves it entirely up to the investigator.*[113]

Departmental response

The department advised the committee on 14 July 2017:

> *The effectiveness of the labour hire licensing scheme the Bill seeks to introduce will be reliant on the ability to monitor and enforce compliance with the Bill and its provisions. Inspectoral powers including specified powers of entry and powers after entering places have been provided in the Bill (Part 6) to ensure this. It is also necessary and appropriate that the chief executive be able to inform themselves in relation to an applicant or licensee through the Obtaining Information provisions set out in Part 5 of the Bill.*
>
> *The existing powers of entry are quite broad (given the Legislative Standards Act 1992 (Qld), s4(3)(e) which provides that "legislation should not confer power to enter premises, and search for or seize documents or other property, without a warrant issued by a judge or other judicial officer".*
>
> *However, the broad powers of entry provisions are considered necessary to 'balance the competing interests of an individual's right to privacy in their residential premises while seeking to guard vulnerable workers against exploitation' (see Explanatory Notes to the Bill, p4).*
>
> ***Proposed Part 5, clause 42***
>
> *The provisions of Part 5 relate to the chief executive's powers to inform herself/himself in relation to applicants and licensees including at application and renewal.*
>
> *As noted in the comments above, entry to a business without consent or warrant when business is being carried on is not an unusual provision.*
>
> *Clause 42 relates to the chief executive's powers in relation to an application of or renewal/restoration of a licence. It is necessary for the effective operation of the proposed licensing scheme for the chief executive to be able to request information from applicants to inform a decision to grant or renew a licence or in the case of clause 42 to enter and inspect a business premises for the purpose of ascertaining whether the applicant is a fit and proper person to provide labour services. Such inspections when and if undertaken would inform the chief executive's considerations of whether an applicant was a fit and proper person, as required for the granting of a licence at clause 15.*
>
> ***Proposed Part 6, Division 2 (clauses 55 and 56).***
>
> *The effectiveness of the labour hire licensing scheme the Bill seeks to introduce will be reliant on the ability to monitor and enforce compliance with the Bill and its provisions. Inspectoral powers*

[113] QLS, Submission 32, pp 4-5.

including specified powers of entry and powers after entering places have been provided for in drafting to ensure this.

The powers of inspectors provided in the Bill in these clauses are generally consistent with the powers of inspectors under the Industrial Relations Act 2016 (e.g. section 910) and the Fair Trading Inspectors Act 2014 (Part 2). The treatment at clause 55(1)(d)(i) and (ii) provides a standard approach so that inspectors may enter a workplace when it is open for business or when work is being carried out at the business. The 'when work is being carried out' at a business at clause 55(1)(d)(ii) is considered necessary for where work may be carried out at a business premises outside normal business hours.

The provision at clause 55(1)(d)(iii) permitting entry to a workplace when 'the workplace is required to be open for inspection under a condition of a licence' is to ensure that if a condition of inspection was imposed on a licence that the premises be inspected at stated intervals (see clause 29(2)(c)) that the entry powers would permit this if the times specified did not fall under 55(1)(d)(i) or (ii). This approach is again consistent with the equivalent provision under the Fair Trading Inspectors Act 2014 (Part 2) and is considered necessary to achieve the objectives of the Bill.

Proposed Part 6, Division 3 (clauses 67 and 68)

The QLS note 'that clause 68(1)(c) and (e) give the investigator power to take a thing but there do not appear to be any provisions covering return of property taken. An appropriate mechanism should be inserted into these provisions. Similarly, clause 68(3) does not specify a date or period for return of a document. Feasibly, this could result in inspectors taking documents indefinitely. "As soon as practicable" is not defined. A date period (and procedures for seeking an extension) should be preferred'.

The department notes an almost identical provision to clause 68(1)(e) of the Bill exists at section 911(3)(d) of the Industrial Relations Act 2016. Here the inspector need only return the thing 'as soon as practicable' (s 911(6)). Similarly, section 28(4) of the Private Employment Agents Act 2005 provides that an inspector may keep a document to copy it and the inspector only need return the document 'as soon as practicable' (s 28(7)). Also section 174(1) of the Work Health and Safety Act 2011 provides that an inspector may keep a document (for the purposes of making a copy) 'for the period the inspector considers necessary'.

The QLS concern about what will be interpreted by an inspector as a 'necessary step' per clause 68(2) is noted. Inspectors face a variety of challenges in the performance of their duties and the exercise of general powers. Section 68(2) makes clear that an inspector may take 'a necessary step' to allow the exercise of a power provided at s68(1). In this way it is directly linked and qualified through the exercise of the inspector's powers.

*Regarding the concern raised by the QLS that **clause 68(1)(h**) should have a caveat as to the time an inspector can be on private property, the Industrial Relations Act 2016 includes an identical provision at section 911(3)(g). It is considered the provision is not unreasonable and is necessary to effectively perform an inspector's functions under the Bill.*[114]

4.1.1.3 Protection against self-incrimination

Section 4 (3)(f) of the *Legislative Standards Act 1992* requires legislation provide appropriate protection against self-incrimination. This matter was raised in submissions as noted at 3.8.2.

Clause 43 (1) of the Bill allows the chief executive to, by notice given to a licensee, require a licensee to give the chief executive information the chief executive reasonably requires to decide whether the

[114] Queensland Treasury, correspondence dated 17 July 2017, pp 10-12.

licensee is, or continues to be, a fit and proper person to provide labour hire services; or the licensee's business is financially viable.

Clause 70 (1) provides an inspector who enters a place with the power to require, at a reasonable time and place nominated by the inspector, the production of certain documents required to be kept by the person under the Bill.

A failure to comply with clause 43 attracts a maximum penalty of 40 penalty units, and with respect to clause 70, a maximum of 200 penalty units. Subject to clause 101, it is not a reasonable excuse not to comply with a requirement under either clause on the basis compliance may incriminate the licensee or person subject to the requirement.

Clause 101 provides that the information or document obtained under clause 43 or 70, and other evidence directly or indirectly derived from them, is not admissible against the individual in any proceeding to the extent that it incriminates the individual, or exposes the individual to a penalty, in the proceeding (except for a proceeding about the false or misleading nature of the information or evidence).

The fundamental legislative principles state legislation should provide appropriate protection against self-incrimination.[115]

As noted at 3.8.2, The QLS submitted:

> *Clause 70(5) waives the right against self-incrimination. The Society is very concerned by this. Any breach of a fundamental right, such as the right to claim privilege against self-incrimination, should be a last resort and we can see no justification for it in this Bill. Fundamental rights of this nature underpin the rule the law and the justice system as a whole. As stated below, we do not consider that clause 101 is strong enough to protect this right by preventing self-incrimination and the derivative use of evidence.*[116]

Regarding clause 101, the QLS stated:

> *The Society is concerned that clause 101 does not adequately protect someone from self-incrimination. Sub-section (1) should not limit the types of documents covered by this immunity. Further, we submit that sub-section (3) should be removed.*[117]

Although clause 101 provides a limited immunity to persons required to give the chief executive information under clause 43 or to persons required to produce a document or information for an inspector under clause 70, the immunity does not extend to a document required to be kept or given under the Bill.

Departmental response

The department advised the committee on the 14 July 2017:

> *Clause 43(4) and 70(5) exclude self-incrimination from being a reasonable excuse not to provide (a) information to the chief executive or (b) a document to an inspector. Section 101 of the Bill provides for an evidential immunity insofar as the individual giving or producing information to the chief executive (under s43) or a document an inspector (under s70). 101(2) makes clear that evidence of the information or document, and other evidence directly or indirectly obtained from the information or document, is not admissible against the individual …..in a proceeding. This evidential immunity does not extend to the production of a document required to be kept under the Act.*

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115 *Legislative Standards Act 1992*, section 4 (3)(f).

116 QLS, Submission 32, p 5.

117 QLS, Submission 32, p 5.

Clause 70 sets out inspectors' powers to require the production of documents and for the offence provision at clause 89 specifies that it is not a reasonable excuse for an individual not to comply on the basis of self-incrimination or exposure to a penalty. This approach is considered necessary given the seriousness of reports of exploitation and mistreatment the Bill is seeking to address by protecting workers and is consistent with, for example, the Work Health And Safety Act 2011 (section 172) and the Fair Trading Inspectors Act 2014 the provisions of which apply across a large number of Acts administered by the Office of Fair Trading.

Clause 71 (Power to require information or attendance) includes an express protection against self-incrimination where an inspector believes an offence has been committed and a person may be able to give information about the offence.

As mentioned in a prior response (refer page 5), the QLRC has considered that the privilege against self-incrimination may be abrogated by statute where the legislature considers that it is outweighed by other factors, and that whether legislation does abrogate the privilege against self-incrimination will be interpreted if the intention is clear in the legislation. The intention is made clear on the face of the Bill, and the approach is considered necessary to ensure the effectiveness of the scheme the Bill seeks to introduce.[118]

4.1.2 Institution of Parliament

Section 4 (2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

With respect to clauses 7 (3)(c), 8 (2), 13 (3)(c), 18 (2)(b), 19 (2)(c), 31 (2)(o), 32, 33, 40 (3), 49, 87 (5), 103 (2)(n), 108 and 100, the Bill refers to the delegation of legislative power to regulation. These clauses relate to various aspects of the Bill, including, but not limited to:

- the meaning of 'worker'
- various prescribed fees
- the form in which records are to be kept and for how long
- requirements for a person to apply for a license
- a licensee's obligations to report to the chief executive
- requirements for nominated officers
- appointment conditions and limits on powers relating to inspectors
- a court's considerations when ordering compensation, and
- the particulars to be contained on the register of licenses.

Section 4 (4)(a) of the *Legislative Standards Act 1992* provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the Office of Queensland Parliamentary Council Notebook, this matter is concerned with the level at which delegated legislative power is used. Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

As noted at 3.2.1 above, the Queensland Law Society also raised concerns (in relation to clause 7 (4)) about matters being provided for in regulation as opposed to legislation

The explanatory notes state:

Several clauses of the Bill allow elements of the licensing scheme to be prescribed by regulation. While this is a delegation of legislative power, it is appropriate that the specific details of particular matters be prescribed by regulation with a suitable head of power in the substantive legislation. A matter such as the prescription of fees or the type of information that is required to support an application for a labour hire licence is primarily administrative in nature and may

[118] Queensland Treasury, correspondence dated 17 July 2017, p 14.

be subject to change over time. The Bill provides that certain persons or classes of labour hire providers or workers may, by regulation, be removed from the scope of the licensing scheme in particular circumstances. This recognises the complexity in defining labour hire services and is available to ensure coverage does not capture or extend to unintended classes of workers.[119]

The Bill delegates considerable detail to regulation. Matters prescribed by regulation will however still be subject to Parliamentary scrutiny by way of committee scrutiny of subordinate legislation.

Departmental response

The department advised:

The delegations to subordinate legislation in the Bill are considered appropriate. Drafting has sought to include the heads of power and significant detail of provisions which include a regulation making power, for example, the information to be provided at application (clause 13) and reporting (clause 31). The regulation making provisions under these and similar provisions throughout the Bill are subject to the limits imposed on them by the substantive provision, for example Clause 32 specifies what may be prescribed in a regulation under clause 31(2)(o) thereby limiting the scope of any regulation. The Explanatory Notes to these clauses also discuss examples about what a regulation might include. Matters prescribed by regulation will also be subject to Parliamentary scrutiny by way of Committee scrutiny of subordinate legislation.

The ability to regulate persons or individuals or classes of persons or individuals out of scope (clauses 7 and 8 regulation making provisions) is considered necessary to facilitate the effective application of innovative legislation, particularly having regard to the broad scope of the proposed scheme and the purpose of the legislation. The regulation making power is provided as a practical inclusion to allow for the scheme to be contracted in response to improved practices in particular industry or occupational sectors, should it be considered warranted. For example, a regulation could be made to apply to a worker, such as medical professionals or legal practitioners, who are engaged under a labour hire arrangement by a related entity within a single company structure in which the worker is also a principal, and that worker enjoys highly paid terms and conditions and does not put at risk the integrity of the labour hire industry.

The prescribing of a fee by regulation is standard practice. The proposed fee structures and approaches for this scheme have been discussed in consultation with stakeholders and in the Decision Regulatory Impact Statement undertaken to inform the development of this Bill. [120]

Committee Comment

The committee notes the department's advice regarding the application of the fundamental legislative principles to the Bill.

4.2 Proposed new and amended offence provisions

The table at Appendix C outlines the proposed offence provisions in the Bill.

4.3 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

The explanatory notes regularly only restate the contents of clauses without providing any information about why the clause was inserted, and were also noted to be incorrect in some instances (including clause 36 and 79).

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119 Explanatory notes, p 3.

120 Queensland Treasury, correspondence dated 17 July 2017, pp 15-16.

To the extent that the explanatory notes are intended to be relied upon to assist both individuals and the courts with interpretation and to determine intent of clauses in the Bill, the explanatory notes could be improved with the inclusion of further explanatory detail of intent and purpose of key clauses.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Nurses and Midwives' Union
002	Allens Linklaters
003	2XM Recruit
004	Australian Manufacturing Workers' Union
005	Edge Personnel
006	Fuse Recruitment
007	Australian Sugar Milling Council
008	Carestaff Nursing
009	Gen5 Group
010	Chandler Macleod
011	Anti-Discrimination Commission Queensland
012	LOVETTS
013	Omni Recruit
014	Anonymous
015	Australasian Meat Industry Employees' Union
016	Workplace Central
017	BHP Billiton
018	AgForce
019	Steps Group
020	Growcom
021	Apprentice Employment Network
022	Maurice Blackburn Lawyers
023	United Voice
024	Queensland Council of Unions

025	WorkPac
026	The Salvation Army
027	Chamber of Commerce and Industry Queensland
028	National Union of Workers
029	Association of Professional Staffing Companies
030	Master Builders Queensland
031	Australian Mines and Metals Association
032	Queensland Law Society
033	Maritime Union of Australia
034	National Farmers' Federation
035	Housing Industry Association
036	Jane O'Sullivan
037	Recruitment and Consulting Services Association
038	Ai Group
039	Symmetry Human Resources
040	On Talent
041	Anonymous

Appendix B – List of witnesses

Public briefing

Date	Location	Witnesses from the Office of Industrial Relations, Queensland Treasury
14 June 2017	Brisbane	Mr Tony James, Executive Director, Industrial Relations Dr Simon Blackwood, Deputy Director-General Ms Kate Spiers, Senior Policy Officer

Public hearing

Date	Location	Witnesses (in order of appearance)
22 June 2017	Brisbane	Queensland Council of Unions • Dr John Martin, Research and Policy Officer National Union of Workers • Ms Imogen Beynon United Voice, Queensland • Mr Jared Marks, Industrial Officer Anti-Discrimination Commission Queensland • Ms Neroli Holmes, Deputy Commissioner Ai Group • Mr Maurice Swan, Special Counsel Australian Mines and Metals Association • Ms Lindsay Carroll, Workplace Relations Lawyer Recruitment and Consulting Services Association • Ms Sinead Hourigan, RCSA Vice President and Director Robert Walters Brisbane • Mr Cameron Hockaday, Group General Manager Commercial, WorkPac • Ms Natalie Stewart, General Manager Safety, Quality and Employment, Protech • Mr Tom Reardon, Managing Director, AWX Housing Industry Association • Mr David Humphrey, Senior Executive Director – Business, Compliance and Contracting • Mr Michael Roberts, Acting Executive Director for Queensland Growcom • Ms Rachel Mackenzie, Chief Advocate The Salvation Army • Ms Alison Rahill, National Networks Coordinator for the Freedom Partnership • Captain Craig Harlum, The Salvation Army Lockyer Valley Queensland Law Society • Ms Kate Brodnik, Policy Solicitor • Mr Dean Cameron, Industrial Law Committee Member • Mr Rob Stevenson, Industrial Law Committee Member

Appendix C - Proposed new or amended offence provisions

Clause	Offence	Proposed maximum penalty
10	**Licence required to provide labour hire services** (1) A person must not provide labour hire services unless the person is the holder of a licence.	(a) for an individual—1034 penalty units or 3 years imprisonment; or (b) for a corporation—3000 penalty units.
10	(2) A person must not advertise, or in any way hold out, that the person provides or is willing to provide labour hire services, unless the person is the holder of a licence.	200 penalty units.
11	**Person must not enter into arrangements with unlicensed providers** (1) A person must not, without a reasonable excuse, enter into an arrangement with a provider for the provision of labour hire services to the person, unless the provider is the holder of a licence. (2) It is a reasonable excuse for the person not to comply if, when the person entered into the arrangement, the provider was shown on the register as the holder of a licence.	(a) for an individual—1034 penalty units or 3 years imprisonment; or (b) for a corporation—3000 penalty units.
12	**Person must not enter into avoidance arrangements** A person must not enter into an arrangement with another person (an ***avoidance arrangement***) for the supply of a worker if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed by this Act, unless the person has a reasonable excuse. *Note—* See also section 90.	(a) for an individual—1034 penalty units or 3 years imprisonment; or (b) for a corporation—3000 penalty units.
25	**Return of suspended or cancelled licence** (1) If the chief executive suspends or cancels a licensee's licence, the licensee must return the licence to the chief executive within 14 days after receiving the information notice for the suspension or cancellation, unless the licensee has a reasonable excuse. (2) If a licence returned to the chief executive is still current at the end of a period of suspension, the chief executive must return the licence to the licensee.	40 penalty units.
31	**Obligation to report to chief executive** (1) A licensee must give the chief executive a report that complies with this section within 28 days after a reporting period for the licensee ends. (2) The report must include the following information—	200 penalty units

	(a) the licensee's full name and contact details; (b) the business name, ABN and address of the business that is the subject of the licence; (c) the full name and contact details of each of the nominated officers for the licence; (d) the number of workers (the ***relevant workers***), supplied by the licensee to another person, who do work for the other person during the reporting period; (e) a description of the arrangements entered into between the licensee and the relevant workers; *Examples of arrangements—* an employment relationship, including whether the relationship is casual or permanent, contractual arrangements, apprenticeship or traineeship arrangements (f) details of the type of work carried out by the relevant workers, including the industry in which the work was carried out; (g) the locations in Queensland where work was carried out by the relevant workers; (h) if the licensee provided accommodation to the relevant workers in connection with the provision of labour hire services— (i) the address of the accommodation; and (ii) whether the relevant workers paid a fee for the accommodation; and (iii) the number of relevant workers that used the accommodation; (i) if the licensee is aware that accommodation was provided by another person to the relevant workers, to the best of the licensee's knowledge— (i) who provided the accommodation; and (ii) the address of the accommodation; and (iii) whether the relevant workers paid a fee for the accommodation; and (iv) the number of relevant workers that used the accommodation; (j) whether any other services were provided to the relevant workers by the licensee or, to the best of the licensee's knowledge, by a person to whom a relevant worker was supplied; *Examples of other services*— meals, transport (k) information about the licensee's compliance with relevant laws for the reporting period; (l) disclosure of any disciplinary action or enforcement action taken, or started, against the licensee by a regulatory body under a relevant law during the reporting period; (m) to the best of the licensee's knowledge, the number of notifiable incidents involving a relevant worker notified under the *Work Health and Safety Act 2011*, section 38; (n) to the best of the licensee's knowledge, the number of applications for compensation made by a relevant worker under the *Workers' Compensation and Rehabilitation Act 2003*;	

	(o) any other matter prescribed by regulation under section 32. (3) In this section— ***reporting period***, for a licensee, means— (a) the period of 6 months starting on the day the licensee's licence is granted; and (b) the period of 6 months starting immediately after the day the reporting period for the previous report the licensee was required to give under this section ended.	
34	**Nominated officer must be reasonably available** A licensee must ensure each of the nominated officers for the licence is reasonably available to be contacted by the chief executive or a member of the public during business hours.	40 penalty units
36	**Licensee may substitute nominated officer for limited period** (1) A licensee may appoint an individual who satisfies the requirements mentioned in section 33(1) as a substitute nominated officer for the licensee's licence for a period of not more than 30 days if— (a) a nominated officer for the licence will be absent from the licensee's business; and (b) the person consents to the appointment. (2) The licensee must ensure— (a) an appointment under subsection (1) and the person's consent to the appointment are in writing and state the period of appointment; and (b) the appointment and consent are— (i) kept at the premises where the person will be responsible for the day-to-day management and operation of the business; and (ii) made available for immediate inspection by an inspector who asks to see them.	40 penalty units.
38	**Production of licence** A licensee must, if asked by an inspector, worker or another person with whom the licensee is dealing, produce a copy of the licensee's licence for inspection by the inspector, worker or other person.	100 penalty units
39	**Licensees must not transfer licence etc.** A licensee must not transfer, sell, dispose of, lend or hire out the licensee's licence to another person.	200 penalty units or 1 years imprisonment
40	**Licensees to notify chief executive of particular changes in circumstances** (1) A licensee must give the chief executive notice of a prescribed change in circumstances of the licensee within 14 days after the change.	200 penalty units
40	(2) If the licensee is a corporation, the licensee must give the chief executive notice of a prescribed change in circumstances of an	200 penalty units

	executive officer of the corporation within 14 days after becoming aware of the change. (3) In this section— ***prescribed change***, in circumstances, means a change prescribed by regulation relating to— (a) a matter the chief executive must consider in deciding whether a person is a fit and proper person to provide labour hire services; or (b) details about a licence shown on the register; or (c) for a licensee—accommodation for workers supplied to another person by the licensee.	
43	(1) The chief executive may, by notice given to a licensee, require the licensee to give the chief executive, within a reasonable period of at least 21 days stated in the notice, information the chief executive reasonably requires to decide whether— (a) the licensee is, or continues to be, a fit and proper person to provide labour hire services; or (b) the licensee's business is financially viable. (2) The chief executive may, in the notice, require the licensee to verify the further information by statutory declaration. (3) The licensee must comply with the notice, unless the person has a reasonable excuse. (4) It is not a reasonable excuse for the licensee not to comply with the notice on the basis that complying with the notice might tend to incriminate the licensee or expose the licensee to a penalty. *Note—* See, however, section 101. (5) The chief executive may— (a) give information obtained under this section to an auditor under section 104(3)(d); and (b) ask the auditor to give the chief executive advice about a matter mentioned in subsection (1)(a) or (b). *Example—* The chief executive may ask an auditor to provide advice about financial information given to the chief executive by a licensee.	40 penalty units
46	**Confidentiality of criminal history information** (1) This section applies to a person who possesses a report or information given to the chief executive about a person that includes information about a person's criminal history (***criminal history information***). (2) The person must not, directly or indirectly, disclose the criminal history information to any other person unless the disclosure is permitted under subsection (3). (3) The person is permitted to disclose the criminal history information to another person— (a) to the extent necessary to perform the person's functions under this Act; or (b) to the extent the disclosure is otherwise required or permitted by law; or	100 penalty units

	(c) if the disclosure is in a form that does not identify the person to whom the information relates. (4) The chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.	
54	**Return of identity card** If the office of a person as an inspector ends, the person must return the identity card to the chief executive as soon as practicable after the office ends.	40 penalty units
76	**Tampering with seized things** (1) If access to a seized thing is restricted under section 75, a person must not tamper with the thing or with anything used to restrict access to the thing without— (a) an inspector's approval; or (b) a reasonable excuse.	100 penalty units.
76	(2) If access to a place is restricted under section 75, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without— (a) an inspector's approval; or (b) a reasonable excuse.	100 penalty units
88	**Obstructing inspectors** (1) A person must not obstruct an inspector exercising a power, or a person helping an inspector exercising a power, unless the person has a reasonable excuse. (2) If a person has obstructed an inspector, or a person helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that— (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and (b) the inspector considers the person's conduct an obstruction. (3) In this section— ***obstruct*** includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.	100 penalty units.
89	**Failure to comply with requirements of inspectors** If, in the exercise of a power under this Act an inspector makes a requirement of a person, the person must comply with the requirement unless the person has a reasonable excuse.	200 penalty units.
90	**Persons must report avoidance arrangements** (1) This section applies if— (a) a person (the ***non-complying person***) has supplied, or intends to supply, a worker to another person; and	200 penalty units.

	(b) the other person (the ***client***) is aware, or ought reasonably to be aware, the supply or intended supply by the non-complying person is an avoidance arrangement. (2) As soon as practicable after the client becomes aware, or ought reasonably to have become aware, of the matter mentioned in subsection (1)(b), the client must, unless the person has a reasonable excuse, give the chief executive a notice stating— (a) the name of the non-complying person; and (b) a brief description of the avoidance arrangement.	
91	**False or misleading information** (1) A person must not, for this Act, give an official information the person knows is false or misleading in a material particular. (2) Subsection (1) does not apply to a person who, when giving information in a document— (a) informs the official, to the best of the person's ability, how the document is false or misleading; and (b) if the person has, or can reasonably obtain, the correct information— gives the official the correction information.	100 penalty units.
104	**Disclosure of confidential information** (1) This section applies to a person who— (a) is or has been engaged in the administration of this Act; or (b) has obtained access to confidential information, whether directly or indirectly, from a person mentioned in paragraph (a). (2) The person must not disclose confidential information acquired by the person to anyone else other than under subsection (3). (3) The person may disclose confidential information— (a) with the written consent of the person to whom the information relates or someone else authorised by the person; or (b) to the person to whom the information relates; or (c) if the disclosure is authorised under an Act or law; or (d) in connection with the administration of this Act, or the enforcement of a relevant law; or (e) for a legal proceeding under this Act.	100 penalty units
104	(4) If, under subsection (3), confidential information is disclosed to another person in connection with the administration or enforcement of a law, the person must not disclose the information to anyone else other than in connection with that purpose. (5) In this section— ***confidential information*** means information given to an official under this Act, if the information identifies a person.	100 penalty units

Statements of Reservation

Government Members' Statement of Reservation

It is disappointing that the Committee has not been able to reach consensus on a Bill that is designed to protect vulnerable workers from exploitation and improve the integrity of the labour hire sector. One would have thought this is something that all sides of Parliament could agree on, but unfortunately that appears not to be case.

In these circumstances, the Government members of the Committee have no choice but to provide this Statement of Reservation to make clear our strong support for the Bill before the House.

The Bill is an appropriate and much-needed response to the evidence of exploitation in the labour hire industry. As the Minister said in her introduction speech, for far too long and far too often we have all heard the stories of vulnerable workers being exploited at the hands of unscrupulous labour hire operators.

Our own Committee heard this evidence in the Parliamentary Inquiry conducted in 2016. We heard disturbing and often shocking evidence of underpayment and unauthorised deductions of pay, sexual harassment, workers housed in over-crowded and substandard accommodation, systemic tax avoidance, sham contracting and phoenixing of companies leaving workers stranded without their entitlements.

Unfortunately, the Inquiry by our Committee was not the first or last time such cases of exploitation have been reported. A stream of other parliamentary inquiries and reports and media investigations have uncovered similar damning evidence of exploitation over a number of years. The recent ABC Australian Story on the tragic death of English backpacker Mia Ayliffe at Home Hill has once again brought these issues into the spotlight.

Faced with this evidence, it would be a dereliction of our duty to not respond. More of the same is clearly not acceptable. A business as usual approach is not an option.

Neither is self-regulation is the answer. The sector has been left unregulated for too long. If the Government and the Parliament is serious about doing something to stop the exploitation of labour hire workers and clean up the sector then a legislated labour hire licensing scheme is required.

International comparisons show that a number of other countries have been prepared to take this step and regulate labour hire in a way that Australia has not done until now. Countries with labour hire licensing schemes include Singapore, Japan, South Korea, Belgium, Netherlands, and the UK.

The scheme contained in this Bill is based on two key planks. First, it provides that labour hire operators must be licensed in order to operate. In order to be licensed, they must be able to meet certain conditions and requirements. These include the requirement to satisfy a fit and proper person test, demonstrate a history of compliance or ability to comply with all relevant laws, and also be able to show that the business is financially viable. These are all perfectly sensible, proportionate and reasonable requirements. In fact, it would be strange if labour hire providers were not required to meet these basic conditions, given the evidence described above. The many legitimate labour hire operators have nothing to fear from these requirements.

Second, the Bill provides that persons using the service of a labour hire provider must only use a licensed labour hire provider that meets those requirements. Again, this is a perfectly appropriate requirement if we are serious about lifting the performance, integrity, and reputation of the labour hire sector.

There is broad acknowledgment that a national labour hire licensing scheme would be the most desirable outcome. However, the Deputy Prime Minister himself has made clear that the Federal Government is not interested in doing anything. In the absence of any action at the national level, we

support the efforts of the Government to do all it can at a state level to address these issues through a state-based licensing scheme.

We have heard various submissions argue that the coverage and scope of the scheme is too broad. This included a view that the scheme should be limited to sectors like horticulture where the evidence of exploitation has been most widespread. We disagree.

The evidence to this Committee is that exploitation and poor practices in the labour hire sector extends across a number of sectors, including but not limited to horticulture, meat processing, security, cleaning and hospitality.

We support the view that the labour hire sector as a whole needs to be cleaned up. Regardless of what industry we are talking about, the reputation of good labour hire companies is being tarnished by those dodgy companies that continue to exploit their workers.

Furthermore, as a matter of policy and principle, we take the view that regardless of the level of exploitation or otherwise, if you are in the business of selling human labour to third parties, you should be licensed, in the same way you need a licence to sell a house, or a car, or alcohol.

A broad definition of labour hire in the Bill is appropriate in order to capture the diversity of arrangements which can be properly characterised as labour hire. At the same time, the Minister has already made clear the types of arrangements that are not intended to be captured. Subject to any further clarification the Minister may wish to make, we consider that that a broad definition is entirely justified and appropriate.

We also note that the scheme will be backed by a compliance unit within the Office of Industrial Relations. A common-sense approach suggests that if a business is genuinely unsure about whether or not they need to be licensed, they will be able to seek advice from the Office of Industrial Relations and that supporting information and advice will be available on the labour hire website for them to make that decision. The fact that people will need to consider their arrangements is a good outcome.

There are various other sections of the Bill the Government may wish to have a further look at, and the Committee's report highlights some of these. However, in the main, these relate to matters of detail in the Bill, such as the appropriateness of particular powers, or reporting requirements, or other mechanics of the proposed scheme. They do not in any way put into question the fundamental case for a proper labour hire licensing system.

To those who claim that this is somehow about propping up union membership, we suggest that this says more about the prejudices and biases of those who make that claim. We also make the point that it has been unions, as well as other civil society groups, that have been at the forefront of uncovering much of the labour hire exploitation that has occurred and supporting the workers affected by it.

In conclusion, we consider these are good laws and they are sorely needed. They will not only help to protect workers from exploitation; they will also help those labour hire operators that are doing the right thing. Regulation of the labour hire sector will promote greater transparency and scrutiny of labour hire operators, give confidence to those businesses who use the services of labour hire providers, and raise the standard of integrity and professional conduct across the industry.

Peter Russo MP

Chair of Finance and Administration Committee

State Member for Sunnybank

Non-Government Members' Statement of Reservation

The Non-Government members believe this legislation is neither warranted nor efficacious. This legislation is specifically designed to enshrine a State based system of licensing labour-hire firms which will further empower the union movement in their future control of this growing sector of the labour market.

While employers see great advantage in utilizing the effectiveness and cost competitiveness of the labour-hire industry, the union movement is obviously concerned about the industries effect on their dwindling union membership and their ability to control matters in relation to employers' use of union affiliated work force.

Whilst evidence of the existence of some unscrupulous operators in the labour-hire industry is irrefutable, this sledge-hammer to crack a walnut approach to overcome the small number of undesirable operators in the industry through Trojan-horse legislation is both an overkill and a political excuse to seek greater union participation in the labour-hire industry.

There is no certainty that the rogue operators will be defeated by this legislation and that was confirmed by departmental officers. There is no national adherence to the regime inflicted by this legislation on employers operating in Queensland. It is yet another layer of bureaucratic paper-work, delay and obtrusion designed by the union elected Government to halt the slide of declining union membership on behalf of their union puppet-masters.

Allocating more funding to policing existing fair-work inspectors would undoubtedly achieve greater results in eradicating dodgy operators under current national laws than this legislation will achieve.

Several employers groups that supported the establishment of a licensing regime under this legislation would be unaware of the longer term consequences of the legislation in terms of fees payable and union demands to be met to satisfy licensing requirements in the longer term.

And despite the fact that there is "waiver" provision in the legislation, there is still an undetermined "catch-all" philosophy that may impact on disabled employment groups and other yet to be determined groups that will fall under the umbrella of this wide-reaching labour-hire definition.

The third party rights review in the proposed bill will provide trade unions and other third parties with a relatively unrestrained right to involve themselves in delaying and potentially overturning decisions to which they should have no expectation or right to influence.

The Non-Government members reiterate their rejection of the need for this legislation as expressed in their findings from the Inquiry in to the practices of the Labour Hire Industry in Queensland tabled in the report to the House in late 2016.

As noted at the time, it was irrelevant that the inquiry produced no supporting evidence that a licensing regime would address the problems of rogue operators in the highly-successful labour-hire industry and that this union directed Labor Government would proceed with introducing labour-hire legislation to further the interests of their union masters regardless of the outcome of that inquiry.

This has occurred through this legislation and the Non-Government members are still of the opinion that this legislation is a politically inspired opportunity by this Government to generate more fees from the industry while at the same time promoting union membership and this legislation will not stamp out the abhorrent practices of unscrupulous rogue operators to any significant degree.

The Non-Government members of this committee oppose the passing of this legislation.

Ray Stevens MP
Deputy Chair of Finance and Administration Committee
State Member for Mermaid Beach