

TECHNICAL SCRUTINY REPORT ON LABOUR HIRE LICENSING BILL 2017

Date introduced: 25 May 2017

Responsible minister: Hon Grace Grace MP

Portfolio responsibility: Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs

BACKGROUND

The objectives of the Labour Hire Licensing Bill 2017 (the Bill), as set out in clause 3 of the Bill, 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.

THE FORMER SCRUTINY OF LEGISLATION COMMITTEE

This report makes reference to the former Scrutiny of Legislation Committee (SLC). That Committee's remit was to 'examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation'. The Fundamental Legislative Principles (FLPs) referred to are enshrined into law by the *Legislative Standards Act 1992*.

FUNDAMENTAL LEGISLATIVE PRINCIPLES AND OTHER ISSUES

It is considered that clauses 29, 31, 42, 43, 44, 45, 46, 55, 56, 68, 70, 71, 72, 93, 100, 101, 103 (and a large number of identified clauses related to the delegation of legislative power to regulation) contain issues of fundamental legislative principle.

The Bill also includes 23 offence provisions which are set out at **Annexure A**, some of which include a proposed maximum penalty of up to 3 years' imprisonment.

POTENTIALLY SIGNIFICANT FLP ISSUES WHICH ARE BROUGHT TO THE COMMITTEE'S ATTENTION

RIGHTS AND LIBERTIES OF INDIVIDUALS

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| Clauses | 29, 31, 44, 45, 46, 71, 103 |
| FLP issue | Rights and liberties of individuals - Section 4(2)(a) <i>Legislative Standards Act 1992</i> Does the Bill have sufficient regard to the rights and liberties of individuals? |
| Comment | <u>Summary of provisions</u> Proposed Part 4 of the Bill provides for obligations of licensees. Clause 29 'Conditions may be imposed' provides, at subsection (1), that the chief executive may impose, vary or revoke conditions on a licence for the reasons, and in the circumstances, the chief executive considers appropriate. Without limiting this power, subsection (2) lists various requirements that may be made a condition, including the requirement that a licensee give the chief executive stated information, or allow the chief executive to inspect the premises at which the licensee carries on business, at stated reasonable intervals. <u>Potential FLP issues</u> Reasonableness and fairness of treatment of individuals are relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. |

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| | <p>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:</p> <ul style="list-style-type: none"> • 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 • the imposed condition requiring the licensee to give the 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. <p><u>Comment</u></p> <p>Although clause 29 allows for the imposition, variation or revocation of licence conditions, the power is tempered as outlined above and clause 30 provides for a show cause process whereby a licensee can challenge a proposed variation if required.</p> |
| | <p><u>Summary of provisions</u></p> <p>Proposed Part 5 of the Bill provides for obtaining and using information, including criminal history information. 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.</p> <p>The explanatory notes advise (at p.16):</p> <p><i>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.</i></p> <p>Unlawfully disclosing criminal history information will be an offence under s.46.</p> <p><u>Potential FLP issues</u></p> <p>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.</p> <p><u>Comment</u></p> <p>Clause 44 empowers the chief executive to procure personal and, potentially, sensitive information about an applicant or licensee. The powers 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. The use of the procured information must be limited to these purposes. Clause 45(3) restricts the use of information about a charge mentioned in the person's criminal history, while clause 46 sets out confidentiality provisions.</p> <p>These provisions are drawn to the Committee's attention.</p> |

Summary of provisions

Clause 71 provides a general power to an inspector to require information or attendance from a person. The clause applies if an inspector reasonably believes an offence under the Bill has been committed and a person may be able to give information about the offence (subsection (1)).

Subsection (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.*

Subsection (4) provides protection against self-incrimination, in circumstances where the person has a reasonable excuse for not complying with the requirements of subsection (2).

Potential FLP issues

Legislation must have sufficient regard to the rights and liberties of individuals. Clause 71 compels a person's attendance before an inspector at a stated time and place. Such a power relates directly to the rights and liberties of a person. Further, the clause proposes to require a person, when attending before the inspector, to answer questions or produce documents related to an offence under the Bill. The proposed section will also require the person to give the inspector information related to the offence.

The Queensland Law Society submitted:

The Society expresses serious concerns with respect clause 71... 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.¹

Comment

The exercise of the cl.71 powers will potentially impinge upon the rights and liberties of a person by compelling them to give information, or to attend at a time and place to answer questions or produce documents, in order for an inspector to investigate an offence under the Bill.

Safeguards on the use of cl.71 limit the inspector's power to compel information or attendance by requiring that the inspector reasonably believes an offence against the Bill has been committed and that the person may be able to give information about the offence at a stated reasonable time and place. There is also protection against self-incrimination as it is a reasonable excuse not to comply with a requirement made under subsection (2) if complying might tend to incriminate the individual or expose them to a penalty.

¹ Submission 32, p 5.

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| Clause | 93 |
| FLP issue | <p>Natural justice - Section 4(3)(b) <i>Legislative Standards Act 1992</i></p> <p>Is the Bill consistent with principles of natural justice?</p> |
| Comment | <p><u>Summary of provisions</u></p> <p>Clause 93(1) provides that a person who has been given, or is entitled to be given, an information notice for a decision may apply for a review. Clause 93(2) provides that an interested person may also apply for a review of certain decisions.</p> <p>Clause 97 provides that within 21 days of receiving an application to review a decision, the chief executive must review the decision and confirm, amend or substitute it with another decision, and give the applicant notice of the review decision.</p> <p>Clause 97(6) provides that if the chief executive does not give the review notice within the required period, the chief executive is taken to have made a review decision confirming the original decision.</p> <p><u>Potential FLP issues</u></p> <p>Clause 97(6) deems that the chief executive makes a review decision as a result of the mere effluxion of time. This potentially means that a decision on a review, including one that is detrimental to the applicant, may be made as a result of inaction on the behalf of the chief executive.</p> <p>The Queensland Law Society submitted:</p> <p style="padding-left: 40px;"><i>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.²</i></p> <p><u>Comment</u></p> <p>The committee may wish to consider whether a deeming provision which results in an unfavourable result to an application for review is an appropriate mechanism to include in the Bill. The committee may consider that such a provision does not afford an applicant sufficient procedural fairness.</p> |

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| Clauses | 42, 55, 56, 68, 72 |
| FLP issue | <p>Power to enter premises – Section 4(3)(e) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill 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?</p> |
| Comment | <p><u>Summary of provisions</u></p> <p>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.</p> |

² Submission 32, p 5.

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| | <p>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)).</p> <p><u>Potential FLPs</u></p> <p>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.³</p> <p><u>Comment</u></p> <p>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).</p> <p>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.</p> <p>These provisions are drawn to the Committee's attention.</p> |
| | <p><u>Summary of provisions</u></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p><u>Potential FLP issues</u></p> <p>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.⁴ Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.⁵</p> <p>The explanatory notes state:</p> <p><i>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</i></p> |

³ Legislative Standards Act 1992, s 4(3)(e).

⁴ Legislative Standards Act 1992, s 4(3)(e).

⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 46.

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| | <p><i>purposes of gaining access to a suspected workplace. Entry may be by consent, without consent or by warrant.</i></p> <p><i>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.⁶</i></p> <p>The Queensland Law Society submitted:</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.⁷</i></p> <p><u>Comment</u></p> <p>Clause 55 allows an inspector to enter places, most notably, a workplace (in accordance with clause 55(1)(d)), without consent and without a warrant. This entry power is limited by clause 56.</p> <p>This provision is drawn to the Committee's attention.</p> |
| Comment | <p><u>Summary of provisions</u></p> <p>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:</p> <ul style="list-style-type: none"> <i>(a) search any part of the place;</i> <i>(b) inspect, examine or film any part of the place or anything at the place;</i> <i>(c) take for examination a thing, or a sample of or from a thing, at the place;</i> <i>(d) place an identifying mark in or on anything at the place;</i> <i>(e) take an extract from, or copy, a document at the place, or take the document to another place to copy;</i> |

⁶ Explanatory notes, p 4.

⁷ Submission 32, p 4.

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| | <p>(f) <i>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;</i></p> <p>(g) <i>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;</i></p> <p>(h) <i>remain at the place for the time necessary to achieve the purpose of the entry.</i></p> <p>Clause 68(2) provides that the inspector may take a necessary step to allow the exercise of a general power.</p> <p>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.</p> <p><u>Potential FLP issues</u></p> <p>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.</p> <p>The Queensland Law Society submitted:</p> <p><i>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.</i></p> <p><i>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.⁸</i></p> <p><u>Comment</u></p> <p>Clause 68 provides an inspector with certain powers to search, inspect, examine, film, copy and take away things for certain purposes after entering a place. These powers may be exercised if the inspector entered the place under clause 55(1)(a), (c) or (d), being with consent, a warrant or without either. Entry under cl.55(1)(a) or (c) is subject to any conditions of the consent or terms of the warrant. Entry under cl.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.</p> <p>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.</p> <p>These entry, search and seizure powers are drawn to the Committee's attention.</p> |
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| Clauses | 43, 70, 101 |
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⁸ Submission 32, pp 4-5.

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| FLP issue | <p>Protection against self-incrimination – Section 4(3)(f) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill provide appropriate protection against self-incrimination?</p> |
| Comment | <p><u>Summary of provisions</u></p> <p>Clause 43(1) allows the chief executive to, by notice given to a licensee, require the licensee to give the chief executive information the chief executive reasonably requires to decide whether the licensee is, or continues to be, a fit and proper person to provide labour hire services; or the licensee’s business is financially viable.</p> <p>Subsection (3) requires the licensee to comply with the notice, unless the person has a reasonable excuse, with failure to comply attracting a maximum penalty of 40 penalty units.</p> <p>Subsection (4) provides:</p> <p><i>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.</i></p> <p>Note— See, however, section 101.</p> <p>Proposed 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.</p> <p>Failure to produce the document (absent reasonable excuse) is an offence under cl.89, carrying a maximum penalty of 200 penalty units.</p> <p>Clause 70(5) provides:</p> <p><i>For an offence under section 89, it is not a reasonable excuse for an individual not to comply with a requirement under subsection (1) on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.</i></p> <p>Clause 101 ‘Evidential immunity for individuals complying with particular requirements’ 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:</p> <ul style="list-style-type: none"> • the chief executive ‘subject to a requirement’ to give information under clause 43, or • an inspector, if the inspector has required the production of the document or information under clause 70. <p>Clause 101 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 (except for a proceeding about the false or misleading nature of the information or evidence).</p> <p><u>Potential FLP issues</u></p> <p>Legislation should provide appropriate protection against self-incrimination.⁹</p> <p>The Queensland Law Society submitted:</p> |

⁹ *Legislative Standards Act 1992*, s 4(3)(f).

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| | <p><i>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.¹⁰</i></p> <p>Regarding clause 101, the Society stated:</p> <p><i>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.¹¹</i></p> <p><u>Comment</u></p> <p>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.</p> <p>The concerns expressed by the Queensland Law Society are drawn to the Committee's attention.</p> |
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INSTITUTION OF PARLIAMENT

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| 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. |
| FLP issue | <p>Delegation of legislative power – Section 4(4)(a) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?</p> |
| Comment | <p><u>Summary of provisions</u></p> <p>The above clauses of the Bill refer to the delegation of legislative power to regulation. These clauses relate to various aspects of the Bill, including, but not limited to:</p> <ul style="list-style-type: none"> • 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 |

¹⁰ Submission 32, p 5.

¹¹ Submission 32, p 5.

- the particulars to be contained on the register of licenses.

Potential FLP issues

Section 4(4)(a) of the LSA provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the OQPC 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.

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 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.¹²

Comment

The committee will note that 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.

¹² Explanatory Notes, p 3.

ANNEXURE A – PROPOSED NEW OR AMENDED OFFENCE PROVISIONS

| Clause | Offence | Proposed maximum penalty |
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| 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. <i>Note—</i> 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. | 200 penalty units |

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| | <p>(2) The report must include the following information—</p> <ul style="list-style-type: none"> (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 <i>relevant workers</i>), 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; <p><i>Examples of arrangements—</i></p> <p>an employment relationship, including whether the relationship is casual or permanent, contractual arrangements, apprenticeship or traineeship arrangements</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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; <p><i>Examples of other services—</i> meals, transport</p> <ul style="list-style-type: none"> (k) information about the licensee’s compliance with relevant laws for the reporting period; | |
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| | <ul style="list-style-type: none"> (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 <i>Work Health and Safety Act 2011</i>, section 38; (n) to the best of the licensee's knowledge, the number of applications for compensation made by a relevant worker under the <i>Workers' Compensation and Rehabilitation Act 2003</i>; (o) any other matter prescribed by regulation under section 32. <p>(3) In this section—</p> <p>reporting period, for a licensee, means—</p> <ul style="list-style-type: none"> (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 | <p>Nominated officer must be reasonably available</p> <p>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.</p> | 40 penalty units |
| 36 | <p>Licensee may substitute nominated officer for limited period</p> <p>(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—</p> <ul style="list-style-type: none"> (a) a nominated officer for the licence will be absent from the licensee's business; and (b) the person consents to the appointment. <p>(2) The licensee must ensure—</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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. |

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| 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 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. | 200 penalty units |
| 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. <i>Note—</i> See, however, section 101. | 40 penalty units |

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| | <p>(5) The chief executive may—</p> <p>(a) give information obtained under this section to an auditor under section 104(3)(d); and</p> <p>(b) ask the auditor to give the chief executive advice about a matter mentioned in subsection (1)(a) or (b).</p> <p><i>Example—</i></p> <p>The chief executive may ask an auditor to provide advice about financial information given to the chief executive by a licensee.</p> | |
| 46 | <p>Confidentiality of criminal history information</p> <p>(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 (<i>criminal history information</i>).</p> <p>(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).</p> <p>(3) The person is permitted to disclose the criminal history information to another person—</p> <p>(a) to the extent necessary to perform the person's functions under this Act; or</p> <p>(b) to the extent the disclosure is otherwise required or permitted by law; or</p> <p>(c) if the disclosure is in a form that does not identify the person to whom the information relates.</p> <p>(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.</p> | 100 penalty units |
| 54 | <p>Return of identity card</p> <p>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.</p> | 40 penalty units |
| 76 | <p>Tampering with seized things</p> <p>(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—</p> <p>(a) an inspector's approval; or</p> <p>(b) a reasonable excuse.</p> | 100 penalty units. |
| 76 | <p>(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—</p> | 100 penalty units |

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| | <ul style="list-style-type: none"> (a) an inspector's approval; or (b) a reasonable excuse. | |
| 88 | <p>Obstructing inspectors</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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 | <p>Failure to comply with requirements of inspectors</p> <p>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.</p> | 200 penalty units. |
| 90 | <p>Persons must report avoidance arrangements</p> <ul style="list-style-type: none"> (1) This section applies if— <ul style="list-style-type: none"> (a) a person (the non-complying person) has supplied, or intends to supply, a worker to another person; and (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— <ul style="list-style-type: none"> (a) the name of the non-complying person; and (b) a brief description of the avoidance arrangement. | 200 penalty units. |
| 91 | <p>False or misleading information</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (a) informs the official, to the best of the person's ability, how the document is false or misleading; and | 100 penalty units. |

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| | (b) if the person has, or can reasonably obtain, the correct information— gives the official the correction information. | |
| 104 | <p>Disclosure of confidential information</p> <p>(1) This section applies to a person who—</p> <ul style="list-style-type: none"> (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). <p>(2) The person must not disclose confidential information acquired by the person to anyone else other than under subsection (3).</p> <p>(3) The person may disclose confidential information—</p> <ul style="list-style-type: none"> (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 | <p>(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.</p> <p>(5) In this section— confidential information means information given to an official under this Act, if the information identifies a person.</p> | 100 penalty units |

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.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the Explanatory Notes identified the specific clause(s) being discussed, when identifying the fundamental legislative principles.

Prepared by the Technical Scrutiny of Legislation Secretariat

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