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Mr Peter Russo MP
Chair
Finance and Administration Committee
Parliament House
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Dear Mr Russo

I refer to your letter dated 10 July 2017 regarding the Finance and Administration Committee (the Committee) consideration of the Labour Hire Licensing Bill 2017 and your request for a departmental response to issues relating to the application of the Fundamental Legislative Principles to the Bill.

Please find attached the departmental response as requested. The response addresses those matters identified by the Committee's secretariat.

If you require further information or assistance, please contact Mr Tony James, Executive Director, Industrial Relations, Office of Industrial Relations, Queensland Treasury

I trust this information is of assistance and thank you for the Committee's assistance throughout this process.

Yours sincerely

Jim Murphy
Under Treasurer

Encl.

17/7/17

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	<p><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.</p> <p>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.</p> <p><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. 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> 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>
Comment	<p><u>Summary of provisions</u> 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): <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,</i></p>

	<p><i>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> 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> 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>
Comment	<p><u>Summary of provisions</u> 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)).</p> <p>Subsection (2) provides that the inspector may, by notice given to the person, require the person to:</p> <p style="padding-left: 40px;">(a) <i>give the inspector information related to the offence by a stated reasonable time, or</i> (b) <i>attend before the inspector at a stated reasonable time and place to answer questions, or produce documents, related to the offence.</i></p> <p>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).</p> <p><u>Potential FLP issues</u> 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.</p> <p><u>The Queensland Law Society submitted:</u> <i>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</i></p>

	<p><i>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.</i></p> <p><u>Comment</u></p> <p>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.</p> <p>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.</p>
Department response	<p>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.'</p> <p>In relation to the 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, and the clauses and provisions discussed above, the department responds:</p> <p>Part 4 Condition provisions clauses 29 and 30</p> <p>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 the chief executive, would allow for risks to be managed in specific high risk areas rather than applying all obligations broadly by legislative provision.</p> <p>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.</p> <p>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,</p>

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 inspector powers (more below).

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

	<p>(a) give the inspector information related to the offence by a stated reasonable time; or</p> <p>(b) attend before the inspector at a stated reasonable time and place to answer questions, or produce documents related to the offence’.</p> <p>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.</p> <p>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 <i>Liquor Act 1992</i> Part 7, section 183AA. The <i>Fair Trading Inspectors Act 2014</i> 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 <i>Fair Trading Inspectors Act 2014</i>, section 60 specifically.</p> <p>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 <i>Property Occupations Act 2014</i>, the <i>Motor Dealers and Chattel Auctioneers Act 2014</i>, the <i>Debt Collectors (Field Agents and Collection Agents) Act 2014</i> and the <i>Liquor Act 1992</i>.</p> <p>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 ¹, 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’ ².</p> <p>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’³. The drafting of the Bill has sought to impose limits in this way through the interaction of clauses, including 70, 71, 89 and 101.</p>
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¹ E.g. QLRC report no 59, The abrogation of the privilege against self-incrimination (2004), p 15.

² Ibid

³ Ibid p 17

Clause	93
FLP issue	Natural justice - Section 4(3)(b) <i>Legislative Standards Act 1992</i> Is the Bill consistent with principles of natural justice?
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><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.</i></p> <p><u>Comment</u></p> <p>Consideration to be given 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 affords an applicant sufficient procedural fairness.</p>
Department response	<p>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 <i>Guide, Hearing and Assistance Dogs Act 2009</i> – Section 69; <i>Petroleum and Gas (Production and Safety) Act 2004</i>, section 818.</p> <p>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</p>

	<p>clause 97(1).</p> <p>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.</p>
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Clause	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> <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.</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 (e.g. outside usual trading hours). 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>
Comment	<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>

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.

Potential FLP issues

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

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.⁶

The Queensland Law Society submitted:

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

	<p><i>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.7</i></p> <p><u>Comment</u> 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><u>Summary of provisions</u> 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> <i>(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;</i> <i>(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;</i> <i>(h) remain at the place for the time necessary to achieve the purpose of the entry.</i> <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> 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>Comment</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>Department comment</p>	<p>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.</p> <p>The existing powers of entry are quite broad (given the <i>Legislative Standards Act 1992</i> (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").</p> <p>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).</p> <p>Proposed Part 5, clause 42</p> <p>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.</p> <p>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.</p> <p>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</p>

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 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

	<p>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.</p> <p>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 <i>Industrial Relations Act 2016</i> 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.</p>
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Clauses	43, 70, 101
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>

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:

- 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.

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).

Potential FLP issues

Legislation should provide appropriate protection against self-incrimination.⁹

The Queensland Law Society 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.¹⁰

Regarding clause 101, the Society 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.¹¹

Comment

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.

Department response	<p>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 individualin a proceeding. This evidential immunity does not extend to the production of a document required to be kept under the Act.</p> <p>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 <i>Work Health And Safety Act 2011</i> (section 172) and the <i>Fair Trading Inspectors Act 2014</i> the provisions of which apply across a large number of Acts administered by the Office of Fair Trading.</p> <p>Clause 71 (<i>Power to require information or attendance</i>) 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.</p> <p>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.</p>
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Clause	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	Delegation of legislative power – Section 4(4)(a) <i>Legislative Standards Act 1992</i> Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
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

	<ul style="list-style-type: none"> • 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. <p>Potential FLP issues</p> <p>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.</p> <p>The explanatory notes state:</p> <p><i>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</i></p> <p>Comment</p> <p>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.</p>
Department response	<p>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.</p> <p>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</p>

	<p>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.</p> <p>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.</p>
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