



Queensland Treasury

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

Thank you for your letter dated 14 June 2017 seeking further information in relation to the Committee's inquiry into the Labour Hire Licensing Bill 2017 (the Bill).

Please find enclosed the Department's responses to the questions you have raised.

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

I trust this information is of assistance.

Yours sincerely

Jim Murphy
Under Treasurer

Encl.

19/6/17

Finance and Administration Committee Inquiry into the Labour Hire Licensing Bill 2017

Additional questions

Part 1 – Preliminary

Question 1.

Clause 5 states the Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

- a.** What is the extraterritorial legislative power of the Parliament and what does this mean from a practical point of view for the implementation and enforcement of the Bill?

Response:

What is the extraterritorial legislative power of the Parliament?

The plenary power

The Parliament of Queensland is authorised to make laws for the peace, welfare and good government of Queensland (Constitution Act 1867, section 2). This is a plenary or full power. However, the power is subject to the limits and guarantees found in the Commonwealth Constitution. Commonwealth legislation also applies in Queensland and legislation of other Australian jurisdictions may apply in Queensland if it has extraterritorial effect.

Extraterritorial application of the plenary power

The plenary power can even have an effect outside Queensland if there is a sufficient connection with Queensland. Under the Australia Act 1986 (Cwlth and UK), section 2(1), the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extraterritorial operation. An important example of general provisions that have extraterritorial effect concerns the criminal law. Sections 12(2) to (4), 13, and 14 of the Criminal Code apply Queensland criminal law to acts or omissions, and persons, outside Queensland if the preconditions expressed in the section that connect the acts or omissions, and persons, to Queensland are met.

Relationship with the Australian Constitution

The Queensland Parliament's plenary power is subject to the Australian Constitution. Under the Australian Constitution only the Commonwealth Parliament may make laws about a particular list of matters. Also, in relation to another list of matters, if the Commonwealth Parliament makes a law, the law overrides a State law on the same matter, and the State law is invalid to the extent it is inconsistent with the Commonwealth law.

What does this mean from a practical point of view for the implementation and enforcement of the Bill?

State parliaments are able to pass laws having extraterritorial operation in certain circumstances (i.e. for the peace, order and good government of the State). For conduct that is the subject of the Act occurring wholly or partly outside of Qld, if this connection is established, the provisions of the Act may apply.

Section 5 of the Bill provides that the Act is to apply "outside Qld to the full extent of the extraterritorial legislative power of the Parliament". The purpose of including clause 5 is to clearly state that the Act applies extraterritorially to the fullest extent possible, having regard to the policy intent that the conduct of entities located outside of Queensland (but who provide labour hire in Qld) needs to be covered.

From a practical point of view, clause 5 is considered necessary to minimise any ambiguity/arguments as to the scope of the Act for those 'providers' based outside of Qld with the 'workers' performing work within Qld (or partly in Qld and partly outside Qld). By way of example, clause 5 serves to assist negating arguments advanced by 'providers' that the Act does not apply given contracts (with persons to whom the worker was supplied, workers, agents and/or intermediaries) were entered into outside the state (or that the work was performed partly outside the state).

Furthermore, there is no impediment to prosecuting the legal entities behind businesses where the work is performed in Qld but the business/registered office is based outside Qld. Service of processes outside Qld is authorised by the Service and Execution of Process Act 1992 (Cwlth).

Question 2.

Clause 8 provides for certain individuals to not be classified as a worker for the purposes of the Act where prescribed by regulation. What will the regulation contain?

Response:

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 Bill provides for broad coverage of all labour hire services operating within Queensland. 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.

Question 3.

Clause 10 requires a labour hire provider to hold a licence. We understand that the major players and the legitimate businesses will duly make applications.

- a. How will you identify and enforce the Act against the rogue operators, who, as the committee heard during its inquiry last year do not play by the rules and don't have legitimate businesses, often don't pay the workers' compensation insurance premiums, or even payroll tax, and use sham contracting etc?

Response:

The Bill, at s11, makes clear that there is an obligation on persons engaging labour hire services to only use a licensed operator. There is a strong penalty for a breach of this obligation at s11(1)(a) and (b) being a maximum penalty for an individual of 1034 penalty units (pu) or 3 years imprisonment; or 3000 pu for a corporation. This clear obligation to only use licensed operators, coupled with strong penalties and a strong compliance presence will drive changes in industry behaviour from the 'demand side'. If those rogue operators choose not become licensed, users of labour hire services will not use them.

Where operators seek to become licensed, they must satisfy the criteria of a being a fit and proper person and the business to which an application is made must be financially viable for a licence to be granted (see s15). Once licensed, they will be subject to the obligations of the scheme, including regular reporting and renewal (see ss31, 18 and 40) and compliance with all 'relevant laws' (see s28).

There will also be a public register of licensed providers to inform both prospective users of labour hire services and workers about the provider (see ss103 and 105).

In the event of phoenix-ing, the Bill prescribes limitations on further applications being made for a licence (see s14) as well as situations where a person is under the control of another (puppet-master type arrangements) (see s27(1)(h)).

The Bill also provides a serious offence for engaging in 'anti-avoidance' arrangements (see s12). Furthermore, persons are bound to report on anti-avoidance behaviour (see s90) and may also be considered a party to an offence (see s92).

Stakeholder feedback has suggested that industry and business are likely to be active in reporting issues with operators. The Bill provides for referring alleged breaches of other legislation on to the relevant competent authority (see s104).

Part 2 – Prohibited conduct

Question 4.

Clause 12 creates an offence to circumvent or avoid an obligation imposed by the Bill. Clause 28 states that it is a condition of a licence that a licensee comply with *relevant laws* which are defined in schedule 1 of the Bill as including other State and Commonwealth laws.

- a.** Does clause 12 attempt to impose a penalty on a person who circumvents an obligation under one of the listed relevant laws, for example the Commonwealth Fair Work Act?

Response:

No, 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.

- b.** If so, how would this occur, what jurisdiction does the State have to determine and impose penalties for breaches of legislation in another jurisdiction?

Response:

See above.

- c.** What would happen if the person was convicted and a penalty imposed by the other jurisdiction for that Act?

Response:

Conviction of an offence against a relevant law would be grounds for the Chief Executive to reconsider the licensee’s entitlement to obtain or continue to hold a license (see ss27(1)(b)(i) and (ii), 28, 40). 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.

Part 3 - Licenses

Question 5.

Clause 17 provides that a licence can be granted, renewed or restored for up to 1 year.

- a.** Is it anticipated that licenses will be granted for less than 1 year?

Response:

No. It is anticipated that licenses are held and renewable annually. However it may be that, in particular circumstances, a provider may seek a licence for a limited period. See further advice at b. Such an application would be considered by the Chief Executive on its merits.

- b.** In what circumstances?

Response:

In addition to the circumstance indicated above, if a licence is restored it may be for a period of less than a year to maintain its prior expiration date.

- c. Will the standard fee be applied if for example a licence is granted for three months will the applicant need to pay 4 licence fees per year?

Response:

The provision for setting the fee for an application is at s108 (2)(a). While it is not anticipated that licences will be granted for periods of less than one year, the Bill provides that the chief executive may refund, waive or vary the fee (by regulation).

- d. How many licences do you expect to be processing – how will this be administered?

Response:

The Labour Hire Licensing Scheme Decision Regulatory Impact Statement – March 2017, noted (at page 9), 'data provided by WorkCover Queensland has indicated that there are approximately 1500 to 2000 labour hire providers in Queensland. Stakeholder feedback as also suggested the number of operators may be higher, although there is no data to support this contention.

Upon the successful passage of the Bill, its commencement will be by proclamation (see s2). This date will be determined by the Government. A joint media statement by the Premier and Minister for the Arts, and the Minister for employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs dated 1 May 2017 indicated that the scheme was 'expected to be up and running in 2018'.

The scheme will be administered within the Office of Industrial Relations. Transitional arrangements are available at s109 for the supply of labour within 28 days following the commencement of the Bill.

Question 6.

An applicant must be financially viable to be granted a licence but not for renewal or restoration of a licence.

- a. Why is the financial viability of LHPs not a consideration for the renewal or restoration of a licence by the chief executive?

Response:

Fitness and propriety and business viability remain elements that the chief executive can consider at any time during a person applies for or holds a licence. Clause 44(1)(b) allows the chief executive to make inquiries about the viability of a licensee's business. Section 20(1) also provides that the chief executive may consider the [renewal] application and 'any other information obtained in relation to the application'. At renewal or restoration, it is anticipated that a person will make a declaration with respect to the information provided at the original application or subsequently (under s40).

Question 7.

Clause 24(1)(b) allows the chief executive to cancel a licence where the licensee or an employee or representative of the licensee, has contravened a relevant law, whether or not they have been convicted of an offence for the contravention.

- a. Please explain the rationale of this provision.

Response:

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 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.

- b.** How will the chief executive be satisfied that a person has contravened a relevant law?

Response:

In addition to a recovered conviction, the chief executive may be informed by a relevant enforcement agency of a contravention where a matter has been investigated and breaches found but where prosecution is not commenced.

- c.** Can the chief executive cancel a licence where, for example, a labour hire employee placed with another company contravenes (possibly in their own free time) the commonwealth *Racial Discrimination Act 1975* to the satisfaction of the chief executive without necessarily being convicted for any offence under that Act?

Response:

While this example is unlikely to result in cancellation, the Bill, at Part 3 Division 3 sets out the circumstances where the chief executive can suspend or cancel a license. The Bill ensure that proper process, by way of a show cause notice (s23) is in place to ensure natural justice and to enable further review and appeal processes set out at Part 8 of the Bill.

- d.** Do you consider the discretion afforded to the chief executive in this clause is too broad given the potential implications of cancelling a licence on a business and its employees?

Response:

No.

Question 8.

Clause 27 provides the matters which are to be considered when determining is a person is a fit and proper person to provide labour hire services. This includes at 27(1)(d) *whether the person has been convicted of an offence against a relevant law or another law that affects the person's suitability to provide labour hire services.*

- a.** Relevant laws are defined in schedule 1 of the Bill, but what are the other laws referred to in this section?

Response:

A relevant law is defined as 'the Act; or a provision of an Act or law of the State, the Commonwealth or another State imposing an obligation on a person in relation to workers, including, for example, obligations about – (i) keeping records about workers; and (ii) the payment of tax or superannuation for workers; and (iii) ensuring the health and safety of workers. The definition then provides *examples* of relevant laws. These examples are not exhaustive. *Another law* is a law not related to workers. Examples of another law (where a breach may not be related to workers) are company laws or criminal law relating to fraud, serious assault or human trafficking.

- b.** 27(2) allows the chief executive to have regard to any other matter the chief executive considers relevant in determining whether the person is a fit and proper person. Why is this discretion so broad?

Response:

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).

Part 4 – Obligations of licensees

Question 9.

Clause 28 states that a condition of a licence is compliance with relevant laws, which as per schedule 1, includes Queensland, Commonwealth, other State/Territory and local laws. The functions of an inspector under clause 47 are to monitor compliance with this Act.

- a.* Will inspectors be expected to monitor licensees', employees' and relevant persons' compliance with relevant laws?

Response:

No. While compliance with the obligations of other relevant laws underpins the labour licensing system and an entitlement to hold a labour hire licence, the enforcement and ensuring compliance with other Acts are matters for the relevant competent authority.

- b.* If so, given the broad scope of those laws,

- i.* How will this be achieved?

Response:

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

- ii.* Is this not a duplication of work that should be undertaken by other bodies, such as e.g. the Fair Work Ombudsman with respect to the *Fair Work Act 2009*?

Response:

There is no duplication of work.

- iii.* What would happen if an inspector, or the chief executive, discover a potential contravention of a relevant law?

Response:

The Bill provides for an inspector or other person who has knowledge of a suspected breach to provide advice to the relevant authority (see s104). As mentioned above, 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

Question 10.

Clause 29 allows the chief executive to impose any condition on a licensee, so long as it does not stray outside the purposes of the Bill. Can you please provide some examples of such conditions?

Response:

An example of a condition on a license is a requirement to obtain a financial surety or insurance coverage where the chief executive determines such a condition will ensure the applicant is a fit and proper person and/or the business is financially viable.

Question 11.

Clause 33 sets the requirements for nominated officers who will run the day-to-day management of the labour hire provider business. The requirements will be set out in a regulation:

- a.** What will these requirements be and why are they not included in the Bill?

Response:

The regulation power at 33(2) relates to setting out the number of nominated officers which might be required for a licence. For example, such a regulation may stipulate that more than one nominated officer is required based upon whether the company operates over geographically distinct regions or through a number of branch operations. It is not considered necessary for the primary legislation to carry this level of detail rather the legislation makes an appropriate delegation of this matter to subordinate regulation.

Question 12.

Clause 36 allows the licensee to appoint a substitute nominated officer for up to 30 days when the nominated officer will be absent and requires they meet the requirements in clause 33.

- a.** Is this up to 30 days per appointment or a total of 30 days in a year/other period?

Response:

30 days per appointment.

- b.** If it's the earlier, how will this be monitored so that a substitute nominated person is not regularly appointed as a substitute for 29 days for example, every month?

Response:

The provision allows for a nominated officer to be deputised in the event of a short period of absence of the incumbent. This is a reasonable and appropriate provision. If the provision is abused, as described in the question, or by substituting with an inappropriate person, the chief executive may consider this behaviour when considering the appropriateness of the licensee continuing to hold a license.

- c.** Also, the explanatory notes appear to be incorrect for clause 36 at page 15.

Response:

Noted. This should read that a licensee may appoint a substitute nominated officer if the **stated nominated officer** will be absent from the person's business for **not** more than 30 days.

Part 5 – Obtaining information (clauses 41 to 46)

Question 13.

Clause 44 provides that the chief executive may make inquiries about a person for deciding if an applicant or licensee is a fit and proper person to provide labour hire services, or whether a licensee's business is financially viable.

- a.** Why do the inquiries not extend to whether an applicant's business is financially viable, particularly given that financial viability is a required consideration in granting a licence?

Response:

Section 15 requires that the chief executive must satisfy her/himself in relation to the viability of the business before granting a license (i.e. upon application). The chief executive can also request additional information from applicants and licensees relating to the financial viability of the business. Further, by regulation (see s13(3)(C)(ii)) particular information must accompany the application. While other persons or agencies will be well placed to provide advice on the fit and proper person test (e.g. criminal history by the Commission for Police), it is considered that information on the financial viability of the business will be best provided by the applicant or licensee.

Question 14.

Clause 44(1) permits the chief executive to make inquiries about a person for deciding if an applicant or licensee is a fit and proper person to provide labour hire services, or whether a licensee's business is financially viable. For this purpose, clause 44(2) allows the chief executive to request information from the police commissioner about a person's criminal history including a description of the nature of the offence/ alleged offence giving rise to a conviction or charge in the person's criminal history. The commissioner must comply with any request. Clause 45(2) limits the use of the criminal history report information to matters in 44(1) and clause 45(3) limits further the use of charge history information.

- a. Why does clause 45(3) not allow the chief executive to rely on charge information to make a decision to suspend a licence under clause 22, or about whether a person is or continues to be a fit and proper person?

Response:

Legislating for the use of charge information for sanctions is uncommon. Although an example is found in the *Tattoo Industry and Security Providers Act* which provides for charge, the *Motor Dealers and Chattels Auctioneers Act 2014* does not. 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.

- b. Can the chief executive rely on charge information to cancel a licence, but not to suspend a licence based on criminal charge history? If so, why, given the latter would allow the chief executive up to 90 days to further consider the matter?

Response:

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. The reference to 90 days at 22(2)(b) is the maximum period of a suspension.

- c. Given 45(3), how would the chief executive use information on a person's criminal charge history? For example, can a person's criminal charge history be used to make a decision about whether a licensee's business is financially viable under clause 45(2)?

Response:

As mentioned above, charge history may inform a cancellation decision in relation to contravention of a relevant law. It is considered of limited utility in consideration around business viability.

Question 15.

Clause 46(3)(c) permits disclosure of criminal history information to a person if the disclosure is in a form that does not identify the person that the information relates to. Why would you need to disclose de-identified criminal history information where it is not for performance of a function under the Act or permitted by another law?

Response:

An example could be if the chief executive or the inspectorate was analysing, publishing or speaking about the scheme and gave broad examples of how the scheme operated and considerations around sanctions etc.

Question 16.

46(4) provides for the destruction of criminal history information that is no longer needed for the purpose that it was given.

- a. Will information (e.g. conviction information) be retained in the event of consideration of whether an applicant is a fit and proper person given they can re-apply for a licence or will a subsequent request under 44 be required? If a subsequent request is required, has consideration been given to the possible administrative burden this may create for the police commissioner in particular?

Response:

The information which would be anticipated to be requested would be a criminal history check or SCRAM information. Information provided through such a test is contemporaneous. Should a person re-apply after waiting for the three month period set out at clause 14 or longer, and if criminal history information is considered necessary it would be requested again. It would be proposed that the criminal history information would be retained for at least the period leading up to the decision and for the 28 day period when decision review may be requested. If an appeal is made, it would be appropriate to securely hold the criminal history information for a longer period.

- b. What safeguards will be in place around the destruction of this information?

Response:

The destruction of information will be done in accordance with all relevant laws. Reference has been made to the information available from the State Archivist on the destruction of records. Further discussion will be had with the State Archivist for policy and procedure for the appropriate destruction of this information.

Part 6 – Monitoring and enforcement**Question 17.**

Clause 47 identifies the functions of an inspector as monitoring compliance with this Act, investigating and taking action as necessary where the Act has been contravened, and informing providers and workers of their rights and obligations under the Act.

- a. Does 47(a) include monitoring compliance with the conditions of a licence? If not, how are the conditions of a licence monitored outside of reporting at clause 31 or the Chief Executive requiring provision of information at clause 43?

Response:

In addition to the reporting requirements at s31, a licensee is also required to report changes in circumstances which will include issues raised over compliance with relevant laws.

In regard to s47(a) which provides that an inspector's functions are to monitor compliance with this Act, as indicated at Question 9, the compliance unit it is anticipated that the compliance unit will establish co-operative relationships, underpinned by Memorandums of Understanding (MOUs), with agencies that have responsibility for relevant laws for the exchange of information and the investigation of complaints or suspicious activity.

- b. Will there be a requirement for licensees to provide information to their workers on their rights and obligations under this and other Acts?

Response:

There is no requirement in the Bill for licensees to provide information to their workers on their rights and obligations under this and other Acts. While there are constitutional limitations on the State's intervention into private sector employment following the referral of the State's industrial relation jurisdiction to the Commonwealth in 2010 in this regard it is anticipated that the labour hire website to be administered by the Queensland Government (see Dictionary definition of labour hire website) will provide a comprehensive suite of information for labour hire workers. It is anticipated that this information will also be available in a range of languages other than English.

Question 18.

Clause 52(3) states that the section does not limit the chief executive from giving a single identity card to a person for this Act and other purposes. What is the purpose of this provision?

Response:

The Chief Executive (the Under Treasurer or appropriately delegated officer) may, by instrument, appoint an appropriately qualified public service employee as an inspector. While the Bill provides for a stand-alone inspectorate, there is no prohibition on an inspector holding a dual appointment under this and one or more other Acts. For example, an inspector under the *Industrial Relations Act 2016* also holds appointments under the *Trading (Allowable Hours) Act 1990*, the *Child Employment Act 2006*, the *Workers' Accommodation and Pastoral Workers' Accommodation Acts* and the *Anzac Day Act*.

Question 19.

Clause 66(2)(d) states that before an inspector enters a place under warrant they must make a reasonable attempt to give the person an opportunity to allow the inspector immediate entry to a place without using force. 66(2) does not apply where the inspector reasonably believes that entry without consent is required to ensure the warrant can be exercised as per 66(3).

- a. Does this provision permit a use of force by an inspector? If so, are there any impacts or other considerations to be taken into account with regard to such use of force i.e. will police officers be present?

Response:

The purpose of s66(3) is to allow the use of the warrant on the terms that it has been issued in accordance with s62. Section 66(3) does not preclude the inspector using force to enter a place or exercise powers. This is because the use of force is permitted under the issue of the warrant in accordance with s62(2)(b) which provides that an inspector may with necessary and reasonable help and force enter the place and any other place necessary for entry to the place and exercise the inspector's powers.

There is no express provision in the Bill permitting as inspector to request a police officer be present for the purposes of issuing a warrant, however calling for the aid of a police officer and the use of force will be a matter of operational policy.

Question 20.

Why does clause 67(2) restrict the general powers of an inspector after entering a public place, particularly as the fact that the place is open to the public is one of the grounds in upon which an inspector may enter a place under clause 55(1)(c)(b)?

Response:

Section 67(2) does not restrict the general powers of an inspector after entering a public place. Section 67(2) only restricts an inspector's general powers when entering either under s55(1)(a)(consent) or s55(1)(c)(warrant) and not s55(1)(b)(public place).

Following a review of s67 further advice will be sought from the Office of the Parliamentary Counsel in regard to the drafting (where it provides that powers under that subdivision may be exercised if an inspector enters a place under clauses 55(1) (a), (c) or (d)). It may be that s55(b) should also be included to ensure an inspector is empowered to exercise the general powers (under subdivision 1) after entering a 'public place'.

Question 21.

With respect to the treatment of seized items, clause 75(2)(b) refers to making equipment inoperable. Considering the purpose of the Act (and that this subdivision relates to seizure of things as evidence of an offence under the Act), can you please provide an example of the sorts of equipment you expect may need to be made inoperable?

Response:

The provision is typical of a seizure power. An example where it may be actioned is not available.

Question 22.

Clause 77(1)(b) provides that an inspector need not provide a receipt and information notice for a thing seized if the condition, nature and value of the thing mean it would be unreasonable to require a receipt and information notice.

- a. In what circumstances would the condition, nature and value of a thing make it unreasonable to require the provision of a receipt and information notice?

Response:

The provision is typical of a seizure power. An example may be a hand written note associated with the labour hire engagement provided to a worker on scrap paper.

Question 23.

Clause 79 allows an owner of a seized thing to apply to the chief executive for its return after 3 months, and the chief executive is to decide whether the thing can be returned, i.e. there are no reasonable grounds for retaining the thing.

- a. If a decision is made that a thing cannot be returned at that time, can the owner apply again in the future? What is the process?

Response:

There is no provision in s79 to make a second application. It is anticipated that the chief executive would provide, as part of the response to the application, a time frame as to how much longer the item will be held (pending any legal action relating to the seized item).

Question 24.

Clause 80 states that a thing is forfeited to the State if an inspector after making reasonable inquiries can't find an owner, or after making reasonable efforts, cannot return the thing to its owner. Clause 80(2) however, states the inspector is not required to make unreasonable inquiries or efforts.

- a. What benefit is there to including 80(2)?

Response:

The benefit is to prevent onerous requirements being placed on the inspector to find the owner. The provision is typical of a seizure power. An almost identical provision exists at s 179(2) and (3) of the *Work Health and Safety Act 2011*.

- b. In what circumstances is it likely that the owner is not known/cannot be found?

Response:

The circumstances could include where business has closed and/or the legal entities wound up (e.g. via liquidation etc).

Question 25.

Clauses 85, 86 and 87 provide that an inspector has a duty to minimise damage but where damage (other than trivial damage or damage to things that are abandoned) occurs, a notice must be provided and the person can claim compensation through a court.

- a. Is the only right to claim compensation for damage caused by going through the court?

Response:

Yes, unless a policy decision determines otherwise.

- b. Can an owner make a claim where there is a reasonable, though incorrect, belief that the damage was trivial or the thing was abandoned?

Response:

Yes, as a person is not precluded from making a claim merely because the inspector has determined the damage was either trivial or the thing was abandoned.

Question 26.

Clause 88 states a person must not obstruct an inspector exercising a power – e.g. to enter a property or seize a thing. The clause provides that when a person has obstructed an inspector and the inspector decides to continue to exercise the power – e.g. to enter – the inspector must at that point warn the person that it is an offence to cause an obstruction and the inspector considers the person's conduct an obstruction.

- a. Should the warning occur earlier than when a person has already obstructed the inspector? Particularly given the penalty is up to 100 penalty units.

Response:

No. A similar provision exists at s 917 of the *Industrial Relations Act 2016*. There is also an obstruction offence under s188 of the *Work Health and Safety Act 2011* with no requirement to warn the person.

Part 8 – Reviews and Appeals**Question 27.**

Who do you envisage would be an interested person with a right to appeal decisions of the chief executive with respect to granting and suspending licences and licence conditions?

Response:

The review and appeal processes are available to persons identified at s93.

At 93(1) 'A person who has been given, or is entitled to receive an information notice for a decision...' and 93(2) '... an interested person'.

An interested person is defined at 93 (3) 'as 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'.

Examples of an interested person could be Unions and relevant employer/industry representative organisations and social justice organisations. Similar organisations provided submissions and evidence to the Committee's inquiry in 2016 and also to the Issues paper on the regulation of the labour hire industry issued by the Queensland Government in December 2016.

- a. Why are they not an interested party for a decision to cancel or to renew or restore a licence?

Response:

Clause 93(1) of Bill provides that a person is entitled to apply for a review of a decision for which an information notice is given. These are:

- Refusal to grant a licence (section 16(3))
- If condition is imposed (section 16(2) and see also section 29(1))
- Refusal to grant renewal or refusal to grant restoration or if granted subject to conditions imposed under s29(1) (section 21(3)).
- Suspension of licence at section 22
- Cancellation of licence at section 24
- Impose, vary or revoke a condition at section 29.
- CE refusal of application to change nominated officer at section 35(5)
- Seizure of thing by inspector (receipt and information notice given) section 77. ??
- Forfeiture of seized thing (decided under s80, info notice under s81 ** note section 81 specified the owner may seek a stay of the decision at QCAT).

Clause 93(2) also provides that an interested person (defined at 93(3)) may apply for a review of the following decisions of the CE:

- Grant of licence at section 16
- Suspension of licence at section 22
- Impose, vary or revoke a condition at section 29.
- Note – chief executive must notify the licensee of an application for review by another person

Consideration will be given to extending the review by an interested person for a decision to cancel or to renew or restore a licence.

Question 28.

What input will a licensee have in a review of a decision regarding their licence status made by an interested party?

Response:

The chief executive must notify the licensee if an application for review is made by an interested person. Natural justice will ensure the chief executive proceeds in a proper way. The licensee maintains their appeal rights.

Question 29.

Why was it considered necessary to only allow a decision of the chief executive to be stayed by QCAT under clause 96 and not upon a review under the Act?

Response:

Section 96 provides that an application for a review of a decision does not stay the decision. Considering the evidence of serious exploitation uncovered by the Committee during its review of the practices of the labour hire in Queensland, that these occurrences have been found in other inquiries and have been reported in the media, it is considered not appropriate that the decision of the chief executive be automatically stayed. It is reasonable that an application for such be applied for at QCAT. Section 96 enables the applicant and QCAT to proceed appropriately.

Question 30.

Clause 97 provides that the chief executive is to provide a review notice informing the applicant and the licence holder of their decision regarding the review application within 21 days. This review notice is to include a QCAT information notice where the decision is not the outcome sought by the applicant/licence holder.

- a. Is there any limit on when the licensee or review applicant can make an application to QCAT if the chief executive does not provide a review notice within 21 days under clause 97(6)?

Response:

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.

Part 9 – Legal proceedings**Question 31.**

The chief executive must keep a register of licences under clause 103 which include information on licences, enforcement action, the business, whether accommodation is provided for workers etc.

- a.* Will information be published about cancelled licences? A cancelled licence holder would be removed from the register.

Response:

The Bill contains a publication provision at clause 105(1)(b) under which the chief executive can publish information about 'enforcement action taken under this Act, including information about prosecutions and the suspension or cancellation of a licence'. Details of cancelled licences will be published on the website.

- b.* What information will be provided regarding suspended licences?

Response:

The register on the website (under clause 105(1)(b)) will include information about the period of a suspension, and clarify for example that the licensee is unable to supply workers while the licence is suspended. The register may also include information in relation to what brought about the suspension, to raise awareness and to deter other similar behaviour, within the limits provided under the Bill for privacy and confidentiality of information.

- c.* What enforcement action information will be included on this public register?

Response:

It is anticipated that prosecution action and where conditions have been imposed on a licensee will be presented on the public register.

- d.* How will you ensure that people, and particularly labour hire workers, are made aware of this register?

Response:

The compliance unit will coordinate an extensive awareness and education campaign. As discussed above, there will be 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 of non-English speaking background), and the publishing of the register of licensed labour hire providers and applicants.

Negotiation with industry stakeholders (e.g. government agencies, industry associations, unions and accommodation providers) will also occur seeking appropriate linkages are made, particularly for newly arrived visa holders and non-English speaking cohorts.