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Your Ref: B.19 qA7748

Mr Peter Russo MP
Chair
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Russo

I refer to your letter dated 26 May 2017 regarding the Finance and Administration Committee (the Committee) consideration of the Labour Hire Licensing Bill 2017 (LHL Bill 2017) and your request for a departmental (Office of Industrial Relations) response to issues raised in public submissions.

Please find enclosed 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, [REDACTED]

I trust this information is of assistance.

Yours sincerely

Jim Murphy
Under Treasurer

Encl. 22/6/17

Submission summaries

Clause and policy issue	Issues raised	Departmental consideration and response
<p>Clause 7 – Meaning of <i>provider</i> and <i>labour hire services</i></p>	<p>Allens Linklaters raised concern with the definition of labour hire services being the ‘supply’ of workers. Recommends it be amended to ‘hire’ of workers. Considers that the definition is not precise enough and will capture a broader range of services than intended. Takes issue with the words ‘carrying on a business’ as this could open the possibility that the supply of the worker is just one component of the service being supplied, and with ‘to do work’ as the bill does not define or describe the work the worker is to do to satisfy the definition and could capture work undertaken for the employer, not the host. Lists as examples, the provision of farm hands to a farm where the provider has agreed to pick fruit on a certain parcel of land, supply of cleaners to a shopping centre where provider has contracted to clean the centre, supply of mining workers where the provider has agreed to operate and maintain the mine, and supply of electricians to a building site where the provider has agreed to carry out the electrical work at that site. Takes issue with the words ‘in the course of carrying on a business’ because this appears to apply only to the suppliers business and not the host and leaves open the possibility that people who are not carrying on a business may be caught, e.g. home owner asking a cleaning agency to provide a cleaner for their residential home. [Allens, sub 2, p. 3-5]</p> <p>Allens lists a number of recommendations to the definition including: (a) the hiree and the hirer are associated entities (within the meaning of s50AAA of the Corporations Act); (b) the hirer or an associated entity of the hirer is a participant in a joint venture and the worker is hired by the host to perform work in or for the joint venture; (c) the hirer or an associated entity of the hirer is a partner in a partnership and the worker is hired by the host to perform work in or for the partnership; or (d) the work that the worker does for the hiree continues to be work done in or for the business of the hirer or an associated entity of the hirer, unless that business is the hire of workers. [Allens, sub 2, p. 3-5]</p> <p>AMWU strongly supports the inclusion of Group Training Organisations with the definition of provider and labour hire services [AMWU, sub 4, p 3].</p>	<p>The Government’s policy position is for the implementation of a mandatory business licensing scheme covering all labour hire providers in Queensland.</p> <p>It is considered that the use of the term ‘supply’, and the drafting of the meaning of <i>provider</i> and <i>labour hire services</i> provided at s7 (and used in conjunction with the meaning of a <i>worker</i> at s8) adequately captures the business of labour hire however it may be described.</p> <p>Labour hire arrangements characteristically involve a ‘triangular relationship’ in which a labour hire business supplies the labour of a worker to a third party (host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships, whereby:</p> <ul style="list-style-type: none"> – the host employer pays the labour hire agency for the labour provided by the worker and – also has a direct contractual relationship with the labour hire agency; – the worker is under the direction or control of the host employer for the performance of work, but is not engaged in any contractual or employment relationship with the host employer; and – the worker is paid by the labour hire agency. <p>The labour hire agency retains the contractual or employment relationship with the worker. As the</p>

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	<p>ASMC states the definition of a provider is too broad and may potentially capture unintended occupations [ASMC, sub 7, p. 1]</p> <p>Chandler Macleod states that current clause creates a very broad scheme that has the potential to encapsulate a range of service models over and above genuine labour hire providers. Bill needs to be amended to provide clarity on what types of arrangements will be included as genuine labour hire [Chandler, sub 10, p. 2-3] See also [2XM Recruit, sub 3, p. 2; Edge Personnel, sub 5, p. 2; Fuse Recruitment, sub 6, p. 2; Carestaff Nursing, sub 8, p. 2; Omni Recruit, sub 13, p. 2; Workplace Central, sub 16, p. 2; Steps Group, sub 19, p. 3]</p> <p>Anonymous submission 14 states that GTOs should be exempted from the definitions in Bill on the basis that they are already regulated for under other legislation as well as a national standard, and there is no evidence that apprentices or trainees are being exploited [Anonymous, sub 14, p. 17-21]</p> <p>BHP state that the use of the term ‘in the course of carrying on a business’ in other legislation has been subject to much judicial interpretation, the use of the phrase leaves the Bill with uncertain scope and undermines the objectives of the legislation. Specific exclusion could be included to remove/minimise the uncertainty in the legislation as per the example provided [BHP, sub 17, p. 1-2]</p> <p>Agforce states that clause 7 provides a broad meaning of provider and labour hire services and potentially has the effect of capturing contractors traditionally engaged by our members as providers of labour hire services. Given the lack of evidence of exploitation or mistreatment amongst such contractors this seems to be an overreach of the proposed legislation. If the Bill progresses AgForce requests that contractors commonly used by broadacre agriculture be excluded from the definition (preferably in the Act itself) [Agforce, sub 18, p. 2-3]</p> <p>Growcom is concerned that the broad definition under clause 7 will result in confusion as to what constitutes a labour hire arrangement and what</p>	<p>employer of the worker the labour hire agency is responsible for ensuring the worker’s entitlements are met as well as the full range of associated employer responsibilities and liabilities, including legal requirements for workplace health and safety, workers’ compensation and taxation.</p> <p><i>In Kool v Adecco Industrial Pty Ltd T/A Adecco</i> Deputy President Asbury defined the business model of LHPs:</p> <p><i>The business model of labour hire companies is generally that they employ persons (usually on a casual basis), and place those persons in the businesses of other companies with which the labour hire company has a contractual relationship (host employers).</i></p> <p>As the Finance and Administration Committee noted in its report into the Practices of the Labour Hire Industry In Queensland, variations on this standard “triangular” employment model can also be engaged, which can serve to complicate these contractual or control relationships and therefore also the distribution of employer responsibilities and liabilities. The definitions (and scope) provided in the Bill accounts for these variations.</p> <p>Section 8(2) provides that ‘an individual is not a worker if the individual is, or is of a class of individual, prescribed by regulation.’ The regulation making power is provided as a practical inclusion to allow for the scheme to be contracted, for example in response to improved practices in particular industry or occupational sectors, or for other exemptions should it be considered warranted. For example, a</p>

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	<p>requires a licence; request that greater clarity be provided to distinguish between service provision and labour hire [Growcom, sub 20, p. 2]</p> <p>AEN states that apprentices and trainees employed by group training organisations should be exempted from being the Bill noting they are already heavily protected under the <i>Further Education and Training Act 2014</i> and by National Standards that the Organisations are audited against. Further legislation will not add any more protection and could be potentially harmful, adding further cost and administrative burden [AEN, sub 21, p. 2]</p>	<p>regulation could be made to apply to a worker doing work between related entities.</p> <p>The Bill provides for the ability to waive specified requirements at Section 102. This could potentially be used to give recognition where a business is licensed or accredited under another suitably rigorous scheme e.g. a Group Training Organisation. It should be noted however that a Group Training Organisation is considered to be a labour hire provider within the meaning of the Bill.</p> <p>Genuine subcontractor arrangements, of the nature identified in submissions, are not captured by the Bill. The Bill covers labour hire arrangements that are a ‘triangular relationship’ in which a labour hire business <u>supplies the labour of a worker</u> to a third party (host employer or other labour hire provider in a chain), for an agreed fee.</p>
Clause 8 – Meaning of <i>worker</i>	<p>Allens Linklaters raised concern with the definition of worker, recommends this be narrowed to ensure it does not capture workers who are not labour hire employees and proposes amendments –refer to submission page 3 [Allens, sub 2, p. 3, 7]</p> <p>Chandler Macleod states the current definition of a worker could encompass independent contracting arrangements and they look forward to seeing the regulations to understand the scope of the types of working relationships the Bill intends to cover [Chandler, sub 10, p. 3]</p>	<p>As mentioned above, it is considered that the drafting of the meaning of a <i>worker</i> at s8 (and used in conjunction with the meaning of <i>provider</i> and <i>labour hire services</i> provided at s7) adequately captures the business of labour hire however it may be described.</p> <p>Section 8(2) provides that ‘an individual is not a worker if the individual is, or is of a class of individual, prescribed by regulation.’ The regulation making power is provided as a practical inclusion to allow for the scheme to be contracted, for example in response to improved practices in particular industry or occupational sectors, or for other exemptions should it be considered warranted. For example, a regulation could be made to apply to a worker doing work between related entities.</p>

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Part 2 – Prohibited conduct	<p>QNMU supports the application of penalties for contraventions of provisions [QNMU, sub 1, p. 3]</p> <p>The AMWU states the penalties for prohibited conduct are appropriate and provide an effective deterrent to non-compliance [AMWU, sub 4, p. 3]</p> <p>Agforce states that a licensing scheme should be structured in such a way that the use of a licensed provider covers any responsibility/liability the host has with respect to a providers actions, as implied in clause 11(2) [Agforce, sub 18, p.3]</p>	<p>The Bill provides strong penalties for operating as a labour hire provider without a license, or for engaging with an unlicensed provider. In this way the user also knows the true nature of the arrangements it is seeking to utilise in its business i.e. whether it is seeking a direct engagement, on-hire/labour hire, or a genuine subcontracting arrangement. This leverages the supply chain to self-identify what is a labour hire arrangements. Users of labour hire services will then seek out and work with licensed providers (rather than an unlicensed provider).</p> <p>These penalties are considered adequate to deter the use of non-licensed providers.</p>
Clause 12 – Person must not enter in avoidance arrangements	<p>QNMU supports the bill and clause 12 [QNU sub 1, p 3]</p> <p>Allens Linklaters recommends that clause 12 be removed from the Bill [Allens, sub 2, p. 3, 8]</p>	<p>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).</p> <p>An ‘avoidance-arrangement’ is an arrangement with another person for the supply of a worker if then person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation under the Bill.</p> <p>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).</p> <p>It is not uncommon for a licence to require compliance with other regulatory requirements. In</p>

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		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.
Part 3 – Licences	<p>QNMU supports the criteria for the chief executive to make a decision re granting a licence [QNMU, sub 1, p. 3]</p> <p>AMWU states the licensing fee for the scheme must be appropriate and proportionate to the size of the labour hire provider’s operation [AMWU, sub 4, p. 4]</p> <p>ADCQ suggest that where accommodation of other services such as transport are supplied by the licensee, that the standard of accommodation and/or services forms part of the criteria for granting/suspending and/or cancelling a licence [ADCQ, sub 11, p. 3]</p> <p>AMIEU states that licensing fees should be established at a level which is both appropriate to the size of a labour hire operation, and reflective of the costs of the licensing scheme – there is no reason the introduction of the legislation should become a financial cost to public expenditure [AMIEU, sub 15, p. 5]</p>	<p>The setting of the licensing fee is a matter of Government policy. The Decision Regulatory Impact Statement noted that a licence fee will be charged to an applicant seeking to be licensed as an LHP under the scheme in Queensland. The fee would be set at a level such that it acts as a small financial barrier to entry to deter speculative applications and encourage LHPs to be licensed, but would not make it overly burdensome for small LHPs to become licensed. Licence fees are an essential part of a licence scheme. Licence fee structures for business licensing are generally: ongoing, payable annually, and often designed to help fund the administration of the scheme to some extent. The licensing scheme proposed by the Victorian Inquiry Report included a fee.</p> <p>The proposed licensing fee structure is considered to be appropriate for the Queensland labour hire licensing scheme. It is proposed that fees will be set at \$1000 for small scale LHPs, \$3000 for medium-sized LHPs, and \$5000 for a larger LHP, with the categories of small, medium and large LHPs to be defined in subordinate legislation. It is anticipated that size will be determined by labour hire wages paid, leveraging existing arrangements, for example WorkCover premium threshold or payroll tax threshold.</p>
Clause 17 – Term	Chandler Macleod states the annual licence scheme creates an onerous administrative burden, they suggest an alternative tiered approach: small providers apply annually and pay a \$1000 fee; medium providers apply bi-	See above. Licence fees are an essential part of a licence scheme. Licence fee structures for business licensing are generally: ongoing, payable annually, and

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	<p>annually and pay a fee of \$6000; large providers apply tri-annually and pay a fee of \$15,000 [Chandler, sub 10, p. 3]</p>	<p>often designed to help fund the administration of the scheme to some extent. Generally, stakeholders did not consider an appropriately set fee to be a particular issue for business provided that the amount did not place LHPs under unnecessary financial burden. For the purposes of consultation, a fee range of \$3000-\$5000 was discussed. Most stakeholders consulted did not raise any concerns about this amount or the requirement for a fee, accepting it as a standard component of a licensing scheme.</p>
Part 3, Division 2 – Renewal and restoration	<p>QNMU supports ability to apply for renewal of licence prior to expiry and the criteria for the decision to renew [QNMU, Sub 1, p. 3]</p>	<p>Section 18 of the Bill allows a licensee to apply to the chief executive for the renewal of the licensee's licence before the licence expires. The Bill also includes a decision making provision for an application to renew or restore a licence at Section 20. The chief executive may grant the renewal or restoration only if satisfied that specified persons are a 'fit and proper person to provide labour hire services'. The specified persons are: the applicant, each nominated officer, and if the application is a corporation, the corporation and each person who is an executive officer of the corporation.</p>
Part 3, Division 3 – Suspension, cancellation and surrender	<p>QNMU supports the ability for the chief executive to suspend a licence in certain circumstances [QNMU, Sub 1, p. 3]</p> <p>Anonymous submission 14 states that clause 22 permits unilateral suspension of a licence, and while a licensee can seek a review in QCAT, the application does not stay the decision. Currently the suspension of a licence may be undertaken without giving the licensee a right to natural justice; the Bill should be amended so that before a decision is made to suspend a licence the licensee should be given a right to be heard. [Anonymous, sub 14, p. 21-22]</p>	<p>Part 3 Division 3 sets out the circumstances where the chief executive can suspend or cancel a licence. The Bill seeks to provide for a proper process, by way of a show cause notice ahead of any decision to cancel (Section 23) to ensure natural justice and to enable further review and appeal processes set out at Part 8 of the Bill.</p> <p>The Bill does not expressly provide for a show cause notice before suspension. While the chief executive will generally follow a show cause process for suspension to provide for natural justice having regard to the availability of review and appeals processes and</p>

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		<p>the Government's obligation to be a model litigant at QCAT, given the egregious issues which have been reported where labour hire arrangements are utilised, it may be necessary from time to time to immediately suspend a licence where circumstances are sufficient to warrant such action.</p> <p>The Chief Executive can suspend a licence for not more than a period of 90 days (Section 22). If the chief executive wishes to cancel a licence after this period of time they must give the licensee a show cause notice before cancellation.</p>
Clause 27 – Fit and proper persons	<p>QNMU supports the fit and proper person provisions [QNMU, sub 1, p. 3]</p> <p>AMWU states the fit and proper person test is fair and reasonable [AMWU, sub 4, p. 4]</p> <p>AMIEU considers the criteria in clause 27 appropriate for determining fitness to hold a licence, including addressing the issues of an applicant being put forward as a puppet of a real business operator, and extending the test to natural persons associated with a corporation in considering whether to grant a licence under clause 15 [AMIEU, sub 15, p. 3-4]</p>	<p>Section 27 is considered appropriate to ensure the chief executive, in making her/his decision whether a person is fit and proper to provide labour hire services, is able to have regard to a fulsome range of an applicant's attributes, characteristics and history.</p> <p>The Bill also provides robust mechanisms to review and appeal a chief executive's decision (see Part 8).</p>
Clause 28 – Condition— compliance with relevant laws	<p>The QNMU supports the requirement for compliance with all relevant laws as a licence condition [QNMU, sub 1, p. 3]</p> <p>Allens Linklaters recommends that there be a reconsideration of retaining the requirement for compliance with Commonwealth laws as a condition of the licence [Allens, sub 2, p. 3, 8]</p>	<p>It is not uncommon for a licence to require compliance with other 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). 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</p>

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		provides examples of relevant laws. These examples are not exhaustive.
Part 4, Division 2 – Reporting	<p>QNMU supports the mandatory public reporting and recommends clause 32 be amended to require regulation to prescribe reporting on the number of visa holders and the type of visa [QNMU, sub 1, p. 3]</p> <p>AMWU supports the requirement for regular and systematic reporting of labour hire providers, and states the arrangement in the Bill are appropriate, including the nature of the matters to be reported [AMWU, sub 4, p.4]</p> <p>Chandler Macleod states this section will cause significant and unnecessary administrative burden for large, ethical labour hire providers, contrary to the aims of the bill. There will be a significant increase in reporting, making licensed providers more expensive and less competitive in the labour hire market place. All of significant components of the data proposed to be requested could be obtained by other means. Such data could be transferred from relevant government bodies to the Chief Executive [Chandler, sub 10, p. 4]</p> <p>ADCQ suggest the expansion of information required about accommodation to include the amount of the fee paid for the accommodation and the description of the accommodation, including the number of people housed in the accommodation [ADCQ, sub 11, p. 2]</p> <p>AMIEU considers the regular reporting system appropriate to allow monitoring of licence eligibility and compliance with licence conditions [AMIEU, sub 15, p. 4]</p> <p>Agforce states that notwithstanding the penalties for non-reporting of prescribed changes under clause 40, self-reporting under clause 31 offers significantly less rigour and potential value than independent 3rd party audits, as opposed to the national certification program. Self-reporting may be less expensive, however its value in removing g sub-standard providers is also limited [Agforce, sub 18, p. 3]</p>	<p>Reporting is considered a crucial component of the scheme, both to ensure ongoing eligibility and compliance; and to provide information on the performance of the industry to inform future policy and compliance activities.</p> <p>It is noted that the information requested should not be unduly onerous for providers who are compliant with relevant legislation. On balance, self-reporting on a six monthly basis, with annual renewal of a licence, is considered appropriate.</p> <p>The Bill includes specific provisions about what an applicant must report on. Section 31(2)(i) deals with reporting on accommodation provided to workers. Various inquiries in Australia have highlighted the vulnerability of labour hire employees to poor treatment including the provision of substandard accommodation. It is noted that the RCSA is finalising a national certification program for Employment Services which includes provision for ‘decent accommodation’.</p> <p>The information sought in relation to accommodation is to be provided ‘to the best of the licensee’s knowledge’. It is not envisaged that the licensee would need to interrogate workers in relation to their accommodation if the licensee genuinely has no knowledge of the accommodation arrangements to report on this provision.</p> <p>Section 32(a) also provides that further matters may</p>

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	<p>Growcom seek greater clarification of how and where information reported under clause 31 is to be used and what purpose collecting retrospective information may serve, including:</p> <ul style="list-style-type: none"> • information that could be used to identify particular farms (for what impact does the location of a farm have on the criteria for a licence), and • information about accommodation noting the definition of accommodation is unclear (long term or one night) and may result in an invasion of privacy of a worker's living arrangements. It would be preferred that this requirement covers accommodation arrangements where there is a clear link between the accommodation provider and labour hire service and other arrangements that could be used to deprive workers of their rights [Growcom, sub10, p. 2] 	<p>be prescribed in regulation in regards to what a licensee must report on under Section 31(2). The Bill provides examples of what might be specified in a regulation including: the number of workers the licensee has supplied who are of a non-English speaking background, the number of workers the licensee has supplied who hold particular types of visas under the <i>Migration Act 1958</i> (Cwlth), information required about the licensee's compliance with a relevant law.</p> <p>This could provide for reporting to include for example: the number of workers on visas, what types of visa the workers held, countries of origin, primary language spoken.</p> <p>Confidential information will not be disclosed other than as expressly provided for in the Bill at Section 104(3), for example with the written consent of the person to whom the information relates or if the disclosure is authorised under an Act or law.</p> <p>The Bill at Sections 103 and 104 provides for the establishment and maintenance of a Labour Hire Website and a register of licensed providers. It is anticipated that this will be a 'dynamic' site able to inform potential users of labour hire services and workers about the location and (in general) performance of the a licensed labour hire service provider. The information which may be published in the register is clearly set out in the Bill at Section 103, and the range of information which will be published is considered appropriate to inform potential or existing users or workers in relation to labour hire providers in Queensland, as well as providing a 'one stop shop' approach for those seeking to find a labour</p>

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		hire provider and check that provider is licensed.
Clause 34 – Nominated officer must be reasonably available	Agforce states it may be problematic for a nominated officer who is an agricultural contractor operating in rural and remote areas where reception is poor/non-existent to always be available [Agforce, sub 18, p.3]	<p>It is not unreasonable that a nominated officer representing the business of the license holder be reasonably contactable.</p> <p>Section 33 sets the requirements for nominated officers who will run the day-to-day management of the labour hire provider business. 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.</p>
Part 6 – Monitoring and enforcement	<p>QNMU supports a dedicated compliance unit [QNMU, sub 1, p. 3-4]</p> <p>AMWU states that in order for the industry to be properly regulated the scheme must be well resourced with an active inspectorate to ensure compliance [AMWU, sub 4, p4]</p> <p>ADCQ states that it is important the compliance unit has sufficient resources to promote awareness of the scheme, awareness of workers' rights and to ensure compliance [ADCQ, sub 11, p. 3]</p> <p>AMIEU notes that a properly resourced and active inspectorate is crucial to identifying those who operate without a licence or who breach licence conditions [AMIEU, sub 15, p. 5-6]</p>	<p>Stakeholder feedback during consultation on the Bill has revealed a very high expectation for a strong presence to be established for the enforcement and monitoring of the labour hire licence scheme. In response it is anticipated that a well-resourced compliance unit of inspectors and desktop auditors will be established to promote awareness of the scheme and ensure compliance.</p> <p>While still in its formative stages, it is proposed that the Labour Hire Inspectorate (Compliance Unit) will comprise of</p> <ul style="list-style-type: none"> • Desk-top Auditors (for application and reporting validation) • Inspectors (for conducting investigations, whether by complaint or by targeted programs).

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		<p>The inspectorate will also coordinate an extensive awareness and education campaign. The inspectorate will be responsible for administering an extensive on-line presence through the Government's labour hire website, to be used for the dissemination of information to providers, end users and workers(including people of non-English speaking background), and the publishing of the register of licensed labour hire providers and applicants.</p> <p>The inspectorate will report to the Director, Industrial Relations Compliance and Regulation, within the Office of Industrial Relations. Funding for the Inspectorate/compliance unit will be \$5million in the first two years of operation, with recurrent funding of \$2million per year thereafter. This funding is to be made available from revenue derived from the licensing fees.</p> <p>Desk-top auditors will review and validate license applications and reporting. The license application and reporting function will be a digitalised 'on-line' system requiring applicants to establish their fitness for holding a licence and their business's financial viability by declaration made under Oath. All applications will be vetted, with a proportion, including those that may trigger a need for further inquiry, subject to full desktop audit.</p> <p>Inspectors will undertake in-field compliance activities, working in cooperation with established investigation programs currently undertaken by the Fair Work Ombudsman (FWO) e.g. 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</p>

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		<p>Protection and FWO. These investigation activities will include 'on-complaint' and targeted compliance campaigns.</p> <p>The Labour Hire Inspectorate 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. While the Labour Hire inspectorate will be regionally based, a final decision on the location of the unit, or the distribution of inspectors is yet to be determined.</p>
Part 6, Division 2 – Powers of entry	Contact with agricultural contractors is often difficult noting that workplace entry powers appear to permanently apply to primary production properties (clause 55(1)(d) and entry procedures may be difficult to apply (for example, under clause 66(2) even when the occupier is not seeking to frustrate a warrant) [AgForce, sub 18, p. 3]	The right of entry powers (along with the general powers and power to seize) are similar to powers exercised by industrial (wages) and workplace health and safety inspectors. These powers are considered adequate and well established.
Clause 90 – Persons must report avoidance arrangements	<p>Allens Linklaters recommends that clause 90 be removed from the bill [Allens, sub 2, p. 3, 8]</p> <p>Growcom seeks clarity as to what is intended to be covered by clause 90. For example, a labour hire arrangement may be abandoned for a service type arrangement where a set fee is paid to pick a crop, would this constitute an avoidance arrangement as this type of arrangement is used in some agriculture such as broadacre harvesting and contract spraying [Growcom, sub 20, p. 3]</p>	<p>The Bill also provides a serious offence for engaging in 'anti-avoidance' arrangements (see Section 12). Furthermore, persons are bound to report on anti-avoidance behaviour (see Section 90) and may also be considered a party to an offence (see Section 92).</p> <p>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 <u>is designed to circumvent or avoid an obligation under the Bill</u>.</p> <p>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 Section 104).</p> <p>Bona fide business decisions to utilise licensed labour hire providers or to enter into genuine contracting</p>

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		arrangements are not affected by Sections 12, 90 or 92 of the Bill.
Clause 93 – Application for review	Growcom question the intent of this provision and argues that it opens up the door for malicious and vexatious applications to slow approval of labour hire providers, stating this provision gives third parties a much more powerful role than in other similar legislation, and there is not real justification for the unusual provision [Growcom, sub 20, p. 4]	<p>The review and appeal processes are available to persons identified at Section 93.</p> <p>At Section 93(1) ‘A person who has been given, or is entitled to receive an information notice for a decision...’ and</p> <p>Section 93(2) ‘... an interested person’.</p> <p>An interested person is defined at Section 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’.</p> <p>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. Section 93(2) ‘interested person’ does not include another licensee.</p> <p>Section 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:</p> <ul style="list-style-type: none"> – 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 Section 29(1) (Section 21(3)). – Suspension of licence at Section 22 – Cancellation of licence at Section 24

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		<ul style="list-style-type: none"> – 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 Section 80, information notice under Section 81. In relation to this provision, Section 81 specifies that the owner may seek a stay of the decision at QCAT. <p>Section 93(2) also provides that an interested person (defined at 93(3)) may apply for a review of the following decisions of the CE:</p> <ul style="list-style-type: none"> – 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 <p>Consideration will be given to extending the review by an interested person for a decision to cancel or to renew or restore a licence.</p>
Clause 102 – Waiver of particular requirements to give information	Chandler Macleod notes RCSA has created an audit based certification program for providers and recommends the Bill includes provisions for mutual recognition of accreditation schemes (and that the RCSA scheme be recognised as meeting all the requirements of the proposed licensing scheme) [Chandler, sub 10, p. 4-5] See also [2XM Recruit, sub 3, p. 2-3; Edge Personnel, sub 5, p. 2-3; Fuse Recruitment, sub 6, p. 2-3; Carestaff Nursing, sub 8, p. 2; Gen5 Group, sub 9, p.3; Omni Recruit, sub 13, p. 2-3; Workplace Central, sub 16, p. 2; Steps Group, sub 19, p. 2-3]	The Bill provides for the ability to waive specified requirements at Section 102. This could potentially be used to give recognition where a business is licensed or accredited under another suitably rigorous regulatory or industry accreditation scheme. This Section allows the scheme to provide flexibly for the ability to recognise or waive certain elements for example at application or reporting to reduce the

Clause and policy issue	Issues raised	Departmental consideration and response
		administrative burden. Under the same Section, the Chief Executive may make a policy about a waiver and if so, must publish that policy which would allow for a standardised approach to recognition or waiver of an element if identified by the Chief Executive.
Clause 103 – Register of licences	Anonymous submission 14 raises a concern that clause 103(2)(i) and 103(3) requires the publication of the location of where a GTO supplies apprentices and trainees on the labour hire website, noting that most apprentices and trainees are young people and that it is not appropriate that such information be published as the protection of young people may be compromised by such publication [Anonymous, sub 14, p. 22]	<p>The Bill requires that the location be provided. This is anticipated to be district or postcode information. Individual identifiers are not required or sought.</p> <p>Location information will support the utility of the Register of LHPs, providing users and workers with relevant information when searching for a LHP. It will also inform compliance activity and identification of issues.</p>
Clause 105 – Publication of Information	Chandler Macleod states that unnecessary additional detail is to be published under the Bill which could have unintended consequences. Including that personal information may be ascertainable from the way information is presented and there appears to be no mechanism to challenge an inadvertent publication of identifying information constituting a breach of other laws, also commercial in confidence information could be published leading to targeted and unsolicited re-pricing and in turn, uncertainty for licensees and their workers. Recommend reconsider the requirement for reporting to include information that workers or users of labour hire services would reasonably expect to available in determining if the providers they are dealing with is reputable and compliant [Chandler, sub 10, p. 5-6] See also [2XM Recruit, sub 3, p. 3; Edge Personnel, sub 5, p. 3; Fuse Recruitment, sub 6, p. 3; Carestaff Nursing, sub 8, p. 3; Gen5 Group, sub 9, p.3; Omni Recruit, sub 13, p. 3; Workplace Central, sub 16, p. 2; Steps Group, sub 19, p. 3]	<p>Individual identifiers and/or commercial in confidence information are not required or sought for publication. Section 105 sets out additional information that the Chief Executive may publish on the labour hire website.</p> <p>The publication of specified information on the Register is provided at Section 103.</p> <p>Section 105 provides for publishing information on the status of a licensee, including suspension or cancellation of a licence or enforcement action taken under the Bill, be published (including reasons for any action taken by the Chief Executive).</p>
Information to workers	QNMU recommends the bill be amended to require labour hire operators to provide information to workers, such as the Fair Work statement and/or training to workers about their workplace rights and entitlements before or as soon as possible after, they start their new job. This should include the	Under the terms of the referral of the State's private sector industrial relations powers to the Commonwealth (2010) the State has constitutional limitations upon how it may interact in private-sector

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	<p>contacts for the relevant union and other agencies that may assist in providing information or representation [QNMU, sub 1, p. 4]</p> <p>QNMU – nursing and midwifery labour hire firms should be aware of professional obligations for those workers under the Health Practitioner Regulation National Law Act 2009 (the national law), the Aged Care Act 1997 and nurses and midwives working in public sector with nurse-to-patient ratios should be made aware of those matters [QNMU, sub 1, p. 4]</p>	<p>employer/employee matters that are regulated by the <i>Fair Work Act 2009</i> (Cwlth). While the State cannot compel the delivery of training or information to be provided by a labour hire employer to its workers, the Queensland Government will provide extensive information to support and inform labour hire workers, employers and users of labour hire services on its labour hire website.</p> <p>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.</p> <p>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.</p>
Labour hire contracts	QNMU submits that labour hire contracts should include specific provisions for the payment of wages and conditions in accordance with employment laws, allow labour hire employees to recover any unpaid wages from the host where it is due to administration, liquidation or inability to locate the labour hire provider [QNMU, sub 1, p. 4]	These initiatives are outside the scope of the labour hire business licensing scheme.