Queensland Government

Queensland Treasury

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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 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 those matters identified by the Committee's secretariat in the second tranche of public submissions. I apologise for not responding by midday Thursday 29 June 2017 as requested by the Committee, however the matters raised were complex and required further examination and consideration.

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

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Submission summaries

Clause and policy issue	Issues raised	Departmental consideration and response
Clause 3 – Main purposes of the Act	AiGroup states Clause 3(1)(a) implies providers of labour hire services exploit workers, this is untrue in the vast majority cases; propose to remove reference in the clause [AiGroup, sub 38, p. 4-5]	The purpose of the Bill is found at s3 *Main purposes of Act.* These are to 'protect workers from exploitation by providers of labour hire services' and 'promote the integrity of the labour hire industry'. These main purposes are to be primarily achieved by 'establishing a licensing scheme to regulate the provisions of labour hire services'. This Bill, or its purpose provisions, do not imply the Government considers that all operators engage in exploitative practices. On the contrary, the Bill seeks to protect ethical operators for those unscrupulous and exploitative operators the likes of which have been revealed by Parliamentary Inquiries and other Inquiries into Labour hire practices in Queensland and in other states, and by the Fair Work Ombudsman. In her Explanatory speech at the introduction of the Bill, the Hon Grace Grace, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs made clear the purpose of the Bill: "I turn now to outline the key features of the bill. The Labour Hire Licensing Bill 2017 will establish a mandatory business licensing scheme for the labour hire industry in Queensland. The twin purposes of the scheme, as set out in the bill, are to protect labour hire workers from exploitation and to promote the integrity of the labour hire industry in Queensland. We know that there are many ethical labour hire operators who have had enough of being undercut by shonky operators who are exploiting workers and tarnishing the reputation of the whole industry. The Minister continued to say: "The advice from industry users, labour hire providers, community groups and worker representatives largely supports the introduction of a labour hire licensing scheme as a means to protect vulnerable labour hire workers from exploitation, to support ethical and responsible labour hire providers and also to provide confidence to host employers who utilise labour hire arrangements in good faith.

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		In preparing the Labour Hire Licensing Bill, the government has sought to balance the need to provide protections for vulnerable workers and rid the industry of cheats and rorters with minimising the administrative burden on those labour hire providers who operate ethically and in compliance with all their legal obligations. I trust that every member in this place shares this government's unwavering commitment to rid this state of the scourge of dishonest and shonky labour hire operators. This bill will drive out those cheaters and rorters who exploit labour hire workers, who take unfair advantage of those businesses that do the right thing and who bring the entire industry into disrepute. This bill will protect both workers and those reputable labour hire providers that are doing the right thing."
Clause 4 – Act binds all persons	The state is not liable for any offences. It is hypocritical to provide a special exemption for the state [HIA, sub 35, p. 16]	The Bill expressly binds all persons, including the State. The provision for the State not being liable for prosecution for an offence is a standard statutory treatment, for example, s 5 of the *Industrial Relations Act 2016* also provides for this treatment of the State.
Clause 5 – Extraterritorial application of Act	APSCO state the application to all labour hire providers in Queensland regardless of where they are registered fails to acknowledge that companies often have operations or provider workers across multiple Australian and international markets. Under the Bill a worker for a client in New South Wales may be required by the client to undertake work in Queensland, which would require the providers to obtain a licence before this could occur even though they do not normally operate in/provide workers in Queensland. There is no indication how long an application process will take to assess the possible impacts on a provider and their commercial relationships; a reason to choose contractors/non-permanent forms of work is the flexibility it provides. Noting that other jurisdictions may introduce similar models and the likelihood the other schemes would not be complementary this may result in businesses being required to pay multiple licensing fees, regardless of compliance with another scheme, placing	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 section 5 is to clearly state that the Bill 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 services or use labour hire services in Queensland are clearly within the scope of the Bill. From a practical point of view, section 5 seeks to minimise any ambiguity/arguments that the scope of the Act applies to 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, section 5 serves to assist negating arguments advanced by 'providers' that the Act does not apply were contracts (with persons to whom the worker was supplied, workers,

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	a further burden on national operators [APSCO, sub 29, p. 5] MBQ states the Bill provides no information on the application to Queensland businesses trading over the state border, nor the obligations of interstate firms providing services to a Queensland host. The consequences need to be understood before a decision is made on the Bill [MBQ, sub 30, p. 5] AMMA states any onerous burdens that apply may act as a disincentive to do business in Queensland. Additionally, the 1500-2000 labour hire companies identified by the Department are likely to be significantly higher given the extra territorial powers of the Bill [AMMA, sub 31, p. 7] QLS note that the bill does not express whether the provider of labour hire services or worker needs to be located in Queensland. The Bill does not deal with out-of-state workers or interstate-workers not does it state that employment must be connected with Queensland (as per the *Workers' Compensation Rehabilitation Act 2003*. This issue needs to be addressed [QLS, sub 32, p.1]	agents and/or intermediaries) were entered into outside the state (or that the work was performed partly outside the state). In regard concerns raised about the employment must be connected with Queensland or whether the provider of labour hire services or worker needs to be located in Queensland, in addition to the definition of labour hire provider, services and worker, s9 makes clear that, for the Act, the supply of a worker to do work for a person happens when the worker first starts to do work for the person in relation to the supply. This, in conjunction with s4 and 5 makes clear that the Act will cover all work performed under a labour hire arrangement in Queensland. In regard to the observation of the likelihood of other licensing schemes operating in other states, the Queensland Labour Hire Licensing laws will be the first of its type introduced in Australia. In her Explanatory speech at the introduction of the Bill, the Hon Grace Grace, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs made clear that "a national licensing system for labour hire would be the best outcome but with the continuing absence of national leadership on this matter …… the Queensland government is determined to do all it can at the state level to clean up the labour hire sector and protect vulnerable workers." The Bill is specific to the State of Queensland and is not uniform or complementary to legislation of the Commonwealth or another State. The assessment of the number of labour hire providers in Queensland was provided in the Decision Regulatory impact statement (at Appendix 1). This is available at https://s3.treasury.qld.gov.au/files/attachment-1-labour-hire-policies-by-industry-classification.pdf The number of providers has been assessed based upon Workers' compensation policy data (by industry with policies with less than $15,000 worth of declared wages paid in 2015/16 excluded). That assessment indicated 1,789 labour hire policies as at 30 June 2016.
Clause 7 – Meaning of *provider*	AEN states that apprentices and trainees employed by	The Government's policy position is for the implementation of a mandatory

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and *labour hire services*	group training organisations should be exempted from being the Bill noting they are already heavily protected under the *Further Education and Training Act 2014* 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] CCIQ states clause is so broadly drafted it will capture any and all worker providing services. The definition should be defined to capture unregulated industries and other industries should only be encapsulated by way of parliamentary review [CCIQ, sub 27, p. 4] APSCo state the definition of labour hire in the bill is where a person or business supplies worker to do work for another person regardless of how the activity might be described. This terminology is not appropriate for most APSCO members and does not recognise the broad range of services provided in Queensland. Terminology, including 'provider', is outdated. There is also no clarity in the Bill or Explanatory Notes about how far the definition of a provider will extend and what exceptions may be implemented. It should be clear that contract arrangements and recruitment companies operating in the professional services sector are excluded [APSCo, sub 29, p. 6] MBQ states the meaning or provider and labour hire service are drafted wider than the example of providers given in the Bill and will capture businesses whose main business is not the provision of labour hire services. This is in conflict with the stated objective of the Bill at clause 3, noting some of these businesses are already covered by other standards (for example,	business licensing scheme covering all labour hire providers in Queensland. The Bill does not seek to change or challenge a particular type of employment engagement arrangement that a business has chosen to utilise. It does however give cause for that business to consider, in cases other than a direct employment relationship, the nature of the employment/engagement arrangement and if it is labour hire as generally understood. In this way the Bill and licensing scheme places obligations on those who are engaged in labour hire, be it the labour hire provider or the user of those services to protect workers from exploitation and promote the integrity of the labour hire industry. Recruitment services leading to direct employment/permanent placement, genuine independent contracting arrangements, contractor management and workforce consulting services are not in the scope of the Bill and do not fit the definitions of a labour hire provider, service or worker as provided at s7 and 8. It is considered that the use of the term 'supply', and the drafting of the meaning of *provider* and *labour hire services* provided at s7 (and used in conjunction with the meaning of a *worker* at s8) adequately captures the business of labour hire however it may be described. The definition describes labour hire arrangements which are those that characteristically involve a 'triangular relationship' in which a labour hire business supplies the labour of a worker to a third party (host employer), for an agreed fee. The essential quality of these arrangements is the splitting of contractual and control relationships, whereby: – the host employer pays the labour hire agency for the labour provided by the worker and – also has a direct contractual relationship with the labour hire agency; – the worker is under the direction or control of the host employer for the performance of work, but is not engaged in any contractual or employment relationship with the host employer; and – the worker is paid by the labour hire agency. The labour hire agency retains the contractual or employment relationship

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	law firms which second employees to clients are subject to the *Legal Profession Act 2007*). Further: • the exemption of a genuine subcontracting arrangement should be made clear in clause 7(3) • further classes of person can be excluded from the application of the Bill in clause 7(3)(c), such a fundamental element of the licensing scheme should not be prescribed in regulation • GTO's should be exempted noting as they are already subject to significant regulation under legislation, and including them would be a costly duplication • Intercompany supply of labour should be exempted, noting that some businesses are structure to give flexibility through cross hire of workers within a group of related entities, and that transfers of workers may also occur between unrelated entities. All these entities must hold a licence under the Queensland Building and Construction Commission. If they are subject to the proposed law, these opportunities would cease and be a detriment to efficiency, administration and short term access to skilled workers • Businesses licenced under the QBCC should be exempt[MBQ, sub 30, p.3-5, 14] AMMA states there is a lack of clarity in what type of business will be considered a provider of labour hire services which are required to be licenced, and is concerned about the capturing of businesses for whom the provision of labour to another person is not the dominant purpose of that business, which is contrary to the purposes of the review undertaken. AMMA states the definitions should clearly ensure that	with the worker. As the employer of the worker the labour hire agency is responsible for ensuring the worker's entitlements are met as well as the full range of associated employer responsibilities and liabilities, including legal requirements for workplace health and safety, workers' compensation and taxation. In *Kool v Adecco Industrial Pty Ltd T/A Adecco* Deputy President Asbury defined the business model of LHPs: *The business model of labour hire companies is generally that they employ persons (usually on a casual basis), and <u>place</u> those persons in the businesses of other companies with which the labour hire company has a contractual relationship (host employers).* 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 relationship' 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. 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. Section 102 of the Bill provides for the ability to waive a relevant information requirement if the chief executive is satisfied the applicant or licensee has already satisfied the requirement through another regime. This allows the Chief executive to give recognition to a business that is licenced or accredited under another suitably rigorous scheme. The registration requirements for recognition as a Group Training Organisation may be an example of this. It should be noted however that a Group Training Organisation is considered to be a labour hire provider within the meaning of

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	licensing requirements only apply where the provision of labour hire services are the sole or dominant purpose of the enterprise being undertaken by the provider. [AMMA, sub 31, p. 2, 7-9] QLS notes concerns that come lawyers and law practices will fall within the scheme when this may not be appropriate (e.g. lawyers undertaking work for their employer who is providing a service to a client). To extend the scheme to cover lawyers/law practices in these circumstances seems to be an unintended consequence of the current drafting. Further there is no definition of work in the Bill. In addition to lawyers, workers in the professional services industry may also be subject to conditions of the scheme, noting that these employers and employees are already heavily regulated (e.g. lawyers through the QLS and the Legal Services Commission). Also, movement or hiring of labour within related entities should also be excluded from the scheme (or regarded as a single employer) [QLS, sub 32, p. 2] NFF states that the definition of provider and labour hire services is very broad and may capture agricultural contractors beyond the intention of the Bill [NFF, sub 34, p.7] HIA states that the definition of labour hire services in clause 7 goes well beyond what is traditionally accepted as labour hire or a labour hire business (examples included). The onus also falls on businesses to determine if they fall within the exceptions of a labour hire services under clause 7(3)(b), this approach does not adequately address the arrangements that exist in the residential construction industry and may unintentionally capture arrangements that were not intended to be subject to the Bill . It unclear who a subcontractor is (examples of a subcontractor who	the Bill and would still fall within the ambit of the scheme. It is also noted that, as the obligations for ensuring compliance with relevant employment and other laws apply equally to profit and not-for-profit businesses, the licensing requirements should also apply to both. The Bill, at s108, does provide a regulation-making power in regard to fees payable, which does include waiver. The term 'labour hire' is the commonly accepted term for arrangements which involve a 'triangular relationship' in which a labour hire business supplies the labour of a worker to a third party for an agreed fee. The term has also been used (as opposed to on-hire) by a number other State and Federal inquiries. The term 'work' has not been defined in the Bill as work can take on different forms and has a well understood ordinary and customary meaning. Further, while the *Industrial Relations Act 2016* (and its predecessor Acts) defines an industrial matter include (amongst other things) '*work done or to be done*' (see s9(1)(a)), the term 'work' is not explicitly defined in that industrial relations legislation.

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	further subcontracts work and of the situation of an architect and whether they meet the exception are provided). HIA submits that the complexity in clause 7 needs to be rectified as a matter of priority, further noting that the regulations also exclude certain classes which may provide some clarity however HIA has not been able to may any comments on the regulations. HIA also recommend the removal of GTOs from the scope of any activity to regulate the labour hire industry, noting this is already a highly regulated industry [HIA, sub 35, p. 3, 6-9, 16] The RCSA p7-14 submitted that the interpretation and operation of the Labour Hire Licensing Bill 2017 is complicated by the extremely board definition of Labour Hire that does not take account of the many 'worker supply' arrangements, nor existing occupational licensing arrangements and, that will require detailed regulatory exemption in every sector of the economy and in every corner of Queensland. The RCSA also opposed the use of the term 'labour hire' and submitted that the Bill differentiate between on-hire services and contracting services. The RCSA also submitted that the Queensland Government should licence high risk sectors rather than the broad scope of the Bill as drafted. The AiGroup [sub 38, p. 5-6] submits that GTOs operated by not-for-profit bodies like Australian Industry Group Training Services should be excluded from the Bill. MBQ [sub 30] raised concerns about clause 8(1)(3) including GTOs as they are already subject to significant regulation and there is no net gain to be achieved by requiring licensing of GTOs as there is no	

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	suggestion that they are non-compliant or exploitative. The AiGroup (submission 38, p. 5 and 6) submitted that the meanings of 'provider' and 'labour hire services' in section 7 are extremely broad and inappropriate. They submitted that these definitions would capture a vast array of arrangements beyond the provision of on-hire employees by a labour hire company to a client company. The AiGroup draws attention to a definition decided by then Australian Industrial Relations Commission definition which uses the term 'on-hire' rather than 'labour hire' and which is included in most modern awards, and suggests this definition would be a far more appropriate means of identifying labour hire providers and labour hire services, than the definitions in the Bill.	
Clause 8 – Meaning of *worker*	APSCo states the Bill does not recognise the complexity in defining labour hire and other services to ensure coverage does not capture or extend to unintended classes of workers, not least the distinction between professionals who choose to enter this type of relationship and vulnerable workers. A one size fits all definition of independent contractor prevents nuances of individual circumstances being considered and may lead to complications as work arrangements evolve. APSCo submits the definition of worker should exclude people in the professional services sector who desire freedom to structure their work arrangements [APSCO, sub 29, p. 7]	The Government's policy position is for the implementation of a mandatory business licensing scheme covering all labour hire providers in Queensland. It is the business of labour hire that is being licenced, not the class of worker. It follows that labour hire workers, are within the coverage of the scheme. The Bill does not seek to change or challenge a particular type of employment engagement arrangement that a business has chosen to utilise. It does however give cause for that business to consider, in cases other than a direct employment relationship, the nature of the employment/engagement arrangement and if it is labour hire as generally understood. In this way the Bill and licensing scheme places obligations on those who are engaged in labour hire, be it the labour hire provider and the user of those services to protect workers from exploitation and promote the integrity of the labour hire industry. Recruitment services leading to direct employment/permanent placement, genuine independent contracting arrangements, contractor management and workforce consulting services are not in the scope of the Bill and do not

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		fit the definitions of a labour hire provider, service or worker as provided at s7 and 8. As mentioned above, it is considered that the drafting of the meaning of a *worker* at s8 (and used in conjunction with the meaning of *provider* and *labour hire services* provided at s7) adequately captures the business of labour hire however it may be described. 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.
Part 2 – Prohibited conduct	QCU notes that substantial fines that are included for breaches of this legislation will introduce a deterrent against operators operating outside of the proposed law [QCU, sub 24, p. 2] CCIQ – see general statements above relating to fundamental legislative principles [CCIQ, sub 27, p. 3-4] APSCo states the penalties for engaging in prohibited conduct are extremely high. While punitive action may be appropriate for those engaging in exploitative conduct, providers may be caught by these provisions for minor compliance issues (such as being unable to apply for a licence within the transitional period). Additionally, the amounts are disproportionate to penalties imposed by other laws. The licensing fees and the potential penalties will have a significant impact on business and are disproportionate for businesses which	The Bill provides strong penalties for operating as a labour hire provider without a licence, or for engaging with an unlicenced provider. These penalties are considered adequate to deter the use of non-licenced providers. Furthermore, it leverages the demand side such that users of labour hire services, seeking to engage only licenced providers, will drive providers to seek a licence. Strong penalties are needed to enforce the objective of the licensing scheme to protect workers from exploitation by providers of labour hire and promote the integrity of the labour hire industry. A range of offences, in addition to administrative sanctions, will also ensure that the scheme operates effectively by providing an effective deterrent for non-compliant conduct. The highest penalties introduced by the Bill are for the serious contraventions of the core tenets of the licensing scheme i.e. (i) for operating as a labour hire provider without a licence; (ii) for entering into an arrangement with an unlicenced provider; and (iii) for entering into an

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	are already compliant. Business should be able to adapt their workplaces to a rapidly changing technological and economic environment and ensure they can attract, maintain and support skilled workers to rely on in the future. The provisions will add an additional administrative barrier on commercial arrangements and potentially stifle the labour market [APSCo, sub 29, p. 7-8] MBQ states that operating without a licence (clause 10) does not equate to a person being in breach of federal employment legislation (or other relevant laws identified in the Bill). While the Explanatory Notes justify the penalties in reference to the stricter penalties under the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, the penalties under the bill relate to a breach of a worker's workplace rights which is a much more serious offence than operating without a licence. The Bill's penalty offences should be benchmarked against occupational licensing regimes (see the QBCC Act 1991, the *Property Occupations Act 2014*, the *Liquor Act 1992*, the *Motor Dealers and Chattel Auctioneers Act 2014*). Consideration should also be given to including a defence to not being licenced on the grounds an organisation did not believe on reasonable grounds they required a licence, given the complex field in which the Bill operates [MBQ, sub 30, p. 9] AMMA noted that the way in which clause 11 is drafted there is no requirements that a person intend to enter into an arrangement with an unlicenced provider, and given the uncertainty about what arrangements will be considered in the provision of labour hire services, there is a risk that persons engaged in an offence even though they genuinely did not believe a licence a provider required a licence	avoidance arrangement. The maximum penalties for a breach of these provisions is 1034 penalty units or 3 years imprisonment for an individual or 3000 penalty units for a corporation. These penalties provide an effective deterrent and are comparable with offences recently introduced by the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 which similarly aim to prevent the exploitation of vulnerable workers. They are also comparable with high penalties for serious offences in the *Industrial Relations Act 2016.* The Bill provides for a person's dealing with inspectors and the prohibition of providing false and misleading information. These offences are justified on the basis that they are necessary practicalities of a licensing scheme with a strong enforcement presence. Contraventions of these section attract a maximum penalty of 100 penalty units. These penalties are comparable with similar offences introduced by other state licensing schemes such as the *Property Occupations Act 2014*, the *Motor Dealers and Chattel Auctioneers Act 2014*, *the Debt Collectors (Field Agents and Collection Agents) Act 2014* and the *Electrical Safety Act 2002.* The Bill places obligations to comply with the administrative and enforcement functions of the scheme. A contravention of these obligations carries a maximum penalty of 200 penalty units for failing to comply with a requirement of an inspector, with more administrative offences attracting lower maximum penalties of 40 penalty units. These offences and penalties are considered necessary to ensure the effective operation of the scheme and are comparable with similar offences and penalties introduced under the *Property Occupations Act 2014*, the *Motor Dealers and Chattel Auctioneers Act 2014*, *the Debt Collectors (Field Agents and Collection Agents) Act 2014* and the *Liquor Act 1992*. 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). It is not uncommon for a licence to require compliance with other regulatory

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	[AMMA, sub 31, p. 2,9, 18] QLS states clause 11 should state that the person must not 'knowingly' enter into an arrangement with a provider for the provision of labour hire services unless the provider holds a licence and unless there is reasonable excuse – knowledge must be a threshold element of the offence [QLS, sub 32, p. 3] HIA submitted that the penalties provided throughout the Bill go well beyond anything reasonably required to deter rogue employers and ensure compliance. The AiGroup submitted that the proposed penalties within Part 2 for breach of Prohibited Conduct are excessive and should be reviewed. They also submitted that the threshold of 'reasonable excuse' is vague and would expose clients of labour hire providers to harsh penalties, including imprisonment. AiGroup recommended that 'knowingly' should be inserted in clause 11 [AiGroup, (clause 11), sub 38, p. 6-7]. Jane O'Sullivan raised concerns that the enforcement provisions in the Bill should be linked to enforcement of industrial relations laws generally [J O'Sullivan, sub 36, p. 2].	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 avoidance arrangement, not for the breach of the relevant law itself.
Clause 12 – Person must not enter in avoidance arrangements	APSCo – see information at "Part 2 –Prohibited conduct" [APSCO, sub 29, p.8] AMMA is concerned about the inclusion of a general avoidance provision where the scope of the legislation is unclear and may well capture legitimate and lawful business arrangements. AMMA states clause 12 is unclear and insufficiently specific, and that its premise is that any arrangement that is not the provisions of labour hire services is in fact an attempt to avoid the licensing requirements. It is also unclear what conduct	The Bill also provides a serious offence for engaging in 'avoidance arrangements' (see section 12). Furthermore, persons are bound to report avoidance behaviour (see section 90) and may also be considered a party to an offence (see s92). An 'avoidance arrangement' is defined within section 12 and is an arrangement with another person for the supply of a worker if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed under the Bill. It is unlikely that such provision could be interpreted to capture 'legitimate and lawful business arrangements'.

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	ought to be viewed as an avoidance arrangement; the Explanatory Notes do not clarify this [AMMA, sub 31, p. 2, 9-10] AiGroup, sub 38, p. 7 submits that section 12 should be amended to omit the words 'or ought reasonably to know'.	In regard to the AiGroup's submission to remove the 'ought to reasonably know', the inclusion 'ought reasonably to know' reflects an expectation for due diligence when dealing with labour hire arrangements. This is a reasonable construction of an obligation to ensure that the beneficiary of the labour hire worker cannot completely 'wash its hands' of all responsibility for the welfare of that worker where it is reasonable for the beneficiary to have known that the worker was subject to exploitation. This concept was raised by several submitters to the Parliamentary Inquiry into the practices of the Labour Hire industry in Queensland (refer page 24 of the Inquiry Report) "that the host employer should have some responsibility to ensure the labour hire company they engage is providing workers who enjoy the minimum standards". The Inquiry also heard that "labour hire companies that comply with their obligations as employers…..find it increasingly difficult to compete with businesses who undercut conditions of workers to provide them at a lower cost". The RCSA made this particular point in its submission to the Committee's Inquiry at public hearing held on 11 May 2016 (transcript 11 may 2016 at p.16).
Part 3 – Licences	Maurice Blackburn state that a licence application under clause 13 should detail the nature and manner of the work, including the industry/sector the licence is for. By identifying or specifying the industry/sector inspectors are better able to target potential exploitation and breaches of the Act [Maurice Blackburn, sub 22, p.3] QCU states that a licensing fee would go some way to eliminating organisations described as 'backyard' operators that are little more than a façade. The cost to government will be between insignificant to non-existent given the licensing fee associated with operating as a labour hire providers. The cost is necessary to demonstrate some economic capacity on the part of the labour hire operator; it is presumed the	S3 provides that the main purposes of the Bill are to be primarily achieved by establishing a licensing scheme to regulate the provision of labour hire services. *Licence coverage* Section 13 provides for the making of an application for a licence. The licence is made by a person who carries on, or intends to carry on, a business. The Application will be made in an approved form and will provide certain particulars (refer s13(3)). The application must be accompanied by a fee and also other information prescribed by regulation pertaining to the financial viability of the business; the applicant's compliance with *Work Health and Safety Act 2011* and the *Workers Compensation and Rehabilitation Act 2003*, and ability to comply; and any other information the Chief executive reasonably requires to decide if the applicant, nominated officer and/or executive officer is a fit and proper person to provide labour hire services. Furthermore, the Bill at s31, requires a licensee to report the type of work

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	cost would be passed on to labour hire clients and would be negligible to the overall cost of operations [QCU, sub 24, p.2] Workpac states that a licence can granted only if the chief executive is satisfied an applicant is both a fit and proper person and a service is financially viable, however, neither the bill or explanatory notes provide necessary detail on what specific criteria must be considered or applied in making this decision [Workpac, sub 25, p. 1] NUW states that while a fee payment provides some safeguard against the continued participation of undercapitalised operators in the industry, to be adequate the fee should be set at an amount commensurate with effective international schemes. Seeking statements of financial viability under the Bill may go some way to ensuring a business can operate a legitimate labour hire business [NUW, sub 28, p. 5] APSCo states fees will be structured according to the size of a business, it is not clear which companies would be classified small, medium or large and as a result businesses are unable to assess the annual financial burden of the licensing scheme. APSCo also states required information for a licence application may need to be provided by several people within a business, creating an additional administrative burden that is unreasonably onerous on compliant providers. It is unclear what is needed to establish financial viability, this may cause difficulties for smaller and new enterprises (there is no guidance in the Bill or Explanatory Notes on how smaller or newer companies will prove their financial viability. The Bill should provide some concessions for start-up companies	performed, including the industry, and the location (s31 (2)(f)(g)). Section 14 provides an exclusion of 2 years for a holder of a licence that has been cancelled. The cancellation of a licence is a serious matter and has considerable process supporting such action i.e. show cause process, review and appeal. The exclusion of two years is considered an appropriate deterrent against phoenix-ing. Phoenix-ing, which is the deliberate and systematic liquidation of corporate trading entities with fraudulent or illegal intention, has been widely reported as a practice in the labour hire industry (refer Qld Parliamentary Labour Hire Inquiry Report pg 19-20). *Fees* 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. The Decision Regulatory Impact Statement noted that a licence fee will be charged to an applicant seeking to be licenced as a Labour Hire Provider under the scheme in Queensland. The setting of the licensing fee is a matter of Government policy. The fee is set at a level such that it acts as a small financial barrier to entry to deter speculative applications while being at a level to encourage providers to be licenced. The fee is also not overly financially burdensome for small LHPs to become licenced. 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. Similar classification arrangements, where a business estimates their wages outlays,

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	(similar to those in the National Industry Innovation and Competitiveness Agenda). The Licence requirements (including the fit and proper person test are too broad, subjective and may result in application for a licence being refused, suspended or cancelled at any time. Finally, there is little guidance on what conditions may potentially be applied to licences that are granted to assess the financial and administrative burden on complaint providers [APSCO, sub 29, p. 7, 8-9] MBQ states that the Bill contains no criteria against which the 'financial' test will be made. It is inappropriate to define under regulation and should be in the substantive legislation. Industry must have consistency in the application of financial criteria, and at this point in time MBQ cannot comment on an unknown test [MBQ, sub 30, p. 6] AMMA states the application process – depending on the size of the business – may represent an administrative burden in terms of the collation of all the information being sought, also noting it is difficult to comment without knowing what other information may be sought through regulation. AMMA states with respect to clause 13(3)(v) and (vi) that disciplinary action and regulatory body are not defined and relevant law is extremely broad. Information sought should be limited to information genuinely required to determine whether businesses are complying with their obligations in the Bill (critical business details, offences relating to underpayments, appropriate taxation and appropriate workers compensation insurance policies). If additional regulation around accommodation is required the Chief executive should request it rather than make it a mandatory part of the application process. The impact of prohibiting a related	apply in those schemes. *Business viability* Undercapitalisation and undercutting conditions have been widely reported in the Labour Hire Industry (refer FAC Report no.25 pg-20-21). The Bill seek to ensure licenced labour hire businesses are financially viable. Business viability provisions are not uncommon in business licensing schemes. Further, it is not uncommon for the detail of the requirements to be provided in subordinate legislation or policy. For example, financial requirements are provided by the Queensland Building and Construction Board Policy for the *Queensland Building and Construction Commission Act 1991*. The objectives of having financial Requirements are to promote financially viable businesses and foster professional business practices in the Queensland labour hire industry. To achieve these objectives and minimise the incidence of financial failure in the labour hire industry, this Bill requires all applicants and licensees to establish they are financially viable. The Bill does not set out detail of minimum financial requirements as a hurdle to be met, rather the Bill provides for the requirement for the Chief executive to be satisfied that the business to which the application relates is financially viable (sections 13(3)(c)(ii) and 15(b). This recognises that while an existing business can declare their financial bona-fides upon which evidence may be sought and tested, a new business may require an alternative to this approach. To this end a new business may establish their viability by declaration as to their financial backing, their business plan or other evidence such as having appropriate insurances or worker's compensation policy in place. To allow the Chief executive to make a determination as to the applicant or licensee's business viability, the applicant or licensee will be required to declare relevant evidence to support their application for a licence. If the Chief executive has concerns about the adequacy or accuracy of the

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	body corporate from obtaining a licence under clause 14 appears unduly harsh in circumstances where a related body corporate may have no ability to influence or impact the business of its related licensee, while the entity may satisfy the Chief executive that they should hold a licence this process is unduly onerous. Clause 16 contains no timeframe by which the Chief executive may grant a licence; the licensing authority must be appropriately resourced to process applications promptly [AMMA, sub 31, p. 2, 10-12] QLS states with respect to clause 13 that it may be difficult to provide all details of entitlements intended to be extended to workers. This should not disrupt an application process, that person should report the information once agreed between worker and provider. A body corporate related to clause 14(2) should not be prohibited from applying for a licences if the chief executive is satisfied the body corporate had no influence or control over the corporation whose licence has been suspended. There should be a discretion under clause 14(3) as to when a person should be able to reapply for a licence, considering circumstances for example where a licence was refused because insufficient information was provided. [QLS, sub 32, p. 3] MUW recommends inclusion of a threshold capital requirement in order to operate a labour hire company (ensures that a company can pay entitlements to workers and acts as a deterrent for undercapitalised companies) [MUW, sub 33, p. 6] HIA notes that the anticipated licence fee will be structured according to the size of a business based on annual turnover and wages paid. Given the lack of clarity regarding exceptions, and the high (somewhat punitive) penalties, a perverse incentive may be	information provided, the Chief executive may require further information. *Chief executive powers* The administration of the Act, in terms of decision making is vested in the Chief executive. Part 3 of the Bill deals comprehensively with the powers of the Chief executive to grant, renew or restore, suspend, or cancel a licence. Part 8 deals with the review and appeal of a decision of the Chief executive. It is not uncommon for a Chief executive to be provided with powers to grant or not grant permissions. For example, the Chief executive is the decision-making authority for the purposes of the *Child Employment Act 2006.* The Chief executive, as a very senior public official, is bound by the Government's Code of Conduct and must act with proper process, due diligence and in good faith. As Chief executive, she/he is bound to act on behalf of the Government as a model litigant ensuring natural justice in all dealings. These are in addition to, or underpin the relevant legislative prescriptions. The ability of the Chief executive to inform her/himself in relation to a decision and to take into account a range of factors is considered necessary and appropriate in light of the range of businesses which will seek to be licenced under the scheme and also to allow for discretion to deal with new start-up businesses and mature/established businesses. *Administrative burden* The introduction of a licensing scheme presents administrative obligations to licence applicants and licensees and therefore be an addition burden on business. It is proposed that the licensing system be a digital on-line system allowing business to apply, review and report on-line. Consultation with stakeholders, and in light of the disturbing evidence of exploitation and avoidance practices revealed through the State and Commonwealth Inquiries and investigation by the FWO has informed the application and reporting requirements.

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	created for businesses to take out a licence even if they do not consider themselves and labour hire provider to be safe. Structuring fees on the basis of annual turnover complicates who is considered a small, medium or large provider. Structuring fees on the annual turnover of a business does not take into account where only part of a business operates as a labour hire business (such as HIA which also runs a GTO). The fees also don't take into account ancillary costs a business faces when applying for a licence: time to fill out the paperwork; researching company history; employment costs associated with conducting research; disputes and appeals; associated opportunity costs [HIA, sub 35, p. 9-10] HIA also notes clause 13 requires an applicant to provide information for example around accommodation and other services for workers connected to labour hire services, yet this may not be known at the time a provider is applying for a licence. Clause 14 is also rigid; the genuine sale exemption is extremely limited in scope and does not potentially take into account other legitimate restructures [HIA, sub 35, p. 10]. AiGroup, sub 38, p. 8, 9 comments regarding licensing stages, that clause 15(b) and clause 20(2)(c) should be amended so that the requirement that a company be financially viable is satisfied by the making of a statutory declaration by the applicant to that effect (AiGroup, sub 38, p. 8, 9). AiGroup submits that the two year exclusion period under section 14(1) Persons who can not apply is too long, and should be subject to Chief executive discretion with a maximum of six months.	The Government has sought to balance the administrative burden with the requirements to protect workers from exploitation, promote the integrity of the industry and also to properly and efficiently manage the licensing scheme.

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Clause 17 – Term	AMMA state licences are granted for a maximum period of one year creating an unnecessary burden for compliant businesses and the inspectorate who must determine new applications as well as any applications to renew. AMMA recommends low risk businesses with high records of compliance be able to apply for licences for a longer period, a licence of up to five years may be appropriate [AMMA, sub 31, p.2, 12]	Section 17 provides that a licence is for a term of one year and is renewable prior to expiry (s18). A renewed licence is in force also for one year (s21). Provision is also made in circumstances where a licence expired (s19). The process for renewal (or restoration) is at s18 and 19). There may be merit in providing flexibility for the period of the licence for low-risk businesses with a strong record of performance, supported by ongoing reporting. This will require further consideration of s17 and 21.
Part 3, Division 2 – Renewal and restoration	APSCo states the process for renewal and restoration of a licence is onerous and prescriptive, noting the short timeframe and obligation to renew prior to the expiration of a licence and the impact that has on a business. If other jurisdictions implement schemes, businesses may be tied up with reporting and renewing licences regardless of whether they are already compliance with the labour laws in those states [APSCo, sub 19, p. 9]	Renewal and restoration of a licence in practice is envisaged to be a straight forward process. 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 section 40). The operation of other licensing schemes would inform the implementation of this scheme, for example, system generated reminder letters or notifications to advise licence holders of upcoming renewal dates. The ongoing six monthly reporting obligations will largely coincide with the renewal and restoration.
Part 3, Division 3 – Suspension, cancellation and surrender	APSCo states – with reference to impacts on a business – that if a licensee fails to report on time their licence may be subject to suspension or cancellation. If other jurisdictions implement schemes, businesses may be tied up with reporting and renewing licences regardless of whether they are already compliance with the labour laws in those states [APSCO, sub 29, p. 9] MBQ states that being able to suspend a licence under clause 22 without notice offends the *Legislative Standards Act 1992* to the extent a person may lose their business and employees their jobs without notice or opportunity to rectify a breach motivating a	Section 31 places an obligation of a licensee to report to the Chief executive. Failure to report carries a maximum penalty of 200 penalty units. It is also grounds for the Chief executive to suspend a licence (by giving an information notice) –"if the Chief executive –(a) is satisfied the licensee has failed to comply with section 31 (Reporting)". Reporting is a cornerstone of the licensing scheme. Reporting establishes a licensee's on-going compliance with their obligations under the Act and also for informing the efficient administration of the licensing scheme. Failure to report, if used as a deliberate strategy to defraud or to avoid scrutiny is a serious breach of the entitlement to hold a licence and warrants a strong deterrent.

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	suspension. Even where a chief executive suspends a licence in error (for example through misinterpretation of information provided by a licensee) the Bill provides no avenue for correcting an error prior to a business suffering significant losses and potential closure. The bill should be amended to allow at a minimum a show cause notice to be served prior to suspension [MBQ, sub 30, p. 6-7] MBQ also states with respect to clause 24(1)(b) relating to cancellation of a licence on the grounds that the chief executive is satisfied that a contravention of a law has occurred regardless of whether convicted of an offence for the contravention: • The criteria for the chief executive to be satisfied are not identified, noting that the chief executive and their agency will have no expertise in most of the relevant laws listed in the bill, and as such how is the Chief executive to form an opinion, for example, of a contravention of the *Migration Act 1958*? • It offends the rights and liberties of persons to be subjected to significant adverse impacts on a belief by an officer of the executive government that they have contravened a relevant law before they have been convicted. • If a labour hire provider fails to keep an accurate record of overtime for example, their business can be shut down. If an employee makes an unfair dismissal claim against an employer is this enough of a contravention of a relevant law to cancel a licence? This connection is manifestly unfair. MBQ states the 14 day period permitting a provider to respond to a show cause notice as to whether a licence should be cancelled under clause 23 is too short taking into account the practical consequences of	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. The Bill does not expressly provide for a show cause notice before suspension. While it is anticipated that the chief executive will follow a show cause process for suspension to provide for natural justice having regard to the availability of review and appeals processes and the Government's obligation to be a model litigant at QCAT, given the seriousness of some issues which have been reported where labour hire arrangements are utilised (very serious exploitation), it may be necessary to immediately suspend a licence where circumstances are sufficient to warrant such drastic action. 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. The Ai Group submitted that clause 24 (cancellation) is unfair and unbalanced. It is understood that cancellation of a licence means the business cannot operate in Queensland. The licensing scheme is in response to the government's and community, including the business community's, concerns about improper practice in the labour hire industry. Such practices are well documented and directly impact workers and those labour hire businesses that operate ethically. Against this background the power to end a licence is considered justified. While it is reasonable to consider such drastic action only after conviction, there are circumstances where, for example a labour hire provider systematically and repeatedly over a prolonged period has not meet their obligations under employment law (underpayment for example) and, follows a strategy of 'settlement on the court-house steps' to avoid prosecution/conviction. It may be such a circumstance warrants proper consideration of a cancellation of the licence.

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	cancellation, noting the likely insolvency of a business as well as workers losing their jobs [MBQ, sub 30, p. 7] AMMA state that given the consequences of a decision to suspend (up to 90 days of not being able to operate), the standard of 'reasonably considers' in clause 22 combined with no opportunity to show cause why a suspension should not occur is unsatisfactory. Clause 24 relating to cancellation of a licence is concerning as there are provisions where wrongdoing need not be established according to the laws of the land (see clause 24(1)(b)). There is also concern with regard to the breadth of the matters that may be relevant to a decision relating to a licence under the Bill (a decision-maker would need to understand the offences under each relevant law as part of their assessment). Finally, the Bill makes no reference to arrangements already made and under operation in the event of licence cancellation, including what happens to workers already engaged with a client – noting neither workers nor client have much control of whether a licensee is still licenced. Given these consequences, there must be due process applied to any decision in relation to a licence [AMMA, sub 31, p. 12-14] AiGroup raised concerns that the loss of a licence would, in many cases, result in a labour hire provider going out of business with the loss of all employees' jobs. They submit that the Chief executive's power to cancel a licence if the Chief executive 'is satisfied' that a licensee, employee or representative of the licensee, has contravened a 'relevant law', 'whether or not the licensee, employee or representative has been convicted of an offence for the contravention' is unfair and unbalanced.	

Clause and policy issue	Issues raised	Departmental consideration and response
Clause 27 – Fit and proper persons	UV state that it would be beneficial to include a requirement that a provision mirroring clause 35 (which requires a licensee to apply for a change to a nominated officer and an assessment to be undertaken of whether a proposed nominated officer is a fit and proper person) be included where there is a change in a chief executive of a corporation [UV, sub 23, p. 3-4] QCU states that the fit and proper person test is not unusual for licensing legislation and it will hopefully provide a basis for eradicating less scrupulous operators from the industry [QCU, sub 24, p. 2] The Salvation Army support this sections and recommends the Queensland Government consider the feasibility of incorporating the Australian Labor Party's recent policy commitment of a 100 point identity test and unique ID number for company directors to further strengthen this provision (supported by the Productivity Commission) to assist in preventing directors from obtaining a licence under the Qld scheme [Salvation Army, sub 26, p. 4] CCIQ states that some of the provisions in clause 27 are unworkable, 27(b)(i), history of compliance with relevant laws, is an ambiguous term. For example, trade groups caught by the All Trades Case decision may not be able to show a history of compliance as a result of receiving false information from the Fair Work Commission [CCIQ, sub 27, p. 5] NUW supports the key tenets of the 'fit and proper person test' proposed in the Bill [NUW, sub 28, p. 4] APSCo states that the test covers a broad range of matters and extremely subjective and vague in parts. It	Part 3 Division 4 provides for 'fit and proper persons'. The fit-and-proper-person test is aimed to prevent corrupt or untrustworthy persons from holding a licence to undertake business, perform certain activities, have access to particular things, or for occupying positions of influence in corporations, Boards or other organisations. The fit and proper person test is a significant component of the licensing scheme. It was identified in the FAC original Inquiry (pg 38) and also a recommendation of the Government members in their statement of reservation to the report. The fit and proper person test has also been raised in the labour hire inquiries in other jurisdictions. A fit and proper person test is not uncommon in a licensing scheme. There are many examples of this test being applied including, the Australian Securities and Investment Commission for granting a credit licence, for recognition as a registered Training Provider; or to hold a weapon under the *Queensland Weapons Act*. Criteria normally associated with a fit and proper person test are criminal history, and history of bankruptcy or corporations-related offences or disqualifications. It is anticipated that these tests will also be applied to the labour hire licence. Section 27 sets out what the chief executive must consider for a fit and proper person to provide labour hire services. The criteria provided, being personal integrity, compliance with laws relevant to the labour hire industry, criminal history or history of bankruptcy or corporations offences, or whether the person is subject to the control of another person, are considered appropriate and sufficient to ensure the chief executive, in making her/his decision whether a person is fit and proper to provide labour hire services, is able to have regard to a range of an applicant's attributes, characteristics and history. Subsection (2) ensures the chief executive may also have regard to other matters considered relevant to the application which is not otherwise provided for in the remainder of the section. This may include membership (or disqualification) of a professional association or body.

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	is not clear how the Chief executive with conduct the assessment or how matters such as integrity and professionalism will need to be demonstrated, noting also the increased administrative burden of being required to provide proof of compliance [APSCo, sub 29, p. 9-10] MBQ states the description of a fit and proper person leaves a very high level of discretion to the chief: • How will honesty, integrity and professionalism be assessed? • What does convicted under an offence against a relevant law mean? • If a union owns 50% of a GTO and they have been fined for breaches of the Fair Work Act will this disqualify the union from obtaining a licence under 27(1)(h)? Additionally, 27(2) grants too wide a discretion to the chief executive (can have regard to any other matter they consider relevant) without oversight from parliament, noting also that the Chief executive can suspend or cancel a licence at any time if they consider the licensee is no longer a fit and proper person [MBQ, sub 30, p. 6] AMMA state that the relevant laws in clause 27 go well beyond whether a person is likely to exploit vulnerable workers. Information required to determine whether a person or entity is a fit and proper person to hold a licence should relate to whether the licensee is likely through the pattern of behaviour to comply with their legal obligation to labour hire workers and the requirements of the legislation [AMMA, sub 31, p. 14-15] QLS states the definition of fit and proper person is very broad, particularly at clause 27(1)(a), it is	Section 40 obliges a licensee to notify the chief executive of a change in circumstances. It is considered appropriate that a change in the executive office of a corporation is an example of such a change. The Bill also provides robust mechanisms to review and appeal a chief executive's decision (see Part 8). Section 13(3)(b) provides who will be subject to the fit and proper person test. These are considered to be the persons who exercise control and have responsibility for the operations of the labour hire provider (eg the directors of the corporation). It is therefore not unreasonable to ensure such persons satisfy a fit and proper person test.

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	unknown how that element will be established to the satisfaction of people applying for a licence and people concerned about a labour hire provider's behaviour. Clause 27(1)(a) should be removed. As the terms fit and proper person is not included in the dictionary, other clauses should reference clause 27 when refer to a fit and proper person [QLS, sub 32, p. 3] MUW states the relevant laws referred to in section 27(1)(b) should specifically list those outlined in the Qld Government's 2016 Issues paper (as echoed by the QCU). Specifically outlining the laws which any applicant needs to demonstrate compliance with would hold applicants to a higher standard of accountability than is presently outlined in clause 27 [MUW, sub 33, p. 6-7] HIA states the test is drafted in fairly broad terms that are open for subjective interpretation (including 27(1)(a) and (b)), and it is also unclear how this will be assessed. Given a chief executive can have regard to any other matter the chief executive considers relevant in 27(2), it is unclear why 27(1)(a) is needed as a standalone provision [HIA, sub 35, p. 11] HIA raised concerns that the Chief executive is given extraordinarily broad discretion to assess a person's ability to 'comply with relevant laws; under section 27(1)(b)(ii). The Ai Group (sub 38, p. 8) considered that the requirement that all persons concerned with or that participate in the management of a company must satisfy the 'fit and proper person' test is too onerous, and is unnecessary.	
Part 4, Obligations of licensees	The Salvation Army recommends that the Qld Government make it an offence to fail to comply with the conditions of a licence [Salvation Army, sub 26, p.	Offences are dealt with throughout the Bill, (for example see s10, 11 and 12) as well as in Part 7.

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	6] MBQ states that the Bill provides a discretion for the chief executive to determine whether a licensee must lodge a security as per clause 29(2), noting also the lack of information about how this is determined. Additionally, clause 38 includes a requirement that a licensee provide a copy of a licence to another person, however, there is no definition of another person and they are not required to demonstrate a valid purpose for the request under the Bill. The provision should be amended to limit to the client, workers, or a person who is a legal representative of the worker [MBQ, sub 30, p. 7, 11]. AMMA submit there is no detail provided about what a security is as per clause 29(2)(b), and there are no legislative checks to ensure that a decision to impose a condition has been arrived at fairly. While there is a requirement to issue a show cause notice if there is an intention to impose a condition on a notice, there is a level of uncertainty that could cause unease about what conditions could be imposed and why [AMMA, sub 31, p. 16] QLS states that the timeframes for the show cause notice provisions at clause 23 and 30 should run from the date the document is received rather than sent (a person can show evidence of receipt if requested) [QLS, sub 32, p. 3] MUW support the payment of a bond to ensure that there is a safety net of wages for employee conditions in the event of liquidations, a bond would also help act as a deterrent in relation to the practice of phoenix-ing by way of shelf-companies [MUW, sub 33, p. 6] HIA notes that the examples of conditions a chief executive could put on a licence at clause 29 (including	The current treatment, where failure to meet a condition of a licence can result in administrative sanctions (e.g. condition, suspension, cancellation) is considered appropriate rather than applying an offence provision to the obligation to comply with conditions. This is also the usual approach taken in licensing legislation. While compliance with the obligations of other relevant laws underpins the (ongoing) entitlement to hold a labour hire licence and therefore conduct business in Queensland, the enforcement and ensuring compliance with those relevant laws are matters for the relevant competent authority. Clause 29 provides that the chief executive may apply conditions to a licence. This is not uncommon in a licensing scheme. Business licence schemes, such as WorkCover may seek solvency and Australia Prudential Regulation Authority requirements, the provision of financial statements, or recording of information. Types of conditions are (without limiting) described at subsection (2) and include holding insurance, offer a security or report at specified intervals. The provision of condition attached to a licence will strengthen the scheme while allowing persons to operate where their application may have otherwise failed. As with the all the powers granted to the chief executive, these will be administered appropriately and be subject to review and appeal. Section 38 requires a licensee to produce their licence upon the request of an inspector, worker or another person with whom the licensee is dealing. The operative words 'with whom the licensee is dealing' provides sufficient qualification about who would be considered 'another person'. This obligation to produce the licence is a reasonable condition to establish the person is the holder of a valid licence.

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	a requirement to take out insurances or provide a security) could significantly add to the cost of licensing. Clause 30 requires a show cause notice be issued where a condition is imposed, etc., however, there is still a very broad discretion to exercise this power and the bill should be redrafted to contemplate the circumstances when a condition is imposed [HIA, sub 35, p. 11] AiGroup submit the Chief executive has broad and unfetted powers about the application of conditions in section 29 [sub 38, p. 8 and 9].	
Clause 28 – Condition—compliance with relevant laws	QCU states licensing the labour hire industry is the only effective measure available to Queensland to bring about compliance with various industrial legislation, noting the inclusion of a requirement to comply with relevant laws (also as a condition of being a fit and proper person in clause 27 and as defined in Schedule 1) [QCU, sub 24, p. 2] The Salvation Army support the clause 28 in principle, noting it is also important to recognise the extent and nature of unethical conduct against vulnerable workers that do not necessarily breach the law, for example around overcharging for overcrowded and unsanitary accommodation. Consequently, the Salvation Army recommend that conditions of a licence not only require lawful conduct, but ethical conduct as well [Salvation Army, sub 26, p. 4-6] AMMA states that the intent of clause 28 is unclear.	Section 28 make clear that it is a condition of the licence that the licensee complies with all relevant laws that apply to the licensee. The FAC Inquiry report, submissions to the Issues paper, inquires in other states and consultation with stakeholders (see background) provided consistent evidence of ongoing and serious allegations of exploitation of workers in labour hire arrangements. Given these findings, and the ambition of the licensing scheme to protect workers and promote the integrity of the labour hire industry it is appropriate that the entitlement to hold a licence to operate a labour hire business be linked to licensee's compliance with legal obligations towards workers (and to the community through the payment of appropriate taxes and compliance with immigration laws etc.) Review and appeals processes are available to conditions, as well as for decision not to grant a licence.
Part 4, Division 2 – Reporting	QCU states that the information required would not be difficult to establish for a legitimate operator, for those that find it difficult to provide the proposed details it	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

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	would be reasonable to assume those organisations are not keeping proper records [QCU, sub 24, p. 2] The Salvation Army recommends that where a licensee provides accommodation to workers in connection with the provision of labour hire services, licensees under clause 31(2)(h) should be required to report on whether work is contingent on taking up accommodation with the provider and provide information demonstrating the accommodation rates accurately reflect comparable current market rates. Similar requirements should apply under clause 31(2)(i) where accommodation is provided by another person, to the best of the licensee's knowledge (for example, where the provider is directly/indirectly linked to the accommodation provider and benefits from an arrangement with a worker) [Salvation Army, sub 26, p. 6] NUW supports the reporting requirements in the Bill on the basis it will help minimise non-compliance and allow the Government to receive up to date information about the operation of providers and seek enforcement with licence obligations, if required. The documentation required is consistent with the what would be kept by a bona fide provider in the ordinary course of conducting business and therefore cannot be viewed as being particularly onerous [NUW, sub 28, p. 4] APSCO states there is no indication of the level of detail a report will require, and are concerned this will create an additional administrative burden on compliant providers as well as publically disclose unnecessary commercial information. While the Chief executive may waive an information requirements under clause 102, it is not clear in what circumstances the discretion will be exercised. Noting the high	activities. It is noted that the information requested should not be unduly onerous for providers who are compliant with relevant legislation and have good business practices. On balance, self-reporting on a six monthly basis, with annual renewal of a licence, is considered appropriate. It is anticipated all reporting will be done on-line, removing the need for a hardcopy report to be provided. The 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'. The information sought in relation to accommodation is to be provided 'to the best of the licensee's knowledge'. It is not envisaged that the licensee would need to interrogate workers in relation to their accommodation if the licensee genuinely has no knowledge of the accommodation arrangements to report on this provision. Section 32(a) also provides that further matters may be prescribed in regulation in regards to what a licensee must report on under Section 31(2). The Bill provides examples of what might be specified in a regulation including: the number of workers the licensee has supplied who are of a non-English speaking background (i.e. English is not the first language spoken at home), the number of workers the licensee has supplied who hold particular types of visas under the *Migration Act 1958* (Cwlth), information required about the licensee's compliance with a relevant law. This could provide for reporting to include for example: the number of workers on visas, what types of visa the workers held, countries of origin, if a language other than English is the worker's primary language. In regard to language and literacy it is considered that this information is likely to be

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	turnover of labour in the industry, the administrative burden imposed by the reporting requirements is likely to be significant (and exacerbated where similar schemes are implemented in other states) [APSCo sub 29, p. 10] MBQ states the 6 monthly reporting requirement in clause 31 is excessive and will impose a massive workload on licensees and the regulator; this requirement must be investigated through a RIS before considered any further. Also noting that some of the requirements are broad and vague, for example (k) requiring compliance with relevant laws for a period, however, the Bill does not provide a definitive list of relevant laws. Reporting should be no more frequent than yearly [MBQ, sub 30, p. 8, 14] AMMA states that it hopes efforts will be made to streamline reporting where the same or similar information is required (noting clause 102). It appears the information sought is excessive and unnecessarily onerous. Further consideration should be given as to how frequently information should be provided, and confidential commercial arrangements should not need to be provided [AMMA, sub 31, p. 16] QLS state that addresses of workplaces and accommodation should not be published or disclosed as it is commercially sensitive information. If it is published or otherwise released it must be de-identified to larger geographical regions (as done by the ABS). Clause 31(2)(n) does not specify whether applications for compensation are accepted, rejected or withdrawn; a licensee should be able provide this additional information. Providers who are national/operate in more than one state may have difficulties complying with the requirements. Concerns that information may be being obtained for purposes	available to the labour hire provider for purposes of the providing ensuring safe work practice and procedures and other important information is understood. 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. The Bill at Sections 103 and 104 provides for the establishment and maintenance of a Labour Hire website and a register of licenced providers. It is anticipated that this will be a 'dynamic' site able to inform potential uses of labour hire services and workers about the location and (in general) performance of a licenced labour hire service provider. 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 hire provider and check that provider is licenced. Addresses of workplaces, beyond broader geographical location (postcode or region) and accommodation are not published.

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	other than those stated in clause 3. Finally, the example of someone of 'non-English speaking background' in clause 32 is vague and ambiguous [QLS, sub 32, p. 3-4] NFF states the reporting requirements are unduly onerous and extend beyond the purposes of the Bill [NFF, sub 34, p. 7] HIA notes clause 31 requires extensive reports to be produced, if a provider is required to apply for a licence yearly there is little practical sense introducing a separate reporting obligation requiring a provider spend money and time to report twice a year. With respect to the individual requirements, HIA opposes the requirement that a provider report on the locations where work is carried out. This information is no necessary for the licensing regime to effectively operate, it is inappropriate to require the disclosure of the location of an apprentice, and creates an additional regulatory burden where a host has work occurring in several locations. Other concerns relate to the disclosure of information about notifiable incidents and workers compensation information, this information is not relevant for the effective operation of the scheme under the bill [HIA, sub 35, p. 11-12] RCSA, p19 submitted that the requirements for reporting is overly onerous and will not be publicly available to the direct buyer of labour hire services. In addition, much of the information required from licensees is already available from Government and industry reporting services. The RCSA recommend that reporting requirements should focus on information that workers or users of labour hire services would reasonably expect to be available in determining if the provider they are dealing with is reputable and	

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	compliant. The Ai Group sub 38, p. 8, 9-11 opposed the frequency of reporting, the level of detail, and the nature of the information required to be provided by a licensee to the Chief executive in the Bill. They submitted that the reporting requirements would operate as a barrier to entering or remaining in the labour hire industry, which by its nature operates on tight margins. The AiGroup considered that the requirement that the licensee provide information about compliance with relevant laws and other details regarding work health and safety and workers' compensation is overly burdensome. They submitted that other well-resourced and effective regulators are responsible for ensuring compliance with these laws, and there is no need for duplicate regulatory processes.	
Clause 33 – Requirements for nominated officers Clause 34 – Nominated officer must be reasonably available	J O'Sullivan, clause 33, p2 in her submission noted that the nominated officers as well as individual licensees should be required to be permanent residents of Australia. AMMA state that the requirement of a nominated officer including the instruments of their appointment are quire prescriptive. These should be revised to accommodate national and multinational businesses. Further it is unclear why a nominated officer must be available to a member of the public, the privacy of the nominated officer meeds to be respected [AMMA, sub 31, p. 17] AiGroup, sub 38, p. 11 considers that the obligation to be reasonably available is an onerous and unfair requirement.	Section 33 sets the requirements for nominated officer for a licence. A nominated officer is an individual who is responsible for the day-to-day carrying-on, or takes part in the management, of the business to which the licence relates; and satisfies other requirements prescribed by legislation. Having a nominated officer who exercises responsibility for day-to-day operations ensures there is an appropriate representative for the licensee, in particular where the licensee is a large corporation or where it operates over a number of geographically diverse areas. 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

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		regulation. In the absence of a regulation the applicant may propose the number of nominated officers it wishes to present. For section 34 which requires that a nominated officer must be reasonably available to be contacted by the chief executive or a member of the public during business hours, it is not unreasonable that a nominated officer representing the business of the licence holder be reasonably contactable.
Clause 38 – Production of a licence	MBQ submitted that a union representative should only be able to request a labour hire company to produce a licence if they are satisfied that the licensee has a worker that is a current member of a union, and that worker has authorised the union to inspect the licence.	Section 38 requires a licensee to produce their licence upon the request of an inspector, worker or another person with whom the licensee is dealing. The operative words 'with whom the licensee is dealing' provides sufficient qualification about who would be considered 'another person'. To seek to define another person in specific circumstances is not feasible. This obligation to produce the licence is a reasonable condition to establish the person is the holder of a valid licence. In relation to the MBA submission that a union representative should only be able to request a labour hire company to produce a licence if they are satisfied that the licensee has a worker that is a current member of a union, it may also be appropriate in those cases where the labour hire provider has employee who are eligible to join the union. It may not be reasonable for the union representative to have obtained the consent of a member, or worker who is eligible to join the union.
Clause 40 – Licensees to notify chief executive of particular changes in circumstances	AMMA states that this requirement should be revisited noting the nature of projects in the resources sector is that the volume of workers and the location of where they are accommodated may vary frequently. It is impracticable to provide constant updates where the location or type of accommodation changes, as well as the number of workers to be accommodated [AMMA, sub 31, p. 17]	The ordinary turnover of labour hire workers would not ordinarily be a matter anticipated to be notifiable other than at regular reporting intervals. While the specific information will be prescribed in subordinate legislation, it is anticipated that such information would relate to the identity of the licence holder for example, has an executive officer of the corporation changed; has there been a conviction of a serious offence such as fraud, assault or breach of workplace law; or bankruptcy or insolvency.
Part 5 – Obtaining information	AMMA states that individuals may have concerns about their privacy in relation to irrelevant criminal history. All information gathered should have regard to	Privacy obligations will apply in relation to information gathered for the purposes of the Bill, including any other legislative obligations under other Acts which would apply, and the specific provisions of the Bill which also relate.

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	the Privacy Act 1988 [AMMA, sub 31, p. 18] QLS state with reference to clause 44(2)(b) that consideration should only be given to offences that a person has been convicted of (not alleged offences to determine if someone is a 'fit and proper person' [QLS, sub 32, p. 4] J O'Sullivan, clause 44-46, p1-2 also raised concerns in relation to fit and proper person test for clauses 44 to 46, and notes that section 27 informs these sections.	Section 44 proves that the chief executive may seek a report from the police commissioner about the person's criminal history, including a brief description of the offence giving rise to conviction or charge. Section 46 deals with confidentiality of criminal history information wherein the information provided in a criminal history report cannot be disclosed unless required in relation to the operation of the Act or permitted by law. The criminal history document itself must also be destroyed as soon as practicable. In relation to the use of charge information s45(3) limits the use of charge information to suspension of the licence or about whether a person is or continues to be a fit and proper person. In the latter case any decision can be subject to review and appeal.
Part 6 – Monitoring and enforcement	QCU states that the effective application of the regulation will rely on enforcement and the need for an effective enforcement regime [QCU, sub 24, p. 2] NUW supports a well-resourced compliance unit to promote compliance with the scheme, regular audits and investigations of labour hire providers [NUW, sub 28, p. 5] MBQ states the Bill allows inspectors to enter business premises and inspect documents required to be kept by a business, including documents required by other bodies under relevant laws. An inspector is required to inform an occupier of the powers of an inspector however such powers are ill-defined, including around documents, noting that clause 70(1) refers to documents required to be kept under the Act, which is not defined. Under the Bill an inspector has the authority to enter a premise to inspect documents regulating workplace relations. MBQ questions the purpose of inspecting such documents, noting if there are concerns about wages and conditions of employment the Fair Work Ombudsman is the proper	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. While still in its formative stages, it is proposed that the Labour Hire Inspectorate (Compliance Unit) will comprise of • Desk-top Auditors (for application and reporting validation) • Inspectors (for conducting investigations, whether by complaint or by targeted programs). The inspectorate will also coordinate an extensive awareness and education campaign. The inspectorate will be responsible for administering an extensive on-line presence through the Government's labour hire website, to be used for the dissemination of information to providers, end users and workers (including people for who English is not their first language), and the publishing of the register of licenced labour hire providers and applicants. 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.

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	authority and can investigate and identify any breaches. Inspectors within other authorities (such as the Fair Work Ombudsman) are trained and authorised under relevant, specific legislation, they do not investigate outside of their legislation. For example, while an inspector with Fair Work Ombudsman may identify but has no authority to bring an action against an employer relating to unsafe workplace safety. An inspector under the Bill cannot pretend to make a judgement of the suitability of a licensee when it is beyond their authority and training to identify and prosecute any alleged non-compliance with 'relevant laws' [MBQ, sub 30, p. 11] MBQ states the extent of inspectors powers to seize things (clause 72, etc), and undertake inspections is extraordinary in the context of managing a register of labour hire licences. The Bill must be amended to limit the powers of inspectors to only the determination of whether the business fails under the scope of the licensing authority. Inspectors should be limited to entry and inspection to determine whether the business should be covered by the Bill, whether the business has a licences and whether it is submitting reports [MBQ, sub 30, p. 12, 14] AMMA states the provisions are very broad and must only be used for ensuring that the requirements of the Bill are satisfied and not a wider range of perceived wrongs that are the domain of other inspectorate functions (i.e. the Fair Work Ombudsman) [AMMA, sub 31, p. 18] QLS state that clause 68 should insert a mechanism covering return of property taken under Clause 68(1)(c) and (e). Clause 68(3) should specify a date or period for return of a document (and procedures for seeking an extension). Clause 68(1)(h) should include a	Desk-top auditors will review and validate licence applications and reporting. The licence 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. 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 Protection and FWO. These investigation activities will include 'on-complaint' and targeted compliance campaigns. 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. *Self-incrimination* The department notes the issues raised by the QLS around section 70(5) which waives the right against self-incrimination. The QLS also submitted that they do not consider that clause 101 is strong enough to protect this right by preventing self-incrimination and the derivative use of evidence and noted similar concerns about clause 71. Part 6 of the Bill deals with the appointment of inspectors; powers of entry and entry procedures; and powers after entering premises, including the power to require the production of documents (s70) and the power to require information or attendance (s71). Section 71(4) provides that it is a reasonable excuse for non-compliance if

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	caveat as to how long an inspector can be on private property (time necessary to achieve the purpose is too vague). It is unclear what an inspector will interpret as necessary steps under clause 68(2), examples should be provided. Clause 69 also does not state what behaviour will be considered reasonable help. Clauses 70 and 71 both waive the right against self-incrimination, this is a fundamental right and there is no justification for it. Clause 101 is not strong enough to protect this right by preventing self-incrimination and the derivative use of evidence. Clause 80, relating to forfeiture, does not impose a high enough standard on inspectors to return property [QLS, sub 32, p. 4-5] MUW submits that the provisions for monitoring and compliance need to be expanded to enable a Union to take action against a host employer on behalf of an employee to recover any wages or lost entitlements. It is also important that any investigation outcome be shared with the Fair Work Ombudsman and Fair Work Commission [MUW, sub 33, p. 6] J O'Sullivan, clause 47-89 (62 specifically), p2, 3 raises several concerns about the construction of the provision relating to inspector powers. Under 62 Issue of warrant, the warrant may only be issued if there is reasonable suspicion of"a particular thing or activity that may provide evidence of an offence against this Act." This Act does not mention entitlements of employees or obligations of employers or employment agents toward employees. It would seem that the substantive abuses which have characterised labour hire arrangements are not "offences against this Act", and this Act does not authorise inspectors to access workplaces to investigate them.	'complying might tend to incriminate the individual or expose the individual to penalty'. While s70(5) provides that the defence of self-incrimination is not a reasonable excuse in relation to the production of a document required to be kept under the Act, however section 101 provides protection for the person against the derivative use of other information or document insofar as it is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose that individual to a penalty, in a proceeding. Section 71(4) provides a reasonable excuse in relation to a requirement to give an inspector information or a document (other than a document required to be kept under the Act) if complying might tend to incriminate the individual or expose them to penalty. The waiver of the defence of self-incrimination in regard to the production of a document required to be kept under the legislation is not uncommon. It ensures that an inspector is able to inspect a document that is required to be kept by the person under that legislation. The protection against its derivative use is also not uncommon and provides suitable protection against self-incrimination. An example of similar provisions are in the Fair *Trading Inspectors Act 2014* at s57, s58 (relating to the production of document) and s72 (the evidential immunity provision). Clause 101(2) applies if an individual gives or produces information or a document, other than a document, required to be kept or given under this Bill, to the chief executive. Clause 101(2) provides that the information or document, and other evidence directly or indirectly derived from them, obtained under clause 43 or 70 is not admissible against the individual in any proceeding to the extent that it incriminates the individual, or exposes the individual to a penalty, in the proceeding. This provision is considered to mitigate the impacts of the Bill on abrogating the common law self-incrimination protection as it prevents a person from

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		being providing evidence of their own failure or guilt. Further, in *Trade Practices Commission v Abbco Iceworks Pty Limited and Others* the majority of the court found that the penalty privilege is not available to corporations at common law. Further, the privilege against exposure to forfeiture has limited application in Queensland by virtue of the *Evidence Act 1977* section 14 (1)(a) which provides: (1) The following rules of law are hereby abrogated except in relation to criminal proceedings, that is to say— (a) The rule whereby, in any proceeding, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose the person to a forfeiture.
Part 6, Division 2 – Powers of entry Clause 55 – General power to enter places Clause 58 Incidental entry to ask for access.	CCIQ – see general statements above relating to fundamental legislative principles [CCIQ, sub 27, p. 3] Clause 58 should be amended to prohibit an investigator conducting an investigation until consent is obtained [QLS, sub 32, p. 4] The Housing Industry Association, p.15 raised concerns about the broad right for inspectors to enter 'a place', as defined in Schedule 1, to also include any potential host businesses. Additionally, they considered that the Right of Entry with or without consent without first requiring notice gives the inspectors more powers than already existing rights under the FWA. HIA argues that these powers are unnecessary to achieve the objects of the Bill. The Ai Group , sub 38, (and division 3 – Powers after entering places) p. 11 raised concerns that the powers in Part 6, Division 2 of the Bill are inappropriate and overly heavy-handed. APSCo states that the right of entry provisions may place a further imposition on businesses [APSCo, sub 29, p. 10]	The right of entry powers (along with the general powers and power to seize) are not dissimilar to powers exercised by industrial (wages), workplace health and safety inspectors and inspectors appointed under the *Fair Trading Inspectors Act 2014*. These powers are considered adequate and well established and are not considered to be inappropriate and overly heavy-handed. Labour hire licensing inspectors will be required to undertake appropriate training before enforcing provisions of the Bill. An inspector's 'general power of entry' is set out in s55. This section makes clear that an inspector's may enter a place if (a) the occupier consents; or (b) it is a public place and entered at a time when the place is open to the public; or (c) by warrant (where the conditions for obtaining and entering by warrant are further prescribed at ss61-66). An inspector can also enter a place without the consent of the occupier if (and only if) the place is a workplace that is open and carrying on business or work is being carried on at the workplace, or the workplace is required to be open for inspection as a condition of the licence. The definition of place, which includes premises, is made clear at Schedule 1 (the dictionary) which gives an ordinary and customary use of the words. It is anticipated that any licence condition imposed for a workplace to be open will be clear and unambiguous in its detail. Clause 55 is considered to include

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	QLS states that the powers for entry at clause 55(d) – where a business needs to be open for inspection under a condition of a licence – is too broad and does not specify what licence authority is, or whether a licences has actually been issued to the workplace in question. A workplace being open for carrying on a business or work is being carried out at the workplace is too broad to authorise entry'; it is open to abuse and is broader than powers of entry under the Police Powers and Responsibilities Act without evidence. Many businesses will have commercially sensitive, private and confidential information (the same concerns apply with respect to clause 56(c)) [QLS, sub 32, p. 4] J O'Sullivan (Sub 36 p3) suggests that places where hired-out labour are put to work be included in clause 55 The Salvation Army recommends that where accommodation is directly linked with the employment by a labour hire company or otherwise connected to a labour hire company , an inspector should be able to enter accommodation premises accordance with the respective authority to enter a workplace under this section [Salvation Army, sub 26, p. 6] The MBA raised concerns that an inspector should not make a judgment on the suitability of a licensee when it is beyond the inspectors authority and training to identify and prosecute any alleged non-compliance with 'relevant laws'.	a workplace where a labour hire worker is employed. Section 58 applies where the inspector intends to ask the occupier for consent to enter. This provision is not an uncommon provision and ensures that an inspector is not open to charge of trespass if entering land 'to the extent that it is reasonable to contact the occupier; or part of a place that 'the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier. All inspectors (and all public sector employees) are bound by a Code of Conduct that deals with the handling of commercially sensitive, private and confidential information obtained or learnt during the course of employment. There are sanctions, including dismissal, for a breach of the Code. If it was identified that a labour hire provider was providing accommodation, and there were concerns about the safety or standard or otherwise in relation to that accommodation, the inspector can refer the concern to the appropriate and competent authority including the local council and Queensland Fire and Emergency Services. Similar arrangements would be made where concerns or suspicions were raised about the possible breach of other relevant laws. An Inspector appointed under the Labour Hire Licensing Act is not authorised or employed to conduct investigations of, or prepare for a prosecution for a breach of laws other than for an offence against the Labour Hire Licensing Act
Part 6, Division 3 – Powers after entering places	MBQ concerns that an inspector should only assess the principal purpose of firms and whether or not the business is engaging in labour hire, not have the capacity to seize and inspect documents.	The powers an inspector may exercise after entering a premises (whether by consent, warrant or without consent (as provided at s55(1)(d)) are set out at ss67-Part 6 Division 3. These powers are grouped as 'general powers' (ss67-71); and seizure powers (ss72-84). The description of these powers is not uncommon for an inspector to investigate matters and ensure compliance with the Act. These powers are not considered inappropriate and overly

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		heavy-handed. Section 72 and 73 deal with seizure powers in either case of entry by consent or warrant, or without consent or warrant. In both cases the inspector can only exercise a seizure power if the inspector 'reasonably believes a thing is evidence of an offence against the Act'. Further qualifications are provided at s73 (where entry is by consent or warrant). The Bill also provides a comprehensive treatment of dealing with, returning or the forfeiture of a seized thing. All inspectors (and all public sector employees) are bound by a Code of Conduct that deals with the handling of commercially sensitive, private and confidential information obtained or learnt during the course of employment. There are sanctions, including dismissal, for a breach of the Code. Across Queensland legislation a core power of an inspector is the ability to seize and inspect documents where warranted. The Bill does not introduce any new powers in this manner.
Clause 90 – Persons must report avoidance arrangements	NUW states clause 90 should be clarified to not just require a client to report an avoidance arrangement when they become aware such an arrangement but to also report non-compliance with a licence [NUW, sub 28, p.6] J O'Sullivan (sub 36 p3-4,) is concerned that the definition of an avoidance arrangements at clause 90 (and 12 re avoidance arrangements), AiGroup submitted that the obligation to report avoidance arrangements is too broad and vague and recommend that the obligation be removed from the Bill [AiGroup, sub 38, p. 12].	The Bill also provides a serious offence for engaging in 'avoidance arrangements' (see Section 12). Furthermore, persons are bound to report on avoidance behaviour (see Section 90)). An 'avoidance arrangement' is defined within section 12 and 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. Placing an obligation within the supply chain upon parties who become aware of an arrangement to deliberately avoid an obligation imposed by a relevant law, where such an arrangement is not a legally proper arrangement, is considered a cornerstone of the design of the regulation of the labour hire industry. It goes to the object of promoting the integrity of the labour hire industry.

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		Stakeholder feedback has suggested that industry and business are willing and likely to be active in reporting these types of issues. The Bill provides for referring alleged breaches of other legislation on to the relevant competent authority (see Section 104). Bona fide business decisions to utilise licenced labour hire or to enter into genuine independent contracting arrangements are not affected by Sections 12 or 90 of the Bill.
Clause 93 – Application for review	CCIQ states that clause 93(2) is a derogation of natural justice and procedural fairness. Specifically allowing a third party who has an external interest to interfere in a legal proceeding as well beyond the scope of the legislation and will allow politicised movements to inject themselves into legal proceedings and could lead to commercial and competitive abuse. Additionally, decisions to be reviewed are not stayed and as a consequence, employers are at risk of being unable to trade if reviews are delayed [CCIQ, sub 27, p. 4] AMMA states that the definition of an 'interested party' is very broad, there need not be a material interest in the business of the licensee or the types of workers engaged by it. Other parties should have no direct standing to review a licensing decision issued by the Chief executive. The relevant inspectorate should investigate compliance concerns directly once a complaint is made. Additionally, when a decision effectively revokes the right of the licence holder to do business, there should be a mechanism that allows the status quo to be maintained until the decision is reviewed [AMMA, sub 31, p. 19-20] NFF states that clause 93(2) enabling an interested person to apply for a review of a decision to grant or suspend a licence or impose, vary or revoke a condition is highly unusual and concerning as it will enable	The Review and Appeal provisions of the Bill are at Part 8(ss93-98). The introduction of a review and appeal right of 'interested persons' (as defined at s93) is considered appropriate and responds to wide-spread concerns that labour hire workers are 'some of the most vulnerable workers in the community'. The Committee, in its report following its inquiry into the labour hire industry in Queensland noted 'it is recognised that while agency workers in Australia are a diverse group spanning all occupational levels and industries, they tend, on average, to be engaged in low-skilled and labour intensive positions and exhibit the characteristics of 'marginal, peripheral works (page 5); and "labour hire workers tend to have less of a workplace voice, have considerable less bargaining power and may be disinclined to speak out about their conditions largely out of fear for their employment' (page 14-15). Providing review and appeal rights for a person or organisation with an interest in the protection of workers is appropriate for the protection of vulnerable workers. At Section 93(1) 'A person who has been given, or is entitled to receive an information notice for a decision…' and Section 93(2) '… an interested person'. 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'. Examples of an interested person could be Unions and relevant employer/industry representative organisations and social justice

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	malicious and vexatious application to interfere with the legitimate activities of labour hire companies and require unnecessary resources in responding to an appeals process. A complaints process would be more appropriate [NFF, sub 34, p. 7-8] HIA, p. 15-16	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. A labour hire licensee is not an interested person and cannot seek a review or appeal of a decision. This will remove the risk of malicious commercial intent be industry competitors. 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: – 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 – 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. 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: – 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
Clause 98 – Persons considered	Maurice Blackburn states that it would be beneficial to	While compliance with the obligations of other relevant laws underpins the

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parties to offences	clarify that a contravention of a relevant law by a provider is an offence under the Act, as it will provide greater protection to workers from exploitation by providers of labour hire services (which is consistent with the main purposes of the Act) [Maurice Blackburn, sub 22, p. 3] AMMA states that clause 98(2) provides interested parties with an opportunity to further review a decision to grant a licence through QCAT. It is unclear the status of the licence while this further appeal is undertaken or the grounds on which an appeal could be made [AMMA, sub 31, p. 20] QLS (sub 33 papa 24 and 25) raise a concern that s97(6) allowing a decision to be confirmed simply due to the passage of time is unjust and unfair; and also state that clause 98 should be amended to say appeal rather than review throughout [QLS, sub 32, p. 5]	labour licensing system and the entitlement to hold a labour hire licence, the enforcement and ensuring compliance with other Acts are matters for the relevant competent authority. The department considers that the current treatment where failure to meet a condition of a licence can result in administrative sanctions (e.g. condition, suspension, cancellation) is appropriate rather than applying an offence provision to the obligation to comply with conditions. This is also the usual approach taken in licensing legislation, and also avoids the possibility of applying a double penalty under two different jurisdictions. The Bill provides that an application for a review does not stay the decision. A specific provision in relation to seeking a stay of the decision can be made at section 96. It is considered the same approach will apply upon an appeal made under s98. Advice will be sought on whether a provision similar to s96 is required in this regard. The QLS has correctly identified an error in the use of the word review, rather than appeal, at s98. For clarity this will be corrected. Further consideration will also be given to QLS observation in regard to 97(6) in light of the concern raised.
Clause 101 – Evidential immunity for individuals complying with particular requirements	QLS states that clause 101 does not adequately protect someone from self-incrimination. Clause 101(1) should not limit the types of documents covered by the immunity. Clause 101(3) should be removed. [QLS, sub 32, p. 5]	Please see discussion under Part 6 – Monitoring and Enforcement in relation to self-incrimination.
Clause 102 – Waiver of particular requirements to give information	RCSA (RCSA certification/accreditation program), p.3-4, 17-18, 23-28 (attachment 1) recommends that the Committee consider how the certification programme might be prescribed or approved in order to improve the workability of the Bill and the protection against exploitation that it seeks to afford	Section 102 of the Bill provides for the ability of the Chief executive to waive a relevant information requirement if the chief executive is satisfied that the applicant or licensee has satisfied another scheme (whether it be another licensing regime or a professional accreditation scheme) and the requirement is substantially the same. This is an appropriate approach to reduce the administrative burden of applying for a licence or reporting on activity by recognising the information those applicant and licensees have already established and/or report on

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		particular matters. The Chief executive may make a policy about such a waiver and if so, must publish that policy.
Clause 103 – Register of licences	The Salvation Army strongly supports the provision to make the list of licences publicly available as an effective means to increase transparency across the industry and to better inform potential job seekers [Salvation Army, sub 26, p. 7] NUW states the public register on the website will provide further transparency of the industry [NUW, sub 28, p. 4] APSCo states the information required to be kept on a public register includes commercially sensitive information which could be viewed by competitors and clients, such sensitive and otherwise confidential information should not be disclosed [APSCo, sub 29, p. 10] MBQ states that a public register will be burdensome for firms registered with QBCC which must also be on a register with QBCC. The preference is that entities licenced under the QBCC be exempted from the Bill as the QBCC register satisfies the purposes of the register under the Bill. If not exempted MBQ oppose a register which is open to change through regulation (how can the suitability of the register be assessed if it is unknown what may be introduced later?) [MBQ, sub 30, p. 12] AMMA states the register outlines a range of sensitive information that is proposed to be published on a public website. Information that is provided to the relevant licensing authority/chief executive should only be published on a public website to the extent it is	Section 103 provides for the matters that the Chief executive must keep on a register. Section 103(3) provides that the register must be available free of charge on the Labour Hire website. Recording matters listed under s103 is considered necessary and appropriate to ensure the objects of the scheme are achieved and to administer the labour hire licensing system. The subject matter of the matters in the list have all been raised as issues during the parliamentary inquiry, for example, there were serious issues raised about the provision of accommodation, poor work health and safety and intimidation when applying for workers' compensation, claims of harassment and discrimination and underpayment of employment entitlements. Ensuring that licence holders can be identified on the basis of the industries and areas in which they operate will benefit the licence holder, those looking to source a licenced labour hire provider and potential workers looking to link up with a labour hire provider. It is also appropriate that any conditions on the licence be publicly available. It is considered these matters are not likely to be commercially sensitive. Commercially sensitive matters are not included in the register. Providing a listing of licenced operators, with contact information, information of the industries and locations serviced, compliance with relevant laws, work health and safety performance, the provision of accommodation and benefits and any conditions imposed are seen as vital for transparency. The availability of such information to inform users of labour hire services and workers is also a cornerstone of the labour hire licensing scheme .

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	necessary to determine if a person/entity is a licenced labour hire provider [AMMA, sub 31, p. 20] QLS is concerned about the information required to be placed on a public register – refer to comments at reporting section [QLS, cub 32, p. 5] HIA notes the register will contain extensive details about a provider that go beyond what is required for a user to check if a business has a licence, including information about where work is carried out by workers supplied by the provider. There are also privacy concerns about a client's details, which could allow another party to interfere with a host business. Published information should be restricted to that set out in clause 105 [HIA, sub 35, p. 12]	
Clause 105 – Publication of Information	Published information should be restricted to that set out in clause 105 [HIA, sub 35, p. 12]	Section 105 has been provided to allow information about applicants and former licensees to be published on the website. It is not uncommon for information on persons seeking to become a licenced operator be made public. Such action may bring to the attention of the chief executive any serious concerns. Any influence of claims made against an applicant would be subject to consideration and due process, and to the review and appeal rights attached to the chief executive's decision.
Clause 104 – Disclosure of confidential information	AiGroup, sub 38, p. 11 submits that the provision should be expanded to include information that is 'commercial in confidence'.	As mentioned above, it is considered that the information required at s103 to be kept in the register is not commercial in confidence
Clause 109 – Supply of Workers within 28 days of commencement	APSCo state 28 days is not a sufficient transitional period for existing providers to ensure compliance with the Bill and to compile the necessary information to make an application. The period should be extended [APSCo, sub 29, p. 10-11] AMMA states that given the breadth of information sought, making an application within 21 days will create significant strain on their resources. This also affects clients who will rely on the publishing of the	This transitional provision provides for existing operators to not be in breach of the Bill from its proclaimed date by allowing current providers 28 days to lodge their application for a licence. It is anticipated that there will be an extensive awareness campaign in the lead-up to the proclamation date of the Bill, including any provisions contained in subordinate legislation.

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	register to ensure they are not entering into an arrangement with an unlicensed provider [AMMA, sub 31, p. 20] The timeframe under clause 109 may not be sufficient to allow businesses to apply for a licence (28 days from commencement). Businesses may have some knowledge of the proposed scheme, but they will not know the particulars until it commences. There may be a genuine inability to meet this timeframe which will then put them in breach of the legislation and may impact their contracts with other businesses [QLS, sub 32, p. 5]	
Schedule 1 - Dictionary	Maurice Blackburn identifies additional federal laws to be included (in line with the examples of laws already included) [Maurice Blackburn, sub 22, p. 3-4] AiGroup, [sub 38, p. 7] raised a concern that the definition of 'executive officer' is extremely broad as includes all persons involved in the management of a company.	The department notes the comments in relation to definitions included in the Bill. The examples of relevant laws in the Bill as drafted are examples listed under a definition. The definition of executive officer captures those persons who exercise managerial control however may not be a director. In this way the Bill captures the
Recommended inclusions		
Protections and exploitation	[MUW, sub 33, p. 3-5] The Bill in its present form does not address a situation where a worker can be dismissed from employment absent any wrongdoing on their part, and be left without recourse. A recent decision of the Fair Work Commission allows labour hire companies to rely on a decision by a company to which it is providing the labour as a defence to an unfair dismissal claim without meeting any other requirements of a fair dismissal. Recommend that the proposed legislation prohibit a labour hire company from entering into any contractual arrangements with a third party employer that would cause the labour hire company to offend any relevant legislation	Although protecting workers from exploitation by providers of labour hire services is a main purpose of the Bill (to be achieved by establishing a licensing scheme), the *Fair Work Act 2009* 'covers the field' for the purposes of industrial entitlements, including dismissal, for private sector employers and employees following the referral of the State's private sector industrial relations jurisdiction to the Commonwealth in 2010.

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	including but not limited to unfair dismissal provisions in the *Fair Work Act 2009* J O'Sullivan, p2 raises concerns that there is no new or clarified responsibility of clients to ensure that workers are fully paid at award rates for the type of work provided. No capacity is provided for workers to seek unpaid wages from clients if labour hire companies disappear.	