

CCIQ SUBMISSION

Labour Hire Licensing Bill 2017 Finance and Administration Committee



CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

19 June 2017



Overview

1. The Chamber of Commerce and Industry Queensland (CCIQ) makes this submission in response to the Labour Hire Licensing Bill 2017 (the Bill) introduced to the Queensland Parliament, 25 May 2017, referred to the Finance and Administration Committee (the Committee).
2. CCIQ is Queensland's peak industry representative organisation for small and medium businesses. We represent over 25,000 businesses on local, state, and federal issues that matter to them. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.
3. CCIQ welcomes the opportunity to provide comment to the Finance and Administration Committee with respect to the Bill.
4. The following submission contains CCIQ's commentary and concerns regarding the Bill, specifically, legislation duplication, purpose, fundamental legislative provision breaches, anti-harmonisation, third party intervention, scope, compliance burden, increased red tape and failure to follow Government guidelines.

Overall Position

5. As previously outlined in previous submissions, CCIQ is of the firm position that labour hire does not pose a unique set of challenges beyond the capacity of existing legislation to manage. Therefore, CCIQ does not believe labour hire warrant legislative intervention and increased regulation.
6. Current legislative regulation and protections are found in:
 - a. Anti-Discrimination Act 1991 (Qld);
 - b. Criminal Code 1995 (Qld);
 - c. Competition and Consumer Act 2010 (Cth);
 - d. Independent Contractors Act 2006 (Cth);
 - e. Industrial Relations Act 1999 (Qld);
 - f. Migration Act 1958 (Cth);
 - g. Superannuation Guarantee (Administration) Act 1992 (Cth) and the Superannuation Guarantee (Charge) Act 1992 (Cth);
 - h. Tax Administration Act 1953 (Cth);
 - i. Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015 (Qld);
 - j. Work Health and Safety Act 2011 (Qld);
 - k. Fair Work Act 2009 (Cth); and
 - l. Further Education and Training Act 2014 (Qld).
7. The prospect of an additional regulatory scheme is particularly daunting for businesses already suffering from the cumulative compliance burden of workplace relations laws, workplace health and safety laws, and other legal requirements.



8. Greater regulation of the labour hire industry would impose significant additional costs on already compliant firms. Imposing another layer of regulation on businesses in Queensland would be a counter-productive measure towards achieving job creation and economic growth.
9. To this end, CCIQ believes this Bill will add to an already significant compliance burden for businesses, undermine job growth, and create an unnecessary layer of legal requirements to which a sufficient safety net for temporary forms of employment already exists.

Objective Purpose

10. Section 3 of the Bill outlines the purpose is to protect workers from exploitation by providers of labour hire services and to promote integrity of the labour hire industry.
11. As the purpose is already well canvassed under current legislation, CCIQ does not support the duplication of current legislation, as it will not have an impact on worker protection.
12. Much like the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (Cth), CCIQ believes a strengthening of existing regimes would more effectively achieve the purpose of the Bill rather than attempting to improve compliance through further regulation.
13. For example, Group Training Organisations are regulated by three regimes. Adding a fourth is unlikely going to improve compliance. Parties who are currently breaching their compliance duties are unlikely to conform to another scheme.

Fundamental Legislative Principles (FLP)

14. CCIQ is extremely troubled by the high level of inconsistency the Bill has with FLPs. The Bill breaches the Legislative Standards Act 1992 (Qld), sections 4 (4)(a), 4(3)(d), 4(3)(e) and 4(2)(a).
15. By having key parts of the Bill prescribed by Regulations, which change regularly and without legislative oversight, CCIQ believes this is an inappropriate delegation of legislative power without sufficient reasoning. This will make an already complex scheme unstable and unworkable due to shifting regulations that can undermine the fundamentals of the Bill.
16. Our major concern is the awarding of search and seizure powers without warrant. This power is at odds with the Legislative Standards Act. Search and seizure powers should only be awarded by way of a warrant, awarded by a judge or judicial officer. Part 6, Division 2, Subdivision 1 allows inspectors to enter property without consent or warrant. The reasoning for such a delegation of power is not strong enough, as well as being open to interpretation and an abuse of legal process which could undermine chain of custody, perverting justice.
17. Excessive penalties have also been introduced, justified in comparison to the Industrial Relations Act 2016 (Qld). This assessment and justification is false. The maximum penalty units in the Bill for individuals (1034) and Corporations (3000) are three to nine times higher compared to the Industrial Relations Act 2016. When compared against other work place bills, including the Workers' Compensation and Rehabilitation Act 2003 (Qld) and



Queensland Building and Construction Commission Act 1991 (Qld this was also shown to be the case. These penalties are by far excessive and overly punitive in nature.

18. The nature and scope of FLP breaches is such that this Bill cannot be perceived as 'good' law.

Uniformity

19. This Bill is a move away from national harmonisation. Currently Victoria and South Australia are undertaking their own reviews. If multiple jurisdictions are moving towards implementing similar schemes, then a federal scheme should be introduced to ensure consistency.
20. A standalone state scheme will make Queensland an unattractive business and investment environment. CCIQ supports legislation harmonisation to streamline regulation and interpretation, lessening legal burdens for small to medium businesses.

Third Party Reviews

21. Part 8, Division 1, Section 93(2) is a derogation of natural justice and procedural fairness. To allow a third party, as defined by section 93(3), who has an external interest to interfere in a legal proceeding is well beyond the scope of the legislation.
22. CCIQ believes this section will allow politicised movements to inject themselves into a legal process, irrespective of the wishes of the relevant two parties. This provision will open the door for commercial and competitive abuse.
23. Decisions to be reviewed are not stayed and therefore employers are at a risk of being unable to trade if reviews are delayed, putting in jeopardy the industry, jobs and the economy.

Definitional Breadth and Depth: Section 7

24. Section 7 of the Bill is so broadly drafted that it will catch *any and all* worker providing services. Such a wide approach will encapsulate a vast spectrum of providers required to be reviewed. CCIQ believes that the true purpose of the act, to protect vulnerable workers, will be compromised as industries with no history of exploitation or already regulated, will be required to report, generating a massive review process and government burden.
25. The definition should be refined to capture those industries which are unregulated, for example horticulture, which has a known history of exploitation. Other industries should only be encapsulated by way of parliamentary executive review.
26. If the licence scheme can be proven to be a valid tool of change, then other independently identified industries may then be included.
27. CCIQ does not believe in any form will the Bill be a valid tool of change. CCIQ believes all industries are sufficiently capture under current laws; laws which should be enforced.



28. In a recent survey in relation to Red Tape and the impacts to business, a respondent commented stating:

“Regulation needs to be more flexible as ‘one rule fits all’ just doesn’t work.”

Fit and Proper Person Compliance

29. CCIQ has serious concerns about Division 4, section 27, the fit and proper person test. We commend any effort to uphold a standard of integrity, however some of the provisions are unworkable.

30. Section 27(b)(i) – has a history of compliance with relevant laws – is an ambiguous term. Implications for trades group who will be caught by All Trades Case decision may not be able to show a history of compliance due to receiving false information from the Fair Work Ombudsman.

Red Tape

31. This Bill will exponentially increase red tape for small businesses. An extensive application process as well as six monthly reporting obligations and yearly renewals will have a devastating effect on time poor small businesses.

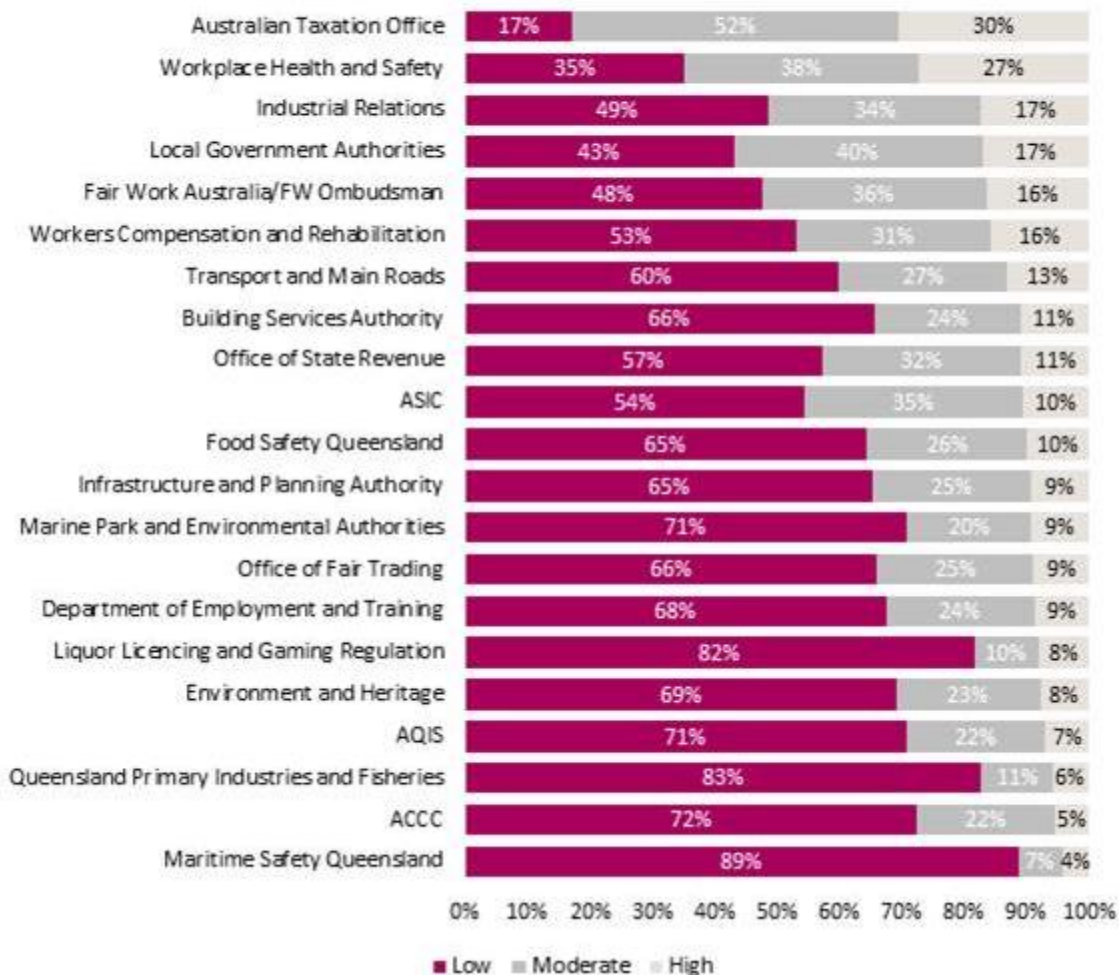
32. In a recent survey of small businesses, the top five government agencies in which businesses believed to impose the most red tape were:

- a. Australian Taxation Office
- b. Workplace Health and Safety
- c. Industrial Relations
- d. Local Government Authorities
- e. Fair Work Australia / Fair Work Ombudsman

33. Industrial relations agencies climbed three places, up from sixth, in two years.



Q) Please indicate the burden of regulatory compliance on your business in dealing with the following areas of regulation and/or government agencies:



34. Businesses are required to submit ongoing reports, renew licenses and if necessary have decisions reviewed. The level of red tape is beyond an acceptable scope.

“Dealing with government is extremely bureaucratic and the payment processes are so slow. Business is blamed for the delays, but it is lack of streamlined processes, lack of electronic communication and lack of staff within the departments.”

35. Red tape is a business killer. CCIQ has serious apprehensions of the compliance burden contained within the Bill.

Regulatory Impact Statement (RIS)

36. The Regulatory Impact Analysis (RIA) process is an important element of the Government’s approach to reducing the regulatory burden, with its key focus being to increase the rigour with which new regulation is made. An element of the RIA process is a RIS, which was not



provided. This Bill has far reaching regulatory implications which will adversely impact businesses.

37. CCIQ encourages the Government to follow appropriate protocols and consider the implications this Bill.

Conclusion

38. CCIQ believes this Bill will not achieve its purpose and is a duplication of legislation, increasing compliance burden on businesses.
39. We thank you for the opportunity to provide comment on the Bill. CCIQ would welcome any opportunity to discuss this submission further. Should you have any enquiries please contact Kate Whittle, General Manager of Advocacy