

***Submission to the Finance and  
Administration Committee***

***Labour Hire Licensing Bill 2017***

*June 2017*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 99 years, AMMA's membership spans the entire resource industry supply chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resources and energy industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

The resources industry is, and will remain, a major pillar of the national economy. Its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resources industry currently directly generates over 8% of Australia's GDP. In 2015-16, the value of Australian resource exports were \$157.1 billion. This is projected to increase to \$232 billion in 2020-21<sup>1</sup>. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Approximately 50% of the value of all Australian exports is from the resources and energy industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserve.

AMMA members across the resources industry are responsible for a significant level of employment in Australia. The resources extraction and services industry directly employs 222,300 people. Adding resource-related construction and manufacturing, the industry directly accounts for 4% of total employment in Australia. Considering the significant flow-on benefits of the sector, an estimated 10% of our national workforce, or 1.1 million Australians, are employed as a result of the resource industry.

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<sup>1</sup> Office of the Chief Economist – Resources and Energy quarterly publication

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## EXECUTIVE SUMMARY

AMMA welcomes the opportunity to provide feedback to the Finance and Administration Committee in relation to the *Labour Hire Licensing Bill 2017* (Bill). AMMA has previously submitted its views in relation to mandatory licensing in Queensland and notes that similar reviews have taken place in South Australia and Victoria. AMMA is supportive of the recommendations arising out of the Victorian inquiry, which recommended a targeted approach to regulation for non-compliant industries.

A decision has been made to introduce mandatory licensing to Queensland businesses and any business seeking to provide labour hire services within the state of Queensland. AMMA submits that such a scheme must be aimed at identifying and eliminating practices of exploitation and must not impose an undue burden on legitimate labour hire businesses who operate in high compliance and highly paid sectors such as the resources sector. To do otherwise would adversely impact Queensland businesses.

This submission highlights areas of the Bill, which, as drafted, are unclear, uncertain or place an unjustified burden on businesses engaged in the provision of labour hire services and businesses who utilise them. Areas of particular concern in the Bill are:

1. the lack of clarity in what type of business will be considered a provider of labour hire services which are required to be licensed, and the capturing of businesses for whom the provision of labour to another person is not the dominant purpose of that business;
2. the inclusion of a general avoidance provision where the scope of the legislation is unclear and may well capture legitimate and lawful business arrangements;
3. the burden on businesses to collate, extract and supply the information sought under the Bill to the licensing authority is significant, given the amount of information being sought and the frequency of reporting required;
4. the term of a license being granted for a maximum of 12 months is short;
5. the proposal to publish significant amounts of information which may have commercial sensitivity for a labour hire provider or client is of concern. Additionally, individual privacy concerns must be addressed and information that could be used for a purpose other than to be satisfied that a person or entity is a licensed provider should not be publically available on the register/website;
6. the ability for a third party to seek review of a licensing decision is unjustified. Ensuring compliance with licensing arrangements ought be the domain of the licensing authority or Chief Executive. Additionally, rights of appeal to QCAT are unclear;

7. the consideration for the purposes of the fit and proper person should be limited to matters relevant to ensuring compliance with the Bill and not a broader range of laws which are appropriately enforced by other inspectorates;
8. the lack of consistency of approach depending on the decision licencing decision made. It is critical that due process be provided at all stages of licensing decisions;
9. significant detail about how the licencing regime will operate including matters fundamental to its operation is proposed to be contained in regulations. Industry has not seen these regulations.

It has always been AMMA's position that regulatory efforts should be targeted towards areas where exploitation has been shown to occur to ensure workers in those industries are protected from exploitation and paid their due entitlements. With regulatory efforts appropriately targeted towards this aim, businesses which are highly compliant can be assured that they will not suffer from undue interference and regulatory burden and be able to continue operating lawfully. The suggested clarifications to the Bill are, in AMMA's view, directed towards achieving this.

## INTRODUCTION

10. AMMA is the peak resources industry employer group representing businesses involved in major resources projects throughout Queensland. AMMA members operate across the entire resources and energy sector (and across multiple states / territories). This includes companies that operate within the broader supply chain, with many AMMA member companies utilising labour hire arrangements in both the construction of a project and during its operation. AMMA also has labour hire and manning agent firms among its members.
11. Labour hire has been a long-standing feature of the resources industry. It is recognised as a legitimate mode of engaging skilled workers to manage and operate various resource sector projects and operations across Australia, including Queensland. As alluded to in a number of documents produced by the Office of Industrial Relations, it can be a concept which is difficult to define as businesses across the Australian economy need to evolve and innovate to remain competitive. This is particularly so in the resources industry which is subject to global competitive forces and market fluctuations impacting the need for labour.
12. A number of significant resource activities occur within Queensland, and the *Labour Hire Licensing Bill 2017* (Bill) as currently drafted, imposes significant regulatory burdens on legitimate labour hire arrangements. Additionally, the legislation is unclear and confusing in its intent, and the implications for such uncertainty could be far-reaching for Queensland businesses.
13. AMMA previously provided a submission to the Finance and Administration Committee (FAC) to its inquiry in April 2016. In its submission, AMMA recommended that:
  - a. Any findings and recommendations from the inquiry be supported by a proper evidence base and an acknowledgement that issues concerning individual companies or specific sectors of the Queensland economy are not the basis to justify industry-wide regulation, legal obligations or additional costs on other sectors and employers.
  - b. The inquiry consider how to better promote legitimate and lawful arrangements already in place that rely on non-standard forms of labour but which serve the needs of individual workers and businesses.
  - c. The inquiry consider the existing regulatory burden on employers, the existing legal protections (at federal and state levels) and justify by cost-benefit analysis why any additional regulatory measures are warranted.

14. AMMA notes that the report produced by the FAC made one recommendation, which was:
  - a. that the Minister progress this issue through COAG meetings to work together with the Federal Government to address the issuance of ABNs to employees as a way for labour hire companies to avoid their obligations.<sup>2</sup>
15. The FAC also reported that the majority of employers engaged in labour hire were in fact complying with all their legal requirements, and that instances of exploitation of workers, while deeply regrettable and unacceptable, is not the experience across the majority of industry. AMMA supports efforts to ensure that workers engaged in labour hire arrangements are paid their entitlements and enjoy all the protections afforded to workers across all industries. Employers/businesses or individuals who act in a manner inconsistent with these expectations, rightfully, should be held accountable.
16. As was reflected in many submissions to the FAC Inquiry, AMMA is concerned that widespread mandatory licencing for businesses operating in Queensland will unlikely achieve the commendable objective of preventing the behaviour of the unscrupulous few who do not comply with their legal obligations. There is a genuine risk that those who currently do not comply with their legal obligations will continue to act in an unethical manner.
17. Therefore, the proposed additional regulation will only act as an increased regulatory burden for already compliant businesses without actually ensuring that workers that are exploited are protected. To that end, AMMA sees the Commonwealth *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2016* as being an example of clear identification of an area of concern, and appropriate regulation seeking to address that area.
18. Given the Queensland Government's decision that it will introduce a mandatory licencing system which covers all businesses operating in Queensland, this submission seeks to highlight specific queries and concerns with the Bill itself. In particular, AMMA seeks to highlight what may be unintended consequences that impact businesses operating within the Queensland resources sector.

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<sup>2</sup> Report No. 25, 55<sup>th</sup> Parliament Finance and Administration Committee, June 2016, pg. 23

## ACHIEVING POLICY OBJECTIVES AND FUNDAMENTAL LEGISLATIVE PRINCIPLES

19. The Explanatory Notes accompanying the Bill articulate that the Bill seeks to introduce a scheme which balances the need to provide protections for vulnerable workers while minimising the administrative burden on labour hire providers and those who engage their services. In doing this, the Bill provides blanket coverage of all labour hire providers and in no way seeks to actively target businesses who have been found to have engaged in exploitation of vulnerable workers. It does, however, effectively place all labour hire providers in one basket, failing to acknowledge that the overwhelming majority of employers in this industry are complying with their legal obligations.
20. The Explanatory Notes addresses matters highlighted by the Office of Queensland Parliamentary Counsel where concerns are raised about compliance with the *Legal Standards Act 1992 (LS Act)*.<sup>3</sup> AMMA queries whether the explanations provided in the document do in fact satisfactorily explain that the legislation does comply with the LS Act. For example, the explanation provided justifying entry onto a premises for the purpose of determining whether someone is a fit and proper person for the purposes of the Bill. This fails to address why sufficient information to determine this could not be obtained without entry into a property without a warrant.
21. The offences introduced are comparable with those introduced by the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* which, the Explanatory Notes confirm, is similarly aimed at addressing exploitation of vulnerable workers. The notes do not specifically address the areas where federal legislation is deficient.
22. The brief acknowledgment of privacy concerns outlined on page 5 of the Explanatory Notes fails to give due regard, to the significant privacy concerns from both an individual worker and labour hire service provider's perspective. These are canvassed in more detail in the submission below.
23. Much of the architecture of the licencing regime will be decided through regulation. Industry has yet to be provided with the regulations. Looking at the Bill in isolation from the regulations is far from ideal.

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<sup>3</sup> Explanatory Notes Labour Hire Licensing Bill 2017, pg.3.

# DEFINITIONAL ISSUES

## Extra Territorial Powers

24. Clause 5 of the Bill seeks to extend its operation to any national business which is providing labour hire services to a business/client in Queensland. This was confirmed in a public briefing to the FAC.<sup>4</sup> Accordingly, any onerous burdens that apply may act as a disincentive to do business in Queensland.
25. The department Regulatory Impact Statement highlighted 1500-2000 labour hire companies that will be affected by the licensing regime.<sup>5</sup> Given the purported extra territorial powers of the Bill, this figure is likely to be higher taking into account where businesses based elsewhere supply labour to Queensland businesses.

## What Constitutes a “provider” and “labour hire services”

26. Clause 7 of the Bill is expressed in very broad terms as to what constitutes labour hire services. It states
  - a. 7(1) – a person (a **provider**) provides **labour hire services** if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.
27. The note following this definition identifies three presumably non-exhaustive examples of circumstances where a person or business would be considered to be a provider.
28. Clause 7(2) then highlights certain situations which may, via various contractual arrangements, not be a direct labour hire arrangement. The relevant definition will also apply:
  - a. whether or not the worker is an employee of the provider (7(2)(a));
  - b. whether or not a contract is entered into between the worker and the provider or between the provider and the person to whom the work is supplied (7(2)(b));
  - c. whether supply of the worker is direct or via agents or intermediaries (7(2)(c)); and,
  - d. whether or not the work done by the worker is under the control of the provider, the person to whom the worker is supplied or another person.

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<sup>4</sup> FAC public briefing 14/6/17

<sup>5</sup> Labour Hire Licensing Scheme Decision RIS 2017. P.g.9

29. Clause 7(3) determines that a person is not providing a labour hire service merely because:

- a. the person is a private employment agent under the *Private Employment Agents Act 2005*; or,
- b. the person is a contractor who enters into a contract to carry out construction work within the meaning of the *Building and Constructions Industry Payments Act 2004*; or,
- c. the person is, or is of a class of person, prescribed by regulation.

Clause s7(4) then determines that a class of persons may only be so prescribed if the supply of worker by the person or class of persons is not the sole or dominant purpose of the business ordinarily carried on by the persons or class of persons).

30. It is in AMMA's view, entirely contrary to the purposes of the various reviews undertaken by the Queensland Government, to impose regulation on businesses who are not essentially wholly-created and operating as a provider of labour. The legislation is drafted to capture every business who may as an entirely ancillary activity of their business meet the Bill's definition of a provider of labour hire services.

31. The purposes of the Bill are:

- a. protect workers from exploitation by providers of labour hire services; and
- b. promote the integrity of the labour hire injury.

32. Clause 7, as drafted, does not achieve this objective. It will have the effect of imposing regulation on businesses whose sole or dominant purpose may be completely unrelated to the provision of labour to another party. The only way such businesses can be said to not constitute a provider of labour hire services is because they meet definitions within two pieces of legislation specified, or because they are described in the regulations. It is, in AMMA's submission, not necessary, or desirable, that business should be considered the provider of labour hire services unless specified by the regulations. The architecture of coverage should be clearly set out in the legislation, and not be reliant on exemption through regulation.

33. Further, the definition of provider of labour hire services should be limited to the person or business, if it is the sole or dominant purpose of their enterprise to be the provider of labour hire services. This means that businesses, who may for an ancillary purpose meet this definition, should not be captured. Where, for example, a business provides a secondment opportunity, this could meet the definition. Other forms of temporary provision of labour, for example, to a related

entity, may also be captured. It seems unlikely that these kinds of arrangements lend themselves to worker exploitation the types of which this legislation is aiming to eliminate.

The definitions should clearly ensure that licencing requirements only apply where the provision of labour hire services are the sole or dominant purpose of the enterprise being undertaken by the “provider”.

## Prohibited Conduct

34. As mentioned repeatedly in this submission, the architecture of the legislation should be far clearer in terms of defining labour hire services for which a licence is required. AMMA reiterates its previous submission that the instances of worker exploitation, at which this legislation is targeted, does not occur in the overwhelming majority of labour hire arrangements. There are also a range of legitimate business arrangements which could, potentially, given the broad drafting, fall within the relevant definitions.
35. The Explanatory Notes recognise the complexity in defining labour hire services, which is the justification for the ability to clarify coverage within the regulations.<sup>6</sup>
36. Given the uncertainty of whether certain businesses do in fact require a licence, the offence provisions as they relate to persons entering into arrangements with unlicensed providers appears to be unnecessarily prescriptive. Clearly, it should be the case that no offence is committed if at the time the arrangement was entered into, the person entered into an arrangement the provider was shown on the website as a licensed provider (clause 11(2)).
37. The way the offence provision in clause 11 is drafted indicates there is no requirement that a person intend to enter into an arrangement with an unlicensed provider. Given the uncertainty about what arrangements will be considered in the provision of labour hire services, there is a risk that persons are engaged in an offence, even if they genuinely did not believe the person/entity with whom an arrangement is entered into, required a licence for the arrangement upon which they had agreed. This should be adequately addressed in the Bill.

## Avoidance Arrangement

38. Clause 12 of the Bill is unclear and insufficiently specific. The Explanatory Notes merely repeat the clause as drafted and quantifies the maximum monetary penalty for an offence.<sup>7</sup> The premise of the clause is that any arrangement that is not the provisions of labour hire services is in fact an attempt by a person (either

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<sup>6</sup> Explanatory Notes Labour Hire Licensing Bill 2017 pg.9.

<sup>7</sup> Explanatory Notes Labour Hire Licensing Bill 2017 pg.9.

the provider of services or the recipient of them) to avoid either the requirement to be licenced, or the requirement to enter into an arrangement with a provider of labour hire services who is licenced.

39. Additionally, there are any number of other arrangements that will not meet the definition that are legitimate and legal business practices which should clearly not be the subject of an offence provision. It is unclear what conduct ought to be viewed as an “avoidance arrangement”. The Explanatory Notes are not enlightening in this respect. Again, AMMA reiterates its previous concern that the failure to exactly articulate the conduct the Bill seeks to regulate also affects any consequential enforcement clause.

## LICENCING REQUIREMENTS

40. The intent of the Bill is to mandate licencing for the labour hire industry. The effect of the proposed legislation is that any person or entity that provides a worker to another person or entity for the purpose of them doing work is the provider of labour hire services and is required to hold a licence. The legislation will therefore impact businesses which do not consider themselves part of the labour hire industry and will require those businesses to obtain a licence.
41. The application process itself, depending on the size of the business, may represent an administrative burden in terms of the collation of all the information that is being sought. There is also the potential that information sought via regulation (as permitted in 13(c)(iii)) may be onerous. It is difficult to comment without visibility of what these requirements would look like. AMMA understands from a public briefing conducted by the FAC, that it is intended to be an online application process. Any process that streamlines applications and approvals and minimised additional regulatory burden on business is welcomed.
42. AMMA considers that as information is required to be submitted in the “approved form”, that industry be afforded the opportunity to provide comment on any approved form.
43. Clause 13(3)(v) and (vi) refer to information that is onerous to collate, and is unjustifiably broad in terms of the information sought. Disciplinary action is not defined; regulatory body is not defined; and relevant law is extremely broad. Referring back to the intent of the Bill, which is focused on the exploitation of workers, the information sought goes beyond what is necessary to ensure that holders of licences are not engaged in the exploitation of workers. AMMA submits that the information sought should be limited to information genuinely required to determine whether businesses are complying with their obligations in the Bill. This would include:

- a. Critical business details (including appropriate contacts);
  - b. offences relating to underpayments (including superannuation), occupational health and safety, victimisation or harassment;
  - c. any appropriate taxation (i.e. PAYG, payroll tax); and,
  - d. the holding of appropriate workers compensation insurance policies.
44. In its current form, where accommodation and other services are provided to workers, information relating to this is sought. This is purportedly in response to reports of overcrowding in accommodation provided to labour hire workers.<sup>8</sup> Again, AMMA considers additional regulation should only be imposed where it is justified in meeting the aims of the Bill.
45. There is no evidence to suggest a practice of providing substandard accommodation is prevalent across all industries that utilise labour hire services. If it is felt that this additional level of regulation is necessary, it should be open to the Chief Executive to request information relating to accommodation provision rather than include it as a mandatory part of the application process. Practically, labour hire businesses may provide accommodation across a range of sites in both a commercial setting (i.e. hotels) and on-site, with workers who are provided such accommodation varying frequently.
46. The prescribed fee is to be determined by regulation. While AMMA does not object to this mechanism for fee setting, given the imposition of a fee is a cost to business, there must be transparency and accountability in any fees set.

Information sought for the purposes of applying for a licence should not be unjustifiably onerous to collate and provide and should only be necessary to the extent it achieves the objectives of the Bill.

## APPLICATION, SUSPENSION AND CANCELLATION OF LICENCES

47. Clause 14 outlines persons who cannot apply for a licence, including where the licence of a person, or if the applicant is a corporation, a related body corporate, has previously had the licensed cancelled. The only caveat on the prohibition is where for a corporation there is a sale of business and no persons who was a shareholder or holds a beneficial interest in the entity of the cancelled licence holder, holds an interest in the applicant entity. Additionally, no person in a

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<sup>8</sup> Labour hire Licensing Scheme Decision RIS 2017, pg5.

position to control or influence the affairs of the company may also be in a position to do so in relation to the applicant entity.

48. The requirement to hold a licence in relation to labour hire services is mandatory. It effectively precludes a person who is unable to obtain a licence from doing business. Any refusal to grant, or cancellation of a licence, must only occur on sound and justifiable reasons. AMMA has some concerns about whether the Bill, as drafted, achieves this.
49. The impact of prohibiting a related body cooperate from obtaining a licence 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 there is an ability to satisfy the Chief Executive that the related entity should be entitled to hold a licence, this is unduly onerous.

## **Granting a Licence**

50. Clause 16 contains no timeframe by which the Chief Executive may grant a licence. Given the Government has decided that it will keep a public register of licenced providers, any delay to the granting of a licence (and the updating of a register) will adversely impact the applicant's business. The licensing authority charged with licensing approvals must ensure it is appropriately resourced to analyse and decide applications promptly and without delay.

## **Term**

51. Licences are granted for a maximum period of one year. This creates unnecessary administrative burden for compliant businesses and the inspectorate who must determine new applications as well as any applications to renew. AMMA recommends that low risk businesses with high records of compliance be able to apply for licences for a longer period, with the Chief Executive having the ability to grant licences for up to that longer period. A licence up to five years may be appropriate. This would ultimately be a decision for the Chief Executive.

## **Suspension of a Licence**

52. Unlike where the Chief Executive makes a decision to cancel a licence, it appears there is no requirement that in the case of a suspension, the licence holder has the opportunity to "show cause". Further, the standard for suspension of a licence, which in practice would mean a labour hire business could not earn income or supply work to the workers who are in its employ for a period of up to 90 days, is that the Chief Executive "reasonably considers" that one of the events listed in 22(1)(b) has occurred. Given the consequences of a decision to suspend, the standard of "reasonably considers" combined with no opportunity to show cause why a suspension should not occur is unsatisfactory.

The Chief Executive should be required to provide a licensee the opportunity to show cause prior to taking a decision to suspend a licence; the events listed in 22(1)(b) should be required to be established before a decision to suspend can be taken.

## Cancellation

53. Given the significant consequences of a licence being cancelled, which is effectively that the person will no longer be able to provide labour hire services which may be the entire business of that enterprise, a cancellation decision must apply due process. Clause 23 does provide an opportunity for a licensee to show cause why the decision to cancel a licence should not be taken. However, clause 24 is concerning, as again, there are provisions where wrongdoing need not be established according to the laws of the land.
54. For example, clause 24 (1)(b) states;  

“...the licensee, or an 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...”
55. This clause does not require the employee to be a person in effective control with the ability to influence to organisation. In fact, it does not even require the person to be an employee. They may be a mere representative of the licensee.
56. AMMA suggests that any contravention on which a decision is taken, must at least have been established under the relevant law (if a breach of relevant law is alleged) or, the Chief Executive must be satisfied that an offence has occurred on the standard required under the relevant law.
57. Further, there is some concern that with the breadth of matters that may be relevant to a decision relating to a licence under a Bill. It is critical that a decision-maker with appropriate understanding of the offences under each relevant law and their relevance to whether a person would be a fit and proper person or otherwise appropriate to hold a licence be appointed. Currently, there is limited visibility on the person (or persons given the Chief Executive's ability to delegate functions) who would be charged with making those assessments.

## Effect of Cancellation on Existing Arrangements

58. The Bill does not determine what will happen to arrangements already made and under operation in the event of a licence cancellation. Of obvious concern would be contracts entered into, and the arrangements under which work is at that time being performed. Would all workers engaged by the licensee immediately lose their jobs because the provider is no longer licensed? This would be a particularly

difficult situation for the client and workers who have very little control over whatever the reason a licensee may no longer being licensed. Loss of employment is not in the best interests of individual employees or businesses.

59. The person or business receiving the labour hire services will likely experience significant business disruptions if the labour can no longer be provided. Where a significant project has been mobilised, the loss of labour, which often requires familiarisation training and licensing, has the potential to significantly impact the client who has no control over the licensing of the provider.

Given the effect of a cancellation of a licence has on the business of a provider of the labour hire services, there must be due process applied to any decision in relation to a licence.

## Fit and Proper Person

60. Clause 27 outlines a number of broad considerations for determining whether a person is a fit and proper person to hold a licence. In the majority of cases the labour hire company is a business, and a constitutional corporation.
61. The broad range of relevant laws identified in the Bill go well beyond whether or not a person is likely to exploit vulnerable workers. For example, a company can be found to have unfairly dismissed a person under the *Fair Work Act 2009* even if there was a valid reason for the termination and all of their entitlements are paid. A commissioner, finding that in his or her opinion a dismissal is “harsh” is irrelevant to whether or not a person is likely to exploit a vulnerable worker, which is the purpose of requiring a licence to be held. While generic information as to the financial viability is relevant to determining whether a worker is likely to receive their entitlements (notwithstanding for corporations, obligations not to trade while insolvent should give the Queensland Government a level of comfort), the breadth of “relevant laws” and offences under them go far beyond this.
62. Another example is the issue of a Provisional Improvement Notice (PIN) under the *Work Health and Safety Act 2011*. The issue of such a notice is a demonstration of that Act meeting its stated intent of improving safety outcomes in the workplace. Will the circumstances of the PIN be interrogated such that it could be determined that the licensee should be accountable for the matters to which the Pin relates? It is inappropriate that the issue of such a notice should lead to a presumption that a person is not a fit and proper person to hold a licence, and, the significant consequences for that business as well as the persons employed by that business.
63. A further example relates to a law involving the standards of buildings and structures, to the extent it relates to a building or structure used to provide accommodation to a worker. This would appear to apply regardless of the ability

of the licensee to influence the standard of accommodation where it is provided on a commercial basis or is in a regional or remote area where options are limited.

64. The ability to hold a licence is key to the livelihood of the individual to run their business, and in the case of a corporation, for that entity to be able to financially viable. The consequences for losing the ability to hold a licence have significant consequences for the business and those workers employed by it. The provisions of the Bill determining the fit and proper person test should reflect:
- a. A requirement be placed on the appropriate individual or entity and not extend to individuals who may have an involvement with an entity but have no practical ability to influence how a business is run;
  - b. An examination of matters directly relevant to the person or entity's likely compliance with the laws relating to workers terms and conditions of employment, harassment and victimisation as well as occupational health and safety, and not extraneous matters of no relevance and over which the licensee has little or no control (i.e. local laws about the standards of buildings and structures);
  - c. Corporate history, financial viability and confirmed offences under corporations' law.

Information required to determine whether a person or entity is a fit and proper purpose to hold the 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 this legislation.

## OBLIGATIONS ON THE LICENSEE

65. Clause 28 states that it is a condition of a licence that the licensee must comply with all relevant laws applying to the licensee. Relevant laws is a defined term in the Bill and references a number of other industrial laws which may or may not be relevant to the business of being a provider of labour hire services. The intent of this clause is unclear.
66. Clause 29 (2)(b) states a condition may require a licensee to lodge with the Chief Executive a security that complies with a stated requirement. Security is not defined. The Explanatory Notes merely repeats the clause. AMMA notes that there is no detail about what that security may look like and there are no legislative checks to ensure that the decision to impose a condition has been arrived at fairly.
67. While there is a requirement that the Chief Executive show cause if he or she intends to impose a condition on a licence, there is a level of uncertainty that has cause for a business to be uneasy about what conditions may be imposed and why.

### Reporting

68. It is hoped that efforts would be made to streamline reporting where the same or similar information is required to be provided to other authorities. This is contained in the Bill's miscellaneous provisions. If it is clear that a requirement exists under other legislation to provide information, then it should be removed from the Bill in entirety.
69. On the face of the Bill, the information sought is excessive and unnecessarily onerous. Again, AMMA suggests that drafters need to revisit the intent of the Bill and assess how the provision of the information assists in protecting vulnerable workers and promoting the integrity of the labour hire industry.
70. Information must be provided every six months. Given that provision of workers in the resources sector can range from a single shift to the length of a substantial project, the time, effort and resources necessary to compile this data will be extensive. Further consideration should be given as to how frequently the information should be provided, and whether or not information should relate to a particular point in time. AMMA urges a pragmatic approach be taken, particularly in industries and workforces that are at low risk of exploitation and non-compliance.
71. Information relating to commercial arrangements is sensitive information closely guarded by businesses and their clients. Confidential commercial arrangements should not need to be provided.

## Nominated Officer

72. The purpose behind requiring a licensee to nominate an officer is to ensure someone responsible for the day-to-day carrying on of the business to which the licence relates, is contactable by the Chief Executive or a member of the public during business hours.
73. National labour hire businesses may have offices in several locations, with persons responsible often requiring to travel between locations according to business need. The requirement of a nominated officer including the instruments of their appointment are quite prescriptive. These should be revised to accommodate national and multinational businesses.
74. Further, it is unclear why a nominated officer must be available to a member of the public; to that end the privacy of the nominated officer(s) needs to be respected.

## Other Obligations

75. There is a requirement to give the Chief Executive notification of a prescribed change in circumstances. This includes where there is a change relating to the accommodation for workers supplied to another person by the licensee. 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. This requirement should be revisited.

Information sought by the Chief Executive should be relevant to compliance with the requirements set out in the Bill and not broader information which is more appropriately provided to other agencies. Practicalities particular to different industries should be considered.

## OBTAINING INFORMATION

76. Part 5 of the Bill provides the Chief Executive with broad-ranging powers, from obtaining information, to entering an applicant's place of business. The Chief Executive also maintains the ability to obtain criminal history about a person without, it would seem, regard to the relevance of that history.
77. Individuals may have concerns about their privacy in relation to irrelevant criminal history. All information gathered should have regard to the Privacy Act 1988.

### Monitoring and Enforcement

78. These provisions provide the Chief Executive and inspectors with broad powers to monitor and enforce the provisions of the Bill. These 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).

## GENERAL OFFENCE PROVISIONS

79. The Bill requires a "client" to report what is described in the Bill as "avoidance arrangements". This submission has identified issues with identifying what would constitute an avoidance arrangement, given the lack of clarity in the Bill over what is an avoidance arrangement as distinct from a legitimate business practice.
80. Further, requiring the client to become a whistle-blower by placing an active obligation on them to identify what constitutes an avoidance arrangement is an unrealistic expectation. In many cases, an arrangement that is not labour hire service for the purposes of this Bill, would be considered a legitimate alternative business arrangement. How could another person/entity be expected to make an assessment about what constitutes an avoidance arrangement?
81. Given the model of government regulation has been adopted in preference to other non-regulatory alternatives available to address any issues arising out the inquiry into the labour hire industry, enforcing such regulation is properly the domain of the inspectorate.

# ENFORCEMENT AND PENALTIES

## Standing of Interested Parties

82. AMMA is concerned that clause 93(2) provides any interested person standing to review a decision to grant, suspend, vary a licence or condition on a licence. The definition of interested person is exceptionally broad. Arguably, all of Australia has an interest in the protection of workers or the integrity of the labour hire industry. It appears clear that the intent is to permit trade unions, employer organisations, individual workers and a wide range of other individuals or interest groups to apply for a review. There need not be a material interest in the business of the licensee or the types of workers engaged by it.
83. AMMA understands that the intent of the use of the term "other than a licensee" is to prevent business competitors from interfering with a decision, although it appears that the only party restricted from applying for a review of the decision would be another licensee.<sup>9</sup>
84. There is no reference to a person who is entitled to represent the interests of a worker who is affected by the particular decision. This unfettered right of standing leaves this provision vulnerable to abuse. If any interested parties have concerns about an individual or entity's compliance with the requirement of this Bill or any other law, the appropriate avenue of redress is a complaint to the relevant inspectorate for them to investigate and determine an outcome, through the courts if necessary.
85. The Queensland Government has taken the policy decision to regulate the labour hire industry throughout the state. It is unreasonable for it to now seek to obviate its obligation to monitor and enforce its own regulation by granting parties who may have alternative agendas with businesses in the labour hire industry the right to be heard and influence licensing decisions directly.

Other parties should have no direct standing to review a licencing decision issued by the Chief Executive. The relevant inspectorate should investigate compliance concerns directly once a complaint is made.

## Stay of Operation of Decisions

86. In circumstances where an applicant applies for a review of a decision under clause 93(1), there is no automatic stay on the effect of a decision. Presumably this includes a decision to suspend or cancel a licence. 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

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<sup>9</sup> FAC Public Briefing 14/6/17

reviewed. While the ability to apply for a stay does exist, this does not appear to be the case where the decision relates to a cancellation of a licence under clause 24. The intent of this should be clarified.

87. Clause 98 provides an avenue of appeal to QCAT. Clause 98(2) provides interested parties (not the licensee or applicant) the opportunity to further review a decision to grant a licence. It is unclear the status of the licence while this further appeal is being undertaken. It is also unclear the grounds on which an appeal could be made to QCAT.

## Register of Licences

88. The proposed register of licences outlines a range of sensitive information that is not only collected, but the Bill proposes to publish this on a public website. It is unclear why the Chief Executive would seek to provide more information than the critical business details for a licensee, as well as their licence details.
89. The additional information sought has the effect of identifying the clients of labour hire service providers and the projects that they are working on. In highly competitive industries having this information publicly available, which is often quite deliberately kept confidential, may be adverse to the business interests of the labour hire provider and their client. It may also have the effect of identifying workers or classes of workers, including where they are accommodated away from the workplace, which gives rise to privacy concerns.

Information that is provided to the relevant licensing authority/Chief Executive should only be published on a public website to the extent it is necessary to determine if a person/entity is a licensed labour hire provider.

90. Even if it were decided that the inspectorate requires this information to effectively enforce the proposed legislation, there appears to be no justifiable reasons to make this level of detail about a labour hire business's operations publicly available.

## Transitional Arrangements

91. Given the breadth of the information sought from labour hire service providers, AMMA members advise that making an application within 28 days will create a significant strain on their resources.
92. Also, given clients will rely on the publishing of the register to ensure they are not entering into an arrangement with an unlicensed provider, it is imperative that the relevant government agency is resourced to update the register immediately upon a licence being granted. A failure to do so has significant consequences for labour hire businesses and their ability to attract clients.