



Labour Hire Licensing Act 2017

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Queensland

Labour Hire Licensing Act 2017

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Labour Hire Licensing Act 2017

An Act to provide for the licensing and regulation of providers of labour hire services and related matters

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Labour Hire Licensing Act 2017*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Main purposes of Act

- (1) The main purposes of this Act are to—
 - (a) protect workers from exploitation by providers of labour hire services; and
 - (b) promote the integrity of the labour hire industry.
- (2) The main purposes are to be primarily achieved by establishing a licensing scheme to regulate the provision of labour hire services.

4 Act binds all persons

- (1) This Act binds all persons, including the State.

- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

5 Extraterritorial application of Act

This Act applies—

- (a) inside Queensland; and
- (b) outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Division 2 Interpretation

6 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

7 Meaning of *provider* and *labour hire services*

- (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.

Examples of providers—

- a contractor who supplies workers to a farmer or fruit grower to pick produce for the farmer or grower
 - a group training organisation or principal employer organisation under the *Further Education and Training Act 2014* that supplies an apprentice or trainee to an employer
 - an employment agency who on-hires temporary administration staff to a business
- (2) Without limiting subsection (1), a provider provides labour hire services regardless of—
- (a) whether or not the worker is an employee of the provider; and

- (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 worker is supplied; and
 - (c) whether the worker is supplied by the provider to another person directly or indirectly through 1 or more agents or intermediaries; and
 - (d) whether the work done by the worker is under the control of the provider, the person to whom the worker is supplied or another person.
- (3) However, a person does not provide *labour hire services* 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 Construction Industry Payments Act 2004*, section 10, and engages subcontractors to carry out the work; or
 - (c) the person is, or is of a class of person, prescribed by regulation.
- (4) A regulation may prescribe a person, or a class of person, under subsection (3)(c) only if the supply of a worker by the person or class of person is not a dominant purpose of the business ordinarily carried on by the person or class of persons.

8 Meaning of *worker*

- (1) An individual is a *worker* for a provider if the individual enters into an arrangement with the provider under which—
- (a) the provider may supply, to another person, the individual to do work; and
 - (b) the provider is obliged to pay the worker, in whole or part, for the work.

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- (2) However, an individual is not a *worker* if the individual is, or is of a class of individual, prescribed by regulation.
- (3) To remove any doubt, it is declared that a worker includes an apprentice or trainee under a training contract entered into with a provider who is a group training organisation or principal employer organisation under the *Further Education and Training Act 2014*.

9 When a worker is supplied

For this 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.

Part 2 Prohibited conduct

10 Licence required to provide labour hire services

- (1) A person must not provide labour hire services unless the person is the holder of a licence.

Maximum penalty—

- (a) for an individual—1034 penalty units or 3 years imprisonment; or
 - (b) for a corporation—3000 penalty units.
- (2) A person must not advertise, or in any way hold out, that the person provides or is willing to provide labour hire services, unless the person is the holder of a licence.

Maximum penalty—200 penalty units.

11 Person must not enter into arrangements with unlicensed providers

- (1) A person must not, without a reasonable excuse, enter into an arrangement with a provider for the provision of labour hire

services to the person, unless the provider is the holder of a licence.

Maximum penalty—

- (a) for an individual—1034 penalty units or 3 years imprisonment; or
 - (b) for a corporation—3000 penalty units.
- (2) It is a reasonable excuse for the person not to comply if, when the person entered into the arrangement, the provider was shown on the register as the holder of a licence.

12 Person must not enter into avoidance arrangements

A person must not enter into an arrangement with another person (an *avoidance arrangement*) 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 by this Act, unless the person has a reasonable excuse.

Note—

See also section 90.

Maximum penalty—

- (a) for an individual—1034 penalty units or 3 years imprisonment; or
- (b) for a corporation—3000 penalty units.

Part 3 Licences

Division 1 Application and grant

13 Application

- (1) Subject to section 14, a person who carries on, or intends to carry on, a business may apply to the chief executive for a licence.
- (2) If a person carries on, or intends to carry on, a business with 1 or more other persons, the application must be made jointly by the person and each of the other persons.
- (3) The application must—
 - (a) be in the approved form; and
 - (b) state the following—
 - (i) each applicant's full name and contact details;
 - (ii) the business name, ABN and address of the business to which the application relates;
 - (iii) the full name and contact details of 1 or more individuals (each a *proposed nominated officer*) who satisfy the requirements mentioned in section 33(1);
 - (iv) if the applicant is a corporation—the name and ACN or ARBN of the corporation and the names of the directors or members of its governing body;
 - (v) whether the applicant is providing, or intends to provide, accommodation or any other service to workers in connection with the provision of labour hire services;
Example of other services—
meals, transport
 - (vi) whether, within 5 years before the application is made, any disciplinary action has been taken

against the applicant by a regulatory body under a relevant law; and

- (c) be accompanied by—
 - (i) the application fee prescribed by regulation; and
 - (ii) the information, prescribed by regulation, about whether the business to which the application relates is financially viable; and
 - (iii) the information, prescribed by regulation, about whether each applicant has, for the 5 years before the application is made, complied with the *Work Health and Safety Act 2011* and the *Workers' Compensation and Rehabilitation Act 2003*, and is able to comply with those Acts; and
 - (iv) any other information, prescribed by regulation, the chief executive reasonably requires to decide whether each applicant and the persons mentioned in section 15(a) are fit and proper persons to provide labour hire services.
- (4) If a regulation under section 33(2) prescribes the number of nominated officers for a licence, the application must, for subsection (3)(b)(iii), state the name and contact details of at least the prescribed number of proposed nominated officers.

14 Persons who can not apply

- (1) A person who was the holder of a licence that has been cancelled can not apply for a licence for 2 years after the cancellation.
- (2) However, a corporation that was the holder of a licence that has been cancelled, and any related body corporate of the corporation, can not apply for a licence unless the chief executive is satisfied that, because of a genuine sale, the requirements mentioned in subsection (5) are satisfied for the corporation.

- (3) If a person applies for a licence and the chief executive decides to refuse to grant the licence, the person can not apply for another licence—
 - (a) for 3 months after the day the chief executive gives the person the information notice about the decision; or
 - (b) if the person applies for a review of or appeals the decision and the decision is confirmed—for 3 months after the day the decision is confirmed.
- (4) However, subsection (3) does not apply to a corporation if the chief executive is satisfied that, because of a genuine sale, the requirements mentioned in subsection (5) are satisfied for the corporation.
- (5) For subsections (2) and (4), the requirements, in relation to the corporation's cancelled licence or refused application, are that—
 - (a) no person who was a shareholder of, or held a beneficial interest in, the corporation when the cancellation was made or the refused application was made, is a shareholder of, or holds a beneficial interest in, the corporation when the application mentioned in subsection (2) or (3) is made; and
 - (b) no person who was in a position to control or influence the affairs of the corporation when the cancellation or refused application was made is in a position to control or influence the affairs of the corporation when the application mentioned in subsection (2) or (3) is made.
- (6) In this section—

related body corporate see the Corporations Act, section 9.

15 Criteria for grant

The chief executive may grant an application for a licence only if the chief executive is satisfied—

- (a) each of the following persons are fit and proper persons to provide labour hire services—

- (i) each applicant;
 - (ii) if a proposed nominated officer for the application is a person other than an applicant—the proposed nominated officer;
 - (iii) if an applicant is a corporation—the corporation and each person who is an executive officer of the corporation; and
- (b) the business to which the application relates is financially viable.

16 Decision on application

- (1) After considering an application for a licence and any other information obtained in relation to the application, the chief executive may decide to—
- (a) grant the licence; or
 - (b) refuse to grant the licence.

Note—

The chief executive may obtain information about an application for a licence under part 5.

- (2) If the chief executive decides to grant the licence, the chief executive must give the applicant—
- (a) the licence; and
 - (b) if the licence is subject to a condition under section 29(1)—an information notice for the decision to impose the condition.
- (3) If the chief executive decides to refuse to grant the licence, the chief executive must give the applicant an information notice for the decision.

17 Term

- (1) A licence is granted for the term of up to 1 year stated in the licence.

- (2) A licence comes into force on the day stated in the licence.
- (3) A licence stops being in force if—
 - (a) it is surrendered or cancelled; or
 - (b) subject to section 18(3), it expires without being renewed.

Division 2 Renewal and restoration

18 Applying for renewal

- (1) A licensee may apply to the chief executive for the renewal of the licensee's licence before the licence expires.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by the renewal fee prescribed by regulation.
- (3) If an application is made for the renewal of a licence and the chief executive has not, before the licence expires, made a decision about whether to renew the licence, the licence is taken to continue in force until the day—
 - (a) the chief executive decides the application; or
 - (b) the licensee withdraws the application.

19 Applying for restoration of expired licence

- (1) If a person's licence expires, the person may apply for restoration of the licence.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be made within 28 days after the licence expires; and
 - (c) be accompanied by the restoration fee prescribed by regulation.

- (3) If an application is made for restoration of a licence, the licence is taken to be in force from the time the licence expired until the day—
 - (a) the chief executive decides the application; or
 - (b) the applicant withdraws the application.

20 Decision on renewal or restoration

- (1) After considering the application and any other information obtained in relation to the application, the chief executive may—
 - (a) grant the renewal or restoration of the licence, with or without conditions; or
 - (b) refuse to grant the renewal or restoration of the licence.

Note—

The chief executive may obtain information about an application for renewal or restoration of a licence under part 5.

- (2) The chief executive may grant the renewal or restoration only if the chief executive is satisfied each of the following persons is a fit and proper person to provide labour hire services—
 - (a) each applicant;
 - (b) if a nominated officer is a person other than an applicant—the nominated officer;
 - (c) if an applicant is a corporation—the corporation and each person who is an executive officer of the corporation.
- (3) If the chief executive decides to refuse to grant the renewal or restoration, or grants the renewal or restoration with conditions under section 29(1), the chief executive must give the applicant an information notice for the decision.

21 Term of renewed or restored licence

- (1) A renewed licence is in force for the period of up to 1 year stated in the licence, starting on the day it would have expired if it were not renewed under this division.
- (2) A restored licence—
 - (a) is taken to have been in force from the day after the licence would otherwise have expired; and
 - (b) continues in force for the period of up to 1 year stated in the licence, starting on the day mentioned in paragraph (a).

Division 3 Suspension, cancellation and surrender

22 Suspension

- (1) The chief executive may suspend a licence by giving the licensee an information notice for the suspension if the chief executive—
 - (a) is satisfied the licensee has failed to comply with section 31; or
 - (b) reasonably considers—
 - (i) the licensee has given materially incorrect or misleading information in a report under section 31; or
 - (ii) the licence was obtained, renewed or restored because of materially incorrect or misleading information; or
 - (iii) the licensee, or an employee or representative of the licensee, has contravened a condition of the licence; or
 - (iv) the licensee, or an employee or representative of the licensee, has contravened or is contravening a relevant law; or

- (v) the licensee is no longer a fit and proper person to provide labour hire services; or
 - (vi) the business to which the licence relates is no longer financially viable.
- (2) The suspension—
- (a) takes effect on the day stated in the information notice; and
 - (b) continues for the period of not more than 90 days stated in the information notice.
- (3) The day stated in the information notice under subsection (2)(a) must be after the notice is given to the licensee.

23 Show cause notice before cancellation

- (1) This section applies if the chief executive is proposing to cancel a licence under section 24.
- (2) The chief executive must give the licensee a notice stating—
- (a) that the chief executive proposes to cancel the licensee's licence; and
 - (b) the reasons for the proposed cancellation; and
 - (c) that the licensee may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.
- (3) The chief executive must consider the licensee's response, if any, before deciding whether to cancel the licence.

24 Cancellation

- (1) After complying with section 23, the chief executive may cancel the licensee's licence by giving the licensee an information notice for the cancellation, if the chief executive is satisfied—

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- (a) the licensee, or an employee or representative of the licensee, has contravened a condition of the licence; or
 - (b) 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; or
 - (c) the licensee is no longer a fit and proper person to provide labour hire services; or
 - (d) if the licensee is an individual—the licensee is an insolvent under administration; or
 - (e) if the licensee is a corporation—the licensee has been wound up or deregistered under the Corporations Act.
- (2) The cancellation takes effect on the day stated in the information notice.

25 Return of suspended or cancelled licence

- (1) If the chief executive suspends or cancels a licensee's licence, the licensee must return the licence to the chief executive within 14 days after receiving the information notice for the suspension or cancellation, unless the licensee has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) If a licence returned to the chief executive is still current at the end of a period of suspension, the chief executive must return the licence to the licensee.

26 Surrender

- (1) A licensee may surrender the licensee's licence by giving the chief executive notice of the surrender and returning the licence.
- (2) A licence surrendered under this section stops having effect on the day it is surrendered.

Division 4 Fit and proper persons

27 Fit and proper persons

- (1) In deciding whether a person is a fit and proper person to provide labour hire services, the chief executive must have regard to the following matters—
 - (a) the person’s character, including, for example, the person’s honesty, integrity and professionalism;
 - (b) whether the person—
 - (i) has a history of compliance with relevant laws; or
 - (ii) is able to demonstrate an ability to comply with relevant laws;
 - (c) whether the person has previously held a licence that has been cancelled or suspended, or for which conditions have been imposed under section 29(1);
 - (d) whether the person has been convicted of an offence against a relevant law or another law that affects the person’s suitability to provide labour hire services;
 - (e) if the person is an individual—whether the person has been an insolvent under administration;
 - (f) whether a corporation has been placed into administration, receivership or liquidation while the person was an executive officer of the corporation;
 - (g) whether the person has been disqualified from managing corporations under the Corporations Act;
 - (h) whether the person is under the control of, or substantially influenced by, another person whom the chief executive considers is not a fit and proper person to provide labour hire services.
- (2) The chief executive may also have regard to any other matter the chief executive considers relevant in deciding whether the person is a fit and proper person to provide labour hire services.

Note—

If, at any time while a licence is in force, the chief executive decides the licensee is no longer a fit and proper person to provide labour hire services, the chief executive may take action to suspend or cancel the licence under division 3.

Part 4 Obligations of licensees

Division 1 Licence conditions

28 Condition—compliance with relevant laws

It is a condition of a licence that the licensee must comply with all relevant laws applying to the licensee.

29 Conditions may be imposed

- (1) The chief executive may impose, vary or revoke conditions on a licence for the reasons, and in the circumstances, the chief executive considers appropriate.
- (2) Without limiting subsection (1), a condition may—
 - (a) require a licensee to hold insurance of a stated kind and in a stated amount; or
 - (b) require a licensee to lodge with the chief executive a security that complies with stated requirements; or
 - (c) require a licensee to give the chief executive stated information, or allow the chief executive to inspect the premises at which the licensee carries on business, at stated reasonable intervals.
- (3) The chief executive may—
 - (a) impose a condition when the licence is granted by stating the condition on the licence; and

-
- (b) subject to section 30, impose, vary or revoke conditions on a licence after it is granted by notice given to the licensee.
 - (4) However, nothing in this section authorises the chief executive to impose a condition that is inconsistent with this Act.

30 Show cause notice before imposing or varying a condition

- (1) Before imposing or varying a condition on a licence other than when it is granted, the chief executive must give the licensee a notice stating—
 - (a) that the chief executive proposes to impose or vary the condition; and
 - (b) the reasons for the proposed condition or variation; and
 - (c) that the licensee may, within 14 days after the notice is given, give the chief executive a written response to the proposed condition or variation.
- (2) The chief executive must consider the licensee's response, if any, before deciding whether to impose or vary the condition.
- (3) If the chief executive decides to impose or vary the condition, the chief executive must give the licensee an information notice for the decision.

Division 2 Reporting

31 Obligation to report to chief executive

- (1) A licensee must give the chief executive a report that complies with this section within 28 days after a reporting period for the licensee ends.

Maximum penalty—200 penalty units.

- (2) The report must include the following information—
 - (a) the licensee's full name and contact details;

- (b) the business name, ABN and address of the business that is the subject of the licence;
- (c) the full name and contact details of each of the nominated officers for the licence;
- (d) the number of workers (the *relevant workers*), supplied by the licensee to another person, who do work for the other person during the reporting period;
- (e) a description of the arrangements entered into between the licensee and the relevant workers;

Examples of arrangements—

an employment relationship, including whether the relationship is casual or permanent, contractual arrangements, apprenticeship or traineeship arrangements

- (f) details of the type of work carried out by the relevant workers, including the industry in which the work was carried out;
- (g) the locations in Queensland where work was carried out by the relevant workers;
- (h) if the licensee provided accommodation to the relevant workers in connection with the provision of labour hire services—
 - (i) the address of the accommodation; and
 - (ii) whether the relevant workers paid a fee for the accommodation; and
 - (iii) the number of relevant workers that used the accommodation;
- (i) if the licensee is aware that accommodation was provided by another person to the relevant workers, to the best of the licensee's knowledge—
 - (i) who provided the accommodation; and
 - (ii) the address of the accommodation; and
 - (iii) whether the relevant workers paid a fee for the accommodation; and

-
- (iv) the number of relevant workers that used the accommodation;
- (j) whether any other services were provided to the relevant workers by the licensee or, to the best of the licensee's knowledge, by a person to whom a relevant worker was supplied;
- Examples of other services—*
meals, transport
- (k) information about the licensee's compliance with relevant laws for the reporting period;
- (l) disclosure of any disciplinary action or enforcement action taken, or started, against the licensee by a regulatory body under a relevant law during the reporting period;
- (m) to the best of the licensee's knowledge, the number of notifiable incidents involving a relevant worker notified under the *Work Health and Safety Act 2011*, section 38;
- (n) to the best of the licensee's knowledge, the number of applications for compensation made by a relevant worker under the *Workers' Compensation and Rehabilitation Act 2003*;
- (o) any other matter prescribed by regulation under section 32.
- (3) In this section—
reporting period, for a licensee, means—
- (a) the period of 6 months starting on the day the licensee's licence is granted; and
- (b) the period of 6 months starting immediately after the day the reporting period for the previous report the licensee was required to give under this section ended.

32 Prescribed matters for reports

A regulation may prescribe the following matters in relation to a report under section 31—

- (a) the details about a matter mentioned in section 31(2) that must be included in the report;

Examples—

- the number of workers the licensee has supplied who are of a non-English speaking background
 - the number of workers the licensee has supplied who hold particular types of visas under the *Migration Act 1958* (Cwlth)
 - the information required about the licensee's compliance with a relevant law
- (b) how information about the licensee's compliance with relevant laws mentioned in section 31(2)(k) is to be provided.

Division 3 Nominated officers

33 Requirements for nominated officers

- (1) A nominated officer, for a licence, must be an individual who—
- (a) is responsible for the day-to-day carrying on, or takes part in the management, of the business to which the licence relates; and
- (b) satisfies any other requirements prescribed by regulation.
- (2) A regulation may prescribe the number of nominated officers required for a licence.

34 Nominated officer must be reasonably available

A licensee must ensure each of the nominated officers for the licence is reasonably available to be contacted by the chief executive or a member of the public during business hours.

Maximum penalty—40 penalty units.

35 Application to change nominated officer

- (1) A licensee may apply in the approved form to the chief executive to—
 - (a) remove a nominated officer for the licensee’s licence from office; and
 - (b) appoint another individual (the *proposed appointee*) as a nominated officer for the licence.
- (2) The application must be accompanied by enough information about the proposed appointee to enable the chief executive to decide whether the proposed appointee is—
 - (a) a person who satisfies the requirements mentioned in section 33(1); and
 - (b) a fit and proper person to provide labour hire services.
- (3) The chief executive may approve the application only if the chief executive is satisfied the proposed appointee is a fit and proper person to provide labour hire services.
- (4) If the chief executive approves the application, the chief executive must record the details of the change to the licensee’s nominated officer in the register.
- (5) If the chief executive refuses the application, the chief executive must give the licensee an information notice for the decision.

36 Licensee may substitute nominated officer for limited period

- (1) A licensee may appoint an individual who satisfies the requirements mentioned in section 33(1) as a substitute

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nominated officer for the licensee's licence for a period of not more than 30 days if—

- (a) a nominated officer for the licence will be absent from the licensee's business; and
 - (b) the person consents to the appointment.
- (2) The licensee must ensure—
- (a) an appointment under subsection (1) and the person's consent to the appointment are in writing and state the period of appointment; and
 - (b) the appointment and consent are—
 - (i) kept at the premises where the person will be responsible for the day-to-day management and operation of the business; and
 - (ii) made available for immediate inspection by an inspector who asks to see them.

Maximum penalty—40 penalty units.

- (3) The appointed person is taken to be a nominated officer for the licence for the period of the appointment.

37 Licensee may apply to extend appointment of substitute nominated officer

- (1) If a nominated officer for a licence will be absent from the licensee's business for a period of more than 30 days, the licensee must either—
 - (a) apply, in the approved form, to the chief executive for the appointment or the extension of the appointment of a person as a substitute nominated officer; or
 - (b) apply under section 35 to remove the absent nominated officer and appoint another individual as nominated officer for the licence.
- (2) For an application under subsection (1)(a), section 35(2) to (5) applies as if a reference in that section to an application were a reference to an application under subsection (1).

Division 4 Other obligations

38 Production of licence

A licensee must, if asked by an inspector, worker or another person with whom the licensee is dealing, produce a copy of the licensee's licence for inspection by the inspector, worker or other person.

Maximum penalty—100 penalty units.

39 Licensees must not transfer licence etc.

A licensee must not transfer, sell, dispose of, lend or hire out the licensee's licence to another person.

Maximum penalty—200 penalty units or 1 years imprisonment.

40 Licensees to notify chief executive of particular changes in circumstances

- (1) A licensee must give the chief executive notice of a prescribed change in circumstances of the licensee within 14 days after the change.

Maximum penalty—200 penalty units.

- (2) If the licensee is a corporation, the licensee must give the chief executive notice of a prescribed change in circumstances of an executive officer of the corporation within 14 days after becoming aware of the change.

Maximum penalty—200 penalty units.

- (3) In this section—

prescribed change, in circumstances, means a change prescribed by regulation relating to—

- (a) a matter the chief executive must consider in deciding whether a person is a fit and proper person to provide labour hire services; or

- (b) details about a licence shown on the register; or
- (c) for a licensee—accommodation for workers supplied to another person by the licensee.

Part 5 Obtaining information

41 Chief executive may require information about applications

- (1) This section applies to each of the following—
 - (a) an applicant for a licence;
 - (b) an applicant for renewal or restoration of a licence.
- (2) The chief executive may, by notice given to the applicant, require the applicant to give the chief executive, within a stated reasonable period, information the chief executive reasonably requires to decide the application.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant fails to comply with the requirement.

42 Chief executive may enter applicants' place of business for particular purposes

- (1) This section applies to the following—
 - (a) an applicant for a licence;
 - (b) an applicant for renewal or restoration of a licence.
- (2) Subject to subsection (3), the chief executive may enter and inspect the applicant's place of business for the purpose of ascertaining whether the applicant is a fit and proper person to provide labour hire services.
- (3) The entry must be made—
 - (a) at a time the applicant's business is being carried on; or
 - (b) with the consent of the applicant.

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- (4) For this section, a place of business does not include a part of the place where a person resides.

43 Chief executive may require licensees to give information

- (1) The chief executive may, by notice given to a licensee, require the licensee to give the chief executive, within a reasonable period of at least 21 days stated in the notice, information the chief executive reasonably requires to decide whether—
- (a) the licensee is, or continues to be, a fit and proper person to provide labour hire services; or
- (b) the licensee's business is financially viable.
- (2) The chief executive may, in the notice, require the licensee to verify the further information by statutory declaration.
- (3) The licensee must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) It is not a reasonable excuse for the licensee not to comply with the notice on the basis that complying with the notice might tend to incriminate the licensee or expose the licensee to a penalty.

Note—

See, however, section 101.

- (5) The chief executive may—
- (a) give information obtained under this section to an auditor under section 104(3)(d); and
- (b) ask the auditor to give the chief executive advice about a matter mentioned in subsection (1)(a) or (b).

Example—

The chief executive may ask an auditor to provide advice about financial information given to the chief executive by a licensee.

44 Inquiries about whether persons are fit and proper and financially viable

- (1) The chief executive may make inquiries about a person for deciding—
 - (a) if the person is an applicant or licensee—whether the person is a fit and proper person to provide labour hire services; or
 - (b) if the person is a licensee—whether the business to which the person’s licence relates is financially viable.
- (2) Without limiting subsection (1), the chief executive may ask the commissioner to give the chief executive the following written information about the person—
 - (a) a report about the person’s criminal history;
 - (b) a brief description of the nature of the offence or alleged offence giving rise to a conviction or charge mentioned in the person’s criminal history.
- (3) The commissioner must comply with the request.
- (4) The commissioner’s obligation to comply with the request applies only to information in the commissioner’s possession or to which the commissioner has access.
- (5) In this section—

commissioner means the commissioner of the police service.

45 Use of criminal history report and information

- (1) This section applies to the chief executive in considering information about a person obtained under section 44.
- (2) The information may be used only for making a decision mentioned in section 44(1).
- (3) However, the chief executive may not rely on information about a charge mentioned in the person’s criminal history for making a decision—
 - (a) to suspend a licence under section 22; or

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- (b) about whether the person is, or continues to be, a fit and proper person to provide labour hire services.

46 Confidentiality of criminal history information

- (1) This section applies to a person who possesses a report or information given to the chief executive about a person that includes information about a person's criminal history (*criminal history information*).
- (2) The person must not, directly or indirectly, disclose the criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the criminal history information to another person—
- (a) to the extent necessary to perform the person's functions under this Act; or
 - (b) to the extent the disclosure is otherwise required or permitted by law; or
 - (c) if the disclosure is in a form that does not identify the person to whom the information relates.
- (4) The chief executive must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

Part 6 Monitoring and enforcement

Division 1 Appointment of inspectors

47 Functions

An inspector's functions are—

- (a) to monitor compliance with this Act; and
- (b) to investigate and, when necessary, take action to deal with alleged contraventions of this Act; and
- (c) to inform providers and workers of their rights and obligations under this Act.

48 Appointment

The chief executive may, by instrument, appoint an appropriately qualified public service employee as an inspector.

49 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) the inspector’s instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector’s powers.
- (3) In this section—
signed notice means a notice signed by the chief executive.

50 When office ends

- (1) The office of a person as an inspector ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the inspector’s resignation under section 51 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—

condition of office means a condition under which the inspector holds office.

51 Resignation

An inspector may resign by signed notice given to the chief executive.

52 Identity cards

- (1) The chief executive must give each inspector an identity card.
- (2) The identity card must—
 - (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector's signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the chief executive from giving a single identity card to a person for this Act and other purposes.

53 Production and display of identity card

- (1) In exercising a power under this part in relation to a person in the person's presence, an inspector must—
 - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 55(1)(b) or (d).

54 Return of identity card

If the office of a person as an inspector ends, the person must return the identity card to the chief executive as soon as practicable after the office ends.

Maximum penalty—40 penalty units.

Division 2 Powers of entry

Subdivision 1 Power to enter

55 General power to enter places

- (1) An inspector may enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry, and section 59 has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 66 has been complied with for the occupier; or
 - (d) it is a workplace and, when the entry is made—
 - (i) the workplace is open for carrying on business; or
 - (ii) work is being carried out at the workplace; or
 - (iii) the workplace is required to be open for inspection under a condition of a licence.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

-
- (4) An entry may be made under subsection (1)(d) with or without the consent of an occupier.

56 Limitation on entry powers

Despite anything else in this division, the powers of an inspector under this division in relation to entering a place are not exercisable in relation to any part of a place where a person resides except—

- (a) with the consent of the occupier, if section 59 has been complied with for the occupier; or
- (b) under the authority of a warrant and, if there is an occupier of the place, section 66 has been complied with for the occupier; or
- (c) for the purpose only of gaining access to a place suspected to be a workplace, but only—
 - (i) if the inspector reasonably believes that no reasonable alternative access is available; and
 - (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

Subdivision 2 Entry by consent

57 Application of subdivision

This subdivision applies if an inspector intends to ask an occupier of a place to consent to the inspector entering the place under section 55(1)(a).

58 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

59 Matters inspector must tell occupier

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

60 Consent acknowledgement

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) the following has been explained to the occupier—
 - (i) the purpose of the entry, including the powers intended to be exercised;
 - (ii) that the occupier is not required to consent;
 - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
 - (d) the time and day the consent was given; and

- (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) Subsection (5) applies if—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence.
- (5) The onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

61 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Note—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

62 Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within

the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.

- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector's powers; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate's name; and
 - (h) the day and time of the warrant's issue; and
 - (i) the day, within 14 days after the warrant's issue, the warrant ends.

63 Electronic application

- (1) An application under section 61 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—

- (a) may not be made before the inspector prepares the written application under section 61(2); but
- (b) may be made before the written application is sworn.

64 Additional procedure if electronic application

- (1) For an application made under section 63, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under section 63; and
 - (b) the way the application was made under section 63 was appropriate.
- (2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give the inspector a copy of the warrant; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information mentioned in section 62(2); and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 62(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 61(2) and (3); and

- (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Subsection (7) applies if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence.
- (7) Despite subsection (3), the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (8) This section does not limit section 61.
- (9) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

65 Defect in relation to warrant

- (1) Unless a defect in a warrant affects the substance of the warrant in a material particular, the warrant is not invalidated by a defect in—
 - (a) the warrant; or
 - (b) compliance with this subdivision.
- (2) In this section—

warrant includes a duplicate warrant mentioned in section 64.

Subdivision 4 Entry procedure

66 Entry procedure

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under subdivision 3.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without consent is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—
warrant includes a duplicate warrant mentioned in section 64.

Division 3 Powers after entering places

Subdivision 1 General

67 Application of subdivision

- (1) A power under this subdivision may be exercised if an inspector enters a place under section 55(1)(a), (c) or (d).

- (2) However, if the inspector enters under section 55(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

68 General powers

- (1) An inspector may do any of the following (each a *general power*)—
- (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) place an identifying mark in or on anything at the place;
 - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
 - (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this subdivision;
 - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
- (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
- (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an

electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

69 Power to require reasonable help

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the inspector must warn the person that, without a reasonable excuse, it is an offence for the person not to comply with the requirement.
- (3) For an offence under section 89, it is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

Note—

It is an offence under section 89 to fail to comply with a requirement of an inspector without a reasonable excuse.

70 Power to require production of documents

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector, a document required to be kept by the person under this Act.

- (2) For an electronic document, compliance with the requirement requires the making available or production of a clear printed reproduction of the electronic document.
- (3) The inspector may keep the document to copy it.
- (4) The inspector must return the document to the person as soon as practicable after copying it.
- (5) For an offence under section 89, it is not a reasonable excuse for an individual not to comply with a requirement under subsection (1) on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

It is an offence under section 89 to fail to comply with a requirement of an inspector without a reasonable excuse. See, however, section 101.

- (6) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
 - (a) the person must comply with the requirement to produce the document even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) under section 101, there is a limited immunity against the future use of the document given in compliance with the requirement.
- (7) If the person does not comply with the requirement to produce the document when the inspector has not complied with subsection (6), the person can not be convicted of an offence under section 89 for not complying with the requirement.

Subdivision 2 Seizure of evidence

72 Seizing evidence at a place that may be entered without consent or warrant

An inspector who enters a place the inspector may enter under division 2 without the consent of an occupier of the place and

without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

73 Seizing evidence at a place that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
 - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

74 Seizure of property subject to security

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

75 Power to secure seized things

- (1) Having seized a thing under this division, an inspector may—
- (a) leave the thing at the place where it was seized (the *place of seizure*) but take reasonable action to restrict access to it; or
 - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
Example—
make it inoperable by dismantling it or removing a component without which the equipment can not be used
 - (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

76 Tampering with seized things

- (1) If access to a seized thing is restricted under section 75, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an inspector's approval; or
 - (b) a reasonable excuse.
- Maximum penalty—100 penalty units.
- (2) If access to a place is restricted under section 75, a person must not enter the place in contravention of the restriction or

tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

77 Receipt and information notice for seized thing

- (1) This section applies if an inspector seizes anything under this subdivision, unless—
 - (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
 - (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this division.

- (6) However, the delay may be only for as long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

78 Access to seized thing

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

79 Return of seized thing

- (1) This section applies if a seized thing is not—
 - (a) forfeited or dealt with under sections 80 to 83; or
 - (b) subject to a disposal order under section 84.
- (2) As soon as the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the chief executive for its return.
- (4) Within 30 days after receiving the application, the chief executive must—
 - (a) if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner written notice of the decision, including the grounds for retaining the thing; or
 - (b) otherwise—return the thing to the owner.

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- (5) For this section, there are reasonable grounds for retaining a seized thing if—
- (a) the thing is being, or is likely to be, examined; or
 - (b) the thing is needed, or may be needed, for the purposes of—
 - (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
 - (ii) an appeal from a decision in a proceeding for an offence against this Act; or
 - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—
- examine* includes analyse, test, measure, weigh, grade, gauge and identify.

80 Forfeiture of seized thing

- (1) A seized thing is forfeited to the State if an inspector—
- (a) after making reasonable inquiries, can not find its owner; or
 - (b) after making reasonable efforts, can not return it to its owner.
- (2) However, the inspector is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- (3) Regard must be had to the thing's condition, nature and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

81 Information notice about forfeiture decision

- (1) If an inspector decides under section 80(1) to forfeit a thing, the inspector must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply to QCAT for a stay of the decision if the former owner applies for a review of the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
 - (a) a public place; or
 - (b) a place where the notice is unlikely to be read by the former owner.

82 When thing becomes property of the State

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 80(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

83 How property may be dealt with

- (1) This section applies if, under section 82, a thing becomes the property of the State.

- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of a review or appeal against the forfeiture.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

84 Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
 - (a) anything that was the subject of, or used to commit, the offence;
 - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
 - (a) whether or not it has been seized under this subdivision; and
 - (b) if the thing has not been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—
 - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and

- (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order it considers appropriate to enforce the disposal order.
- (6) This section does not limit the court's powers under another law.

Division 3A Power to require information or attendance

84A Power to require information or attendance

- (1) This section applies if an inspector reasonably believes—
 - (a) an offence against this Act has been committed; and
 - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to—
 - (a) give the inspector information related to the offence by a stated reasonable time; or
 - (b) attend before the inspector at a stated reasonable time and place to answer questions, or produce documents, related to the offence.
- (3) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or printed version of the electronic document.
- (4) For an offence under section 89, it is a reasonable excuse for an individual not to comply with a requirement made under subsection (2) if complying might tend to incriminate the individual or expose the individual to a penalty.

Note—

It is an offence under section 89 to fail to comply with a requirement of an inspector without a reasonable excuse.

- (5) In this section—
information includes a document.

Division 4 Miscellaneous provisions relating to inspectors

85 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 87.

86 Notice of damage

- (1) This section applies if—
- (a) an inspector damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—
- (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to a person who appears to the inspector to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
- (a) leave the notice at the place where the damage happened; and

- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the inspector.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 87.

87 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under division 3.
- (2) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

-
- (4) In considering whether it is just to order compensation, the court must have regard to—
 - (a) any relevant offence committed by the claimant; and
 - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
 - (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
 - (6) Section 85 does not provide for a statutory right of compensation other than as provided by this section.
 - (7) In this section—

loss includes costs and damage.

Division 5 Obstruction and failure to comply with inspectors

88 Obstructing inspectors

- (1) A person must not obstruct an inspector exercising a power, or a person helping an inspector exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.
- (2) If a person has obstructed an inspector, or a person helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
 - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the inspector considers the person’s conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

89 Failure to comply with requirements of inspectors

If, in the exercise of a power under this Act an inspector makes a requirement of a person, the person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Part 7 General offence provisions

90 Persons must report avoidance arrangements

- (1) This section applies if—
 - (a) a person (the *non-complying person*) has supplied, or intends to supply, a worker to another person; and
 - (b) the other person (the *client*) is aware, or ought reasonably to be aware, the supply or intended supply by the non-complying person is an avoidance arrangement.
- (2) As soon as practicable after the client becomes aware, or ought reasonably to have become aware, of the matter mentioned subsection (1)(b), the client must, unless the person has a reasonable excuse, give the chief executive a notice stating—
 - (a) the name of the non-complying person; and
 - (b) a brief description of the avoidance arrangement.

Maximum penalty—200 penalty units.

91 False or misleading information

- (1) A person must not, for this Act, give an official information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving information in a document—
 - (a) informs the official, to the best of the person’s ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the official the correction information.

92 Persons considered parties to offences

- (1) This section applies to a person who counsels, procures or aids the commission of an offence under this Act.
- (2) The person is taken to have committed the offence and to be liable to the penalty prescribed for the offence.
- (3) This section does not limit the Criminal Code, section 7.

Part 8 Reviews and appeals

Division 1 Reviews

93 Application for review

- (1) A person who has been given, or is entitled to be given, an information notice for a decision may apply for a review of the decision.
- (2) Also, an interested person may apply for a review of a decision to—
 - (a) grant a licence under section 16; or
 - (b) suspend a licence under section 22; or
 - (c) impose, vary or revoke a condition of a licensee’s licence under section 29.
- (3) In this section—

interested person means 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.

94 How to apply

- (1) An application for review of a decision must be—
 - (a) in the approved form; and
 - (b) supported by enough information to enable the chief executive to decide the application.
- (2) The application must be made within 28 days after—
 - (a) for a person mentioned in section 93(1)—
 - (i) the day the person is given the information notice about the decision; or
 - (ii) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision; or
 - (b) for a person or organisation mentioned in section 93(2)—within 28 days after the information about the decision is first shown on the register.
- (3) The chief executive may extend the period for applying for the review.

95 Chief executive must notify licensee of application by another person

- (1) This section applies if the applicant for review of a decision is a person or organisation mentioned in section 93(2).
- (2) On receiving the application, the chief executive must give notice of the application to the holder of the licence to which the decision relates.
- (3) The notice must be accompanied by a copy of the application.

96 Stay of operation of decision

- (1) An application for review of a decision does not stay the decision.
- (2) However, an applicant mentioned in section 93(1) may immediately apply to QCAT for a stay of the decision.
- (3) QCAT may stay the decision to secure the effectiveness of the review and a later appeal to QCAT.
- (4) The stay—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be amended or revoked by QCAT.
- (5) The period of the stay must not extend past the time when the chief executive makes a review decision about the decision and any later period QCAT allows the applicant to enable the applicant to appeal against the review decision.
- (6) An application for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

97 Review decision

- (1) The chief executive must, within 21 days after receiving the application—
 - (a) review the decision (the *original decision*); and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give notice (the *review notice*) of the decision—
 - (i) to the applicant; and

- (ii) if the applicant is a person or organisation mentioned in section 93(2)—to the holder of the licence to which the original decision relates.
- (2) The application must not be dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (3) Subsection (2)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
 - (b) does not apply to a decision made by the chief executive personally.
- (4) If the review decision is not the decision sought by the applicant, the review notice given to the applicant must be accompanied by a QCAT information notice.
- (5) If the applicant is a person or organisation mentioned in section 93(2), and the review decision is the decision sought by the applicant, the review notice given to the holder of the licence under subsection (1)(c)(ii) must be accompanied by a QCAT information notice.
- (6) If the chief executive does not give a review notice within the 21 days, the chief executive is taken to have made a review decision confirming the original decision.

Division 2 Appeals

98 Who may appeal

- (1) A person or organisation who is given a QCAT information notice for a decision may apply, as provided for under the QCAT Act, for a review of the decision.
- (2) If the person or organisation making the application is a person mentioned in section 93(2), the holder of the licence to which the decision relates is a party to the review proceeding.

Part 9 Legal proceedings

99 Evidentiary matters

In proceedings under this Act—

- (a) the appointment as inspector of a person claiming to be, or stated to be, an inspector, and the authority of an inspector to take proceedings or do any act, must be presumed, until the contrary is proved; and
- (b) a signature purporting to be of an inspector is taken as the signature it purports to be, until the contrary is proved; and
- (c) a document purporting to be a copy of a notice or order issued under this Act by an inspector is admissible as evidence of the issue of the notice or order and of the things in it; and
- (d) a certificate purporting to be signed by the chief executive stating the following matters is evidence of the matter—
 - (i) a stated document is a decision, or a copy of a decision, made under this Act;
 - (ii) a stated document is a notice, or a copy of a notice, given under this Act;
 - (iii) a stated document is a document, or a copy of a document, kept under this Act;
 - (iv) on a stated day, a stated person was, or was not, a licensee;
 - (v) on a stated day, a stated person was given a stated notice under this Act.

100 Offence proceedings

A proceeding for an offence against this Act must start—

- (a) within 1 year after the offence is committed; or

- (b) within 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

101 Evidential immunity for individuals complying with particular requirements

- (1) Subsection (2) applies if an individual gives or produces information or a document, other than a document required to be kept or given under this Act, to—
 - (a) the chief executive under section 43; or
 - (b) an inspector under section 70.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Part 10 Miscellaneous

102 Waiver of particular requirements to give information

- (1) The chief executive may waive a relevant information requirement if the chief executive is satisfied—
 - (a) the applicant or licensee has—
 - (i) complied with a requirement to give information to an entity under a regulatory scheme of the Commonwealth or a State, or another scheme that provides for the accreditation of persons for particular industries or professions; and

- (ii) the relevant information given by the applicant or licensee in compliance with the requirement is substantially the same as the information to which the requirement relates; or
- (b) the information to which the requirement is about whether the applicant or licensee is capable of complying with a relevant law, and the applicant or licensee has—
 - (i) obtained a qualification or accreditation relating to the applicant's or licensee's obligations under the relevant law; and
 - (ii) the qualification or accreditation demonstrates that the licensee is able to comply with the relevant law.
- (2) The chief executive may make a policy about waiver of particular relevant information requirements.
- (3) If the chief executive makes a policy under subsection (2), the chief executive must publish it on the labour hire website.
- (4) In this section—

relevant information requirement means a requirement under this Act about information to be given to the chief executive by—

 - (a) an applicant for an application for a licence or renewal or restoration of a licence; or
 - (b) a licensee in a report under section 31.

103 Register of licences

- (1) The chief executive must keep a register of licences.
- (2) The register must contain the following particulars for each licence—
 - (a) the licensee's name and contact details;
 - (b) the business name, ABN and address for the business to which the licence relates;

- (c) the name and contact details of each nominated officer for the licence;
 - (d) the industries in which the licensee supplies workers;
 - (e) the licence number;
 - (f) the dates of issue and expiry of the licence;
 - (g) the number of years the licensee has held a licence;
 - (h) any conditions imposed on the licence by the chief executive under section 29;
 - (i) the locations in Queensland where work is carried out by workers supplied by the licensee;
 - (j) whether accommodation is provided for workers supplied by the licensee;
 - (k) the details of any enforcement action taken under this Act against the licensee, including information about prosecutions or a suspension of the licence;
 - (l) for notifiable incidents notified under the *Work Health and Safety Act 2011*, section 38—
 - (i) the number of incidents stated in the licensee’s most recent report given under section 31; and
 - (ii) the total number of incidents stated in each of the licensee’s reports given under section 31;
 - (m) for injuries to workers supplied by the licensee for which applications for compensation are made under the *Workers’ Compensation and Rehabilitation Act 2003*—
 - (i) the number of injuries stated in the licensee’s most recent report given under section 31; and
 - (ii) the total number of injuries stated in each of the licensee’s reports given under section 31;
 - (n) any other matter prescribed by regulation.
- (3) The chief executive must make the register available, free of charge, on the labour hire website.

104 Disclosure of confidential information

- (1) This section applies to a person who—
 - (a) is or has been engaged in the administration of this Act; or
 - (b) has obtained access to confidential information, whether directly or indirectly, from a person mentioned in paragraph (a).
- (2) The person must not disclose confidential information acquired by the person to anyone else other than under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may disclose confidential information—
 - (a) with the written consent of the person to whom the information relates or someone else authorised by the person; or
 - (b) to the person to whom the information relates; or
 - (c) if the disclosure is authorised under an Act or law; or
 - (d) in connection with the administration of this Act, or the enforcement of a relevant law; or
 - (e) for a legal proceeding under this Act.
- (4) If, under subsection (3), confidential information is disclosed to another person in connection with the administration or enforcement of a law, the person must not disclose the information to anyone else other than in connection with that purpose.

Maximum penalty—100 penalty units.

- (5) In this section—

confidential information means information given to an official under this Act, if the information identifies a person.

105 Publication of information

- (1) The chief executive may publish on the labour hire website—

- (a) the following information about an applicant for a licence—
 - (i) the applicant's name;
 - (ii) the name of the applicant's business; and
 - (b) information about enforcement action taken under this Act, including information about prosecutions and the suspension or cancellation of a licence; and
 - (c) the following information about a former licensee who has surrendered a licence—
 - (i) the former licensee's name;
 - (ii) the name of the former licensee's business.
- (2) Information published under subsection (1)(b) must not include information that could identify or lead to the identification of an individual other than—
- (a) a licensee; or
 - (b) a person who has been convicted of an offence against this Act.

106 Delegation

The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified officer of the department.

107 Approved forms

The chief executive may approve forms for use under this Act.

107A Service of documents

- (1) This section applies if a provision of this Act requires or permits a document to be given to a person by the chief executive or an inspector.

- (2) For the *Acts Interpretation Act 1954*, section 39, the address of the person's place of residence or business includes the person's postal address.
- (3) Without limiting the *Acts Interpretation Act 1954*, section 39, the document may—
 - (a) be sent by email to the person's email address last notified to the chief executive by the person; or
 - (b) be made available to the person or given in a way prescribed by regulation.
- (4) The document is taken to be given—
 - (a) if sent by email—on the day the email is sent; or
 - (b) if made available to the person or given in a way prescribed by regulation—on the day prescribed by regulation.
- (5) However, if the document is given after 5p.m. on a particular day, the document is taken to be given to the person on the next business day.

108 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) provide for fees payable under this Act, including refunding or waiving of all or part of the fees; or
 - (b) impose a penalty of not more than 20 penalty units for a contravention of a regulation; or
 - (c) provide for the keeping of records under this Act, including the form in which records are to be kept; or
 - (d) provide for the length of time documents required to be kept under this Act are to be kept.

Part 11 **Transitional provisions**

109 **Supply of workers within 60 days of commencement**

- (1) This section applies if—
 - (a) a person supplies, to another person, a worker to do work for the other person within 60 days after commencement; and
 - (b) but for this section, the person would be a provider of labour hire services in relation to the supply.
- (2) Despite section 7, the person is taken not to be a provider of labour hire services in relation to the supply until the later of the following days—
 - (a) the day that is 60 days after the commencement; or
 - (b) if the person applies for a licence within 60 days after the commencement—the day the application is decided.

Schedule 1 Dictionary

section 6

approved form means a form approved under section 107.

avoidance arrangement see section 12.

criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than a conviction—

- (a) to which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived under section 11 of that Act.

disposal order see section 84(2).

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

financially viable, for a person, means the person is able to pay the person's debts as and when they become due and payable.

former owner see section 81(1).

general power see section 68(1).

identity card, for a provision about inspectors, means an identity card given to an inspector under section 52.

information notice, for a decision, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person has a right to have the decision reviewed under section 93; and
- (d) how, and the period within which, the person may apply for the review.

inspector means a person who holds office under part 6, division 1, as an inspector.

labour hire services see section 7.

labour hire website means a website established by the chief executive for the purpose of providing information about the labour hire industry to providers, workers and members of the public.

licence means a licence granted under section 16.

licensee means the holder of a licence.

nominated officer, for a licence, means each individual shown on the register as being a nominated officer for the licence.

notice means a written notice.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

official means—

- (a) the chief executive; or
- (b) a public service employee.

owner, of a thing that has been seized under part 6, division 3, subdivision 2, includes a person who would be entitled to possession of the thing had it not been seized.

person in control, of a thing, includes a person who reasonably appears to be, claims to be, or acts as if the person is, the person in possession or control of the thing.

place includes the following—

- (a) premises;
- (b) vacant land;

- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

premises includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under more than 1 title or by more than 1 owner.

provider see section 7.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Example—

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Example—

a saleyard, a showground

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

relevant law means—

- (a) this Act; or
- (b) a provision of an Act or law of the State, the Commonwealth or another State imposing an obligation on a person in relation to workers, including, for example, obligations about—
 - (i) keeping records about workers; and

(ii) the payment of tax or superannuation for workers; and

(iii) ensuring the health and safety of workers; or

Examples—

- the *Age Discrimination Act 2004* (Cwlth)
- the *Australian Human Rights Commission Act 1986* (Cwlth)
- the *Anti-Discrimination Act 1991*
- the *Child Employment Act 2006*
- the *Disability Discrimination Act 1992* (Cwlth)
- the *Electrical Safety Act 2002*
- the *Fair Work Act 2009* (Cwlth)
- the *Independent Contractors Act 2006* (Cwlth)
- the *Industrial Relations Act 2016*
- the *Migration Act 1958* (Cwlth)
- the *Payroll Tax Act 1971*
- the *Queensland Building and Construction Commission Act 1991*
- the *Racial Discrimination Act 1975* (Cwlth)
- the *Sex Discrimination Act 1984* (Cwlth)
- the *Superannuation Guarantee (Administration) Act 1992* (Cwlth)
- the *Work Health and Safety Act 2011*
- the *Workers' Compensation and Rehabilitation Act 2003*

(c) a provision of a law, including a local law, about the standards of buildings and structures, to the extent it relates to a building or structure used to provide accommodation to a worker.

review decision see section 97(1)(b).

worker see section 8.

workplace means a place where work is carried out for a business and includes any place where a worker goes, or is likely to be, while at work.