



CCIQ SUBMISSION

Labour Hire Licensing Scheme Queensland
Queensland Treasury, Office of Industrial Relations

▾ **CONSULTATION PAPERS 1 & 2**

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

2 February 2018

Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Office of Industrial Relation (OIR) on the Labour Hire Licensing Act 2017 (the LHL Act) consultation papers: development and operational regulations, and possible treatments to refine the scope of the labour hire scheme.
2. CCIQ is Queensland's peak industry representative organisation for small and medium businesses. We represent over 414,000 Queensland businesses on local, state, and federal issues that matter to them. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.

Overall Position

3. CCIQ remains of the firm position that labour hire does not pose a unique set of challenges beyond the capacity of existing legislation to manage, as expressed in previous submissions. The introduction of an additional regulatory scheme is particularly daunting for businesses already suffering from the cumulative compliance burden of workplace relations laws, workplace health and safety laws, and other legal requirements. Current legislative regulation and protections are found in:
 - a) Anti-Discrimination Act 1991 (Qld);
 - b) Criminal Code Act 1899 (Qld);
 - c) Criminal Code Act 1995 (Cth);
 - d) Competition and Consumer Act 2010 (Cth);
 - e) Independent Contractors Act 2006 (Cth);
 - f) Industrial Relations Act 2016 (Qld);
 - g) Migration Act 1958 (Cth);
 - h) Superannuation Guarantee (Administration) Act 1992 (Cth) and the Superannuation Guarantee (Charge) Act 1992 (Cth);
 - i) Tax Administration Act 1953 (Cth);
 - j) Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015 (Qld);
 - k) Work Health and Safety Act 2011 (Qld);
 - l) Fair Work Act 2009 (Cth); and
 - m) Further Education and Training Act 2014 (Qld).
4. Information to be provided under the LHL Act duplicates several federal and state regulators. For example, businesses seeking to obtain sponsorship status under the *Migration Act 1958 (Cth)* are already required to submit a substantial level of information regarding financial capacity. Replication of processes and documentation is poor administration and comes at a cost to business and government.

5. While permanent forms of employment remain the preferred method of employment throughout Australia’s workforce, businesses operating in a modern and dynamic 21st century economy with greater global market connectivity require higher levels of labour market flexibility and adaptability. This necessity is being met by flexible and temporary employment arrangements that which labour hire offers.
6. Regrettably, non-standard forms of work are often described unfavourably by unions as ‘insecure’ and ‘precarious’. CCIQ wishes to dispel the notion forms of work performed outside of a ‘permanent employment relationship’ are a one-sided bargain favouring the employer with high levels of abuse. Both parties can benefit for flexible working relationships.
7. According to the Productivity Commission, the majority of non-standard work is casual employment, with labour hire and subcontracting rare in most industries. As evidenced in the table below, labour hire employees make up around only one per cent of the workforce.

Fixed term contracts and labour hire (2013)		
Employment category	Number	Share of employed
	(‘000s)	(per cent)
Fixed term contract prevalence (a)		
Employees on fixed term contracts	367.2	3.2
Employees not on fixed term contracts	9 267.8	80.1
Non-employees	1 931.6	16.7
Labour hire prevalence (b)		
Employed people who are in labour hire	144.4	1.2
Employed people who are not in labour hire	11 429.3	98.8

Source: a) From ABS 2014, *Forms of Employment, Australia*, Cat. No. 6359.0, released 7 May b) The share of total employment was obtained from ABS 2011, *Forms of Employment*, Cat. No. 6359.0, released 28 April and applied to total employment for November 2013. See also Productivity Commission Inquiry into workplace relations framework (2015) Final Report.

8. A 2014 Deloitte Access report¹ which assessed the red tape in both Australia’s public and private sectors found government regulations cost about \$27 billion a year to administer and costs businesses \$67 billion a year to comply with. In 2018 this total figure is likely to surpass \$100 billion.
9. While businesses understand that measures to ensure compliance is sometimes a legitimate cost they must wear, the introduction of more red tape and increased bureaucracy are costs which can amount to an unnecessary burden.

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

– Red Tape Survey 2017 Respondent²

¹ Deloitte (2014). Get out of your own way: Unleashing productivity, <https://www2.deloitte.com/au/en/pages/building-lucky-country/articles/get-out-of-your-own-way.html>

² CCIQ, 2017, Red Tape Survey 2017 Government Red Tape: A Small Business Dilemma, <https://www.cciq.com.au/assets/Advocacy/Red-Tape/CCIQ-Red-Tape-Survey-2017-screen.pdf>

“Red tape for us is frustrating to do, but we know it’s required. Offering templates that businesses can use might make it easier to comply and therefore make more businesses compliant.”

– Red Tape Survey 2017 Respondent³

10. CCIQ recognises the Labour Hire Licence Scheme has been enshrined into law, however based upon the arguments above we strongly urge the OIR to be considerate of the level of burden placed on small businesses when finalising the regulations outlining the requirements to be eligible to obtain a licence.

³ Ibid.

Consultation Paper 1: Development of Operational Regulations

1: Application - Financial Viability (section 13(3)(c)(ii))

Please provide comments on:

- The suitability of the definition of financial viability.
- The list of proposed documents.
- The suitability of a high/low weighted document approach.
- The number of documents to be provided.
- The proposed approach for new businesses.

The suitability of the definition of financial viability:

- a) the business is able to meet operating costs and expenses, or projected expenses for new businesses;
 - b) workers can be paid promptly; and
 - c) the business has the capacity to pay other obligations and entitlements such as tax and superannuation.
11. The proposed definition, prima facie is extensive and implies an excessive level of proof to determine a business's financial viability. However as broad as the definition is, it does not specify certain particulars business owners would have to supply when compiling the required documents.
12. For example, proof of being able to pay workers promptly – promptly over the year? To the business pay cycle? Outside of the typical pay cycle? Does this include contractors? How is this to be demonstrated and/or assessed? Additionally: the business has the capacity to pay other obligations and entitlements such as tax and superannuation – How is this to be demonstrated without revealing confidential commercial information?
13. The definition proposed raises more questions than answers. Greater detail is required as currently there is scope for broad interpretation, which could result in costly delays.

The list of proposed documents:

14. The list, again is prima facie acceptable and similar to documents submitted under the *Migration Act 1958* (Cth) for business sponsorship approval.

The suitability of a high/low weighted document approach:

15. CCIQ would strongly advocate for weighted documents. We would encourage the OIR to draw inspiration for identity checks. Such as, grouping and classing the documents, assigning a number weighting and for businesses to be qualified as financially viable once they have submitted the minimum amount of documents required to pass the threshold. We would encourage the OIR to develop a simple checklist and factsheet to

facilitate easy compliance and to avoid confusion, whilst assisting the department to expedite the approval process.

16. CCIQ is of the belief a third party individual auditor/accountant report or correspondence confirming the financial viability of a business should be considered sufficient.

The number of documents to be provided:

17. As outlined above, if a weighting system is put in place similar to identity checks, the minimum number of documents to satisfy the requisite level of points should be sufficient. This will avoid excessive paperwork handling for all parties.

The proposed approach for new businesses:

18. CCIQ recognises the difficulties in confirming a new business entrant is 'financially viable', however we stress that the burden of establishing their viability should not act as a deterrent for new businesses. The suggested documents to be submitted to the OIR appear acceptable. We are not supportive of onsite inspections without genuine reason.

Overall:

19. CCIQ would strongly recommend the drafting of the regulation as follows –

As per section 13(3)(c)(ii) businesses are required to be financially viable to be eligible to obtain a Licence under the Labour Hire Licensing Act. Small businesses are financially viable if they can demonstrate financial capacity to pay any immediate costs, have capital to cover costs of staff wages and can meet all taxation obligations. To establish the minimum threshold of financial capacity, please provide [100 points] of financial documentation. This includes, but is not restricted to: [list documents]

2: Application – Compliance with the Work Health and Safety Act 2011 (WHS Act) and the Workers Compensation and Rehabilitation Act 2003 (WCR Act)

Please provide comments on:

- The suitability of this approach for demonstrating compliance with the WHS Act and WCR Act.
- The appropriateness of the list of safety laws.
- Any additional questions that should be asked of applicants.
- Any other criteria by which compliance with the WHS Act and WCR Act could be assessed.

20. Disclosure of any convictions, enforceable undertakings and director's conviction history up to five years is excessive.

21. To reduce red tape for businesses, CCIQ believes it would be more efficient for the relevant regulators to issue letters confirming compliance history to small businesses. This will reduce the amount of paperwork to be submitted, especially for small

businesses with a history of compliance and good practice. Therefore, only non-compliant businesses will be penalised with greater scrutiny.

22. CCIQ does not believe it is necessary or relevant to include the additional suggested legislation outlined on page 5 of Paper 1 under the definition of safety laws.
23. Under the proposed legislation CCIQ finds it highly inappropriate for businesses to disclose litigation, *regardless of outcome*, as this information will be highly prejudicial. Only litigation resulting in a conviction, and or admission of guilt and wrongdoing in breach of the Workers Compensation and Rehabilitation Act should be disclosed. To allow the inclusion of listed prosecutions regardless of the success of claims could be subject to abuse.

3: Application – Additional requirements (section 13(3)(c)(iv))

Please provide comments on:

- The specific questions to be asked at application about any other relevant laws.
- The proposed questions in respect of the *Fair Work Act 2009 (Cth)* and the *Migration Act 1958 (Cth)* are appropriate to establish compliance.
- The proposed approaches for industry and location.
- Any other matter that may be relevant for application.

24. As per the comments made at 22, above, disclosure of litigation, irrespective of the outcome, orders and result, is inappropriate. Similar again as point 17, above, disclosure obligations of up to 5 years is excessive, recommended a shorter timeframe of 3 years.
25. Would strongly recommend a backend system where government regulators are able to cross check applicants to reduce both the red tape burden on small businesses and processing time for the OIR.
26. In relation to expanding regulations to include a series of questions regarding migration purposes, CCIQ believes this to be again excessive red tape and irrelevant to the regulation of labour hire. Migration is regulated by the federal Department of Home Affairs and business sponsors are held to strict levels of compliance. There is no reason for a State agency to be seeking additional information regarding migration employment.
27. Strongly suggest greater collaboration with the new Department of Home Affairs to access records directly to expediate processing if the OIR believes there to have been a non-compliance issue following a sponsorship monitoring.
28. The suggestion of general additional questions, CCIQ believes would be at this stage merely further red tape. CCIQ recommends implementing the license scheme and review the scheme in three years' time to determine if further additional questions are required.

29. As highlighted in previous submissions to the *Labour Hire Licensing Bill 2017*⁴, industry and location questions are able to be abused and used for secondary purposes not relevant to the protection and regulation of the labour hire industry. As disclosure at application and reporting would also be duplicating information to be provided to the OIR, increasing excessive red tape, creating further burdensome information to be processed.

30. Therefore, despite understanding for data purposes knowing the industry and locations may help establish employment trends, that is outside of the purpose and scope of the labour hire scheme legislation and therefore should not be recorded or disclosed as it runs the risk of exposing commercial and confident information and hampers a free market. Nor should it be relevant to the granting of a labour hire licence.

4: Fit and proper person (section 13(3)(c)(iv) and section 27(2))

Please provide comments on:

- The appropriateness of the additional information requirements for the fit and proper person test.
- Any other matters the Chief Executive should have regard to in respect to the fit and proper person test.

31. Proposed factors for the Chief Executive to consider, include:

- a) If the person has been reprimanded, disqualified, removed, banned or refused membership by a professional or regulatory body in relation to matter concerning honesty, integrity or business conduct.
- b) If the person has received conditions or sanctions (e.g. cancellation or suspension) on a labour hire licence (or equivalent) under a reciprocal scheme of another jurisdiction.
- c) If the person has previously been deemed not to be a fit and proper person (or equivalent) by a Commonwealth, State, Territory government or industry association.
- d) Any serious criminal offences under a law of the Commonwealth, State or Territory within the last 10 years. Serious criminal offences will be prescribed in the regulation and are likely to include: homicide and related offences, abduction, harassment and other offences against the person, human trafficking, fraud, extortion, bribery; and illicit drug offences

32. Under a) CCIQ believes the word reprimanded should be removed from consideration. d) should only be relevant where a guilty conviction has been recorded.

33. Overall the outline of considerations is like comparing apples and oranges without the context, purpose and functionality of the organisations in question to be considered.

⁴ Queensland Law Society Submission, page 3 pt. 11 and page 4 pt.13,
<https://www.parliament.qld.gov.au/documents/committees/FAC/2017/B19-LabourHireLicenseBill2017/submissions/032.pdf>

5: Reporting (sections 31 and 32)

Please provide comments on:

- The suitability of the additional details proposed for reporting.
- The appropriateness of the accommodation register.
- Any further details should be prescribed for reporting or for the accommodation register.

34. Continual yearly renewals, accompanied by six months reporting responsibilities is an excessive burden on businesses and the regulator. Therefore, the suggestion to include additional reporting requirements to the legislated requirements is baffling, especially when prima facie the additional requirements are outside of the scope of the legislative objectives.⁵

6: Notification of a prescribed change in circumstances (section 40)

Please provide comments on:

- The suitability of these approaches to prescribed changes in circumstances.
- Any other matter should be included as a prescribed change.

35. CCIQ believes the requirements to be fair and reasonable. We however believe the timeframe of 14 days could be considered too short, however this is a legislated time limit and should be subject to review.

7: Public register of licences (section 103)

Please provide comments on:

- The suitability of these approaches to the public register of licences.
- Any other matter should be included on the public register.

36. As at 24, above, CCIQ shares the concerns raised by the Queensland Law Society regarding a public register and the potential for abuse and secondary political agendas taking precedence over the primary objective of the legislation.

37. If such a register is to be made freely available, open data should be collected about those who access the register for the purposes of monitoring for misuse and commercial espionage. Organisations and persons wishing to access the data should have to request the data from the labour hire website, specifying as to what industry they are seeking employment and/or workers and the location of services. This will improve and reduce search times for potential job seekers and labour hire contractors, while better protecting the privacy of small businesses across Queensland.

38. If a business is conducted from a residential address, businesses should be able to opt out of providing an address. They should not be forced to provide an alternative address.

⁵ *Labour Hire Licensing Act 2017, s 3.*

8: Record keeping (section 108)

Please provide comments on:

- The suitability of these approaches to recordkeeping.
- Any other matter should be considered.

39. CCIQ has no specific opposition to this provision.

9: Renewal, restoration and application fees (Sections 13(c)(i), 18(2)(b) and 19(2)(b))

Please provide comments on:

- The tiered fee band approach.
- The criteria for each fee class.

40. As with Queensland's payroll tax, the fee structure must not act as a deterrent on small businesses creating employment opportunities for Queenslanders. It is disappointing that industry is to pay for an imposed regulatory burden, that will already cost them in time and resources to apply and be compliant.

41. If there is such wide rampant exploitation as believed, penalties under the scheme should cover the administrative cost. Compliant, responsible operators should not be penalised for the few rouge operators. The scheme should be run as a zero-sum operation and not be viewed as a revenue generating body of the OIR.

10: Waiver of particular requirements to give information (Section 102)

Please provide feedback on:

- The components of the listed accreditations and schemes could be considered as meeting critical elements of the labour hire scheme.
- Other schemes which should be considered and which information requirement could be waived.
- Any unintended consequences in recognising these schemes as meeting some aspects of the labour hire scheme.

Please note: When discussing an accreditation or licence to be recognised as meeting some of the requirements under the labour hire scheme, please provide detail of all relevant provisions and elements.

42. Additional to the outlined accreditation scheme, businesses who have obtained sponsorship status under migration schemes should be exempt from financial viability reporting requirements, as a similar degree and level of documents are to be provided to the Department of Home Affairs for sponsorship approval.

Any other proposals/feedback

43. N/A

Consultation Paper 2: Possible treatments to refine the scope of the labour hire scheme

1: Secondments

Please provide feedback on:

- If it is appropriate that genuine secondments are considered arrangements that are not intended to be captured by the scheme?
- If the proposed policy treatment is effective in clarifying the scope of the scheme in respect of genuine secondments?
- If the alternative regulation treatment is necessary and, if so, effective in clarifying the scope of the scheme in respect of genuine secondments?
- If there are possible unintended consequences of this treatment?
- Could any unintended consequences be overcome through a different treatment?

44. CCIQ believes genuine secondments, and other genuine service industry work arrangements should be exempt from the labour hire scheme. Legislative powers under section 8(2) should be utilised to create a regulation outlining exemptions for genuine work arrangements, along with other recognised exempt arrangements.

2: Consultants

Please provide feedback on:

- If it is appropriate that consultants/consultancy arrangements are considered arrangements that are not intended to be captured by the scheme?
- If the proposed treatment is effective in clarifying the scope of the scheme in respect of consultants?
- If there are any unintended consequences of this proposed treatment?
- Could any unintended consequences be overcome through a different treatment?

45. As above, CCIQ believes genuine work arrangements, commonly found in the professional services industry, should be exempt for the labour hire scheme. To avoid penalties and interpretation confusion, CCIQ supports the suggestion of utilising section 7 to further clarify classes of workers to ensure only genuine labour hire arrangements and not consultants, volunteers, temporary work transfers and student, internships are captured.

3: Worker is 'director' or owner of business

Please provide feedback on:

- If it is appropriate that a director or owner of a business who hires themselves out are considered as a class of person who do not provide labour hire services?
- If the proposed treatment is effective in clarifying the scope of the scheme in respect of these arrangements?
- If there are any unintended consequences of this proposed approach?
- If there are any alternate means to achieving this effect?

46. As this is a legitimate business arrangement, it should be exempt under the use of section 8(2).

4: Corporate group/employing entity exclusions

Please provide feedback on:

- If the proposed treatment is effective for dealing with common corporate group/associated entity arrangements such as shared payroll which are not labour hire?
- If there are any unintended consequences of this treatment?
- If there are any alternate means to achieving this?

47. Small family businesses can, and often have complex business structures through legitimate multiple ABN's, family trusts and joint venture structures. For example, a motel and restaurant business in Mt Isa has two separate ABNs for the respective different businesses, however payroll is administrated by the family trust for both companies. All three separate entities are owned and operated by a single family, the arrangement having been created for tax and accounting purposes.

48. Under the LHL Act there should be an acknowledgement of associated entities, as defined by section 50AAA of the *Corporations Act 2001* (Cth).

5: Where workers are supplied to a person in a domestic setting (not to a business or undertaking)

Please provide feedback on:

- If it is appropriate that the supply of workers to persons who are not a business or undertaking (domestic setting) be considered as arrangements that are not labour hire and not intended to be captured by the scheme? And if so, what the specific instances should be and under what conditions?
- If the proposed regulation treatment is necessary and effective in clarifying the scope of the scheme in respect of these arrangements?
- If there are any unintended consequences of considering this treatment?
- If there are any alternate means to achieving this?

49. N/A

Other scope considerations

Your feedback is welcome on any other arrangements that would not be commonly understood as providing labour hire services. Please provide any details of arrangements you propose as being appropriate for possible regulation or policy treatment which would help clarify the scope of the scheme. In your comments, please consider any unintended consequences or different ways to treat the proposed group, again, where the arrangements are not what is commonly understood to be labour hire. Once again, please not the clear policy intention for a broad scheme to apply to all industry sectors and occupations.

50. N/A

51. CCIQ would welcome any opportunity to discuss this submission further. Should you have any enquiries please contact Kate Whittle, General Manager of Advocacy on kwhittle@cciq.com.au.