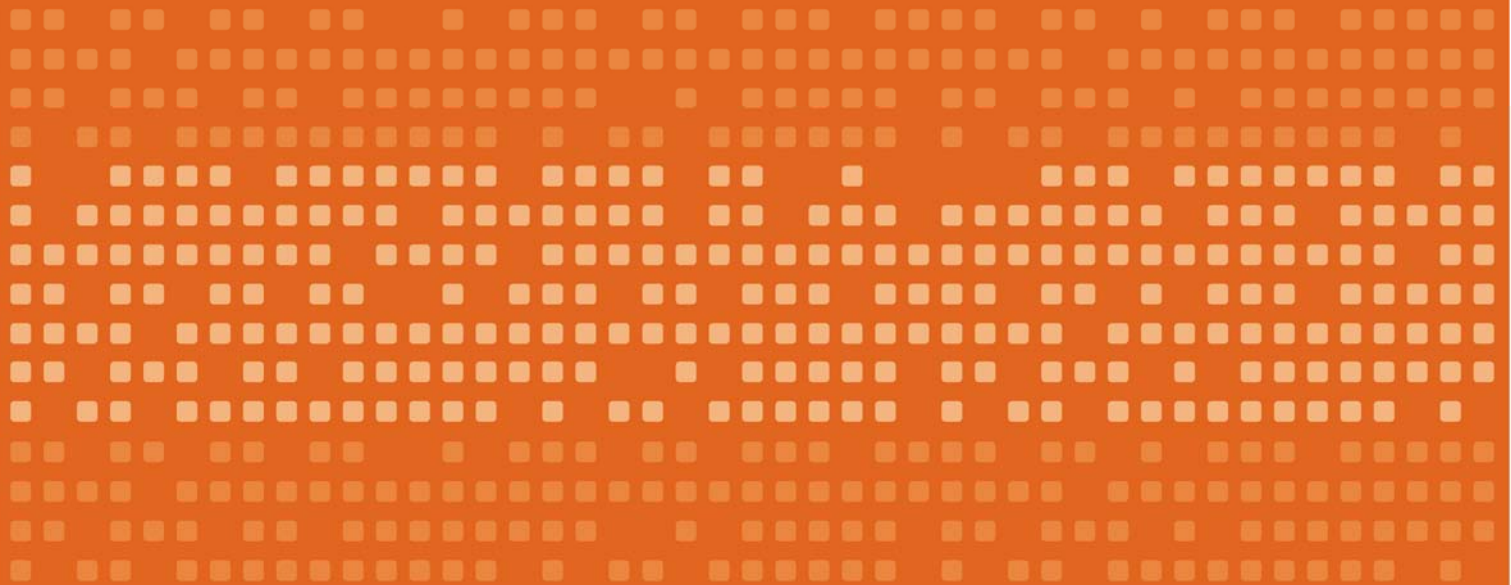


# LABOUR HIRE LICENSING SCHEME QUEENSLAND

CONSULTATION PAPER 1: DEVELOPMENT OF OPERATIONAL REGULATIONS



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## Labour Hire Licensing Scheme Queensland

The *Labour Hire Licensing Act 2017 (LHL Act)* was passed by Queensland Parliament on 7 September 2017. The Queensland Labour Hire Licensing Scheme will commence on the 16 April 2018.

The LHL Act establishes a mandatory labour hire licensing scheme to protect labour hire workers and safeguard ethical and responsible labour hire providers. It will apply to all providers of labour hire services in Queensland. The scheme is intentionally broad and is intended to cover labour hire arrangements in all sectors and occupations.

A number of provisions of the LHL Act delegate to subordinate legislation to provide treatment or prescribe further details and information. This consultation paper addresses the operational aspects of the licensing scheme that will be prescribed in regulations.

The proposals in this paper have been developed bearing in mind the principles of best practice regulation and the need to minimise administrative burden under the scheme. Stakeholders are invited to provide detailed feedback on the proposals addressed in this consultation paper which will inform the development of the scheme. Feedback is also sought on any other proposals considered necessary or desirable in relation to the implementation of the labour hire licensing scheme.

Please provide written feedback that clearly indicates which parts of this paper your comments relate to. A template has been provided to assist your comments. This can be found at: <https://s3.treasury.qld.gov.au/files/Template-for-responses-consult-paper-1-FINAL.docx>

Submissions can be emailed to the Office of Industrial Relations at [labourhirereg@oir.qld.gov.au](mailto:labourhirereg@oir.qld.gov.au). Submissions will close on Friday 2 February 2018.

**All responses will be treated as confidential and will not be published.**

Please note: Defining the scope of the labour hire licensing scheme through regulations is not discussed in this paper. A separate consultation paper has been prepared to address this. The paper can be found at <https://www.treasury.qld.gov.au/fair-and-safe-work/industrial-relations/regulation-labour-hire-industry/consultation-labour-hire-licensing-act>

Further information on the LHL Act, including Frequently Asked Questions, is available at <https://www.treasury.qld.gov.au/fair-and-safe-work/industrial-relations/regulation-labour-hire-industry/>.

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

Section 13(3) of the LHL Act provides an extensive list of information required at application. This includes information about whether the business, to which the application relates, is financially viable (section 13(3)(c)(ii)).

It is proposed that financial viability for the labour hire scheme will be established if an applicant can show:

- the business is able to meet operating costs and expenses, or projected expenses for new businesses;
- workers can be paid promptly; and
- the business has the capacity to pay other obligations and entitlements such as tax and superannuation.

It is also proposed that applicants will be required to nominate documents which would demonstrate the financial viability of the business. They must produce these documents for vetting, auditing or if requested by the Chief Executive. These documents would need to be retained by the licensee for a period of at least three years after the person ceases to have a licence or longer period if required under other legislation. Also, some documents/evidence could be given a higher or lower weighting and there could be a minimum number of documents prescribed.

Documents or evidence which could be provided to demonstrate the financial viability of the applicant's business include:

- Independent auditor/accountant (i.e. not associated with the business) reports on viability of business
- Evidence of payments to Australian Taxation Office
- Evidence of payments to superannuation funds
- Evidence of payments to WorkCover Queensland
- Tax returns (within the last two financial years)
- Statement of financial position (may include projected if new business)
- Statement of profit and loss (may include projected if new business)
- Statement of cash flow (may include projected if new business)
- ATO self-assessment business viability
- Business plans
- Bank statements
- Evidence of a line of credit with bank
- Parent company or investor guarantees
- Public liability insurance/professional indemnity insurance
- Other relevant insurances e.g. insolvency insurance

### New businesses

It is proposed that a new business or businesses operating for less than one year be required to provide different information to establish financial viability. This requirement is intended to minimise risk associated with issuing licences to new businesses. This information could include:

- Business plan;
- Evidence of existence of a business bank account;
- Financial projections;
- Commercial lease agreement;
- Other business licence/accreditation; or
- Invoices, quotes and receipts issued within the last three months.

It is also possible that new businesses may be subject to conditions imposed under section 29 of the LHL Act. An example of a condition that could be applied for new businesses is a mandatory investigation/inspection of the business on a stated date or after a stated period of time. This approach could provide some comfort to established labour hire companies that new businesses are held to the same rigour of financial viability standards.

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.

## 2: Application – Compliance with the Work Health and Safety Act 2011 and the Workers Compensation and Rehabilitation Act 2003 (section 13(3)(c)(iii))

The LHL Act makes provision at section 13(3)(c)(iii) for an application to be accompanied by information about an applicant's compliance with the *Work Health and Safety Act 2011* (WHS Act) and the *Workers Compensation and Rehabilitation Act 2003* (WCR Act) over the last five years.

It is proposed that the regulations will prescribe that an applicant must declare the following information in relation to safety laws:

- Any conviction under a safety law in the last 5 years
- If the applicant has had an enforceable undertaking in the last 5 years
- If the applicant is a company, advise as to whether any of the directors of the company have been directors of any other company that has been convicted under a safety law in the last 5 years.

It is also proposed that the regulations further define safety laws as:

- *Electrical Safety Act 2002*,
- *Safety in Recreational Water Activities Act 2011*, and
- Corresponding state, territory or Commonwealth laws.

It is proposed that the regulations will prescribe that an applicant will demonstrate compliance with the WCR Act by declaring:

- If the applicant has an accident insurance policy under the WCR Act.
- If the applicant has had a prosecution against them, regardless of success.

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.

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

Section 27 of the LHL Act prescribes that the Chief Executive must also have regard to a person's history and ability to comply with relevant laws. Section 13(3)(c)(iv) of the LHL Act enables additional information requirements in relation to a person's fitness and propriety to be prescribed in the regulations. With reference to these provisions it is proposed that applicants will be asked about their compliance with other relevant laws, such as the *Fair Work Act 2009 (Cth)*.

Questions about compliance with the *Fair Work Act 2009 (Cth)* could be:

- Any incident of litigation, regardless of success, in the last 5 years.
- If the applicant has had an enforceable undertaking in the last 5 years.
- If the applicant has been issued a compliance notice in the last 5 years.
- If the applicant has been issued an infringement notice in the last 5 years.

It is also proposed that questions will be asked at application to establish a history and ability to comply with the *Migration Act 1958 (Cth)*. These questions could be in relation to an applicant's obligations about:

- employing workers who are legally able to work in Australia,
- specific subclass visas or programs (e.g. 457, Seasonal Workers Programs and Working Holiday Makers)
- 'labour agreements' under the *Migration Act 1958 (Cth)* to sponsor skilled workers
- any incident of litigation under the *Migration Act 1958 (Cth)* in the last 5 years,
- any Illegal Worker Warning Notices or Infringement Notices under the *Migration Act 1958 (Cth)* in the last 5 years.

Additional questions proposed in relation to the Seasonal Workers Program administered by the Department of Jobs and Small Business are:

- if the applicant is an approved employer under the Seasonal Worker Program, and
- if the applicant has, in the last 5 years, had a Deed of Agreement terminated by the Department of Jobs and Small Business due to a breach of Seasonal Worker Program requirements.

In addition to these specific relevant law questions, it is also proposed that a number of general questions relevant to the fitness and propriety (particularly history and ability to comply with relevant laws) will be asked of an applicant. Section 13(3)(c)(iv) of the LHL Act enables these additional information requirements to be prescribed.

It is proposed that the application process feature questions in regards to industry and location. These are proposed so that users and workers will be able to search by location and industry when looking for a licensed provider to use. This is also a requirement at reporting.

For industry, applicants will be asked to identify where they supply workers in (based on the two digit ANZSIC codes). For location, applicants will be asked to identify the regions in Queensland in which they supply workers in. It is currently proposed that there will be 11 regions (similar to the model mapped by the Department of State Development for Queensland regions) broken down into the current 78 local government areas.

Applicants will also be asked if they supply workers who have a visa. The regulations may define a visa as a working holiday visa (subclasses 417 and 462), regional sponsored migration visa (subclass 187), temporary work sponsored business (457 visas) and seasonal worker program (403 or 416 (discontinued) visas).

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.

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

Section 13(3)(c)(iv) of the LHL Act provides that an application may be accompanied by any other information, prescribed by regulation, or that the Chief Executive considers reasonable in deciding whether each applicant and the persons mentioned in section 15(a) of the LHL Act are fit and proper to provide labour hire services. Section 27(2) of the LHL Act also enables the Chief Executive to have regard to any other matter they consider necessary when deciding if a person is a fit and proper person to provide labour hire services.

It is proposed that regulations also prescribe that the Chief Executive may have regard to:

- 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.
- 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.
- 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.
- 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.

The fit and proper person test will be declaratory. It is proposed that all persons required to satisfy the fit and proper person test will need to keep a signed copy of the declaration. In addition, section 44 of the LHL Act enables the Chief Executive to make an inquiry about an applicant's criminal history for the purposes of determining whether they are fit and proper to provide labour hire services at any time during licence application or tenure.

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.

## 5: Reporting (sections 31 and 32)

Section 32(a) of LHL Act empowers regulations to be made in order to prescribe details of matters to be reported on as per section 31(2) of the LHL Act. The following additional details are proposed:

- If the use of accommodation is a precondition to receiving work with a provider, pursuant to sections 31(2)(h)(ii) of the LHL Act.
- The provision of any additional services (such as meals or transport or job finding services) and any associated fees charged, pursuant to section 31(2)(j) of the LHL Act.
- The region/local government area in which a provider supplies workers (consistent with the regional location approach proposed at application), pursuant to section 31(2)(g) of the LHL Act.
- The number of instances of supply and the total number of workers supplied by a licensee for a reporting period, pursuant to section 31(2)(d) of the LHL Act.
- If the licensee supplies workers who have a visa (including working holiday visas (subclasses 417 and 462), regional sponsored migration visas (subclass 187), temporary work sponsored business (457 visas) and seasonal worker program (403 and 416 (discontinued) visas)) and the country of origin of those workers.

In addition, under section 32(b) of the LHL Act it is proposed that a licensee may also be required to keep a register of accommodation if they provide accommodation to workers. It is proposed that while licensees would not be required to submit this register at reporting, they must declare that it exists. A licensee could be asked by an inspector or the Chief Executive to produce this register.

This register could detail:

- the names of the workers accommodation was provided to,
- the quantum of any respective fee or bond charged to workers for using accommodation,
- the type of residence provided (such as house, unit, apartment or caravan), and
- The number of rooms in the residence.

Please provide comments on:

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



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

The LHL Act requires that changes to certain information be notified to the Chief Executive within 14 days of it occurring (section 40 of the LHL Act). Regulations under section 40(1) of the LHL Act will only be prescribed for 'changes in circumstances' which have the potential to alter a persons' fitness and propriety, changes to the administrative details of the business published on the register under section 103 of the LHL Act, and accommodation. These are proposed to include:

- A change in criminal history where there has been a conviction of a serious criminal offence or offence of a relevant law.
- Insolvency or disqualification under *Corporations Act 2001 (Cth)*.
- Changes to the business's name or trading name; business's primary address; the licensee's name, address or phone number; nominated officers and contact phone numbers.
- If the personnel makeup of the business structure changes (e.g. new executive officers).
- If the licensee begins to provide accommodation, or becomes aware that accommodation is being provided to workers they enter into an arrangement with.
- If the licensee begins to supply workers who have a visa (including working holiday visas (subclasses 417 and 462), regional sponsored migration visas (subclass 187), temporary work sponsored business (457 visas) and seasonal worker program (403 and 416 (discontinued) visas).

Please provide comments on:

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

## 7: Public register of licences (section 103)

Section 103(2)(n) of the LHL Act enables any other matter to be listed on the public register as prescribed by regulation. The matters proposed for regulation seek to assist users, workers and providers of labour hire in using the register. It is proposed that the regulation prescribe the following matters to complement the list of legislated matters at section 103(2)(a)–(m) of the LHL Act:

- Whether the business's trading name differs from the business name.
- An additional address to be published where business address is also the residential address.
- If the licensee supplies visa workers.

Please provide comments on:

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

## 8: Record keeping (section 108)

Section 108 of the LHL Act provides that a regulation may provide for the keeping of records, including the form in which records are to be kept and the length of time that documents are to be kept.

It is proposed that labour hire businesses will be required to keep all records they declare for a minimum of 3 years or a longer period if required under relevant law (e.g. the Australian Taxation Office requires a person to keep evidence of a tax return for 5 years).

Please provide comments on:

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

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

Sections 13(c)(i), 18(2)(b) and 19(2)(b) of the LHL Act provide that the regulations may make provision for application, renewal and restoration fees. For the purposes of determining fee bands, it is proposed that the fees will be broken up into 3 classes of licence:

- Class 1 = under WorkCover Queensland premium threshold of \$1.5 million (or comparable to under \$1.5 million gross annual wages paid).
- Class 2 = WorkCover Queensland premium threshold of \$1.5 million and up to \$5 million reportable wages.
- Class 3 = over WorkCover Queensland premium threshold of \$5 million reportable wages/earnings.

For the purposes of renewal, application and restoration each class of licence will have the following fee:

- Class 1 = \$1000
- Class 2 = \$3000
- Class 3 = \$5000

Please provide comments on:

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

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

Section 102 of the LHL Act provides the Chief Executive with discretion to waive certain information requirements. This element of the scheme is delegated to policy rather than regulations. The Chief Executive may make a policy prior to commencement outlining which qualifications or other licences meet certain requirements of the scheme.

Consideration is being given to utilising this provision to waive certain aspects of the scheme, such as financial viability or fitness and propriety, for applicants who have already obtained a certification or authorisation of another recognized scheme. For example, if an applicant has obtained a licence under the *Security Providers Act 1993* this may be recognized as meeting some or all of the fit and proper person requirements as this licensing scheme has similar fit and proper benchmarks.

- Stakeholders have identified a number of accreditations and licences as of appropriate rigour for recognising certain information requirements of the Queensland labour hire scheme. These include:QBCC licence
- Registered Group Training Organisations
- Cleaning Accountability Framework
- RCSA Staff Sure Workforce Services Provider Certification
- Security providers licence

Please note that the LHL Act does not provide for mutual recognition. As such, no existing accreditations or licences will be recognised as fulfilling all requirements needed to obtain a labour hire licence in Queensland.

Consideration is also being given as to how to best recognise labour hire licences obtained in other Australian jurisdictions.

Please provide feedback on:

- The components of the listed accreditations and schemes which 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.