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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

REVISED EXPLANATORY STATEMENT

LABOUR HIRE LICENSING BILL 2020

**Presented by
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LABOUR HIRE LICENSING BILL 2020

Background

Several Australian inquiries have highlighted the vulnerability of labour hire workers to poor treatment at work, including underpayment, unauthorised deductions of wages, dangerous conditions of work and substandard accommodation.

On 20 September 2018, the then Minister for Employment and Workplace Safety gave a statement in the ACT Legislative Assembly in response to the Standing Committee on Education, Employment and Youth Affairs' final report of the *Inquiry into the Extent, Nature and Consequence of Insecure Work in the ACT*. In this statement, it was confirmed that while a national labour hire scheme was the ACT Government's preference, in the absence of movement to provide a comprehensive scheme at the national level, the ACT Government would licence labour hire activity in the Territory.

In the absence of a national labour hire licensing scheme, various labour hire licensing schemes have commenced in Victoria (*Labour Hire Licensing Act 2018*), Queensland (*Labour Hire Licensing Act 2017*) and South Australia (*Labour Hire Licensing Act 2017*).

Purpose of the Bill

The purpose of the ACT's Labour Hire Licensing Bill 2020 is to encourage responsible employment practices in the ACT labour hire sector. The Bill has been drafted to ensure that labour hire businesses operating in the ACT meet their workplace obligations and responsibilities to their workers.

Further, it will create a framework that is effective in preventing and responding to non-compliance with workplace standards in the labour hire industry by requiring:

- labour hire operators to be licensed;
- labour hire operators to pay a fee for the licence;
- disincentives for use of unlicensed labour hire operators;
- a 'suitable person' test to determine suitability for licensing; and
- licensees to demonstrate a history of, and ongoing compliance with, industry standards and workplace laws.

The Bill allows for the exemption of certain labour hire operators or classes of operations from the Territory scheme, or the declaration of certain operators or classes of operators to be covered by the scheme. It also includes a review mechanism for the operation of the new scheme.

Human Rights Considerations

This section provides an overview of the human rights which may be engaged by the Labour Hire Licensing Bill (the Bill), together with a discussion of the reasonableness of any possible limitations.

Section 28(1) of the *Human Rights Act 2004* (HR Act) provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act contains a framework that is used to determine the acceptable limitations that may be placed on human rights, specifically a number of relevant factors to be considered, including:

- the nature of the right affected;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Bill may be considered to engage the following rights under the HR Act:

- section 8 (Recognition and equality before the law);
- section 12 (Privacy and reputation);
- section 17 (Taking part in public life);
- section 21 (Right to a fair trial); and
- section 22 (Rights in criminal proceedings).

The Bill may also be considered to engage international human rights jurisprudence.

Section 8 (Recognition and equality before the law)

Section 8 (3) of the HR Act states that everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

The nature of the right affected

Clause 19 (2) provides that an appointed person to the Labour Hire Licensing Advisory Committee (the Committee) must be appointed for not longer than three years.

The importance of the purpose of the limitation

The purpose of the limitation is to ensure that the Committee membership is refreshed after three years, recognising that this is an appropriate time to allow for changes in environment, work priority and action areas, as well as changes in personnel within representative and peak bodies. Further, it facilitates a broad range of industries and interests to be represented through the Committee and enhances the ability of the Committee to remain contemporary with emerging employee and employer interests and labour hire priorities.

The nature and extent of the limitation

The limitation only applies to members appointed to the Committee by the Minister to represent employer and employee interests. There will be six people in total: three representing employers and three representing employees.

The relationship between the limitation and its purpose

The limitation is responsive to the Government's policy on periodically refreshing the membership of advisory councils and committees. Members will have the opportunity to serve two terms, if they are renominated by the relevant peak body after serving their first term.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The limitation under the Bill is considered to be the least restrictive means of ensuring the effectiveness of the purpose of the Bill and the effectiveness of the Committee.

Section 12 (Privacy and reputation)

Section 12 of the HR Act protects the right of individuals not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. It further provides to protect the right of individuals not to have their reputation unlawfully attacked.

The nature of the right affected

The Bill sets out the obligations of Territory labour hire providers to include provisions to require that a person must not provide labour hire services unless the person holds a labour hire licence. Further, a person must not enter into an arrangement for the provision of labour hire services unless the proposed provider is the holder of a licence. The new requirements will apply to all providers and users, including providers that are based interstate but supply labour hire workers in the Territory.

The Bill sets out the foundation and technical requirements for establishing licensed labour hire in the Territory. Under the Bill, the licence provisions may lawfully require providers seeking to obtain a licence in the Territory to provide information about the entity so that the Commissioner may decide whether an applicant is a suitable person to hold a licence. This consideration may include:

- the applicant’s character, integrity and professionalism;
- whether the applicant has a history of compliance with labour hire industry laws, or is able to demonstrate an ability to comply with labour hire industry laws;
- whether the applicant has previously held a licence that has been cancelled or suspended;
- whether the applicant has been convicted of an offence against a labour hire industry law; or
- whether the applicant is under the control of, or is substantially influenced by, another person considered to not be a suitable person to provide labour hire services.

Once a licence is issued, the Commissioner is required under section 31 of the Bill to keep records of the licensee on a register, including:

- the licensee’s registered business name;
- the trading name – if different from the business name;
- the licensee’s ABN or ACN;
- the expiry date for the licence; and
- any condition on the licence.

In addition, information about the licensee that is relevant to the exercise of the functions of a responsible entity may be disclosed if appropriate under section 74.

Section 50 of the Bill also allows, in certain circumstances connected to its enforcement, entry onto premises that are open to the public, by consent or if necessary because of a serious and immediate reason or under a warrant. This may include a residential premise where the premise is being used to operate a labour hire business.

The importance of the purpose of the limitation

The purpose of the Bill is to encourage responsible employment practices in the ACT labour hire sector and ensure that labour hire businesses operating in the ACT meet their workplace obligations and responsibilities to their workers by creating a framework that is effective in preventing and responding to non-compliance. The Bill provides the Territory with a mechanism to satisfy itself that labour hire providers and users are looking after the health, safety and rights of workers. Information regarding a licensee allows the Territory to ensure that providers are complying with the conditions of the licence.

The nature and extent of the limitation

As indicated, the limitation will only apply to providers of labour hire workers to do work the Territory. In addition, the *Information Privacy Act 2014* will apply to any of the information collected under the Bill and, as such, the Territory Privacy Principles would apply to that information being personal information with regards to any disclosure.

Section 74 establishes information sharing provisions that are necessary for the effective enforcement and intelligence gathering for the purposes of compliance. Under this provision, information may be shared for the purposes of a function of a responsible entity that it is disclosed to. A *responsible entity* is an entity that is responsible for the administration of a workplace law or standard or a labour hire law. This allows the Labour Hire Commissioner to provide information for compliance purposes to other regulators such as the Office of the Work Health and Safety Commissioner in the ACT, who is responsible for enforcing the Territory's work health and safety laws, and the relevant Labour Hire Authority in Victoria or the Office of Industrial Relations in Queensland, responsible for regulating labour hire schemes in those jurisdictions.

The sharing of information is limited to its relevance to a function of the responsible entity and its appropriateness. In this way, the information must be assessed and considered before it is provided to determine that it is being provided as required under section 74. Such considerations would, in addition to relevance, include considerations of privacy and the principles of disclosure under the *Information Privacy Act 2014*.

The ability of an authorised person to enter premises under section 50 is limited by the operation of part 7. In particular, entry may only be exercised by an authorised person under the Bill who is bound to behave in a manner consistent with their function as an authorised officer to investigate non-compliances under the scheme. In addition, authorised officers are only able to enter premises:

- in relation to subdivision 7.2.3, if a warrant has been issued by a Magistrate and requires the Magistrate to be satisfied that there are reasonable grounds to suspect:
 - that activities are being engaged in connection with an offence under the Act; and
 - those activities are occurring at the premise;
- in relation to section 50 (1)(c), entry is only permitted by an authorised person to residential premises that are used for the operation of a labour hire business (i.e. they are also a workplace for the purpose of the business) and there is a serious or immediate need for the entry.

Given the limitations on when entry may occur at a premise, it is clear that this function may only be exercised where there is a clear need for entry to investigate non-compliance in the labour hire industry.

The relationship between the limitation and its purpose

The Bill is aimed at ensuring that labour hire providers operating in the Territory are complying with their obligations with respect to workplace standards and requirements, including the rights, health and safety of its workers. The information required to assess an individual's suitability to hold a licence, and the information required for the licence register, is necessary to ensure the effectiveness of the Bill by facilitating communication and engagement between those with a legislative duty in respect of the workplace and the Territory.

Specifically, in relation to information sharing under section 74 of the Bill, it is applied in a regulatory context where the licensing scheme establishes two principles. Firstly, the suitability of a person (the labour hire provider) to hold a licence and secondly, mutual recognition principles with other jurisdictions that also have a labour hire licensing scheme.

The Bill itself establishes a need for communication and information sharing between regulatory bodies to ensure effective compliance with workplace laws. Compliance with workplace laws is a key component of a labour hire provider's eligibility for a licence and there are regulatory bodies that are responsible for enforcing compliance with those laws. Where the Labour Hire Commissioner becomes aware of a suspected breach of those laws it would be expected that the Commissioner can communicate with the relevant authority about that breach. This is necessary because the powers of the Labour Hire Commissioner extend only to the regulatory actions and offences they may prosecute under the Bill. It does not extend to the prosecution of breaches under other workplace laws.

Given the scheme allows for mutual recognition with jurisdictions that have labour hire laws in the determination of suitability under section 28 (3), it is necessary for there to be communication between the relevant regulatory authorities for the effective enforcement of these laws in each jurisdiction.

Powers of entry are necessary to support an effective compliance and enforcement framework under the regulatory scheme established by the Bill. Importantly, they allow authorised persons to investigate non-compliances with the scheme. The circumstances in which these powers can be exercised are clearly in response to achieving the purpose of the Bill to encourage responsible practices by labour hire providers and ensuring our workers are afforded the workplace standards enshrined in our laws.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The limitation under the Bill is considered to be the least restrictive means of ensuring the effectiveness of the purpose of the Bill and is reasonably justified on the basis that it:

- will only apply to those applying for a licence to provide labour hire in the ACT;

- the *Information Privacy Act 2014* will apply to the collection and use of the information;
- providers who choose to work in the Territory, and those using labour hire, will be expected to know about their obligations and requirements under the labour hire licensing scheme; and
- powers of entry are necessary enforcement tools that have strict limitations on their use, and in relation to a residential premise are confined to a serious or immediate need for entry where the residence is the labour hire business' place of operation or in relation to an offence.

Section 17 (Taking part in public life)

Section 17 of the HR Act states that every citizen has the right, and is to have the opportunity, to have access, on general terms of equality, for the appointment to the public service and public office.

The nature of the right affected

Clause 11 of the Bill provides that the Commissioner must not have paid employment that is inconsistent with the functions of the Commissioner. Further, it provides that the Commissioner must not engage in any unpaid activity that is inconsistent with the functions of the Commissioner.

The importance of the purpose of the limitation

The purpose of this section is:

- consistent with the nature of the Commissioner's role, to ensure that any other paid employment of the Commissioner does not interfere with the Commissioner's ability to perform their functions; and
- ensures the independence and impartiality of the Commissioner in performing the functions of the Office and the regulator.

The nature and extent of the limitation

While this requirement has the effect of preventing the Commissioner from engaging in some forms of other paid employment, it is not without precedent and would only apply to prevent other paid employment if that employment was inconsistent with the independent regulatory functions of the Commissioner. For example, section 25 of the *Director of Public Prosecutions Act 1990* applies a similar restriction on the Director of Public Prosecutions and a similar requirement for the approval of secondary employment exists for any public servant under section 244 of the *Public Sector Management Act 1994*.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

Given the role of the Commissioner in exercising the functions of the office and the regulator under the proposed labour hire scheme, it is reasonable to expect that they will be able to direct their attention to performing that role. Clause 11 of the Bill is considered to be the least restrictive means of achieving this objective.

Section 21 (Right to a fair trial) and Section 22 (Rights in criminal proceedings)

Section 21(1) of the HR Act states that everyone has the right to have criminal charges, and rights and obligation recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 22 (1) of the HR Act states that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

The nature of the right affected

The right to a fair trial includes all proceedings in a court or tribunal and all stages of proceedings. It is concerned with procedural fairness: the right of all parties in proceedings to be heard and respond to any allegations, and the requirement that the court be unbiased and independent. The nature of the right may be absolute in itself, in that it can never be justified to hold an unfair trial, but many of the principles that characterise a fair trial are not absolute.

Division 4.2 of the Bill provides for offences and penalties for providing labour hire services without a licence; a breach of labour hire licence condition; and engaging an unlicensed labour hire service provider. The Bill provides for maximum penalties for a breach of these clauses.

Rights in proceedings are not considered non-derogable and are capable of being subject to reasonable limitations, demonstrably justified in a free and democratic society, pursuant to section 28 of the HR Act.

The Bill also introduces three strict liability offences under sections 48, 57 and 59. Strict liability offences engage the right to be presumed innocent by removing the fault elements of an offence which, in turn, requires the defendant to prove mistake of fact – a defence to all ACT offences under the *Criminal Code 2002* (the Code) or other defences available under the Code for strict liability offences. Strict liability can be reasonably justified in certain circumstances:

- strict liability offences should only be used where a person knows, or ought to know, their legal obligations;
- strict liability offences must be relevant, rational and proportionate to their objective; and

- examples of where strict liability offences are considered to be appropriate include regulatory regimes, such as a new labour hire licensing scheme, to support the integrity of the legislation, and where offences are minor with no custodial penalty.

The importance of the purpose of the limitation

Allowing for penalties for providing labour hire services without a licence; a breach of a labour hire licence condition; or engaging an unlicensed labour hire service provider will support the objective of integrity in the labour hire sector. It will encourage responsible practices in the ACT labour hire industry and will assist in creating a framework that is effective in preventing and responding to non-compliance with workplace standards in the labour hire industry.

The nature and extent of the limitation

The penalties involve minimal limitation on protected rights and these limitations will only apply in specific circumstances, namely a person who provides labour hire services without a licence; falsely represents that they hold a licence; breaches a condition of the labour hire licence; and/or enters into an arrangement for the provision of labour hire services unless the proposed provider is the holder of a licence.

Further, penalties will not apply to a person who enters into an arrangement for the provision of labour hire services unless the proposed provider is the holder of a licence if the provider was included in the labour hire licence register at the time the arrangement was entered into; or if the person has a reasonable excuse for entering into the arrangement.

The strict liability offences applied under section 48, 57 and 59 are:

- where an authorised person ceases to be an authorised officer and does not return their identity card as soon as practicable or not within 7 days – this offence is determined by objective facts and in the context of a regulatory scheme where authorised officers responsible for investigating non-compliances with the Act should know their obligations as an authorised person;
- where evidence seized is interfered with without the authority of an authorised person; and
- where a person does not give their name and address as required under section 58.

While these offences are necessary to support the integrity of the regulatory scheme, these are minor offences under the Bill and all impose a penalty of 50 penalty units or less.

The relationship between the limitation and its purpose

The overarching intent of the offences and penalties in the Bill is to protect labour hire workers from poor treatment at work.

In particular, the strict liability offences applied under the Bill are applied in circumstances where the obligations are or should be known and support the objectives of the Bill by:

- ensuring a person cannot continue to purport to be an authorised person under the Act if their authorisation ceases;
- ensuring evidence seized in relation to an offence under the Act is preserved; and
- ensuring the proper investigation of non-compliance under the Act, this is particularly important in an industry that engages many vulnerable and migrant workers.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The limitation under the Bill is considered to be the least restrictive means of ensuring the effectiveness of the purpose of the Bill.

Section 35 of the Bill (Engaging unlicensed labour hire service provider)

Section 22 (2) of the HR Act provides that everyone charged with a criminal offence is entitled to a number of minimum guarantees, equally with everyone else.

It is also recognised that civil penalty regimes, while often part of a regulatory scheme, may engage human rights in relation to criminal processes where they can be characterised as criminal.

The nature of the right affected

Clause 35 (3) of the Bill provides that if a person enters into an arrangement for the provision of labour hire services and that provider does not hold a labour hire licence, there is a civil penalty of up to a maximum of 800 penalty units for an individual or 3,000 penalty units for a corporation.

The importance of the purpose of the limitation

The purpose of clause 35 (3) of the Bill is to support the integrity of the proposed labour hire scheme in the Territory by providing a civil penalty that will be an appropriate disincentive. Allowing unlicensed labour hire providers to operate in the ACT would undermine the effectiveness of the scheme.

The nature and extent of the limitation

The following key principles have been applied when considering the level and nature of the civil penalty:

- it will not be applied where the user had a 'reasonable excuse' for entering into a labour hire arrangement;

- a publicly available register will be maintained to ensure that businesses and individuals using labour hire providers are easily able to ascertain who is a licensed provider; and
- it is intended to apply a financial disincentive on using unlicensed labour hire and is not subject to a period of imprisonment.

The Parliamentary Joint Committee on Human Rights' *Offence Provisions, Civil Penalties and Human Rights Guidance Note 2* – has been carefully considered during the drafting process and is not considered to be criminal in nature. In considering the factors that may be used to characterise a penalty as criminal, the following factors have been considered in characterising the offence as a civil penalty:

- the nature of the penalty is to apply as a regulatory disincentive on conduct that would affect the integrity of the scheme;
- it is a financial disincentive that does not impose imprisonment;
- its application is limited to those that use labour hire;
- safeguards and protections have been incorporated to ensure that the regulatory disincentive will only apply where there is no reasonable excuse for entering into a labour hire arrangement; and
- mechanisms have been taken to ensure that users will be able to easily identify who is and who isn't licenced to provide labour hire services in the ACT.

When considering 'reasonable excuse' in the regulatory context of the civil penalty applying under section 35(3), a respondent would have to prove the existence of a 'reasonable excuse'. However, the onus would still be on the applicant to prove each element of the civil penalty provision, including the fact the user did not have a 'reasonable excuse' for entering into a labour hire arrangement with an unlicensed provider. In this context, while those labour hire providers that are licensed will be listed on a public register, there may be circumstances where a user is not aware that the services they are being supplied with are part of a labour hire arrangement and there is no visible material to suggest that they are.

A reasonable excuse would also be considered to extend to circumstances where a labour hire worker is engaged by an individual to perform domestic work at a domestic residence that is not related to a business or undertaking of the individual. In such circumstances that are for domestic purposes only, it is reasonable to expect that the individual may be unaware that they have engaged a labour hire worker.

Similar safeguards invoking a reasonable excuse are provided for in Territory legislation, e.g. s147 (2) of the *Work Health and Safety Act 2011* which provides that civil penalties do not apply *if the person reasonably believes the doing of the thing is authorised*.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

Due to the lack of alternatives in providing for disincentives for engaging unlicensed labour hire providers in order to preserve the integrity of the scheme, clause 35 (3) of the Bill is considered to be the least restrictive means of achieving the objective of the Bill.

Climate Change Vulnerability Assessment

There are no climate change implications associated with the Bill.

Labour Hire Licensing Bill 2020

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides the name of the Act as the *Labour Hire Licensing Act 2020* (the Act).

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act is to commence on a day fixed by the Minister by written notice. The Act will automatically commence 12 months after the day it is notified if no written notice is made earlier by the Minister.

Clause 3 Dictionary

This clause inserts definitions for the purposes of the Act into the Act's dictionary at the end of the Act.

Clause 4 Notes

This clause provides that any note included in the Act is explanatory and is not part of the Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause provides that the Criminal Code chapter 2 applies in relation to all offences against the Act. The *Legislation Act*, s133 applies in relation to the meaning of penalty units expressed in the Act.

Part 2 Objects and important concepts

Clause 6 Objects of Act

This clause provides that the objects of the Act are to:

- protect workers from exploitation by providers of labour hire services;
- ensure labour hire service providers meet their workplace obligations and responsibilities to the workers they supply;
- promote the integrity of the labour hire services industry; and
- promote responsible practices in the labour hire services industry.

The clause further provides that the objects of the Act are achieved by:

- establishing a licensing scheme to regulate the provision of labour hire services; and
- establishing a register of labour hire licence holders.

Clause 7 Meaning of labour hire services

This clause defines the term ‘labour hire services’. It states that a person (a provider) provides labour hire services if, in the course of carrying on a business, the person supplies to another person (the hirer) a worker to do work. A worker is supplied by a provider when the worker starts to do work for the hirer. The provider provides labour hire services regardless of whether the worker is employed by the provider; there is a contract for the worker to do the work; the worker is supplied to the hirer directly or indirectly; or the work completed by the worker is under the control of the provider or hirer.

The clause further provides when a person does not provide labour hire services just because a person is a contractor who enters into a construction contract to carry out construction work, or if the person is prescribed by regulation.

A broad definition has been used to define labour hire services. Labour hire arrangements are chosen for a range of reasons and this meaning of the term ‘labour hire services’ will ensure that the industry, as a whole, will be required to meet their workplace standards – from worker entitlements to work health and safety obligations to tax obligations.

Clause 8 Meaning of worker

This clause defines the term ‘worker’. It states that an individual is a worker for the provider if the individual enters into an arrangement with the provider under which the provider may supply, to another person, the individual to do work; and the provider is obliged to pay the worker, in whole or part, for the work; either directly or indirectly.

The clause further provides that the Minister may declare that a person is or is not a worker and that this declaration is a disallowable instrument.

A broad definition has been used to define the meaning of worker to ensure all workers within the labour hire industry are protected.

Part 3 Labour hire licence commissioner and committee

Division 3.1 Appointment of commissioner

Clause 9 Appointment of Commissioner

This clause provides that the Minister must appoint a person as the Labour Hire Licence Commissioner.

The clause further provides that the Minister must not appoint a person as the Commissioner unless satisfied that the person has the necessary experience and expertise to carry out the Commissioner's functions. The appointment is a notifiable instrument and the agreed conditions of appointment are subject to any determination under the *Remuneration Act 1995*. If a Commissioner is not appointed under the Act then the Commissioner is the Work Health and Safety Commissioner appointed under schedule 2, part 2.2 of the *Work Health and Safety Act 2011*.

Clause 10 Functions of Commissioner

This clause provides for the functions of the Commissioner which are:

- to promote an understanding and acceptance of, and compliance with, this Act;
- to promote the integrity of the labour hire industry;
- to undertake research and develop educational and other programs for the purpose of enabling licensees to comply with the Act;
- to advise the Minister on any matter relevant to the operation of the Act; and
- any other function given to them under the Act or another territory law.

Clause 11 Independence of Commissioner

This clause provides that the Commissioner must act independently in relation to the exercise of a function under this Act or another territory law under which the Commissioner exercises a function. However, the Minister may, in writing, give directions to the Commissioner in relation to the exercise of the Commissioner's functions. Any direction must be of a general nature and must not direct the Commissioner in relation to a particular complaint, licensee or regulatory action.

The clause further provides that the Minister must present a copy of any direction to the Legislative Assembly within five sitting days after the day it is given to the Commissioner.

Providing for the independence of the Labour Hire Licensing Commissioner will ensure the integrity of the scheme is maintained.

Clause 12 Disclosure of interests

This clause provides that the Commissioner must give the Minister a written statement of their personal and financial interests within seven days after the day the Commissioner is appointed.

The clause further provides that the Commissioner must provide a further written statement within seven days after the first day of each financial year and within seven days after the day there is any change in their personal and financial interests.

Clause 13 Commissioner must not do inconsistent work etc

This clause provides that the Commissioner must not have paid employment that is inconsistent with the Commissioner's functions, or engage in any unpaid activity that is inconsistent with the Commissioner's functions.

Clause 14 Ending appointment

This clause provides that the Minister may end a person's appointment as the Commissioner for the following reasons:

- a) misconduct;
- b) if the person becomes bankrupt or personally insolvent;
- c) if the person is convicted in the ACT of an offence punishable by at least one year's imprisonment; or
- d) if the person is convicted outside of the ACT, in Australia or elsewhere, of an offence that – if it had been committed in the ACT – would be punishable by imprisonment of at least one year.

The clause further provides that the Minister must end the Commissioner's appointment for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

Clause 15 Arrangements for staff and facilities

This clause provides that the Commissioner may arrange with the ACTPS Head of Service to use the services of a public servant or Territory facilities.

Clause 16 Engagement of consultants and contractors

This clause provides that the Commissioner may engage an approved auditor, consultants and contractors that are necessary or convenient to exercise the Commissioner's functions.

The clause further provides that any conditions of engagement are agreed between the Commissioner and the consultant or contractor.

The clause further provides that the Commissioner does not have the power to enter into a contract of employment with the consultant or contractor.

An approved auditor means an auditor approved under the *Government Procurement Act 2001*.

Clause 17 Independence of commissioner's staff

This clause provides that in relation to functions under the Act, or another territory law under which the Office exercises a function, a member of the Commissioner's staff is not under the direction of anyone except the Commissioner or another member of the Commissioner's staff who is authorised by the Commissioner to give directions.

Commissioner's staff means a public servant, consultant or contractor engaged by the Commissioner.

Clause 18 Delegation of functions

This clause provides that the Commissioner may delegate their functions under the Act, or another territory law under which the Commissioner exercises a function, to a member of the Commissioner's staff.

Division 3.2 Labour hire licensing advisory committee

Clause 19 Establishment of committee

This clause provides for the establishment of the Labour Hire Licensing Advisory Committee (the Committee).

Clause 20 Functions of committee

This clause provides that the functions of the Committee are to advise the Minister about matters relating to the operation of the Act and, if required by the Minister, anything else in relation to labour hire services.

Clause 21 Membership of committee

This clause provides that the Committee will consist of the Commissioner, three members appointed by the Minister to represent the interests of employers, and three members appointed by the Minister to represent the interests of employees.

The clause further provides that a person cannot be appointed to the Committee for longer than three years.

The clause further provides that the Minister must appoint a chair from the members of the Committee and that the Commissioner is a non-voting member of the Committee.

The purpose of this clause is to provide a balanced representation on the Committee to facilitate the consideration of issues within the labour hire industry.

Clause 22 Procedures of committee

This clause provides that the Committee may conduct its proceedings as it considers appropriate, including when and where. The Committee may also publish its considerations as it considers appropriate.

Part 4 Labour hire licenses

Division 4.1 Licenses generally

Clause 23 Requirement to hold labour hire licence

This clause provides that a person must not provide labour hire services unless the person holds a labour hire licence.

Clause 24 Application for licence

This clause provides that a person must apply to the Commissioner for a licence. The clause further provides that an application must be in writing and must include any information prescribed by regulation.

Clause 25 Commissioner may request more information

This clause provides for when the Commissioner may, by written notice, require an applicant for a licence to provide more information. The clause further provides that failure to comply with a requirement under this clause may result in the Commissioner refusing to consider the application further. The effect of a refusal to consider the application further would be considered to be a refusal of the Commissioner to grant a licence.

Clause 26 Change of information must be provided

This clause provides that if the information in an application for a licence changes before the application is decided, the applicant must give the Commissioner written notice of the details of the change.

Clause 27 Issue of licence

This clause provides that if a person applies for a licence, the Commissioner must, within a reasonable period, issue the licence or refuse to issue the licence.

The clause further provides that the Commissioner may issue the licence only if satisfied that the applicant is a suitable person to hold the licence.

Mutual recognition is applied in relation to who is a suitable person under section 28, in the case of an applicant who holds a licence under a labour hire law in another state or jurisdiction they are a suitable person unless the licence in the other jurisdiction is the subject of regulatory action under another law.

The proposed mutual recognition provisions do not affect the auditing, compliance or enforcement matters relating to the operation of the Act.

Clause 28 Who is a *suitable person*?

This clause provides for whether an applicant is a suitable person to hold a licence. The Commissioner must consider:

- the applicant’s honesty, integrity and professionalism;
- whether the applicant has a history of compliance with workplace laws or standards or is able to demonstrate an ability to comply with workplace laws or standards;
- whether the applicant has previously held a licence that has been cancelled, suspended, or for which conditions have been imposed;
- whether the applicant has been convicted of an offence against workplace laws or standards or another law that affects the applicant’s suitability to provide labour hire services;
- whether the applicant has been the subject of regulatory action under workplace laws or standards;
- if the applicant, as an individual, has been an insolvent under administration under the Corporations Act, section 9; or whether a corporation has been placed into administration, receivership or liquidation while the applicant, as an individual, was an executive officer of the corporation; or whether the applicant, as an individual, has been disqualified from managing corporations under the Corporations Act; and
- whether the applicant is under the control of, or is influenced by, another person who is not considered to be a suitable person to provide labour hire services.

Under this clause, the applicant is a suitable person if the applicant holds a licence under another labour hire law and the licence is not the subject of any regulatory action under that law.

The clause further provides that the Commissioner may also consider any other matter the Commissioner considers relevant and any matter prescribed by regulation.

The clause further provides a definition for an ‘influential person’ for a corporation. It means an executive officer of the corporation or a person who may exercise a relevant

power in relation to the corporation; a related corporation; or an executive officer of a related corporation.

The clause further provides a definition for ‘related corporation’. It means a related body corporate under the Corporations Act.

The clause further provides a definition for ‘relevant power’ for a corporation. It means a power to take part in a directorial, managerial or executive decision for the corporation; or elect or appoint a person as an executive officer in the corporation; or exercise a significant influence in relation to the conduct of the corporation.

The purpose of a suitable person test is to assess the likelihood that a provider will comply with workplace laws and will treat workers fairly.

Clause 29 Licence – conditions

This clause provides that a labour hire licence includes a condition that the licensee must comply with the Act and any other condition the Commissioner imposes when the licence is issued. It is also a condition that the licensee must not contravene workplace laws or standards and that the licensee must notify the Commissioner of any regulatory action taken against the licensee under a labour hire law.

Clause 30 Licence – period

This clause provides that a labour hire licence starts on the day stated in the licence. The clause further provides that the Commissioner must not issue a licence for longer than 12 months – or any longer period prescribed by regulation – and that the licence expires on the day stated on the licence.

Clause 31 Labour hire licence register

This clause provides that the Commissioner must keep a register and that the register must include:

- the licensee’s registered business name;
- the business trading name – if different from the registered name;
- the licensee’s ABN or ACN;
- the expiry date for the licence;
- any condition on the licence; and
- any other details prescribed by regulation.

The clause further provides that these details must be available for public inspection and that the Commissioner may correct a mistake, error or omission in the register.

The other details allowed to be prescribed by regulation allow flexibility to consider in the future whether any other details are required primarily for users of labour hire workers to ensure they know who is licensed and the status of the licence.

Clause 32 Licensee must update details

This clause provides that if, to the knowledge of a licensee, any of the information provided in an application changes, the licensee must tell the Commissioner in writing within seven days.

The clause further provides for a maximum penalty of 50 penalty unit for non-compliance with this obligation.

Division 4.2 Offences and penalties

Clause 33 Providing labour hire services without licence

This clause provides that a person commits an offence if the person provides labour hire services and does not hold a labour hire licence.

The clause further provides for a maximum penalty of 800 penalty units for an individual or 3,000 penalty units for a corporation for non-compliance.

The clause further provides that a person commits an offence if the person falsely represents that they hold a labour hire licence.

The clause further provides for a maximum penalty of 200 penalty units for non-compliance.

Clause 34 Breach of labour hire licence condition

This clause provides that a person commits an offence if that person holds a labour hire licence that is subject to a condition and the person fails to comply with the condition.

The clause further provides for a maximum penalty of 200 penalty units for non-compliance.

Clause 35 Engaging unlicensed labour hire service provider

This clause provides that a person must not enter into an arrangement for the provision of labour hire services to a person unless the proposed provider of the labour hire services is the holder of a licence.

The clause further provides that this does not apply if the provider was included in the register under section 31 as the holder of a labour hire licence at the time the arrangement was entered into, or if the person has a reasonable excuse for entering into the arrangement.

The clause further provides for a maximum penalty of 800 penalty units for an individual or 3,000 penalty units for a corporation for non-compliance of this.

The purpose of imposing a financial penalty on users of unlicensed labour hire providers is crucial within a regulatory licensing scheme to ensure that labour hire providers do not continue to operate unlicensed.

Part 5 Compliance auditing

Clause 36 Complaints about labour hire licensees

This clause provides the framework for actions to be taken by the Commissioner if a complaint is received in relation to a licensee. The Commissioner must:

- investigate the claim; or
- if the complaint relates to a failure to comply with a workplace law or standard, must refer the complaint to the authority responsible for administering that law or standard; or
- take no action if they believe the complaint lacks substance, is frivolous, was not made in good faith or has been adequately dealt with.

The Commissioner must also deal with the complaint in accordance with any guideline under section 37 and give written notice of the action taken unless the complainant has not provided contact details.

Clause 37 Complaints guidelines

This clause provides that the Minister may determine guidelines for how a complaint about a licensee must be dealt with.

The clause further provides that any complaints guideline is a notifiable instrument.

Clause 38 Licensee must provide information about compliance

This clause provides that the Commissioner may request, in writing, that a licensee provides information about the licensee's compliance with this Act within a stated reasonable period on receiving a complaint about the licensee or on the Commissioner's own initiative. The information requested must be provided by the licensee within any stated period.

This clause makes it clear that information provided under this section can only be used in regulatory action under part 6 or proceedings relating to regulatory action. This specifically relates to imposing or amending a condition on the labour hire licence; suspending the labour hire licence for either a fixed period, or until a particular event happens; disqualifying

the labour hire licensee from applying for another licence for a fixed period, or until a particular event happens; or cancelling the labour hire licence. The provisions do not abrogate common law privileges, such as self-incrimination. They ensure that these are maintained and restricts the use of any information that might be obtained by the Commissioner that is self-incriminating.

Part 6 Regulatory action

Clause 39 Meaning of *regulatory action* – pt 6

This clause provides that regulatory action means any of the following actions:

- imposing or amending a condition to the licence;
- suspending the licence for either a fixed period, or until a particular event happens;
- disqualifying the licensee from applying for another licence for a fixed period, or until a particular event happens;
- cancelling the licence.

Enforcement mechanisms are critical to ensuring the integrity of the scheme and that its objectives are met.

Clause 40 When regulatory action may be taken

This clause provides that the Commissioner may take regulatory action against a licensee only if satisfied on reasonable grounds that the licensee:

- stopped operating the business that is subject of the licence; or
- used false or misleading information to obtain the licence; or
- contravened a condition of the licence; or
- fails to give the Commissioner information requested under section 36; or
- failed to comply with a provision of the Act; or
- is no longer a suitable entity to hold a licence; or
- contravened a workplace law or standard.

Clause 41 Notification of proposed regulatory action

This clause provides that before the Commissioner takes regulatory action against a licensee, the Commissioner must give the licensee a written notice stating the grounds under section 40 on which they consider regulatory action may be taken; details of the proposed regulatory action; and that the licensee may, not later than 14 days after the day

the licensee is given the notice, give a written submission to the Commissioner about the proposed regulatory action.

The clause further provides that the Commissioner must consider any written submission received in response to the show cause notice when making a decision to take regulatory action against the licensee.

Clause 42 Taking regulatory action

This clause provides that if the Commissioner, after complying with section 41, is satisfied on reasonable grounds that it is appropriate to take regulatory action, the Commissioner may:

- if the proposed regulatory action is imposing or amending a condition on a licence – impose or amend the condition; or
- if the proposed regulatory action is suspending a licence – take any of the following action:
 - impose or amend a condition on a licence;
 - suspend the licence for a period; or
- if the proposed regulatory action is disqualifying a licensee from applying for a further licence – take any of the following action:
 - impose or amend a condition on a licence;
 - suspend the licence for a period;
 - disqualify the licensee from applying for a further licence for a period; or
- if the proposed regulatory action is cancelling a licence – take any of the following action:
 - impose or amend a condition on a licence;
 - suspend the licence for a period;
 - disqualify the licensee from applying for a further licence for a period;
 - cancel the licence.

A decision under this subsection is a reviewable decision.

The clause further provides that before taking regulatory action against a licensee under this section, the Commissioner must tell the licensee by written notice of the regulatory action to be taken and the day on which the regulatory action takes effect.

The clause further provides that regulatory action takes effect against the licensee on the day stated in the notice of regulatory action.

The clause further provides that proposed regulatory action means regulatory action mentioned in a show cause notice given to the person under section 41 (1).

Clause 43 Not taking regulatory action

This clause provides that if a written submission is made in response to the show cause notice under section 41(2), and the Commissioner is satisfied on reasonable grounds that regulatory action against the licensee may not be taken, or may be taken but is not appropriate, the Commissioner must give the licensee written notice telling the licensee that regulatory action will not be taken in relation to the matters raised in the show cause notice.

Clause 44 Regulatory action in another jurisdiction

This clause provides that if a licensee holds a licence under another labour hire law in another state or territory, and if regulatory action is proposed or taken in respect of that other licence, then the licensee must tell the Commissioner of the proposed or taken action, and the day on which regulatory action takes effect, as soon as possible after the licensee becomes aware of the action.

Clause 45 Effect of suspension

This clause provides that if the Commissioner suspends the licence, the licensee is taken not to hold the licence during the suspension.

Part 7 Enforcement

Division 7.1 Preliminary

Clause 46 Definitions – pt 7

This clause provides for definitions under Part 7 which relate to enforcement. In this division, ‘connected’ is defined by a thing is ‘connected’ with an offence if:

- the offence has been committed in relation to it; or
- it will provide evidence of the commission of the offence; or
- it was used, is being used, or is intended to be used, to commit the offence.

This clause defines that ‘occupier’ of premises, includes:

- a person believed on reasonable grounds to be an occupier of the premises; and
- a person apparently in charge of the premises.

This clause defines that ‘offence’ includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

This clause defines that ‘premises’ includes land.

This clause defines that ‘warrant’ means a warrant issued under division 7.2.3 (Search warrants).

Division 7.2 Authorised people

Subdivision 7.2.1 Authorised people generally

Clause 47 Appointment

This clause provides that a public servant may be appointed as an authorised person for the Act.

Clause 48 Identity cards

This clause provides for the identification of authorised persons, by way of an identity card that states the person’s name and appointment as an authorised person which must show:

- a recent photograph of the authorised person;
- the date the card was issued;
- the card’s expiry date; and
- anything else prescribed by regulation.

The clause further provides that a person commits an offence if that person stops being an authorised person and does not return the identity card within seven days after the person stops being an authorised person.

The clause further provides for a maximum penalty of 1 penalty unit for non-compliance of this.

The clause further provides that the penalty does not apply if the authorised person identity card is lost, stolen or destroyed by someone else.

The clause further provides that an offence against this section is a strict liability offence.

Clause 49 Authorised person must show identity card on exercising power

This clause provides that if an authorised person exercises a power – other than a power under section 54 – that affects an individual, the authorised person must first show an identity card to the individual.

Subdivision 7.2.2 Powers

Clause 50 Power to enter premises

This clause provides that for the purposes of the Act, an authorised person may:

- at any reasonable time, enter premises that the public is entitled to use or that are open to the public;
- at any time, enter premises with the occupier’s consent;
- at any time, enter premises if the authorised person believes on reasonable grounds that the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
- enter premises in accordance with a search warrant.

The clause further provides exceptions where entry is not authorised, such as to parts of the premises that are being used only for residential purposes, unless the premises are also the place from which a labour hire business is conducted.

The clause further provides that an authorised person may, without the consent of the occupier of the premises, enter land around the premises to ask for consent to enter.

The clause further provides that an authorised person may enter premises without payment of an entry fee or other charge.

The clause further provides that an authorised person may enter premises with necessary assistance and may enter premises with necessary assistance and force when in possession of a search warrant.

This clause defines that ‘necessary assistance’ includes the attendance of one or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their function.

Clause 51 Production of identity card

This clause provides that an authorised person, and any other person accompanying the authorised person who is not a police officer, may not remain at the premises entered if the authorised person does not produce their identity card when asked by the occupier.

Clause 52 Consent to entry

This clause provides that when seeking consent to enter premises under section 50(1)(b), an authorised person must produce their identity card and tell the occupier:

- the purpose of the entry;
- the reason for, and identity of, any other person accompanying the authorised person;
- that anything found and seized under this part may be used in evidence in court; and
- that consent may be refused.

The clause further provides that if the owner consents, the authorised person must ask the occupier to sign a written acknowledgement that the occupier was told the purpose of the entry; the reason for, and identity of, any other person accompanying the authorised person; that anything found and seized under this part may be used in evidence in court; and that consent may be refused.

The clause further provides that the authorised person must ask the occupier to sign a written acknowledgement that the occupier consented to the entry and the time and date when consent was given. If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

The clause further provides that a court must find that the occupier did not consent to entry to the premises by the authorised person under this part if:

- the question whether the occupier consented to the entry arises in a proceeding in the court; and
- an acknowledgement of consent for the entry is not produced in evidence; and
- it is not proved that the occupier consented to the entry.

Clause 53 General powers on entry to premises

This clause provides that an authorised person who enters a premises can do one or more of the following in relation to the premises or anything at the premises:

- examine anything;
- examine and copy, or take extracts from, documents relating to a contravention or possible contravention of this Act;
- take photographs, films or audio, video or other recordings;
- require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else that the occupier, or person at the premises, has access to that are reasonably necessary to exercise a function under this Act; and
- require the occupier, or anyone at the premises, to give the authorised person copies of documents that are reasonably necessary to exercise a function under this Act.

The clause further provides that a person takes all reasonable steps to provide reasonable help to exercise a power under this part and that there is a maximum penalty of 50 penalty units for non-compliance of this.

Clause 54 Power to obtain, inspect and copy records

This clause provides that an authorised person may, in writing, require a licensee, a bank or other financial institution that holds accounts for the licensee, or an accountant or bookkeeper engaged by a licensee, to produce documents or anything else that are reasonably required by the authorised person for the purposes of this Act.

The clause further provides that reasonable steps to comply with this requirement must be made.

The clause further provides for a maximum penalty of 50 penalty units for non-compliance of this.

Clause 55 Abrogation of privilege against self-incrimination

This clause provides that a person is not excused from answering a question or providing information or documents that are required if it incriminates the person or exposes them to a penalty.

The clause further provides that answering a question or providing information or documents is not admissible in evidence against the person in civil or criminal proceedings, other than for an offence arising out of the false or misleading nature of the answer, information or document.

Clause 56 Warning to be given

This clause provides that before requiring a person to comply with a requirement under section 53 or 54, an authorised person must warn the person that failure to comply constitutes an offence and the effect of abrogation of privilege against self-incrimination.

The clause further provides that it is not an offence for an individual to refuse to answer a question put by an authorised person or provide information or documents that might incriminate the person, unless the individual was first given the warning.

The clause further provides that nothing in this section prevents an authorised person from obtaining and using evidence given voluntarily.

Clause 57 Power to seize things

This clause provides that an authorised person who enters under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

The clause further provides that an authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

The clause further provides that an authorised person who enters a premises – whether with consent, under a warrant or otherwise – may seize anything at the premises, if satisfied on reasonable grounds that:

- the thing is connected with an offence against the Act; and
- the seizure is necessary to prevent the thing from being concealed, lost, destroyed, used to commit or continue or repeat the offence.

The clause further provides that having seized a thing, an authorised person may remove the thing from the premises where it was seized or leave the thing at the place of seizure but restrict access to it.

The clause further provides that a person commits an offence if that person interferes with a seized thing to which access has been restricted, and the person does not have an authorised person's approval to interfere with the thing.

The clause further provides for a maximum penalty of 50 penalty units for non-compliance of this.

The clause further provides that an offence against this subsection is a strict liability offence.

Clause 58 Direction to give name and address

This clause provides that if an authorised person believes on reasonable grounds that a person has committed, is committing, is about to commit an offence against the Act, or may be able to assist in the investigation of an offence against this Act, then the authorised person may direct the person to immediately provide their full name and home address.

The clause further provides that if the authorised person believes on reasonable grounds that these details are false or misleading, the authorised person may direct the person to immediately provide evidential proof. While section 59 makes the non-provision of evidential proof immediately a strict liability offence, a person is able to remedy the non-compliance by providing evidential proof within three days. Where the non-provision of evidential proof is remedied within three days the offence would not be applied under section 59.

The clause further provides that if the authorised person gives a direction to a person, they must tell the person that it is an offence if they fail to comply.

The clause further provides that if the authorised person gives a direction to a person, it must be given in a language or other way of communicating that the authorised person believes on reasonable grounds that the person is likely to understand.

Clause 59 Offence – fail to comply with direction to give name and address

This clause provides that a person commits an offence if the person fails to comply with a direction under section 58 – Direction to give name and address. An exception to the offence under this section applying would be if a person did not comply with section 58(3) but provided evidential proof within three days of the direction from the authorised person.

The clause further provides for a maximum penalty of 5 penalty units for non-compliance of this.

The clause further provides that an offence against this section is a strict liability offence, but this does not apply to a person if the authorised person, before giving the direction, did not produce the authorised person's identity card for inspection by the person, or tell the person that failure to comply with the direction.

Subdivision 7.2.3 Search warrants

Clause 60 Warrants generally

This clause provides that an authorised person may apply to a magistrate for a warrant to enter premises. The application must be sworn and state the grounds on which the warrant is sought.

The clause further provides that the magistrate may refuse to consider an application until the authorised person has given the magistrate all of the information the magistrate requires.

The clause further provides that the magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting there is a particular thing or activity connected with an offence against the Act, and the thing or activity is being engaged in at the premises or within the next 14 days.

The clause further provides that the warrant must state:

- that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part of the Act;
- the offence for which the warrant is issued;
- the things that may be seized under the warrant;
- the hours when the premises may be entered; and

- the date, within 14 days after the day of the warrant’s issue, when the warrant ends.

Clause 61 Warrants – application other than in person

This clause provides that an authorised person may apply for a warrant by phone, fax, radio, email, letter or other form of communication, if the authorised person considers it necessary because of urgent or special circumstances.

Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought. The authorised person may apply for the warrant before the application is sworn.

The clause further provides that after issuing the warrant, the magistrate must immediately provide a written copy to the authorised person, if it is practicable to do so. If it is not, the magistrate must tell the authorised person what the terms of the warrant are and the date and time the warrant was issued. The authorised person must complete a form of warrant and write on it the magistrate’s name; the date and time the magistrate the warrant was issued; and the warrant’s terms.

The clause further provides that the written copy of the warrant, or the completed warrant form, authorises the entry and the exercise of the authorised person’s powers under this part.

The clause further provides that the authorised person must, at the first reasonable opportunity, send to the magistrate the sworn application and any completed warrant form.

The clause further provides that on receiving the documents, the magistrate must attach them to the warrant.

The clause further provides that a court must find that a power exercised by an authorised person was not authorised by a warrant under this section if the question arises in proceedings before the court whether the exercise of power was authorised by a warrant, if the warrant is not produced in evidence, and it is not proved that the exercise of power was authorised by a warrant under this section.

Clause 62 Search warrants – announcement before entry

This clause provides that before anyone enters the premises under a search warrant, an authorised person must:

- announce that they are authorised to enter the premises;
- give anyone at the premises an opportunity to allow entry to the premises; and
- if the occupier of the premises, or someone else who represents the occupier, is present, identify themselves to the person.

The clause further provides that the authorised person does not need to comply with these provisions if the authorised person believes on reasonable grounds that immediate entry is required to ensure the safety of anyone, or that the effective execution of the warrant is not frustrated.

Clause 63 Details of search warrant to be given to occupier etc

This clause provides that if the occupier of the premises, or someone else who represents the occupier, is present at the premises while a search warrant is being executed, the authorised person, or a person assisting, must make available a copy of the warrant and a document setting out the rights and obligations of the person.

Clause 64 Occupier entitled to be present during search

This clause provides that if the occupier of the premises, or someone else who represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

The clause further provides that the person is not entitled to observe the search if to do so would impede the search, or the person is under arrest and allowing the person to observe the search would interfere with the objectives of the search.

The clause further provides that this does not prevent two or more areas of the premises being searched at the same time.

Subdivision 7.2.4 Return and forfeiture of things seized

Clause 65 Receipt for things seized

This clause provides that once something is seized by an authorised person, as soon as reasonably practicable, that person must issue a receipt for it to the person from whom it was seized.

The clause further provides that if, for any reason, it is not practicable to do this, the authorised person must leave the receipt, secured conspicuously at the place of seizure.

A receipt under this section must include:

- a description of the thing seized;
- an explanation of why the thing was seized;
- the authorised person's name and contact details; and
- if the thing is moved from the premises where it was seized, where the thing is taken to.

Clause 66 Moving things to another place for examination or processing under search warrant

This clause provides that a thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if there are reasonable grounds for believing that the thing is, or contains something, to which the warrant relates and it is significantly more practicable to do so having regard to the timelines and cost of examining or processing the thing at another place and the availability of expert assistance. This is also applicable if the occupier of the premises agrees in writing.

The clause further provides that the thing may be moved to another place for examination or processing for not longer than 72 hours.

The clause further provides that an authorised person may apply to a magistrate for an extension of time if that person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

The clause further provides that the authorised person must give notice of the application to the occupier of the premises and the occupier is entitled to be heard on the application.

The clause further provides that if a thing is moved to another place under this section, the authorised person must, if practicable, tell the occupier of the premises the address of the place where – and the time when – the examination or processing will be carried out, and allow the occupier or the occupier’s representative to be present during the examination or processing.

Clause 67 Access to things seized

This clause provides that a person who, apart from the seizure, be entitled to inspect a thing seized, may inspect the thing; photograph the thing; and if a document, take extracts or make copies.

Clause 68 Return of things seized

This clause provides that a thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing if an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of seizure and either a prosecution for an offence connected with the thing is not begun within the 1 year period, or, a prosecution for an offence connected with the thing is begun within the 1 year period but the court does not find the offence proved.

The clause further provides that a thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing if an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and a prosecution is not begun within 1 year after the day of the seizure, or, a prosecution for an offence connected with the thing is begun within the 1 year period but the court does not find the offence proved.

The clause further provides that a thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing if an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 and information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section, or, the Magistrates Court does not find the offence proved.

The clause further provides that anything seized under this part is not required to be returned or reasonable compensation is not required to be paid if the thing seized is forfeited to the Territory and may be sold, destroyed or disposed of as the Commissioner directs.

Subdivision 7.2.5 Miscellaneous

Clause 69 Damage etc to be minimised

This clause provides that an authorised person must take all reasonable steps to ensure that they, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as it practicable.

The clause further provides that if an authorised person, or any person assisting the authorised person, damages anything in the exercise or purported exercise of a function under this part of the Act, that person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.

The clause further provides that if the damage happens at premises entered under this part, in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

Clause 70 Compensation for exercise of enforcement powers

This clause provides that a person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person, or a person assisting an authorised person.

The clause further provides that compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction or an offence against this Act brought against the person making the claim for compensation.

The clause further provides that a court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

The clause further provides that a regulation may prescribe matters that may, must, or must not be taken into account by the court in considering whether it is just to make the order.

Part 8 Notification and review of decision

Clause 71 Meaning of *reviewable decision* – pt 8

This clause provides that a ‘reviewable decision’ means a decision mentioned in schedule 1, column 3 under a provision of the Act mentioned in column 2 in relation to the decision.

Clause 72 Reviewable decision notices

This clause provides that if a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Clause 73 Applications for review

This clause provides that a person mentioned in schedule 1, column 4 in relation to a reviewable decision and any other person whose interests are affected by the reviewable decision, may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review.

Part 9 Miscellaneous

Clause 74 Disclosure of information by commissioner

This clause provides that the Commissioner may disclose any information obtained to a responsible entity if they consider that the information is relevant to the exercise of the functions of the responsible entity and the disclosure is considered appropriate.

A responsible entity means an entity responsible for the administration of a workplace law or standard, or labour hire law. This provides for information sharing under mutual recognition for jurisdictions with similar workplace and labour hire laws.

Clause 75 Determination of fees

This clause provides that the Minister may determine fees for the Act and that a determination is a disallowable instrument.

Clause 76 Regulation-making power

This clause provides that the Executive may make regulations for the Act.

Clause 77 Review of the Act

This clause provides that the Minister must review the operation of the Act as soon as practicable after the end of its third year of operation. The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.

This section will expire four years after the day it commences.

Part 15 Transitional

Clause 100 Labour hire services provided within 6 months

This clause provides for a six-month transition period from the day of the Act.

Clause 101 Expiry – pt 15

This clause provides that part 15 expires 12 months after the day this Act commences.