

Alert

EMPLOYMENT LAW

Final Call for Labour Hire Licences in South Australia

By Ben Duggan & Jonathan Ikonopoulos

Labour hire regulation is back with the last day to apply for a licence this Friday!

The new regulatory scheme will commence before the end of the year on 1 November 2019. We discuss the background to the new scheme, key elements of the new scheme and recent exemptions to the new scheme granted in response to criticism as to its scope below.

Background

In early 2018 the Weatherill Government successfully achieved the passing of the *Labour Hire Licensing Bill 2017* (SA) through State Parliament.

The *Labour Hire Licensing Act 2017* (SA) ("**the Act**") provided for a transitional period to allow those affected by the Act time to be fully compliant with the obligations under it by 1 September 2018 ("**the Compliance Date**").

A decision was made by the State regulator the

Commissioner of Business Services ("**CBS**") to receive applications for licences from March 2018 to enable sufficient time for these to be considered and approved before the Compliance Date.

In the 2018 State election the Marshall Liberal opposition (as it was at the time) who had earlier vehemently opposed the passing of the Act committed to its repeal if it won office.

The CBS made a decision in the aftermath of the election outcome to cease the receipt of applications for licences with the expectation that the new Marshall Government would seek to repeal the Act.

However the Marshall Government was not able to repeal the Act because of an inability to secure sufficient numbers to support the repeal in the Legislative Council.

CBS subsequently announced they would recommence accepting applications for

labour hire licences and that it was necessary to lodge these by 31 August 2019 such as to again enable sufficient time to consider and approve the licences by the revised compliance date of 1 November 2019.

Licensing

A person who is covered by the scope of the Act will be required to apply for a licence with the CBS.

The main requirement to be granted a licence is that an applicant satisfies a "*fit and proper person test*" that includes consideration of their reputation, honesty and integrity and that the applicant has sufficient financial resources for the purpose of carrying on business under the licence.

In the case of the applicant being a company, it must satisfy the fit and proper person test as well as all current directors of the company.

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A requirement also exists for there to be a responsible officer (or responsible officers) who become responsible for ensuring that a successful applicant complies with its obligations under the Act in a regulatory model adopted from the old *Occupational Health Welfare and Safety Act 1986*.¹

The CBS, must in granting a licence, specify the number of responsible persons for the licence.

A 'person' who is granted a licence is required to:

1. pay an annual fee to the CBS; and
2. lodge an annual report that contains the reporting information as prescribed by the Act with the CBS.

The prescribed information that must be contained in an annual report includes the following:

- the full name and contact details of the holder of the licence;
- the business name, ABN and address, of the business that is the subject of the licence;
- full name and contact details of each of the Responsible Persons for the licence;
- the number of workers supplied by the holder of the licence to another person during the reporting period;
- a description of the arrangements entered into between the holder of the

licence and the relevant workers;

- details of the industry in which the work was carried out by the relevant workers;
- if the holder of the licence provided accommodation to the relevant workers in connection with the provision of the labour hire services:
 - the address of the accommodation;
 - whether the relevant workers paid a fee for accommodation; and
 - the number of relevant workers that use the accommodation.
- if the holder of the licence is aware that accommodation was provided by another person to the relevant workers to the best of the knowledge of the holder of the licence:
 - who provided the accommodation;
 - the address of the accommodation;
 - whether the relevant workers paid a fee for accommodation; and
 - the number of relevant workers that use the accommodation.
- whether any other services were provided to the relevant workers by the holder of the licence, or to the best of the knowledge of the holder, of the licence, by a person to whom the relevant worker was supplied;

- information about compliance with relevant laws for the reporting period by the holder of the licence.
- disclosure of any disciplinary action taken against or started against the holder of the licence by a regulatory body under relevant law during the relevant reporting period;
- to the best of the knowledge of the holder of the licence the number of notifiable instances involving a relevant worker notified under section 38 of the *Work Health and Safety Act 2012* during the reporting period;
- to the best of the knowledge of the holder of the licence the number of applications for compensation made by relevant workers under the *Return to Work Act 2014* during the reporting period; and
- other information prescribed by the regulations to the Act.

Other requirements under the Act include the need for the licence holder to advise of changes in its circumstances and comply with requests for information from an authorised officer appointed by the Commissioner.

Penalties under the Act, as previously reported by us, continue the trend of significant penalties under State safety

¹ which required a company to appoint a responsible officer to ensure compliance with the OHWS Act

laws, are as follows:

- a maximum of \$140,000.00 (or imprisonment for 5 years) for a *natural person*; and
- a maximum of \$400,000.00 for a body corporate.

Exemptions

In response to criticism as to the scope of the Act - as discussed in our earlier articles about the licensing requirements - a decision was made by the CBS in June this year to grant exemptions from the requirement to be licensed to:

1. *a person who provides labour hire services where the provision of such services is not a core function of the person's business or undertaking; and*
2. *a person ("the provider") who provides a worker to do work within the business or undertaking of:*

- a body corporate that is related to the provider under section 50 of the Corporations Act 2001 of the Commonwealth; or

- a franchisee of a franchise of which the provider is also a franchisee; or

- another person that carries on business collectively with the

provider under one recognisable business.

Exemption was also granted "*from the operation of section 12 of the Act to any person who enters into an arrangement for the provision of labour hire services with any of the persons listed in paragraphs 1 and 2 above (inclusive).*"

These exemptions are in addition to those granted on 14 March 2018, being labour hire providers that are persons licensed (by trade) pursuant to:

- Section 6 of the *Building Work Contractors Act 1995*;
- Section 6 of the *Plumbers, Gas Fitters and Electricians Act 1995*; and
- Section 6 and Section 7A of the *Security and Investigation Industry Act 1995* (excluding licensed security agents and licensed investigation agents subject to employee conditions).

Future Steps

We are currently assisting our employer clients with the preparation and submission of their licence applications. Please feel free to contact us if you need assistance with your application or wish to discuss the steps required in regards to your application.



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