

Legislative Council

As passed all stages and awaiting assent.

This is an unofficial copy and is subject to correction.

South Australia

Labour Hire Licensing (Miscellaneous) Amendment Bill 2020

A BILL FOR

An Act to amend the *Labour Hire Licensing Act 2017*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Labour Hire Licensing Act 2017*

- 4 Amendment of section 6—Interpretation
- 5 Substitution of sections 7, 8 and 9
 - 7 Meaning of *labour hire services*
 - 8 Meaning of *labour hire worker*
 - 9 Meaning of *supply*
- 6 Amendment of section 10—Fit and proper person
- 7 Amendment of section 11—Licence required to provide labour hire services
- 8 Amendment of section 12—Person must not enter into arrangements with unlicensed providers
- 9 Amendment of section 13—Person must not enter into avoidance arrangements
- 10 Amendment of section 14—Persons must report avoidance arrangements
- 11 Insertion of section 14A
 - 14A Provision of licence particulars to host
- 12 Amendment of section 18—Conditions of licence
- 13 Amendment of section 19—Prohibition on licence transfer, sale etc
- 14 Amendment of section 20—Duration of licence, periodic fee and report
- 15 Amendment of section 21—Notification of certain changes in circumstances
- 16 Amendment of section 34—Authorised officers
- 17 Amendment of section 41—Evidentiary provisions

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Labour Hire Licensing (Miscellaneous) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Labour Hire Licensing Act 2017*

4—Amendment of section 6—Interpretation

- (1) Section 6—before the definition of *authorised officer* insert:

aquatic animal means an aquatic animal of any species but does not include a bird;

- (2) Section 6—after the definition of *avoidance arrangement* insert:

cleaning work means—

- (a) residential cleaning; and
- (b) commercial cleaning including (without limitation) hotel cleaning, office cleaning, retail cleaning and event cleaning;

- (3) Section 6, definition of *labour hire services*—delete the definition and substitute:

fishing means the act of taking an aquatic animal, or an act preparatory to, or involved in, the taking of an aquatic animal;

horticultural processing work means any of the following activities relating to the production or processing of fruit (including nuts), vegetables and flowers:

- (a) picking;
- (b) harvesting;
- (c) sorting;
- (d) labelling;
- (e) packing;
- (f) grading;
- (g) planting;
- (h) thinning;
- (i) pruning;
- (j) spraying;
- (k) repetitive work on automatic, semi-automatic or single-purpose machines or equipment;
- (l) an activity prescribed by the regulations;
- (m) performing basic recording functions related to the activities referred to in paragraphs (a) to (l);

host—see section 7;

labour hire services—see section 7;

labour hire worker means a labour hire worker under section 8;

- (4) Section 6—after the definition of *licence* insert:

meat means the whole or part of a killed animal intended for human consumption or consumption by pets (including birds) but does not include seafood;

meat processing work means any of the following activities relating to the production or processing of meat:

- (a) an activity preparatory to the killing of animals;
- (b) killing animals;
- (c) boning meat;
- (d) slicing meat;
- (e) portioning meat;
- (f) preparing meat;
- (g) dressing meat;
- (h) packing meat;
- (i) an activity prescribed by the regulations;

- (5) Section 6—after the definition of *premises* insert:

prescribed work means each of the following kinds of work:

- (a) cleaning work;
- (b) horticultural processing work;
- (c) meat processing work;
- (d) seafood processing work;
- (e) trolley work;
- (f) any other work of a kind prescribed by the regulations;

- (6) Section 6, definition of *provider*—delete the definition

- (7) Section 6—after the definition of *responsible person* insert:

seafood means the whole or part of an aquatic animal (including a freshwater aquatic animal), whether dead or alive, intended for human consumption or consumption by pets;

seafood processing work means any of the following activities relating to the production or processing of seafood:

- (a) fishing;
- (b) filleting seafood;
- (c) shucking seafood;
- (d) cleaning seafood;

- (e) portioning seafood;
 - (f) processing seafood;
 - (g) grading seafood;
 - (h) packing seafood;
 - (i) an activity prescribed by the regulations;
- (8) Section 6—after the definition of *substitute responsible person* insert:

trolley work means trolley collection and stacking within the premises of a supermarket or other retail or wholesale shop.

- (9) Section 6, definition of *worker*—delete the definition

5—Substitution of sections 7, 8 and 9

Sections 7, 8 and 9—delete the sections and substitute:

7—Meaning of *labour hire services*

- (1) Subject to subsection (2), a person provides *labour hire services* if—
- (a) in the course of conducting a business the person supplies, to another person (the *host*), an individual to undertake work; and
 - (b) the individual is a labour hire worker for the person.
- (2) A person does not provide labour hire services under subsection (1) in the following circumstances:
- (a) where an individual is supplied to a host to undertake work that is not undertaken as part of a business or commercial undertaking of the host;
 - (b) where an individual is supplied to undertake work that is not prescribed work;
 - (c) any other circumstances prescribed by the regulations.
- (3) For the purposes of subsection (1), a person may provide labour hire services to a host regardless of whether—
- (a) a worker supplied by the person is supplied to the host directly or indirectly through 1 or more agents or intermediaries; or
 - (b) the work performed is under the control of the person or the host.

Examples—

- 1 A has a labour hire business and has an arrangement with B under which A may supply B to other persons to undertake work for which B will be paid by A. In the course of conducting the business, A agrees with C to supply an individual to undertake meat processing work for C at C's meat processing business. A sends B to C to undertake the work for which A will pay B. A provides labour hire services in supplying B to C.

2 A runs a horticultural processing business and employs B to undertake work in the business. In the course of conducting the business, A enters into a contract with C to pick the grapes at C's commercial winery. As part of employment in A's business, B attends at C's winery and picks the grapes. A does not provide labour hire services to C because A is not supplying an individual to undertake work (see section 9) and B is not a labour hire worker for A (see section 8).

At a neighbouring winery, D wants to pick their grapes but does not want to contract out the job, preferring to undertake the work themselves. Needing a worker and having seen A's business working at C's winery, D asks if A would be able to send an individual to work for D at D's winery for 2 days. A asks B if B would agree to be sent to undertake work for another person but be paid by A, to which B agrees. A sends B to work for D at D's winery for the 2 days but B also continues to work 4 regular shifts per week in A's horticultural services business. A does not provide labour hire services to D because, despite the new arrangement between A and B and the supply of B to undertake work for D, B is an in-house employee of A and therefore not a labour hire worker for A (see section 8).

8—Meaning of *labour hire worker*

- (1) Subject to subsection (2), an individual is a *labour hire worker* for another person if the individual enters into an arrangement with the other person under which—
 - (a) the other person may supply, to a third person, the individual to undertake work; and
 - (b) the other person is obliged to pay the individual, in whole or part, for the work (whether directly or indirectly through 1 or more intermediaries).
- (2) An individual is not a labour hire worker for another person if—
 - (a) the individual is an in-house employee of the other person and is only supplied to a third person to do work on a temporary basis (which may be on 1 or more occasions); or
 - (b) the individual is, or is of a class of person, prescribed by the regulations.
- (3) For the purposes of subsection (2)(a), an individual is an *in-house employee* of another person if—
 - (a) the individual is engaged as an employee by the other person on a regular and systematic basis; and
 - (b) in the circumstances of the case, it is reasonable to expect that the employment will continue; and
 - (c) the individual primarily performs work for the other person other than as a worker supplied to a third person to do work for the third person.

9—Meaning of *supply*

- (1) For the purposes of this Act, an individual is not supplied by a person (the *first person*) to another person (the *second person*) to undertake work where—
 - (a) the first person and second person have entered into a contract for the performance of the work by the first person; and
 - (b) the individual undertakes the work for and on behalf of the first person as an employee, agent or independent contractor of the first person.
- (2) For the purposes of this Act, the supply of a labour hire worker to do work for a person commences when the labour hire worker first starts to do work for the person in relation to the supply.

6—Amendment of section 10—Fit and proper person

- (1) Section 10(1)—after "whether a person is a fit and proper person to be the holder of a licence" insert:

, a fit and proper person to be a responsible person
- (2) Section 10(4)—delete subsection (4) and substitute:
 - (4) A person is not a fit and proper person to be a responsible person if the person—
 - (a) has been found guilty or convicted of an offence, or an offence of a class, prescribed by the regulations; or
 - (b) is a member of, or a participant in, a prescribed organisation; or
 - (c) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*.

7—Amendment of section 11—Licence required to provide labour hire services

Section 11(1), penalty provision, (a)—delete "or imprisonment for 3 years"

8—Amendment of section 12—Person must not enter into arrangements with unlicensed providers

- (1) Section 12(1)—delete "with another person for the provision of labour hire services to the person unless the other person" and substitute:

for the provision of labour hire services unless the person providing the labour hire services
- (2) Section 12(1), penalty provision, (a)—delete "or imprisonment for 3 years"

(3) Section 12—after subsection (1) insert:

(1a) Without limitation, subsection (1) applies to a person irrespective of whether the person is—

- (a) the person to whom the labour hire services are to be provided under the arrangement; or
- (b) entering into the arrangement as an agent or intermediary of the person providing the labour hire services under the arrangement; or
- (c) the person providing the labour hire services under the arrangement.

9—Amendment of section 13—Person must not enter into avoidance arrangements

(1) Section 13—delete "a worker" and substitute:

an individual to undertake work

(2) Section 13, penalty provision, (a)—delete "or imprisonment for 3 years"

10—Amendment of section 14—Persons must report avoidance arrangements

Section 14(1)(a)—delete "a worker to another person" and substitute:

to another person, an individual to undertake work

11—Insertion of section 14A

After section 14 insert:

14A—Provision of licence particulars to host

The holder of a licence who supplies a labour hire worker to a host to undertake work, and any agent or intermediary who acts in respect of that supply, must, before the labour hire worker is supplied, take all reasonable steps to ensure that the host is provided with the following particulars for the licence (being particulars current at the time of their provision):

- (a) the name and contact details of the holder of the licence;
- (b) the name and contact details of each responsible person for the licence;
- (c) the licence number.

Maximum penalty: \$4 000.

12—Amendment of section 18—Conditions of licence

- (1) Section 18(1)—delete subsection (1) and substitute:
 - (1) A licence granted under section 17 is subject to the following conditions:
 - (a) a condition that the holder of the licence must comply with the requirements prescribed by the regulations for the provision of information to labour hire workers by persons who provide labour hire services;
 - (b) such other conditions as the Commissioner thinks fit.
- (2) Section 18(2)—after "vary or revoke a condition of the licence" insert:

imposed under subsection (1)(b)
- (3) Section 18—after subsection (4) insert:
 - (5) A person who fails to comply with a condition of a licence under subsection (1)(a) is guilty of an offence.
Maximum penalty: \$4 000.
Expiation fee: \$300.

13—Amendment of section 19—Prohibition on licence transfer, sale etc

Section 19, penalty provision—delete "or imprisonment for 1 year"

14—Amendment of section 20—Duration of licence, periodic fee and report

- (1) Section 20(2)—delete subsection (2) and substitute:
 - (2) The holder of a licence must, at intervals prescribed by regulation—
 - (a) pay to the Commissioner the prescribed fee; and
 - (b) lodge with the Commissioner a report in a form required by the Commissioner containing the prescribed information relevant to the corresponding reporting period.
- (2) Section 20(6)—delete subsection (6) and substitute:
 - (6) In this section—

prescribed information, in respect of a report under subsection (2)(b), means the following information:

 - (a) the full name and contact details of the holder of the licence;
 - (b) the business name, ABN and address of the business that is the subject of the licence;
 - (c) the full name and contact details of each of the responsible persons for the licence;
 - (d) the number of labour hire workers who undertook prescribed work for a host under the licence (the ***relevant workers***);
 - (e) details of the industry or industries in which the work was carried out by the relevant workers;

- (f) information about compliance with relevant laws by the holder of the licence;
- (g) information about any disciplinary action or enforcement action taken against the holder of the licence by a regulatory body under a relevant law;
- (h) to the best of the knowledge of the holder of the licence, the number of notifiable incidents involving a relevant worker notified under section 38 of the *Work Health and Safety Act 2012*;
- (i) to the best of the knowledge of the holder of the licence, the number of applications for compensation made by a relevant worker under the *Return to Work Act 2014*;
- (j) any other information prescribed by the regulations;

reporting period—each reporting period for a licence is as prescribed by the regulations.

15—Amendment of section 21—Notification of certain changes in circumstances

Section 21(2), definition of *prescribed matter*, (d)—delete "workers" and substitute:
labour hire workers

16—Amendment of section 34—Authorised officers

Section 34—after subsection (1) insert:

- (1a) An authorised officer under the *Fair Trading Act 1987* is taken to be an authorised officer appointed under this section.

17—Amendment of section 41—Evidentiary provisions

Section 41—before subsection (1) insert:

- (a1) In proceedings for an offence against this Act, where it is proven that a person, in the course of conducting a business, supplied an individual to another person to undertake work, it will be presumed, in the absence of proof to the contrary, that the individual is a labour hire worker for the person making the supply.