

South Australia

# Labour Hire Licensing Act 2017

An Act to provide for the licensing and regulation of persons who provide labour hire services; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **Division 1—Preliminary**

##### **1—Short title**

This Act may be cited as the *Labour Hire Licensing Act 2017*.

#### **Division 2—Objects and application of Act**

##### **3—Objects of Act**

- (1) The objects of this Act are to—
  - (a) protect workers from exploitation by providers of labour hire services; and
  - (b) protect licensed labour hire businesses from predatory business practices that may be engaged in by persons unsuitable to be licensed to provide labour hire services; and
  - (c) promote the integrity of the labour hire industry.
- (2) The objects are to be primarily achieved by establishing a licensing scheme to regulate the provision of labour hire services.

##### **4—Extraterritorial application**

- (1) This Act is intended to have extraterritorial application to the extent that the legislative powers of the State permit.
- (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that is in connection with labour hire services supplied in the State.

##### **5—Registered group training organisation exempt from application of Act**

- (1) This Act does not apply in respect of a registered group training organisation to the extent that the organisation supplies apprentices or trainees to do work for other persons.
- (2) In this section—

***registered group training organisation*** means a group training organisation registered in South Australia on the Group Training Organisation National Register maintained by the Commonwealth.

### **Part 2—Interpretation**

#### **6—Interpretation**

In this Act, unless the contrary intention appears—

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

**authorised officer** means a person appointed under section 34 as an authorised officer;

**avoidance arrangement**—see section 13;

**cleaning work** means—

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

**Commissioner** means the Commissioner for Consumer Affairs;

**corresponding law** means a law, or part of a law, of a State or a Territory of the Commonwealth—

- (a) that corresponds to this Act or a part of this Act; or
- (b) that is declared by the regulations to be a corresponding law for the purposes of this Act;

**criminal intelligence** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**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;

**licence** means a licence under Part 4;

**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;

**premises** includes the following:

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) a workplace;
- (f) a place where workers are accommodated in connection with their supply;

**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;

**register**—see section 43(1);

**relevant law** means—

- (a) this Act; or
- (b) the *Work Health and Safety Act 2012*; or
- (c) the *Fair Work Act 1994*; or

- (d) the *Employment Agents Registration Act 1993*; or
- (e) the *Return to Work Act 2014*; or
- (f) the *South Australian Skills Act 2008*; or
- (g) the *Payroll Tax Act 2009*; or
- (h) the *Taxation Administration Act 1996*; or
- (i) the *Fair Work Act 2009* of the Commonwealth; or
- (j) a corresponding law; or
- (k) a provision of any other Act or law of the State, the Commonwealth or another State imposing an obligation on a person in relation to workers, including, for example, obligations about—
  - (i) keeping records about workers; and
  - (ii) the payment of tax or superannuation for workers; and
  - (iii) ensuring the health and safety of workers; or
- (l) a provision of an Act or law about the standards of buildings and structures, to the extent it relates to a building or structure used to provide accommodation to a worker; or
- (m) an Act or provision of an Act prescribed by the regulations for the purposes of this definition;

**responsible person**—see section 26;

**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;

**substitute responsible person** means a person appointed as a substitute responsible person under section 29 or section 30;

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

## 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.

### 10—Fit and proper person

- (1) Without limiting the matters to which the Commissioner may have regard in determining whether a person is a fit and proper person to be the holder of a licence, a fit and proper person to be a responsible person or a fit and proper person to be the director of a body corporate that is the holder of a licence, the Commissioner may have regard to the following matters:
- (a) the person's character including, for example, the person's honesty, integrity and professionalism;
  - (b) whether the person has previously held a licence under this Act or a corresponding law and whether such a licence lapsed or was suspended or cancelled;
  - (c) demonstrated compliance by the person with relevant laws;
  - (d) information provided to the Commissioner by the Commissioner of Police under section 32;
  - (e) in the case of a natural person—
    - (i) whether the person has sufficient business knowledge, experience and skills for the purpose of properly carrying on business under the licence; and

- (ii) whether the person has previously been the director of a body corporate that has previously held a licence under this Act or a corresponding law and whether such a licence was suspended or cancelled;
- (f) in the case of a body corporate—
  - (i) whether the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business carried on under the licence; and
  - (ii) whether the body corporate is being wound up or is under official management or in receivership.
- (2) A person is not a fit and proper person to be the holder of a licence if—
  - (a) the person has been found guilty or convicted of an offence, or an offence of a class, prescribed by the regulations; or
  - (b) in the case of a natural person, the person—
    - (i) is a member of, or a participant in, a prescribed organisation; or
    - (ii) 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*; or
    - (iii) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
    - (iv) has, during the period of 5 years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—
      - (A) when the body was being so wound up; or
      - (B) within the period of 6 months preceding the commencement of the winding up; or
  - (c) in the case of a body corporate—
    - (i) the body corporate is a body corporate, or is a body corporate of a class, prescribed by the regulations; or
    - (ii) the body corporate is a prescribed organisation.
- (3) A person is not a fit and proper person to be the director of a body corporate that is the holder of a licence 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*; or
  - (d) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

- (e) has, during the period of 5 years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—
- (i) when the body was being so wound up; or
  - (ii) within the period of 6 months preceding the commencement of the winding up.
- (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*.
- (5) In this section—
- close associate**—see subsection (6);
- domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;
- member**, of an organisation, includes an associate member or a prospective member, however described;
- participant**, in a prescribed organisation, means—
- (a) if the organisation is a body corporate—a director or officer of the body corporate; or
  - (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises their membership of, or association with, the organisation; or
  - (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
  - (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
  - (e) a person who takes part in the affairs of the organisation in any other way,
- but does not include a lawyer acting in a professional capacity;
- prescribed organisation**—the following are prescribed organisations:
- (a) a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;
  - (b) any other organisation prescribed by the regulations for the purposes of this definition.
- (6) For the purposes of this section, 2 persons are **close associates** if—
- (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
  - (b) they are members of the same household; or

- (c) they are in partnership; or
  - (d) they are related bodies corporate; or
  - (e) I has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
  - (f) I is in a position to exercise control or significant influence over the conduct of the other.
- (7) For the purposes of this section, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.

### **Part 3—Prohibited conduct**

#### **11—Licence required to provide labour hire services**

- (1) A person must not provide labour hire services except as authorised by a licence under this Act.

Maximum penalty:

- (a) in the case of a natural person—\$140 000;
  - (b) in the case of a body corporate—\$400 000.
- (2) A person must not advertise, or in any way hold out, that the person provides, is entitled to provide or is willing to provide labour hire services unless authorised to provide labour hire services by a licence under this Act.

Maximum penalty: \$30 000.

#### **12—Person must not enter into arrangements with unlicensed providers**

- (1) A person must not, without a reasonable excuse, enter into an arrangement for the provision of labour hire services unless the person providing the labour hire services is authorised to provide labour hire services by a licence under this Act.

Maximum penalty:

- (a) in the case of a natural person—\$140 000;
  - (b) in the case of a body corporate—\$400 000.
- (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.
- (2) It is a reasonable excuse for the person not to comply if, when the person entered into the arrangement, the person providing the labour hire services was shown on the register as the holder of a licence.

### 13—Person must not enter into avoidance arrangements

A person must not enter into an arrangement with another person (an *avoidance arrangement*) for the supply of an individual to undertake work if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed by this Act, unless the person has a reasonable excuse.

Maximum penalty:

- (a) in the case of a natural person—\$140 000;
- (b) in the case of a body corporate—\$400 000.

### 14—Persons must report avoidance arrangements

- (1) This section applies if—
  - (a) a person (the *non-complying person*) has supplied, or intends to supply, to another person, an individual to undertake work; and
  - (b) the other person (the *client*) is aware, or ought reasonably to be aware, the supply or intended supply by the non-complying person is an avoidance arrangement.
- (2) As soon as practicable after the client becomes aware, or ought reasonably to have become aware, of the matter mentioned in subsection (1)(b), the client must, unless the client has a reasonable excuse, give the Commissioner the following information in writing:
  - (a) the name of the non-complying person;
  - (b) a brief description of the avoidance arrangement.

Maximum penalty: \$30 000.

### 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.

## Part 4—Licences

### Division 1—Application and grant

#### 15—Application for licence

- (1) Subject to this section, a person may apply to the Commissioner for a licence authorising the provision of labour hire services by the person.

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- (2) An application under subsection (1) must—
- (a) be in a form approved by the Commissioner; and
  - (b) specify the names of the person or persons nominated to be responsible persons for the purposes of the licence; and
  - (c) include the information required by the Commissioner to determine the application; and
  - (d) be accompanied by the prescribed fee.
- (3) The Commissioner must cause notice of each application for a licence made under this section to be published on a website determined by the Commissioner.
- (4) The following persons are not eligible, for the periods specified, to apply for a licence—
- (a) a person who was the holder of a licence that was cancelled under section 23, for a period of 2 years from the date of the cancellation;
  - (b) a related body corporate of a person referred to in paragraph (a), for a period of 2 years from the date of the cancellation referred to in that paragraph;
  - (c) a person who has had an application under this section refused, for a period of 3 months from—
    - (i) the date of notification of the refusal of the application; or
    - (ii) if the person appeals against the decision to refuse the application, the date when the appeal is finally determined.
- (5) Subsection (4) does not apply in relation to a body corporate that has been the holder of a licence that was cancelled or that has had an application for a licence refused, or a related body corporate of such a body corporate, if the Commissioner is satisfied that, because of a genuine sale occurring after the cancellation or refusal—
- (a) no person who was a shareholder of, or held a beneficial interest in, the body corporate when the cancellation or the refused application was made, is a shareholder of, or holds a beneficial interest in, the body corporate; and
  - (b) no person who was in a position to control or influence the affairs of the body corporate when the cancellation or refused application was made is in a position to control or influence the affairs of the body corporate.
- (6) In this section—
- related body corporate* has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth.

## 16—Objection to application

- (1) A designated entity may, by notice in writing, lodge with the Commissioner an objection to an application for a licence made under section 15 on the grounds that—
- (a) the person applying for the licence is not a fit and proper person to be the holder of a licence; or
  - (b) a person nominated to be a responsible person for the purposes of the licence is not a fit and proper person to be a responsible person; or

- (c) in the case of an application made by a body corporate—1 or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence.
- (2) A notice of objection under subsection (1) must—
- (a) state reasons for the objection; and
  - (b) be made within 14 days of notice of the application being published under section 15(3).
- (3) If the Commissioner receives a notice of objection under subsection (1) in respect of an application for a licence, the Commissioner must—
- (a) forward a copy of the notice of objection to the person making the application for the licence as soon as reasonably practicable after receiving the notice; and
  - (b) allow a period of 14 days from the date of forwarding the notice for the applicant to respond to the notice of objection.
- (4) If a notice of objection has been lodged in respect of an application for a licence—
- (a) the Commissioner must not grant the licence under section 17 unless the Commissioner has taken into account the objection and the response of the applicant to the objection (if any); and
  - (b) if the Commissioner grants the licence, the Commissioner must give notice of the grant to the designated entity that lodged the notice of objection.
- (5) In this section—
- designated entity** means any of the following entities:
- (a) an industrial association (within the meaning of the *Return to Work Act 2014*);
  - (b) an agency or instrumentality of this State or of the Commonwealth, another State or a Territory of the Commonwealth;
  - (c) a council (within the meaning of the *Local Government Act 1999*).

## **17—Grant of licence**

- (1) Subject to this Act, the Commissioner must, on application under section 15, grant a licence to an applicant if satisfied that—
- (a) in the case of an applicant who is a natural person, the applicant—
    - (i) is a fit and proper person to be the holder of the licence; and
    - (ii) has sufficient financial resources for the purpose of properly carrying on business under the licence; and
  - (b) in the case of an applicant that is a body corporate—
    - (i) the body corporate is a fit and proper person to be the holder of the licence; and
    - (ii) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence; and

- (iii) the body corporate has sufficient financial resources for the purpose of properly carrying on business under the licence; and
  - (c) each person to be specified as a responsible person under subsection (2)(b) is a fit and proper person to be a responsible person.
- (2) The Commissioner must, in granting a licence under subsection (1), specify—
  - (a) the number of responsible persons required for the licence; and
  - (b) the name of each person authorised to be a responsible person for the purposes of the licence.
- (3) The Commissioner may issue to a person evidence, in a manner and form determined by the Commissioner, that the person is the holder of a licence.

### **18—Conditions of licence**

- (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) The Commissioner may, at any time after the grant of a licence, vary or revoke a condition of the licence imposed under subsection (1)(b) or impose a further condition on the licence as the Commissioner thinks fit.
- (3) If the Commissioner proposes to impose a further condition on a licence or vary a condition of a licence under subsection (2), the Commissioner must give the holder of the licence a notice stating—
  - (a) the proposed condition or variation of a condition; and
  - (b) the reasons for the proposed condition or variation; and
  - (c) that the holder of the licence may, within 14 days after the notice is given, give the Commissioner a written response to the proposed condition or variation.
- (4) The Commissioner must, before imposing a further condition on a licence or varying a condition of a licence under subsection (2), take into account the response of the holder of the licence to the notice under subsection (3) (if any).
- (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.

### **19—Prohibition on licence transfer, sale etc**

The holder of a licence must not transfer, sell, dispose of, lend or hire out the licence to another person.

Maximum penalty: \$25 000.

## Division 2—Duration of licences and reporting

### 20—Duration of licence, periodic fee and report

- (1) A licence remains in force (except for any period for which it is suspended) until—
  - (a) the licence is surrendered or cancelled; or
  - (b) the licence holder dies or, in the case of a licensed body corporate, is dissolved.
- (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.
- (3) If the holder of a licence fails to pay the fee or lodge the report in accordance with subsection (2), the Commissioner may, by notice in writing, require the holder of the licence to make good the default.
- (4) If the holder of a licence fails to comply with a notice under subsection (3) within 28 days after service of the notice, the licence is cancelled.
- (5) The Commissioner must notify the holder of a licence in writing of the cancellation of the licence under subsection (4).
- (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.

## 21—Notification of certain changes in circumstances

- (1) The holder of a licence must give the Commissioner notice of a change in respect of a prescribed matter relating to the licence within 14 days after the change.

Maximum penalty: \$4 000.

- (2) In this section—

*prescribed matter*, relating to a licence, means a matter prescribed by regulation relating to—

- (a) whether a person is a fit and proper person to be the holder of a licence; or
- (b) whether a person is a fit and proper person to be a director of a body corporate that is the holder of a licence; or
- (c) details about the licence shown on the register; or
- (d) activities undertaken under or relating to the licence (such as, without limitation, accommodation provided by the holder of the licence for labour hire workers supplied to another person).

## 22—Provision of information

- (1) The holder of a licence must, if so required by the Commissioner by notice in writing, provide the Commissioner with such information as the Commissioner requires relating to—

- (a) the provision of labour hire services by the licence holder; and
- (b) whether the holder of the licence is a fit and proper person to be the holder of a licence; and
- (c) whether the licensee's business has sufficient financial resources for the purpose of properly carrying on business under the licence; and
- (d) any other matters relating to the objects of this Act.

- (2) The Commissioner may require the holder of a licence to provide information under subsection (1)—

- (a) on 1 or more specified occasions; or
- (b) at periodic intervals as specified by the Commissioner.

- (3) If the holder of a licence fails to provide information in accordance with subsection (1), the Commissioner may, by notice in writing, require the holder of the licence to make good the default.

- (4) If the holder of a licence fails to comply with a notice under subsection (3) within 28 days after service of the notice, the licence is cancelled.

- (5) The Commissioner must notify the holder of a licence in writing of the cancellation of the licence under subsection (4).

- (6) The Commissioner may, in a notice under subsection (1), require the holder of a licence to verify specified information by statutory declaration.

### **Division 3—Suspension, cancellation and surrender**

#### **23—Suspension and cancellation**

- (1) The Commissioner may suspend or cancel a licence by notice in writing to the holder of the licence if the Commissioner is satisfied that—
- (a) the licence was obtained because of materially incorrect or misleading information; or
  - (b) the holder of the licence has given materially incorrect or misleading information in a report under section 20, 21 or 22; or
  - (c) the holder of the licence, or an employee or representative of the holder of the licence, has contravened a condition of the licence; or
  - (d) the holder of the licence, or an employee or representative of the holder of the licence, has failed to comply with, or has contravened or is contravening, a provision of this Act or the regulations; or
  - (e) the holder of the licence, or an employee or representative of the holder of the licence, has contravened or is contravening a relevant law; or
  - (f) the holder of the licence is no longer a fit and proper person to be the holder of a licence; or
  - (g) if the holder of the licence is a body corporate—
    - (i) 1 or more directors of the body corporate are no longer fit and proper persons to be directors of a body corporate that is the holder of a licence; or
    - (ii) the holder of the licence has been wound up or deregistered under the *Corporations Act 2001* of the Commonwealth; or
  - (h) the business to which the licence relates no longer has sufficient financial resources for the purpose of properly carrying on business under the licence; or
  - (i) for any other reason, the licence should be suspended or cancelled.
- (2) Suspension under subsection (1)—
- (a) takes effect at a date and time specified in the written notice; and
  - (b) may be for a period of not more than 90 days as specified in the written notice.
- (3) Cancellation under subsection (1) takes effect on the date and time specified in the written notice of cancellation.

#### **24—Return of evidence of suspended or cancelled licence**

- (1) If a licence is suspended or cancelled under a provision of this Act, the Commissioner may require the holder of the licence to return any evidence of the licence issued to the person within 14 days after receiving notice of the suspension or cancellation.

- (2) A person who fails to comply with a requirement of the Commissioner under subsection (1) is guilty of an offence.

Maximum penalty: \$4 000.

## **25—Surrender**

- (1) The holder of a licence may surrender the licence by notice in writing to the Commissioner.
- (2) The Commissioner may require a person giving notice under subsection (1) to return any evidence of the licence issued to the person within 14 days.
- (3) A person who fails to comply with a requirement of the Commissioner under subsection (2) is guilty of an offence.
- Maximum penalty: \$4 000.
- (4) A licence surrendered under this section stops having effect on the day it is surrendered.

## **Division 4—Responsible persons**

### **26—Requirements for responsible persons**

A responsible person, for a licence, must be an individual who—

- (a) is responsible for the day-to-day management and operation of the business to which the licence relates; and
- (b) is a fit and proper person to be a responsible person; and
- (c) satisfies any other requirements prescribed by regulation.

### **27—Responsible person must be reasonably available**

The holder of a licence must ensure that each responsible person for the licence is reasonably available to be contacted by the Commissioner, an authorised officer or a member of the public during business hours.

Maximum penalty: \$4 000.

### **28—Application to change responsible person**

- (1) The holder of a licence may apply to the Commissioner to—
- (a) remove a person as a responsible person for the licence; and
- (b) appoint another individual as a responsible person for the licence.
- (2) An application under subsection (1) must be accompanied by—
- (a) the information required by the Commissioner to determine the application; and
- (b) the prescribed fee.
- (3) The Commissioner may approve the application if—
- (a) the Commissioner has complied with the requirements of section 31; and
- (b) the Commissioner is satisfied that the proposed appointee is suitable for appointment as a responsible person.

- (4) If the Commissioner approves the application, the Commissioner must update the register to record the change to the licence details.

### **29—Substitution of responsible person for limited period**

- (1) The holder of a licence may, by notice in writing, appoint an individual who is suitable for appointment as a responsible person as a *substitute responsible person* for the licence for a period of not more than 30 days if—

- (a) a responsible person for the licence will be absent from the licence holder's business; and
- (b) the individual consents in writing to the appointment.

- (2) The holder of a licence must, as soon as reasonably practicable after the appointment of a person under subsection (1) (but in any case within 7 days), notify the Commissioner of the appointment in a manner and form approved by the Commissioner.

Maximum penalty: \$4 000.

- (3) The holder of a licence must, on providing notice to the Commissioner under subsection (2), pay to the Commissioner the prescribed fee.
- (4) The Commissioner may cancel the appointment of a person under subsection (1) if satisfied that—
- (a) the person is not a fit and proper person to be a responsible person; or
  - (b) the licence holder has failed to pay the fee under subsection (3) in accordance with that subsection.
- (5) The holder of a licence must ensure the notice of appointment and the written consent are—
- (a) kept at the premises where the substitute responsible person will be responsible for the day-to-day management and operation of the business; and
  - (b) made available for immediate inspection by an authorised officer who asks to see them.

Maximum penalty: \$4 000.

- (6) A substitute responsible person is taken to be a responsible person for the licence for the period of the appointment.
- (7) The Commissioner may, on application by the holder of a licence, extend the appointment of a substitute responsible person if the Commissioner is satisfied that it is appropriate in the circumstances to do so.

### **30—Appointment of substitute responsible person by Commissioner on application**

- (1) If a responsible person for a licence will be absent from the business to which the licence relates for a period of more than 30 days the Commissioner may, on application by the holder of the licence, appoint another individual as a *substitute responsible person* in respect of the licence for the period of that absence.

- (2) An application under subsection (1) must be accompanied by enough information about the person proposed to be appointed to enable the Commissioner to decide whether the person is suitable for appointment as a substitute responsible person.
- (3) The Commissioner may only appoint a person as a substitute responsible person under this section if—
  - (a) the Commissioner has complied with the requirements of section 31; and
  - (b) the Commissioner is satisfied that the person is suitable for appointment as a responsible person.
- (4) If the Commissioner approves the application, the Commissioner must update the register to record the change to the licence details.

### **31—Objection to appointment of responsible person or substitute responsible person**

- (1) If the Commissioner receives an application to which this section applies, the Commissioner must cause notice of the application to be published on a website determined by the Commissioner.
- (2) A designated entity may, in response to a notice published under subsection (1) in respect of an application and by notice in writing, lodge with the Commissioner an objection to the application on the grounds that the person proposed to be appointed as a responsible person, or as a substitute responsible person, is not a fit and proper person to be a responsible person.
- (3) A notice of objection under subsection (2) must—
  - (a) state reasons for the objection; and
  - (b) be made within 14 days of notice of the application being published under subsection (1).
- (4) If the Commissioner receives a notice of objection under subsection (2) in respect of an application, the Commissioner must—
  - (a) forward a copy of the notice of objection to the person making the application as soon as reasonably practicable after receiving the notice; and
  - (b) allow a period of 14 days from the date of forwarding the notice for the applicant to respond to the notice of objection.
- (5) If a notice of objection has been lodged under subsection (2) in respect of an application—
  - (a) the Commissioner must not grant the application unless the Commissioner has taken into account the objection and the response of the applicant to the objection (if any); and
  - (b) if the Commissioner grants the application, the Commissioner must give notice of the grant to the designated entity that lodged the notice of objection.
- (6) This section applies to the following applications:
  - (a) an application under section 28(1)(b) to appoint another individual as a responsible person for a licence;

- (b) an application under section 30(1) to appoint an individual as a substitute responsible person.
- (7) In this section—  
*designated entity* has the same meaning as in section 16.

## Part 5—Monitoring and enforcement

### Division 1—Referral to Commissioner of Police

#### 32—Commissioner may refer matters to Commissioner of Police

- (1) This section applies to the following matters:
  - (a) an application under section 15 for the grant of a licence;
  - (b) an application under section 28 to change a responsible person;
  - (c) the appointment of a person as a substitute responsible person under section 29 or 30;
  - (d) a question as to whether a specified person is a fit and proper person to be the holder of a licence;
  - (e) a question as to whether a specified person is a fit and proper person to be the director of a body corporate that is the holder of a licence;
  - (f) a question as to whether a specified person is a fit and proper person to be a responsible person.
- (2) The Commissioner may refer a matter to which this section applies to the Commissioner of Police.
- (3) As soon as reasonably practicable following receipt of a referral under subsection (2), the Commissioner of Police—
  - (a) must make available to the Commissioner information about criminal convictions of persons relevant to the referred matter; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access relevant to the referred matter (such as whether the application should be granted or the person is a fit and proper person for the purposes of this Act).

#### 33—Criminal intelligence

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If—
  - (a) the Commissioner refuses an application for a licence, suspends or cancels a licence under section 23, refuses to appoint a proposed appointee as a responsible person for a licence under section 28(1)(b), cancels the appointment of a person under section 29(4) or takes any other action under this Act; and

- (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,
- the Commissioner is not required to provide any grounds or reasons for the decision other than that it was made in the public interest.
- (3) In any proceedings under this Act, the Commissioner and the court before which the proceedings are being heard—
- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

## **Division 2—Authorised officers**

### **34—Authorised officers**

- (1) The Commissioner is an authorised officer.
- (1a) An authorised officer under the *Fair Trading Act 1987* is taken to be an authorised officer appointed under this section.
- (2) The Commissioner may, by instrument, appoint any of the following as an authorised officer for the purposes of this Act:
- (a) a public sector employee under the *Public Sector Act 2009*;
- (b) the holder of a statutory office;
- (c) a person who is appointed as an authorised officer or inspector under a corresponding law;
- (d) a person in a prescribed class of persons.
- (3) The appointment of an authorised officer may be made subject to conditions specified in the instrument of appointment.
- (4) The Commissioner may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of appointment.
- (5) An authorised officer must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer under this Act.
- (6) If the powers of an authorised officer have been limited by conditions, the identity card issued to the authorised officer must indicate those limitations.

- (7) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person the officer's identity card.
- (8) An authorised officer may, in exercising powers under this Act, be assisted by such other persons as are reasonably necessary for the purpose.

### **35—Obtaining information**

- (1) For the purposes of this Act an authorised officer may require a person—
  - (a) to answer any questions, orally or in writing; or
  - (b) to produce books or documents.
- (2) For an electronic document, compliance with the requirement requires the making available or production of a clear printed reproduction of the electronic document.
- (3) An authorised officer may, for the purposes of subsection (1), by notice in writing served on a person, require the person to attend at a specified time and place.
- (4) A person must not—
  - (a) refuse or fail to comply with a reasonable requirement under this section; or
  - (b) without reasonable excuse, refuse or fail to attend at the time and place specified in a notice under subsection (3) (or some other time and place allowed by an authorised officer); or
  - (c) knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under this section.

Maximum penalty: \$20 000.

- (5) An authorised officer may require that the answer to a question under this section be verified by statutory declaration or given under oath.
- (6) A person is not required to answer a question or produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination.

### **36—Entry and inspection**

- (1) Subject to subsection (2), for the purposes of this Act, an authorised officer may at any reasonable time—
  - (a) enter and search any premises; and
  - (b) stop, enter and search any vessel or vehicle; and
  - (c) open any container, package or other item found in the premises, vessel or vehicle; and
  - (d) make any inspection; and
  - (e) conduct any analysis or test; and
  - (f) take any samples; and
  - (g) examine, copy and take extracts from any books or documents; and
  - (h) take any books or documents; and

- (i) seize and remove anything that constitutes evidence of an offence against this Act; and
  - (j) take photographs, films or video recordings; and
  - (k) take measurements and make notes; and
  - (l) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- (2) The following powers may only be exercised with the authority of a warrant issued by a magistrate:
- (a) the power to enter and search—
    - (i) premises that are not, or that are not reasonably suspected of being, a workplace; or
    - (ii) any part of a workplace that is used only for residential purposes;
  - (b) the power to stop, enter and search a vessel or vehicle that is not a workplace;
  - (c) the powers under subsection (1)(c) and (i), insofar as they relate to items or things found in a vessel or vehicle that is not a workplace or in premises that are not, or are not reasonably suspected of being, a workplace,

(and the requirement for a power under subsection (1) to be exercised at a reasonable time does not apply if the power is exercised under the authority of, and in accordance with, a warrant).

- (3) A person who, without reasonable excuse, fails to comply with a direction of an authorised officer under this section is guilty of an offence.

Maximum penalty: \$20 000.

- (4) The powers conferred by subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of business or performance of work.

- (5) In this section—

*workplace* has the same meaning as in the *Work Health and Safety Act 2012*.

### **37—Use and inspection of books or documents produced or seized**

- (1) This section applies to a book or document that has been produced to an authorised officer or taken by an authorised officer.
- (2) A book or document to which this section applies may be retained for the purpose of enabling the book or document to be inspected and enabling copies of, or extracts or notes from, the book or document to be made or taken by or on behalf of the Commissioner.
- (3) However, if the book or document is required by the Commissioner as evidence for the purposes of legal proceedings, the book or document may be retained until the proceedings are finally determined.
- (4) The Commissioner must permit a person who would be entitled to inspect the book or document if it were not in the possession of the Commissioner to inspect the book or document at any reasonable time.

- (5) Nothing in this section prejudices a lien a person has on the book or document.

### **38—Hindering an authorised officer**

A person who hinders an authorised officer, or a person assisting an authorised officer, acting in the exercise of powers conferred by or under this Act is guilty of an offence.

Maximum penalty: \$10 000.

### **39—Offence relating to intimidation**

A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to fail to cooperate with an authorised officer in the performance or exercise of powers or functions conferred by or under this Act; or
- (b) to fail to provide information or give evidence to an authorised officer as authorised or required under this Act; or
- (c) to provide information or give evidence that is false or misleading in a material particular, or to provide information or give evidence in a manner that will make the information or evidence false or misleading in a material particular, to an authorised officer under this Act.

Maximum penalty: \$10 000.

### **40—Impersonating an authorised officer**

A person who falsely represents, by words or conduct, that the person is an authorised officer is guilty of an offence.

Maximum penalty: \$10 000.

## **Part 6—Proceedings and appeals**

### **41—Evidentiary provisions**

- (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.
- (1) In any proceedings an apparently genuine certificate, purporting to be signed by the Commissioner, stating that a person named in the certificate is an authorised officer is, in the absence of proof to the contrary, proof that the person is such an officer.
- (2) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister or the Commissioner (as the case requires) containing particulars of a delegation under this Act is, in the absence of proof to the contrary, proof of the particulars.
- (3) In any proceedings an apparently genuine copy of any book or document, taken by an authorised officer pursuant to this Act, certified by the Commissioner to be a true copy of the original is proof of the existence of the original and of its contents.
- (4) A finding of fact made by a court in proceedings under this Act will, in the absence of proof to the contrary, be accepted as proof of that fact in other proceedings (except criminal proceedings) under this Act.

- (5) A finding to which subsection (4) applies may be proved by production of a document under the seal of the court by which the finding was made.
- (6) In any proceedings in which a civil or criminal liability is dependent on a state of mind—
  - (a) the state of mind of a director, servant or agent of a body corporate will be imputed to the body corporate; and
  - (b) the state of mind of a servant or agent of a natural person will be imputed to that person.

#### **42—Appeals to District Court**

- (1) A person may appeal to the District Court against any of the following decisions:
  - (a) a refusal to grant a licence under section 17 on application by the person under section 15;
  - (b) a decision under section 18 to impose a condition on, or vary a condition of, a licence held by the person (including a condition imposed on the grant of the licence);
  - (c) a decision to suspend or cancel a licence held by the person under section 23;
  - (d) a refusal to appoint a proposed appointee as a responsible person under section 28(1)(b) for a licence held by the person;
  - (e) a decision to cancel the appointment of a substitute responsible person under section 29(4) in respect of a licence held by the person;
  - (f) a refusal to extend the appointment of a person as a substitute responsible person under section 29(7);
  - (g) a refusal to appoint a person as a substitute responsible person under section 30.
- (2) If the Commissioner grants a licence to a person after receiving a notice of objection under section 16 in respect of the application for the licence, the designated entity that lodged the notice of objection may appeal to the District Court against the granting of the licence on the grounds that—
  - (a) the holder of the licence is not a fit and proper person to be the holder of a licence; or
  - (b) in the case of a licence granted to a body corporate—1 or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence.
- (3) An appeal under this section must be instituted within—
  - (a) in the case of an appeal under subsection (1)—28 days after the making of the decision appealed against;
  - (b) in the case of an appeal under subsection (2)—14 days after the Commissioner gives notice under section 16(4)(b).
- (4) Subject to section 33, the Commissioner must, if so required by an appellant, state in writing the reasons for the Commissioner's decision.

- (5) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within the time allowed for instituting the appeal) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.

## Part 7—Miscellaneous

### 43—The register

- (1) The Commissioner must maintain a register of licences granted under this Act (the *register*).
- (2) The register must contain the following particulars for each licence:
- (a) the name and contact details of the holder of the licence;
  - (b) the business name, ABN and address for the business to which the licence relates;
  - (c) the name and contact details of each responsible person for the licence;
  - (d) the licence number;
  - (e) the date of issue of the licence;
  - (f) any conditions imposed on the licence by the Commissioner under section 18;
  - (g) the details of any enforcement action taken under this Act against the holder of the licence, including information about prosecutions or a suspension of the licence;
  - (h) any other particulars prescribed by regulation.
- (3) The Commissioner must make the register available, free of charge, on a website determined by the Commissioner.

### 44—Delegations

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
- (a) to a person employed in the Public Service; or
  - (b) to the person for the time being holding a specified position in the Public Service.
- (2) The Minister may delegate any of the Minister's functions or powers under this Act.
- (3) A delegation under this section—
- (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.
- (4) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

#### **45—Commissioner may rely on licence, approval etc under prescribed law**

- (1) The Commissioner may, if satisfied that a person is the holder of a licence, or is otherwise accredited or approved (however described), under a law prescribed by the regulations for the purposes of this section, do 1 or more of the following:
  - (a) dispense with the requirement of the person to provide to the Commissioner certain information that the Commissioner would otherwise require to determine a matter under this Act;
  - (b) determine, without any further consideration, that the person—
    - (i) is a fit and proper person to be the holder of a licence; or
    - (ii) is a fit and proper person to be a director of a body corporate that is the holder of a licence; or
    - (iii) is a fit and proper person to be a responsible person; or
    - (iv) has sufficient financial resources for the purpose of properly carrying on business under a licence.
- (2) The Commissioner may require a person to verify that the person is the holder of a licence or is otherwise accredited or approved (however described) under a prescribed law by statutory declaration.

#### **46—Exemptions**

- (1) The Commissioner may grant an exemption from this Act or specified provisions of this Act—
  - (a) to a specified person by notice in writing to that person; or
  - (b) to persons of a specified class by notice in the Gazette.
- (2) An exemption under subsection (1) may—
  - (a) be subject to such conditions as the Commissioner thinks fit; and
  - (b) apply for a specified period, until further notice or indefinitely; and
  - (c) vary according to the circumstances to which it is expressed to apply.
- (3) The Commissioner may, by subsequent notice in writing or notice in the Gazette (as the case requires)—
  - (a) vary or revoke an exemption; or
  - (b) vary or revoke a condition of an exemption or attach new conditions to an exemption; or
  - (c) vary the circumstances to which an exemption is expressed to apply.
- (4) A person who contravenes or fails to comply with a condition of an exemption imposed under this section is guilty of an offence.

Maximum penalty: \$10 000.

#### 47—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: \$10 000.

#### 48—Advertisements to include licence number

The holder of a licence must not publish, or cause to be published, an advertisement relating to the provision of labour hire services unless the advertisement specifies, alongside the name or contact details of the holder of the licence, the licence number preceded by the letters "LHS".

Maximum penalty: \$2 500.

#### 49—Defences

- (1) Subject to subsection (3), in a prosecution for a contravention of a provision of this Act, it is a defence if the defendant establishes—
  - (a) that the contravention was due to reasonable mistake; or
  - (b) that the contravention was due to reasonable reliance on information supplied by another person; or
  - (c) that—
    - (i) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
    - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In subsection (1)(b) and (c)—

*another person* does not include a person who was—

  - (a) a servant or agent of the defendant; or
  - (b) in the case of a defendant that is a body corporate—a director, servant or agent of the defendant,

at the time when the contravention occurred.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without permission, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.
- (4) This section does not apply in relation to a prosecution for a contravention of section 11.

## 50—Confidentiality of information

- (1) A person who obtains information or gains access to a document in exercising a power or function under this Act must not—
- (a) disclose to another person—
    - (i) the information; or
    - (ii) the contents of or information contained in the document; or
  - (b) give access to the document to another person; or
  - (c) use the information or document for any purpose.

Maximum penalty:

- (a) in the case of an individual—\$10 000;
  - (b) in the case of a body corporate—\$50 000.
- (2) Subsection (1) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
- (a) about a person, with the person's consent; or
  - (b) that is necessary for the exercise of a power or function under this Act; or
  - (c) that is made or given by the Commissioner or a person authorised by the Commissioner if the Commissioner reasonably believes the disclosure, access or use—
    - (i) is necessary for administering, monitoring or enforcing compliance with this Act; or
    - (ii) is necessary for administering, monitoring or enforcing compliance with a relevant law; or
    - (iii) is necessary for the administration or enforcement of another Act or law prescribed by the regulations; or
    - (iv) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety or to otherwise protect the public interest; or
  - (d) that is required by a court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
  - (e) that is required or authorised under a law; or
  - (f) to a Minister.

## 51—Service

- (1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may—
- (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or

- (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

## **52—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) be of general or limited application; and
  - (b) confer powers or impose duties in connection with the regulations on the Minister, the Commissioner or an authorised officer; and
  - (c) provide that a matter is to be determined according to the discretion of the Minister or the Commissioner; and
  - (d) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and
  - (e) impose penalties not exceeding \$2 500 for contravention of a regulation.

## **53—Review of Act**

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and report must be completed as soon as reasonably practicable after the third anniversary of the commencement of this Act (but in any event within 6 months after that commencement).
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## **Schedule 1—Transitional provisions**

### **1—Transitional provision**

If a person supplies, to another person, a worker to do work for the other person within 6 months after the commencement of this Act, the person is taken not to be a provider of labour hire services in relation to the supply until—

- (a) after the expiry of 6 months after that commencement; or
- (b) if the person applies for a licence within 6 months after that commencement—the day the application is decided,

whichever is the later.

## **2—Transitional regulations**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later day.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2017	68	<i>Labour Hire Licensing Act 2017</i>	12.12.2017	1.3.2018: s 2
2020	18	<i>Labour Hire Licensing (Miscellaneous) Amendment Act 2020</i>	25.6.2020	20.7.2020 ( <i>Gazette 16.7.2020 p3818</i> )
<b>2020</b>	<b>40</b>	<b><i>Training and Skills Development (Miscellaneous) Amendment Act 2020</i></b>	<b>19.11.2020</b>	<b>Sch 1 (cll 6 &amp; 7)—1.7.2021 (<i>Gazette 24.6.2021 p2260</i>) (cl 7 is of no effect because of amendment made by 18/2020 on 20.7.2020)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	20.7.2020
Pt 2		
s 6		
aquatic animal	inserted by 18/2020 s 4(1)	20.7.2020
cleaning work	inserted by 18/2020 s 4(2)	20.7.2020
<i>labour hire services</i>	<i>deleted by 18/2020 s 4(3)</i>	20.7.2020
fishing	inserted by 18/2020 s 4(3)	20.7.2020
horticultural processing work	inserted by 18/2020 s 4(3)	20.7.2020
host	inserted by 18/2020 s 4(3)	20.7.2020
labour hire services	substituted by 18/2020 s 4(3)	20.7.2020
labour hire worker	inserted by 18/2020 s 4(3)	20.7.2020

meat	inserted by 18/2020 s 4(4)	20.7.2020
meat processing work	inserted by 18/2020 s 4(4)	20.7.2020
prescribed work	inserted by 18/2020 s 4(5)	20.7.2020
<i>provider</i>	<i>deleted by 18/2020 s 4(6)</i>	20.7.2020
<b>relevant law</b>	<b>amended by 40/2020 Sch 1 cl 6</b>	<b>1.7.2021</b>
seafood	inserted by 18/2020 s 4(7)	20.7.2020
seafood processing work	inserted by 18/2020 s 4(7)	20.7.2020
trolley work	inserted by 18/2020 s 4(8)	20.7.2020
<i>worker</i>	<i>deleted by 18/2020 s 4(9)</i>	20.7.2020
s 7	substituted by 18/2020 s 5	20.7.2020
s 8	substituted by 18/2020 s 5	20.7.2020
s 8(3)	amendment purportedly made by 40/2020 Sch 1 cl 7 is of no effect because of a amendment made by 18/2020 on 20.7.2020	
s 9	substituted by 18/2020 s 5	20.7.2020
s 10		
s 10(1)	amended by 18/2020 s 6(1)	20.7.2020
s 10(4)	substituted by 18/2020 s 6(2)	20.7.2020
Pt 3		
s 11		
s 11(1)	amended by 18/2020 s 7	20.7.2020
s 12		
s 12(1)	amended by 18/2020 s 8(1), (2)	20.7.2020
s 12(1a)	inserted by 18/2020 s 8(3)	20.7.2020
s 13	amended by 18/2020 s 9(1), (2)	20.7.2020
s 14		
s 14(1)	amended by 18/2020 s 10	20.7.2020
s 14A	inserted by 18/2020 s 11	20.7.2020
Pt 4		
s 18		
s 18(1)	substituted by 18/2020 s 12(1)	20.7.2020
s 18(2)	amended by 18/2020 s 12(2)	20.7.2020
s 18(5)	inserted by 18/2020 s 12(3)	20.7.2020
s 19	amended by 18/2020 s 13	20.7.2020
s 20		
s 20(2)	substituted by 18/2020 s 14(1)	20.7.2020
s 20(6)	substituted by 18/2020 s 14(2)	20.7.2020
s 21		
s 21(2)		
prescribed matter	amended by 18/2020 s 15	20.7.2020
Pt 5		
s 34		

## Labour Hire Licensing Act 2017—1.7.2021

Legislative history

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s 34(1a)	inserted by 18/2020 s 16	20.7.2020
Pt 6		
s 41		
s 41(a1)	inserted by 18/2020 s 17	20.7.2020

## Historical versions

20.7.2020