

OVERVIEW OF LABOUR HIRE LICENSING LEGISLATION IN QUEENSLAND, SOUTH AUSTRALIA AND VICTORIA

	ITEM	QLD	VIC	SA
1	Title	Labour Hire Licensing Act 2017	Labour Hire Licensing Act 2018	Labour Hire Licensing Act 2017
2	Purpose	Section 3: <ul style="list-style-type: none"> • Protect workers from exploitation by providers of labour hire services. • Promote the integrity of the labour hire industry. 	Section 4 (see also section 1): <ul style="list-style-type: none"> • Protect workers from exploitation by providers of labour hire services and hosts. • Promote the transparency and integrity of the labour hire industry. 	Section 3: <ul style="list-style-type: none"> • Protect workers from exploitation by providers of labour hire services. • 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. • Promote the integrity of the labour hire industry.
3	Commencement	16 April 2018	Dates to be proclaimed; or 1 November 2018 (if not proclaimed before then).	1 March 2018
4	Applying for a licence	Online. From 16 April labour hire providers had 60 days to lodge an application for a licence (s 9). <ul style="list-style-type: none"> • If an application was made within the 60 day period, the obligations and penalties in the Act do not apply until the application for a licence is determined. 	Details of online process to be confirmed. Six-month transition period (sections 115-116).	Online from 1 March 2018. Initially, six months from that date to satisfy requirements and obtain a licence (Schedule 1, clause 1). This transition period was later extended by the SA Liberal Government to 1 February 2019.

	ITEM	QLD	VIC	SA
5	<p>Coverage</p>	<p>Section 7(1):</p> <p>A person (provider) provides labour hire services if, in the course of carrying on a business, the person supplies another person (a worker) to do work. <i>[Note: the Qld Act does not have the limiting words in the definition of providing labour services found in the Victorian and SA legislation, resulting in potentially very broad application subject to exclusions in regulations, see point 6 below.]</i></p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Contractor supplying fruit pickers for farmers. • Training organisations that supply apprentices or trainees to an employer. • Employment agency who on-hires temporary administration staff. <p>See also section 7(2):</p> <p>Provision of LH services directly or through intermediaries, etc.</p> <p>Section 9:</p> <p>Supply of a worker to do work for a person happens when worker first starts to do work for the person in relation to the supply.</p> <p>Section 8(1):</p> <p>An individual is a worker if the individual enters into an arrangement under which the provider supplies them to do work for another, and the provider is obliged to pay the worker (in whole or part) for the work.</p>	<p>Section 7(1):</p> <p>A person (a provider) provides labour hire services if:</p> <ul style="list-style-type: none"> • in the course of conducting a business, the provider supplies one or more individuals to another person (a host) to perform work <i>in and as part of a business or undertaking of the host</i> (this requires an assessment of the activities to be performed by the individual and the level of integration of those activities in the host's business/undertaking); and • the individuals are workers for the provider. <p>Someone will be 'providing labour hire services', regardless of whether there is a contract between the provider and host; or whether the supplier provides the workers directly, or through an intermediary; or whether the work is performed under the control of provider or host (section 7(2)).</p> <p>Recruitment, placement (linked to provision of accommodation)</p> <p>Section 8(1):</p> <ul style="list-style-type: none"> • A person provides labour hire services if, in the course of providing recruitment or placement services, the provider recruits/places individuals with another person (host) to perform work as part of the business of the host; • the provider procures/ provides accommodation for the individuals during this period; and 	<p>Section 7(1):</p> <p>A person (provider) provides labour hire services if, in the course of conducting a business, the person supplies a worker to another person to do work, <i>in and as part of the business or commercial undertaking of the other person.</i></p> <p>See also section 7(2):</p> <p>Provision of LH services directly or through intermediaries, etc.</p> <p>Section 9:</p> <p>Supply of a worker to do work for a person commences when worker first starts to do work for the person in relation to the supply.</p> <p>SA Consumer & Business Services has issued guidance material on when a licence is or is not required, available at: https://www.sa.gov.au/data/assets/pdf_file/0011/392393/Factsheet-who-needs-a-licence-examples.pdf</p> <p>Section 8(1):</p> <p>An individual is a worker if the individual enters into an arrangement under which the provider supplies them to do work for another, and the provider is obliged to pay the individual (in whole or part) for the work.</p>

	ITEM	QLD	VIC	SA
5	Coverage		<ul style="list-style-type: none"> the individuals are workers for the provider. <p>Contractor management services</p> <p>Section 8(2):</p> <ul style="list-style-type: none"> A person provides labour hire services if, in the course of providing contractor management services, the provider recruits/places individuals with a host and as part of the host's business; and the individuals are workers for the provider (rather than the host). 	
6	Exemptions	<p>Sections 7(4), 8(2):</p> <p>Regulations can make exclusions from definitions of provision of labour hire services and worker for purposes of the Act.</p> <p><i>Labour Hire Licensing Regulation 2018 provides for exemptions including:</i></p> <ul style="list-style-type: none"> In-house employee of provider, supplied to another person to do work on 1 or more occasions (e.g. lawyer seconded from firm to client). Executive officer of corporation who is only person supplied by corporation to another person to do work. Individual supplied by provider to another person within same entity/group. Individual employed by provider whose annual wages equal or exceed Fair Work Act high income threshold, and not employed under Qld or federal industrial instrument. 	<p>Section 10:</p> <p>Classes of persons or services prescribed by regulations.</p> <p>Victorian Government has consulted on the following categories of exemptions to be covered by regulations:</p> <ul style="list-style-type: none"> Secondments. Volunteers. Provision of a worker between related companies. Genuine subcontracting and pure outsourcing. Provision of professional services to a third party (e.g. medical or legal services). Work experience placements. Group training apprentices/trainees. 	<p>Section 5(1):</p> <p>Registered group training organisations to the extent that they supply apprentices or trainees to do work for others.</p> <p>Section 7(3):</p> <p>Regulations may prescribe circumstances in which person does not provide labour hire services. See also ss 7(4)(c), (5).</p> <p>Regulations issued to date do not address exemptions.</p>

ITEM	QLD	VIC	SA
7	<p>Prohibitions - Providers</p> <p>Labour hire service providers</p> <p>Section 10(1):</p> <p>A person must not provide labour hire services unless the person is the holder of a licence. Penalties:</p> <ul style="list-style-type: none"> • Individuals up to 1034 penalty units (\$130,439) or 3 years' imprisonment. • Corporations up to 3000 penalty units (\$378,450). <p>Section 10(2):</p> <p>A person must not advertise or hold out that the person provides or is willing to provide labour hire services, unless the person is the holder of a licence. Penalty:</p> <ul style="list-style-type: none"> • Up to 200 penalty units. 	<p>Labour hire service providers</p> <p>Section 13:</p> <p>A person must not provide labour hire services unless the person is a holder of a valid licence. Civil penalties:</p> <ul style="list-style-type: none"> • Natural persons up to 800 penalty units (\$126,856). • Bodies corporate up to 3200 penalty units (\$507,424). <p>Section 14:</p> <p>A person must not advertise or hold out that the person provides or is willing to provide labour hire services, unless the person holds a licence. Civil penalties:</p> <ul style="list-style-type: none"> • Natural persons up to 200 penalty units. • 800 penalty units for bodies corporate. 	<p>Labour hire service providers</p> <p>Section 11(1):</p> <p>A person cannot provide labour hire services unless the person is the holder of a licence. Penalties:</p> <ul style="list-style-type: none"> • Natural persons up to \$140,000 or 3 years' imprisonment • Bodies corporate up to \$400,000. <p>Section 11(2):</p> <p>A person must not advertise or hold out that the person provides or is willing to provide labour hire services, unless the person is the holder of a licence. Penalty:</p> <ul style="list-style-type: none"> • Up to \$30,000.
8	<p>Prohibitions - Users</p> <p>Labour hire service users</p> <p>Section 11(1):</p> <p>A person must not enter into arrangements with a labour hire service provider, unless the provider holds a licence. Penalties:</p> <ul style="list-style-type: none"> • Individuals up to 1034 penalty units (\$130,439) or 3 years' imprisonment. • Corporations up to 3000 penalty units (\$378,450). <p>This does not apply if the person has a reasonable excuse. It is a reasonable excuse if, at the time of entering the arrangement, the provider was shown on the register as a licence holder.</p>	<p>Labour hire service users</p> <p>Section 15:</p> <p>A person must not enter into arrangements with a labour hire service provider, unless the provider holds a licence. Civil penalties:</p> <ul style="list-style-type: none"> • Natural persons up to 800 penalty units (\$126,856). • Bodies corporate up to 3200 penalty units (\$507,424). <p>This does not apply if the provider was shown on the Register as a licence holder, or the person subject to the section 15 obligation has another reasonable excuse.</p>	<p>Labour hire service users</p> <p>Section 12:</p> <p>A person must not enter into arrangements with a labour hire service provider, unless the provider is authorised to provide labour hire services by a licence. Penalties</p> <ul style="list-style-type: none"> • Natural persons up to \$140,000 or 3 years' imprisonment. • Bodies corporate up to \$400,000. <p>This does not apply if the person has a reasonable excuse. It is a reasonable excuse if, at the time of entering the arrangement, the person was shown on the register as a licence holder.</p>

	ITEM	QLD	VIC	SA
8	Prohibitions - Users	<p>Avoidance</p> <p>Section 12:</p> <p>A person cannot enter arrangements for the supply of workers that the person knows, or ought reasonably know, are designed to circumvent or avoid obligations under the Act. This does not apply if the person has a reasonable excuse.</p>	<p>Avoidance</p> <p>Section 16:</p> <p>A person (client) must not enter arrangements for the supply of workers that the client knows, or has reasonable grounds to suspect, are designed to circumvent or avoid obligations under the Act. This does not apply if the person has a reasonable excuse</p> <p>Avoidance Arrangements – Reporting</p> <p>Section 16(3):</p> <p>A person must report avoidance arrangements to the Commissioner as soon as practicable after becoming aware of the arrangement.</p>	<p>Avoidance</p> <p>Section 13:</p> <p>A person must not enter arrangements for the supply of workers that the person knows, or ought reasonably know, are designed to circumvent or avoid obligations under the Act. This does not apply if the person has a reasonable excuse.</p> <p>Avoidance Arrangements – Reporting</p> <p>Section 14(2):</p> <p>A person must report avoidance arrangements to the Commissioner as soon as practicable after becoming aware of the arrangement.</p>
9	Criteria to be met in application for licence	<p>Section 15:</p> <p>A licence application may be granted if:</p> <ul style="list-style-type: none"> • The applicant is a fit and proper person. • The business to which the application relates is financially viable. 	<p>Section 17(4):</p> <p>Licence application must declare:</p> <ul style="list-style-type: none"> • Person is a fit and proper person. • Compliance with legal obligations. <p>Section 23:</p> <p>Applicant must file a declaration to the effect that the applicant complies with legal obligations relating to taxation, superannuation, migration, workplace, occupational health and safety and labour hire laws and minimum accommodation standards. See also s 19, required information for applications and s 24, grounds for grant/refusal to grant a licence.</p>	<p>Section 17:</p> <p>A licence application must be granted if:</p> <ul style="list-style-type: none"> • The applicant is a fit and proper person. • The person or business to which the application relates is financially viable.

	ITEM	QLD	VIC	SA
10	What is a 'fit and proper' person?	<p>Section 27(1):</p> <p>Chief executive must have regard to:</p> <ul style="list-style-type: none"> the person's character (such as their honesty, integrity and professionalism); the person's history of compliance with relevant laws (e.g. laws about record-keeping, payment of tax and superannuation, work health and safety); whether the person has been: <ul style="list-style-type: none"> insolvent; convicted of an offence; whether the person is under the control of or substantially influenced by another (who the Chief Executive does not consider to be fit and proper). 	<p>Section 22:</p> <p>A person is fit and proper unless:</p> <ul style="list-style-type: none"> in the past 10 years the person was guilty of an indictable offence or offence involving fraud, dishonesty or drug trafficking; in the past 5 years the person has not complied with workplace laws, labour hire laws or minimum accommodation standards; in the past 5 years has had their licence cancelled, suspended or revoked; in the past 5 years the applicant was a body corporate and was disqualified from managing corporations; any other prescribed circumstances. 	<p>Section 10:</p> <p>Commissioner may have regard to matters including:</p> <ul style="list-style-type: none"> character (honesty, integrity, professionalism); demonstrated compliance with relevant laws (including state/federal workplace laws, WHS legislation, etc); sufficient business knowledge; convictions for prescribed offences; member or participant in prescribed organisation; insolvency, liquidation, etc; whether person has previously held a licence and if it was suspended, cancelled or lapsed.
11	Conditions	<p>Section 29:</p> <p>Conditions may be imposed on the licence. These could include:</p> <ul style="list-style-type: none"> Licensee holding insurance; Licensee lodging security; Allowing Chief Executive to inspect premises. 	<p>Section 33:</p> <p>Conditions may be imposed on the licence, e.g. conditions requiring inspection of premises at reasonable intervals.</p>	<p>Section 18:</p> <p>Conditions may be imposed on the licence.</p>
12	Objections	<p>Section 93:</p> <p>An 'interested person' (i.e. a person or organisation with an interest in protection of workers or integrity of labour hire industry: s 3) may apply for a review of a decision to grant a licence, suspend a licence or impose, vary or revoke a condition of licence.</p>	<p>Section 32:</p> <p>Objections to applications for (or renewal of) a licence can be made by an 'interested person' (i.e. a person or organisation with an interest in protection of workers or integrity of labour hire industry: s 3).</p>	<p>Section 16:</p> <p>Objections to licence applications can be made by a 'designated entity' (e.g. union, state or federal agency such as Fair Work Ombudsman).</p>

	ITEM	QLD	VIC	SA
13	Period of licence	<p>Section 17:</p> <p>A licence is valid for 1 year from when it is granted. It can be suspended or cancelled.</p>	<p>Section 26:</p> <p>Licence remains in force until the expiry date on the licence (unless cancelled) - no later than 3 years from date licence came into force.</p> <p>Sections 28-31:</p> <p>Provides scheme for renewal of licences.</p>	<p>Section 20(1):</p> <p>Licence remains in force until it is surrendered, cancelled, the licence holder dies or the body corporate is dissolved.</p>
14	Reporting Obligations	<p>Section 31:</p> <ul style="list-style-type: none"> • Licensees must provide a report to the Chief Executive within 28 days after the licensee's reporting period ends. • Reporting period is six months. • Information required includes: <ul style="list-style-type: none"> - Contact details (name, ABN, officers details). - Description of arrangements (e.g. casual or permanent, contractual, apprenticeship). - Details of type of work carried out. - Locations in Qld where the work is undertaken. - Accommodation. - Information about compliance with relevant laws. - Number of notifiable incidents. - Any disciplinary/enforcement action taken by a regulatory body. 	<p>Section 34:</p> <ul style="list-style-type: none"> • Licence holders must lodge information annually re matters such as ATO and Work Safe Victoria registration, numbers of workers supplied to hosts, applicable industrial instruments, compliance with relevant laws, etc. • Must be lodged within 28 days of the start of each reporting period (i.e. each 12 months). 	<p>Section 20(2), (6):</p> <ul style="list-style-type: none"> • Detailed annual reporting requirements of licence holders.

	ITEM	QLD	VIC	SA
15	Other Obligations	<p>Section 38: Licensees must produce a copy of their licence for inspection by an inspector, worker or another person with whom the licensee is dealing, when requested.</p> <p>Parts 5 and 6: Licensees must comply with powers of Chief Executive and Inspectors under these provisions.</p> <p>Section 39: Licensees must not transfer, sell, dispose of, lend or hire their licenses.</p>	<p>Section 46: Licence holders must produce licence for inspection at the request of an inspector, provider, worker, host, police officer or prescribed person.</p> <p>Sections 67-84: Licence holders must comply with requirements re exercise of powers by inspectors, e.g. produce requested documents, allow access to premises, etc.</p> <p>Section 27: Licence is not transferable.</p>	<p>Section 22: The Commissioner can request information from licence holders, which must be provided.</p> <p>Part 2, Div 2: Authorised Officers have powers of entry, inspection, etc.</p> <p>Section 19: Prohibition on transfer, sale, etc of licence.</p>
16	Territorial Operation	<p>Section 5: Act applies in Qld and outside to extent of extra-territorial power of Qld Parlt.</p>	<p>Section 6(2): Act applies in relation to work performed within Victoria, and arrangements made within Victoria in respect of work performed outside Victoria.</p>	<p>Section 4(2): Act applies to conduct either in or outside SA that is in connection with labour hire services supplied in SA.</p>
17	Administration and enforcement	<p>Part 6:</p> <ul style="list-style-type: none"> • Chief Executive of the Office of Industrial Relations (being the head of the relevant public sector unit). • Inspectors appointed by the Chief Executive. 	<p>Part 4:</p> <ul style="list-style-type: none"> • Victorian Labour Hire Licensing Authority. • Labour Hire Licensing Commissioner. • Inspectors. 	<p>Part 5:</p> <ul style="list-style-type: none"> • Commissioner of Consumer Affairs and authorised officers.

	ITEM	QLD	VIC	SA
18	Register	<p>Section 103: Register of licences. Users of labour hire and workers will be able to search a register of licensed labour hire providers so that they can verify that they are dealing with legitimate licensed businesses.</p>	<p>Section 48, see also s 49. Victorian Labour Hire Licensing Authority will maintain a public register of licensed labour hire providers:</p> <ul style="list-style-type: none"> • licence holder's name and contact details; • business name, ABN, business address; • ACN or ARBN (if body corporate); • nominated officer details; • date licence came into force and expiry date; • conditions of licence; • licence number; • other prescribed matters. 	<p>Section 43: Commissioner must maintain a register of licences granted (similar information to Victoria).</p>