

Legal Alert

Workplace

March 2018

Labour Hire Licensing Act

In a Nutshell

The *Labour Hire Licensing Act 2017* came into force on 1 March 2018. The intention of the Act is to protect workers from exploitative arrangements entered into with labour hire service agencies, to level the playing field for compliant labour hire businesses, and to promote the integrity of the labour hire industry.

From 1 September 2018, all labour hire agencies operating in South Australia are required to be licenced (except for providers who have applied for a licence prior to 1 September 2018, but the application has not yet been decided – they may keep operating until a decision has been made). Licences are granted once an entity can prove it has met specified criteria, which includes reporting requirements. The Act also makes it an offence for employers to use unlicensed labour hire agencies.

Application

An applicant must apply to the Commissioner for Consumer Affairs to be granted a labour hire licence. It must be established that the applicant is, firstly, a fit and proper person for the purposes of holding a licence (if a corporation, both the body corporate and all directors must be found to be fit and proper), and secondly, that they have sufficient financial resources to properly carry on business under the licence.

In determining whether one is 'fit and proper', the following criteria will be regarded (but other factors can also be taken into account):

- The character of the person, for instance, their honesty, integrity and professionalism;
- The person's prior compliance with relevant laws – the person will not be deemed fit and proper if they have been convicted of offences prescribed by the regulations; and
- Whether the person or corporation has sufficient business knowledge and experience to properly carry on business under the licence.

Effects on Providers of Labour Hire

Any organisation that provides labour hire will need to either be licenced by 1 September 2018 or have submitted an application for a licence by that time. If an application is submitted within 6 months after the Act commencing but has not yet been decided, a person may continue to operate until the licence application has been determined.

There are significant penalties (both monetary penalties and imprisonment) if a provider of labour hire services is operating unlicensed. The maximum fine for an individual is \$140,000.00 and a corporation \$400,000.00.

Effects on Entities Engaging Labour Hire Providers

Any organisation that utilises labour hire services will need to introduce protocols to ensure that they are not engaging unlicensed labour hire providers. The Act places a high level of responsibility on entities engaging labour hire services to ensure the providers are licenced,

arrangements where the person knows (or ought with significant penalties for entering into arrangements with unlicensed providers and entering into reasonably to know) that the arrangement is designed to avoid obligations under the Act. The penalty is the same range for all offending to a maximum of \$140,000.00 for an individual and \$400,000.00 for a corporation.

It is recommended that all organisations engaging labour hire providers create procedures which put measures in place to check that their providers are licenced. This will need to include a review annually of license arrangements.

What To Do

If you are a labour hire provider, you will need to:

- Commence the process of applying for a licence. Be aware that if your application is submitted after 1 September 2018, you may not be able to provide labour hire services until you have been granted a licence.

If you engage labour hire providers, you will need to:

- Create policies and procedures to ensure that you can satisfy yourself that your labour hire providers are licensed. Be aware that some providers may become unlicensed from early September 2018.



Guy Biddle *Partner*
guy.biddle@finlaysons.com.au
+618 8235 7851



Will Snow *Special Counsel*
will.snow@finlaysons.com.au
+618 8235 7692



Aleksandra Golat *Associate*
aleksandra.golat@finlaysons.com.au
+618 8235 7680