

LABOUR HIRE LICENSING ACT 2017 (QLD)

A summary of the major terms of the new Act

A new labour hire licensing scheme will commence operation in 2018 pursuant to the *Labour Hire Licensing Act 2017* (Qld) ('the Act'). The scheme will apply to all labour hire providers operating in Queensland and will ban business from entering into labour hire arrangements with unlicensed providers. Labour hire providers will need to obtain a yearly, non-transferrable licence, the application and renewal fees for which will range from \$1,000 to \$5,000.

Scope

A person will be considered a provider of labour hire services if, *in the course of carrying on a business, the person supplies, to another person, a worker to do work*.¹ This definition encompasses services regardless of whether or not; the worker is an employee of the provider, a contract is entered into and the worker is supplied by the provider directly or indirectly through agents or intermediaries.²

The Act will apply broadly and capture businesses that may not deem themselves a labour hire provider. For example, companies which employ their employees through a single entity and then have those employees work for multiple group entities, professional service firms which use the common service entity to provide services to partnerships and, employers who second employees to other employers are likely to be affected by the Act.

Notably, the scheme will apply where work is performed by labour hire workers in Queensland, whether or not the labour hire worker or company is based in Queensland.

Requirements for obtaining a Licence

To obtain a licence, an application must be made to the chief executive.³ The applicant, nominated officers and 'executive officers' must pass a fit-and-proper person test to establish that they comply with all relevant laws and that the business is financially viable.⁴ The test takes into consideration (among other factors);⁵ the person's character (including honesty, integrity and professionalism) and the person's history of compliance with relevant laws (including laws about record-keeping, payment of

tax, superannuation, work health and safety, or laws about building standards as it related to the accommodation of a worker).

Obligations of Licensees

Licensees will be obliged to comply with all conditions of the licence and with all relevant laws applying to the licensee (e.g., workplace laws relating to workers' compensation, wages and superannuation).⁶ Furthermore, licensees will be required to report every 6 months on their operations, including providing information on the number of employees they have engaged, how they are engaged, the type of work performed and where it is performed.

Inspectors will be appointed and be granted extensive powers to monitor compliance with the Act and investigate alleged contraventions.⁷

¹ S 7(1).

² S 7(2).

³ See ss 13-14 for specific requirements and exceptions.

⁴ S 15.

⁵ S 27.

⁶ S 28.

⁷ S 47.

Offences

Offences applying to unlicensed providers include providing labour hire services in Queensland⁸ and advertising or holding out that they provide or are willing to provide labour hire services.⁹ Offences applying to those using the services include entering into an arrangement for labour hire with an unlicensed provider¹⁰ and failing to report to a provider who is supplying a worker as part of an avoidance arrangement as soon as they became aware or ought reasonably have become aware of that matter.¹¹

Maximum penalties for a breach of these provisions is \$126,044.60 or three years' imprisonment for an individual, or \$365,700 for a corporation.

Licence Suspension and Cancellation

A licence may be suspended or cancelled if the provider, or a representative or employee of the provider, has contravened a condition of the licence or a relevant law (including *Work Health and Safety Act 2011* (Qld)), the provider is no longer a fit and proper person or, the provider has been wound up or deregistered.

A person whose licence has been cancelled is unable to apply for a new licence for 2 years. A corporation and its related bodies corporate cannot apply for a new licence: unless there is a 'genuine sale' of the business; and the shareholders at the time of cancellation are no longer shareholders; and the person who was in a position to control or influence the affairs of the corporation at the time of the licence cancellation is no longer in a position to do so.¹²

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CONTACT US

JHK Legal
Level 20 241 Adelaide Street
Brisbane, QLD 4006
Telephone: (07) 3859 4500
Email: brisbane@jhklegal.com.au
Website: www.jhklegal.com.au

⁸ S 10(1).

⁹ S 10(2).

¹⁰ S 11(1).

¹¹ S 12.

¹² S 14(5).