



Labour Hire Licensing Act 2017 now in effect in Queensland

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Legislation now effective

As indicated in our e-Alert in September 2017, at that time Queensland had become the first State to establish a licensing scheme for labour hire which:

1. required all labour hire providers to:
 - a. be licenced;
 - b. demonstrate in the licensing process that persons involved in management of the labour hire provider are "fit and proper" persons;
 - c. comply with ongoing reporting requirements; and
2. would ban businesses from entering into labour hire arrangements with unlicensed providers.

Following release of the supporting Regulations on 6 April 2018, the *Labour Hire Licensing Act 2017 (Qld)* (**LHL Act**) took effect on 16 April 2018.

Applications for licences to be lodged within 60 days

Entities which may be caught by the LHL Act now have until 15 June 2018 to confirm whether they are able to rely on one of the newly defined exceptions to the coverage of the LHL Act and if not apply for their licence.

Regulations reduce scope of the LHL Act

Under the LHL Act, with limited exceptions, a person is a labour hire provider if that person *"provides labour hire services if, in the course of carrying on a business, the person supplies, to another person, a worker to do work."*

Importantly, the Regulations seek to address a number of concerns raised about the initial scope of the LHL Act.

This is done by excluding a number of persons from being defined as "workers", thereby meaning that if an entity provides their labour to a third party the entity is not considered a labour hire provider under the LHL Act and the person using their labour is not considered to be using a labour hire provider.

The new categories of person prescribed by the Regulations excluded from the definition of "workers" are:

1. individuals above the High Income Threshold in the *Fair Work Act 2009* (Cth) (currently \$142,000) not covered by an industrial instrument (**high income exception**);
2. an executive officer of a corporation, where that executive officer is the only person that the corporation provides to another person to do work (**small contractor / consultant executive officer exception**);
3. an "in-house employee" of a provider who is supplied to another person only on a temporary basis on one or more occasions (**contractors' employees exception**); and
4. a person who a provider provides to another entity where the provider and the other entity are part of an entity or group entities that carry on business collectively as one recognisable business (**single recognisable business exception**).

Whilst these exceptions will come as relief to many in the Queensland business community and the first and second exceptions are

self-explanatory, entities which provide labour to others (and those engaging the labour) under the contractors' employees and single recognisable business exceptions will need to ensure that they obtain careful advice as to whether they satisfy the relevant criteria in the Regulations for the exceptions or face potential penalties up to \$378,000.

Application process and information required

Applications for licences can now be lodged through the Queensland Office of Industrial Relations.

The Regulations also better define the information which will be required as part of that application process including:

1. the financial viability of the applicant;
2. the migration status of the applicant, and its associates and their workers;
3. any insolvency history of the applicant and its associates;
4. whether the applicant and its related persons have, in the last 5 years has been convicted of workplace, work health and safety or workers compensation offences or entered into undertakings in relation to such breaches;
5. the criminal history of the applicant and its associates including breaches of various specified legislation in the past 5 years;
6. whether the applicant or its associates has been subject to any sexual harassment complaints in the last 5 years.

The information requirements associated with the applications (and on an ongoing basis) will be onerous. Applicants will also need to pay close regard to the differing definitions of "associate" and "related party" in considering the provision of information.

For assistance or more information about these matters or any matters regarding Employment and Work Health & Safety services, please contact Jamie Robinson.

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