

Labour Hire Licensing Regulation 2018

Explanatory notes for SL 2018 No. 35

made under the

Labour Hire Licensing Act 2017

General Outline

Short title

Labour Hire Licensing Regulation 2018

Authorising laws

Section 17 of the *Acts Interpretation Act 1954*.
Section 108 of the *Labour Hire Licensing Act 2017*.

Policy objectives and the reasons for them

The *Labour Hire Licensing Act 2017* (LHL Act) is the Queensland Government's commitment to respond to the exploitation and mistreatment of vulnerable labour hire workers. The LHL Act achieves this by establishing a mandatory licensing scheme in order to protect workers from exploitation by labour hire providers and promote the integrity of the labour hire industry. The policy objective of matters contained in the LHL Act are provided in the Explanatory Notes accompanying the Labour Hire Licensing Bill 2017.

The LHL Act delegates to regulation to prescribe minor and technical provisions to enable its effective administration. To ensure that the LHL Act can operate effectively and its overall purpose can be achieved, it is necessary to make the *Labour Hire Licensing Regulation 2018* (the Regulation).

Achievement of policy objectives

The policy objective of this Regulation is to support the overall purpose of the LHL Act by providing detail to the scope and the operational requirements of the scheme.

The Regulation seeks to further the purpose of the LHL Act by providing limited treatment to identify when a worker is not a labour hire worker for the LHL Act. The provisions discussed below seek to maintain the broad application of the LHL Act to all industry sectors and occupations, while ensuring that arrangements that are not commonly understood to be labour hire are not captured.

These are: the worker is engaged on a regular and systematic basis, the worker has a reasonable expectation that the employment will continue, and the worker primarily performs work in and for the employer's business. Further, if the supply of this worker is on a temporary basis on one or more occasions, they are not a worker for the purpose of the LHL Act.

This approach to the definition of worker presupposes a substantive employment relationship with a reasonable expectation of ongoing employment that would not commonly be considered as labour hire employment. This approach provides that the LHL Act does not apply to those workers who are employees on genuine secondment, engaged in workplace consultancy, or on temporary loan to another employer to cover emergency, incidental or one-off type scenarios, with very little risk of exposing other workers to disguised labour hire arrangements. The approach also provides that workers who provide in-home care support for elderly or disabled people where the carer is substantively employed with a reasonable expectation of on-going employment in an organisation that provides care services is not labour hire where the worker is as described. Similarly, for example, workers such as a photocopier technician who is substantively employed with a firm but attends other workplaces to repair photocopiers, would not be considered a labour hire worker.

The Regulation also provides further provisions prescribing individuals who are not considered to be labour hire workers. These include: individuals who are not covered by an industrial instrument and who also have an annualised income greater than the *Fair Work Act 2009* (Cth) (FW Act) high income threshold; and individuals who are executive officers of a corporation and are the only individual supplied.

Additionally, the Regulation further provides that an individual who is supplied within an entity, or group of entities, that carry on business as one single recognisable business is not considered to be a labour hire worker for the purpose of the Act. This treatment has been implemented in response to evidence of common arrangements of accountants, lawyers and other professionals (particularly those who are required to operate their businesses as individuals or as partnerships) to engage associated entities to provide clerical, administrative and other services.

The Regulation also prescribes further information related to the application and reporting requirements established by the LHL Act. This includes:

- what an applicant's declaration of financial viability means for the LHL Act and examples of the types of financial documents an applicant must nominate to be able to make this declaration;
- details about how compliance with specified work health and safety, fair work, migration, anti-discrimination, transport and accommodation laws will be demonstrated;
- details that the Chief Executive must have regard to when considering if a person is fit and proper to be a provider of labour hire services;
- further details about what a licensee must report on, including specific details about accommodation, transport and services used by labour hire workers; and
- renewal, restoration, and application fee tiers and amounts.

These provisions are also considered to further the purpose of the LHL Act by ensuring that labour hire providers are required to demonstrate a history of compliance and the ability to comply with their legal obligations to workers. This is an integral component of the LHL Act when it comes to combating the exploitation of workers by labour hire providers.

Consistency with policy objectives of authorising law

This Regulation is part of the Queensland Government's commitment to address worker exploitation and mistreatment of labour hire workers. It is consistent with the main objectives of the LHL Act, which are to protect workers and promote the integrity of the labour hire industry.

The Regulation operates within the scope that has been conferred by the provisions of the LHL Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The LHL Act provides for regulation to prescribe some of the features that are essential to the operation of the scheme. There is no alternative means to achieve the policy objective without introduction of the Regulation.

Benefits and costs of implementation

There are no additional costs anticipated to be associated with the Regulation.

The costs and benefits of the new regulatory framework for labour hire providers have been assessed in the Decision Regulatory Impact Statement and Explanatory Notes accompanying the Labour Hire Licensing Bill 2017.

Consistency with fundamental legislative principles

The Regulation is generally consistent with the fundamental legislative principles and gives sufficient regard to these principles.

Legislative Standards Act 1992, sections 4(2)(a) legislation should have sufficient regard to the rights and liberties of individuals

The Regulation introduces a number of minor offences. These offences are considered necessary to further the objectives of the LHL Act. Offences carrying a penalty of 20 penalty units ensure licensees are encouraged to comply with their obligations under the LHL Act. Offences that carry a penalty of 10 penalty units are administrative and are necessary to ensure the effective operation of the LHL Act.

Consultation

A three week public consultation process informed the development of the Regulation. Consultation closed on 2 February 2018. Two consultation papers (one presenting possible treatments for operational elements of the Act and the second discussing possible ways to clarify the scope of the Act) were published and stakeholders were invited to provide feedback on the proposals outlined in the consultation papers and any other matters they considered necessary or desirable in relation to the implementation of the Act.

A total of 49 submissions were received.

Follow up consultation was also undertaken with all relevant stakeholders, including:

- Queensland Council of Unions
- Queensland Law Society
- Queensland Agriculture Workforce Network
- AWX
- WorkCover Queensland
- Workplace Health and Safety Queensland
- Department of Home Affairs
- Queensland Resources Council
- AgForce
- Growcom
- BHP Billiton
- Australian Industry Group
- Recruitment Consulting and Staffing Association
- National Disability Services
- Australian Apprenticeship and Traineeship Office
- Master Builders Queensland
- Construction, Forestry, Mining and Engineering Union.