

**Authorised Version**  
**Labour Hire Licensing Act 2018**  
**No. 25 of 2018**

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**Authorised Version**



**Victoria**

# **Labour Hire Licensing Act 2018<sup>†</sup>**

**No. 25 of 2018**

[Assented to 26 June 2018]

**The Parliament of Victoria enacts:**

## **Part 1—Preliminary**

### **Division 1—General**

#### **1 Purposes of Act**

The purposes of this Act are—

- (a) to establish a licensing system to regulate the provision of labour hire services; and
- (b) to impose civil penalties upon providers and users of labour hire services who obtain those services from anyone other than

licensed providers of labour hire services;  
and

- (c) to establish the Labour Hire Licensing Authority and the office of Labour Hire Licensing Commissioner, and to provide for their functions and powers; and
- (d) to provide for the development of a voluntary code of practice for the labour hire industry; and
- (e) to provide for the appointment of inspectors to monitor compliance and to provide for their powers; and
- (f) to amend the **Public Administration Act 2004** in relation to the office of Labour Hire Licensing Commissioner.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2019, it comes into operation on that day.

## 3 Definitions

In this Act—

*ABN* has the same meaning as it has in the Corporations Act;

*ACN* has the same meaning as it has in the Corporations Act;

*Acting Commissioner* means an acting Labour Hire Licensing Commissioner appointed under section 59;

*ARBN* has the same meaning as it has in the Corporations Act;

**Authority** means the Labour Hire Licensing Authority established by section 50;

**civil penalty provision** means a provision specified in the table in section 94(2) to be a civil penalty provision;

**Code of Practice** means a Code of Practice made in accordance with Division 5 of Part 7;

**Commissioner** means the Labour Hire Licensing Commissioner appointed under section 55;

**contractor** includes, but is not limited to—

- (a) an outworker within the meaning of the **Outworkers (Improved Protection) Act 2003** or the Fair Work Act 2009 of the Commonwealth; and
- (b) an owner driver within the meaning of the **Owner Drivers and Forestry Contractors Act 2005**;

**embargo notice** means a notice issued by an inspector under section 79;

**fit and proper person** has the meaning given by section 22;

**host** means a person to whom a provider provides labour hire services;

**inspector** means a person appointed under section 64;

**interested person** means a person or organisation who has an interest in the protection of workers or the integrity of the labour hire industry;



***labour hire industry law*** means the following—

- (a) this Act;
- (b) a provision of an Act or law of Victoria, the Commonwealth, another State or a Territory imposing an obligation on a person in relation to labour hire (however described)—

and includes regulations or instruments made under such an Act or provision;

***licence*** means a licence granted under section 24;

***minimum accommodation standards*** means standards of accommodation required by or under any of the following, to the extent that those standards relate to accommodation for workers—

- (a) the **Public Health and Wellbeing Act 2008**;
- (b) the **Residential Tenancies Act 1997**;
- (c) the **Rooming House Operators Act 2016**;
- (d) the **Planning and Environment Act 1987**;
- (e) the **Occupational Health and Safety Act 2004**;
- (f) a prescribed provision of a law of Victoria, the Commonwealth, another State or a Territory;
- (g) prescribed accommodation standards (however described)—

and includes standards of accommodation required by or under regulations or instruments made under an Act or provision referred to in any of the above paragraphs;

***nominated officer*** for a licence has the meaning given by section 17(3);

***officer***, in relation to a body corporate means any person (by whatever name called) who—

- (a) is a director or secretary of the body corporate; or
- (b) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the body corporate;

***police officer*** has the same meaning as in the **Victoria Police Act 2013**;

***provider*** means a person who provides labour hire services;

***provides labour hire services*** has the meaning given by section 7(1) and section 8(1) and (2);

***Register*** means the Register of Licensed Labour Hire Providers maintained under section 48;

***regulator*** means a person or body responsible for undertaking activities of a regulatory nature (however described) under a labour hire industry law, a workplace law, or any other law of a regulatory character, whether of Victoria, the Commonwealth, another State or a Territory;

***relevant person***, in relation to an application for or in respect of a licence, or in relation to a licence that is in force, as the case requires, means the following persons—

- (a) the applicant, or the holder of the licence, as the case requires;

- (b) if the applicant, or the holder of the licence, is a body corporate, each officer of the body corporate;
- (c) if the applicant, or the holder of the licence, is a natural person, each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business conducted by the natural person that provides or is to provide labour hire services;
- (d) each proposed nominated officer, or nominated officer, for the licence.

*worker*, for a provider, has the meaning given by section 9;

*workplace law* means the following—

- (a) a provision of a law of Victoria, the Commonwealth, another State or a Territory that imposes an obligation on a person in relation to employees or contractors (however described), including but not limited to, the following—
  - (i) the **Occupational Health and Safety Act 2004**;
  - (ii) the **Workplace Injury Rehabilitation and Compensation Act 2013**;
  - (iii) the **Equal Opportunity Act 2010**;
  - (iv) the **Long Service Leave Act 1992**;
  - (v) the **Child Employment Act 2003**;

- (vi) the **Owner Drivers and Forestry Contractors Act 2005**;
- (vii) the **Outworkers (Improved Protection) Act 2003**;
- (viii) the **Public Holidays Act 1993**;
- (ix) the **Construction Industry Long Service Leave Act 1997**;
- (x) the **Payroll Tax Act 2007**;
- (xi) the Fair Work Act 2009 of the Commonwealth;
- (xii) the Independent Contractors Act 2006 of the Commonwealth;
- (xiii) the Safety, Rehabilitation and Compensation Act 1988 of the Commonwealth;
- (xiv) the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth;
- (b) a provision of a law of Victoria, the Commonwealth, another State or a Territory imposing an obligation in relation to transport, to the extent that the law or provision relates to the transport of workers—

and includes regulations or instruments made under such an Act or provision.

#### **4 Objects of Act**

The objects of this Act are—

- (a) to protect workers from being exploited by providers of labour hire services and hosts; and
- (b) to improve the transparency and integrity of the labour hire industry.

## **5 Act binds the Crown**

- (1) This Act binds the Crown—
  - (a) in right of the State of Victoria; and
  - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

## **6 Extraterritorial application**

- (1) This Act applies within and outside Victoria to the full extent of the extraterritorial legislative power of the Parliament.
- (2) In particular, this Act applies in relation to—
  - (a) work performed within Victoria; and
  - (b) arrangements made within Victoria in respect of work performed outside Victoria.

## **Division 2—Core concepts**

### **7 Meaning of *provides labour hire services*—general definition**

- (1) A person (a *provider*) *provides labour hire services* if—
  - (a) in the course of conducting a business, the provider supplies one or more individuals to another person (a *host*) to perform work in and as part of a business or undertaking of the host; and
  - (b) the individuals are workers for the provider, within the meaning of section 9(1).
- (2) For the purposes of subsection (1), a provider may provide labour hire services to a host regardless of the following—

- (a) whether a contract has been entered into between the provider and the host;
- (b) whether the individuals supplied by the provider are supplied—
  - (i) directly; or
  - (ii) indirectly through one or more intermediaries;
- (c) whether the work performed is under the control of the provider or the host.

**8 Meaning of *provides labour hire services*—certain recruitment and placement services and contractor management services**

- (1) A person (a *provider*) *provides labour hire services* if—
  - (a) in the course of conducting a business of providing recruitment or placement services, the provider recruits one or more individuals for, or places one or more individuals with, another person (a *host*) to perform work in and as part of a business or undertaking of the host; and
  - (b) the provider also procures or provides accommodation for the individuals for some or all of the period during which the individuals perform the work; and
  - (c) the individuals are workers for the provider, within the meaning of section 9(2)(a).
- (2) A person (a *provider*) *provides labour hire services* if—
  - (a) in the course of conducting a business of providing contractor management services, the provider recruits one or more individuals for, or places one or more individuals with another person (a *host*) to perform work in

- and as part of a business or undertaking of the host; and
- (b) the individuals are workers for the provider, within the meaning of section 9(2)(b).
- (3) For the purposes of this section, a provider may provide labour hire services to a host regardless of the following—
- (a) whether a contract has been entered into between the provider and the host;
- (b) whether the individuals recruited or placed by the provider are recruited or placed—
- (i) directly; or
- (ii) indirectly through one or more intermediaries;
- (c) whether the work performed is under the control of the provider or the host.

## **9 Meaning of *worker***

- (1) An individual is a *worker*, for a provider, if—
- (a) an arrangement is in force between the individual and the provider under which the provider supplies, or may supply, the individual to one or more other persons to perform work; and
- (b) the provider is obliged to pay the individual (in whole or part) for the performance of the work by the individual, whether directly or indirectly through one or more intermediaries.
- (2) An individual is a *worker*, for a provider, if an arrangement is in force between the individual and the provider under which the provider—

- (a) recruits the individual for, or places the individual with, one or more other persons to perform work, being persons who are obliged to pay the individual (in whole or part) for the performance of the work by the individual, whether directly or indirectly through one or more intermediaries; or
  - (b) recruits the individual as an independent contractor for one or more other persons to perform work, and manages the contract performance by the independent contractor.
- (3) For the purposes of this section, an individual may be a worker for a provider regardless of the following—
- (a) whether the individual is an employee of the provider;
  - (b) whether a contract has been entered into between the individual and the provider;
  - (c) whether the individual is an apprentice, or is under a training contract, within the meaning of the **Education and Training Reform Act 2006**.

## **10 Exceptions to when a person provides labour hire services**

Despite sections 7 and 8, a person does not provide labour hire services for the purposes of this Act if—

- (a) the person is included in a class of persons prescribed by the regulations; or
- (b) the person provides services prescribed by the regulations; or
- (c) the individual supplied, recruited or placed with the person is included in a class of individuals prescribed by the regulations.



### **11 Exceptions to when an individual is a worker**

Despite section 9, an individual is not a worker for the purposes of this Act if—

- (a) the individual is included in a class of individuals prescribed by the regulations; or
- (b) the individual provides services prescribed by the regulations.

### **12 Regulations may deal with certain matters**

The regulations may make provision for and in relation to the following matters for the purposes of sections 7 and 8—

- (a) circumstances in which an individual is taken to perform work in and as part of a business or undertaking;
- (b) circumstances in which a business or undertaking is taken to be a business or undertaking of a host.

## **Part 2—Prohibited conduct**

### **13 Licence required to provide labour hire services**

A person must not provide labour hire services unless the person is the holder of a licence that is in force.

**Note**

Section 94 provides that this section is a civil penalty provision. Part 6 deals with civil penalty provisions.

### **14 Licence required to advertise provision of labour hire services**

A person must not advertise or in any way hold out that the person provides, or is willing to provide, labour hire services unless the person is the holder of a licence that is in force.

**Note**

Section 94 provides that this section is a civil penalty provision. Part 6 deals with civil penalty provisions.

### **15 Prohibition on entering into an arrangement for labour hire services with an unlicensed provider**

- (1) A person must not enter into an arrangement for the provision of labour hire services to the person unless the proposed provider of the labour hire services is the holder of a licence that is in force.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (2) Subsection (1) does not apply if—
- (a) the provider was included in the Register as the holder of a licence at the time the arrangement was entered into; or
  - (b) the person otherwise has a reasonable excuse for entering into the arrangement.

## 16 Prohibition on avoidance arrangements

- (1) This section applies if—
  - (a) a person (the *client*) proposes to enter into an arrangement with another person (the *supplier*) for the supply of an individual to perform work, whether for the client or another person; and
  - (b) the supplier is not included in the Register as the holder of a licence that is in force at the time the arrangement is proposed.
- (2) The client must not enter into the proposed arrangement if the client knows, or has reasonable grounds to suspect, that the proposed arrangement is for the purpose of avoiding or circumventing an obligation that would otherwise be imposed upon the client, the supplier or another person by this Act.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (3) The client must notify the Authority as soon as reasonably practicable after the client becomes aware, or reasonably suspects, that the proposed arrangement is for the purpose of avoiding or circumventing an obligation that would otherwise be imposed upon the client, the supplier or another person by this Act.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

## **Part 3—Licensing system**

### **Division 1—Applications**

#### **17 Person may apply for a licence**

- (1) A person may apply to the Authority for a licence authorising the person to provide labour hire services.
- (2) The application must include the following information—
  - (a) the full name and address of the applicant;
  - (b) if the applicant is a natural person, the date of birth of the applicant;
  - (c) the business name, ABN and business address of each business through which the applicant will provide labour hire services;
  - (d) if the applicant is a body corporate, the ACN or ARBN of the applicant;
  - (e) if the applicant is a body corporate, the full name, address and date of birth of each officer of the body corporate and the position the officer holds;
  - (f) if the applicant is a natural person—
    - (i) the full name, address and date of birth of each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business conducted by the natural person that provides, or is to provide, labour hire services; and
    - (ii) the role within that business performed by each person referred to in subparagraph (i);

- (g) the information required by section 19;
  - (h) any other information prescribed by the regulations.
- (3) The application must include the full name, position description and contact details of the prescribed number of nominated officers for the licence, each of whom must—
- (a) be a natural person who is responsible for the day-to-day conducting of the business to which the licence relates; and
  - (b) satisfy any requirements prescribed by the regulations.
- (4) The application must be accompanied by the following declarations—
- (a) a declaration by the applicant or, if the applicant is a body corporate, an officer of the body corporate, that, to the applicant's or officer's knowledge, each relevant person in relation to the application is a fit and proper person at the time of the application within the meaning of section 22;
  - (b) a declaration of compliance with legal obligations, as required by section 23;
  - (c) in the case of a body corporate, a declaration by the officer of the body corporate making the application that the information provided in the application is true and correct;
  - (d) in the case of a natural person, a declaration by the natural person that the information provided in the application is true and correct.
- (5) The application must be accompanied by the consent of each relevant person in relation to the application for the Authority to obtain information

from third parties for the purposes of verifying information about the relevant person.

- (6) The application must be accompanied by the application fee (if any) prescribed by the regulations.
- (7) If 2 or more natural persons intend jointly to conduct a business that provides labour hire services, the application must be made jointly by all of the persons and the application—
  - (a) must comply with the requirements of this section in respect of each applicant; and
  - (b) must comply with any additional prescribed requirements in respect of joint applications.
- (8) Upon receiving an application under this section, the Authority must, as soon as is reasonably practicable, publish the following information on the Authority's Internet site—
  - (a) that an application was made and the date of the application;
  - (b) the applicant's name and contact details;
  - (c) the business name, ABN and business address of the business through which labour hire services are to be provided under the licence;
  - (d) if the applicant is a body corporate, the ACN or ARBN of the applicant;
  - (e) the date of publication of the information referred to in paragraphs (a) to (d).

**Note**

Information about applications for licences is also published under section 49.

## **18 Persons who cannot make a valid application**

- (1) A person must not make an application under section 17 for a licence or under section 28 for renewal of a licence if—
  - (a) within the preceding 2 years, a licence (however described) held by the person under a labour hire industry law was cancelled other than—
    - (i) on the initiative of the person; or
    - (ii) in the prescribed circumstances; or
  - (b) the person—
    - (i) had previously made an application (the *prior application*) for a licence (however described) under a labour hire industry law; and
    - (ii) the prior application was refused, or a decision to refuse the prior application was upheld on review or appeal, other than in the prescribed circumstances, during the period of 3 months immediately preceding the proposed application under this Act.
- (2) Without limiting the circumstances that may be prescribed for the purposes of subsection (1)(a)(ii) or (1)(b)(ii), the circumstances may relate to whether there has been a transfer of business or change of ownership of a business.

## **19 Required information for applications**

- (1) An application under section 17 for a licence must include the following information in relation to the applicant—
  - (a) whether the applicant is registered with the Australian Taxation Office as prescribed by the regulations;

- (b) whether the applicant is registered with Work Safe Victoria as prescribed by the regulations.
- (2) If, at the time the application is made, the applicant is conducting a business that provides labour hire services, the application must also include the following information—
- (a) the number of workers supplied by the applicant to hosts during the 12-month period before the date of the application, and the information prescribed by the regulations in relation to those workers;
  - (b) the industrial instruments (however described) that determined the terms and conditions of employment or engagement of those workers;
  - (c) whether those workers held temporary work visas, and if so—
    - (i) the number of workers who held such visas; and
    - (ii) the kinds of visas they held;
  - (d) the industries in relation to which the applicant—
    - (i) is providing labour hire services; and
    - (ii) intends to provide labour hire services.
- (3) If, at the time the application is made, the applicant is not conducting a business that provides labour hire services but intends to do so, the application must also include the following information—
- (a) the number of workers the applicant expects to supply to hosts during the 12-month period after the licence comes into force, and



- the information prescribed by the regulations about those workers;
- (b) the industrial instruments (however described) that the applicant expects will determine the terms and conditions of employment or engagement of those workers;
  - (c) whether the applicant expects that those workers will hold temporary work visas, and if so—
    - (i) the number of workers it is expected will hold such visas; and
    - (ii) the kinds of visas they will hold;
  - (d) the industries in relation to which the applicant intends to provide labour hire services.
- (4) The application must specify the following information in relation to each relevant person in relation to the application—
- (a) whether, to the applicant's knowledge, an investigation by a regulator or proceedings in a court or tribunal are on foot, at the time the application is made, in relation to an alleged contravention by, or with the involvement of, the relevant person or a body corporate of which the relevant person is an officer, of any of the following—
    - (i) a labour hire industry law;
    - (ii) a workplace law;
    - (iii) minimum accommodation standards;
  - (b) whether, to the applicant's knowledge, an incident occurred during the 12-month period preceding the making of the application, that the relevant person or a

body corporate of which the relevant person was an officer was required to notify to a regulator (however described) under a law relating to occupational health and safety;

- (c) whether, to the applicant's knowledge, the relevant person or a body corporate of which the relevant person was an officer was, during the 12-month period preceding the making of the application, the subject of a claim for compensation or damages (however described) under a law relating to workers' compensation;
- (d) whether the relevant person is intending to procure or provide accommodation or transport to a worker in connection with labour hire services supplied under the licence.

## **20 Application may be withdrawn**

- (1) An applicant for a licence may withdraw the application at any time before the licence is granted.
- (2) The application fee is not refundable if the applicant withdraws the application.

## **21 Authority may require applicant to give further information**

- (1) The Authority may, by notice in writing, require an applicant for a licence to give the Authority such further information in relation to the application as the Authority requires.
- (2) The notice may specify the period within which the information is to be given.

- (3) The Authority may require information to be given under this section at any time before the Authority decides the application, whether before or after the Authority has begun to consider the application.

## **Division 2—When a person is a fit and proper person**

### **22 Fit and proper person**

A person is a fit and proper person, at a particular time, unless any of the following apply to the person at that time—

- (a) within the preceding 10 years, the person or a body corporate of which the person was an officer, has been found guilty of—
- (i) an indictable offence against the person, or an offence involving fraud, dishonesty or drug trafficking that was punishable by a term of imprisonment of 3 months or more at the time the person was found guilty; or
  - (ii) an offence that, if committed in Victoria, would constitute an offence referred to in subparagraph (i);
- (b) within the preceding 5 years, the person or a body corporate of which the person was an officer, has—
- (i) been found by a court, tribunal or regulator to have contravened a workplace law, a labour hire industry law or a minimum accommodation standard; or
  - (ii) given an enforceable undertaking (however described) in respect of an alleged contravention of a workplace

law, a labour hire industry law or a minimum accommodation standard;

- (c) within the preceding 5 years, a licence under a labour hire industry law held by the person, or a body corporate of which the person was an officer, was cancelled, suspended or revoked other than on the initiative of the licence holder;
- (d) within the preceding 5 years, the person, or a body corporate of which the person was an officer, was insolvent or was an externally administered company under the Corporations Act;
- (e) in the case of an applicant that is a body corporate, within the preceding 5 years, an officer of the body corporate was an officer of another body corporate whose licence was cancelled, other than at the initiative of the holder of the licence under section 41;
- (f) within the preceding 5 years, the applicant was an officer of a body corporate and was disqualified from managing corporations within the meaning of Part 2D.6 of the Corporations Act;
- (g) any other prescribed circumstances.

### **Division 3—Declarations relating to compliance with legal obligations**

#### **23 Compliance with legal obligations**

- (1) If an application for a licence or renewal of a licence is made by an applicant who, at the time of making the application, is conducting a business that provides labour hire services, the applicant must include with the application a declaration that, to the applicant's knowledge, the applicant complies with all of the following so far as they

relate to the business to which the licence relates—

- (a) laws relating to taxation;
  - (b) laws relating to superannuation;
  - (c) laws relating to occupational health and safety;
  - (d) laws relating to workers' compensation;
  - (e) labour hire industry laws;
  - (f) workplace laws;
  - (g) migration laws;
  - (h) applicable minimum accommodation standards;
  - (i) any other prescribed laws.
- (2) If an application for a licence is made by an applicant who, at the time of making the application, is not conducting a business that provides labour hire services but intends to do so, the applicant must include with the application a declaration that the applicant has in place, and can provide to the Authority on request, a plan to ensure that the applicant will comply with all of the following, so far as they relate to the business to which the licence will relate—
- (a) laws relating to taxation;
  - (b) laws relating to superannuation;
  - (c) laws relating to occupational health and safety;
  - (d) laws relating to workers' compensation;
  - (e) labour hire industry laws;
  - (f) workplace laws;
  - (g) migration laws;

- (h) applicable minimum accommodation standards;
  - (i) any other prescribed laws.
- (3) If a relevant person in relation to an application for a licence or an application for renewal of a licence procures, or intends to procure, accommodation or transport for workers in connection with the provision of labour hire services authorised by the licence, the applicant must include with the application a declaration that—
- (a) in the case of accommodation, the accommodation will comply with all applicable minimum accommodation standards; and
  - (b) in the case of transport, the transport will comply with all applicable laws relating to transport.
- (4) The applicant must include with the application a declaration that the applicant has made reasonable inquiries about—
- (a) matters to be included in the application; and
  - (b) matters included in declarations accompanying the application; and
  - (c) any other prescribed matters.

## **Division 4—Grant, duration and renewal of licences**

### **24 Grant and refusal to grant a licence**

- (1) The Authority must grant a licence if—
- (a) the application includes the information required by section 17(2) and (3); and
  - (b) the application is accompanied by the declarations and consents required by section 17(4) and (5); and

- (c) the person who made the application was not prevented from doing so by section 18; and
  - (d) the application is accompanied by the prescribed application fee (if any); and
  - (e) the Authority is satisfied that each relevant person in relation to the application is a fit and proper person at the time of deciding the application; and
  - (f) the Authority is satisfied that each relevant person in relation to the application is compliant with this Act, the regulations and legal obligations as required by section 23; and
  - (g) if the Authority has required the provision of any of the following under section 21 or 47—
    - (i) further information or consents;
    - (ii) one or more statutory declarations;
    - (iii) access to premises—  
the information, consent, statutory declaration or access has been provided to the satisfaction of the Authority.
- (2) Despite subsection (1), the Authority may grant a licence if the Authority is satisfied that it is appropriate in all the circumstances to grant the licence, even if the application does not satisfy one or more of the matters in that subsection.
- (3) The Authority must refuse to grant a licence if the Authority—
- (a) is not required by subsection (1) to grant the licence; and
  - (b) decides not to grant the licence as permitted by subsection (2).

- (4) For the purposes of being satisfied of any matter in relation to the application, the Authority—
- (a) must have regard to the information specified in the application and the material accompanying it; and
  - (b) may have regard to other information, including information provided by another regulator.

**25 Notification of grant or refusal to grant a licence**

- (1) If the Authority decides to grant a licence, the Authority must—
- (a) give the applicant a written notice stating—
    - (i) the decision; and
    - (ii) any conditions to which the licence is subject and the reasons for imposing those conditions; and
    - (iii) that the applicant may apply to VCAT for review of the decision to impose conditions (if any); and
    - (iv) that the licence is not transferable; and
  - (b) allocate a unique licence number to the licence; and
  - (c) give the applicant the licence, with the licence number and any conditions stated on the licence.
- (2) If the Authority decides to refuse to grant a licence, the Authority must give the applicant a written notice stating—
- (a) the decision and the reasons for the decision; and
  - (b) that the applicant may apply to VCAT for review of the decision.



## **26 Licence period**

A licence—

- (a) comes into force on the day specified in the licence; and
- (b) remains in force—
  - (i) until the date (the *expiry date*) specified in the licence, which must not be later than 3 years after the day on which the licence came into force; or
  - (ii) if the licence is cancelled or otherwise ceases to be in force before the expiry date, until the licence is cancelled or otherwise ceases to be in force.

## **27 Licence is not transferable**

A licence is not transferable.

## **28 Application for renewal of a licence**

- (1) The holder of a licence may make an application for renewal of the licence during the prescribed period before or after the expiry date of the licence.
- (2) An application for renewal of a licence must—
  - (a) include the prescribed information; and
  - (b) be accompanied by the prescribed application fee (if any).
- (3) If an application is made for the renewal of a licence before the expiry date, the licence is taken to remain in force until—
  - (a) the licence is renewed; or
  - (b) the application is withdrawn; or
  - (c) the application for renewal is refused.

- (4) If an application is made for the renewal of a licence after the expiry date, the licence is taken, despite the expiry of the licence, to have been in force from the expiry date and to remain in force until—
- (a) the licence is renewed; or
  - (b) the application is withdrawn; or
  - (c) the application for renewal is refused.

**29 Renewal and refusal of application to renew a licence**

- (1) The Authority must renew a licence if—
- (a) the application includes the prescribed information; and
  - (b) the person who made the application was not prevented from doing so by section 18; and
  - (c) the application is accompanied by the prescribed declarations and consents; and
  - (d) the application is accompanied by the prescribed application fee (if any); and
  - (e) the Authority is satisfied that each relevant person in relation to the licence is a fit and proper person at the time of deciding the application; and
  - (f) the Authority is satisfied that each relevant person in relation to the application is compliant with this Act, the regulations and legal obligations as required by section 23; and
  - (g) if the Authority has required the provision of any of the following under section 31 or 47—
    - (i) further information or consents;
    - (ii) one or more statutory declarations;

- (iii) access to premises—  
the information, consent, statutory declaration or access has been provided to the satisfaction of the Authority.
- (2) Despite subsection (1), the Authority may renew a licence if the Authority is satisfied that it is appropriate in all the circumstances to renew the licence, even if the application does not satisfy one or more of the matters in subsection (1).
- (3) The Authority must refuse to renew a licence if the Authority—
- (a) is not required by subsection (1) to renew the licence; and
  - (b) decides not to renew the licence as permitted by subsection (2).
- (4) For the purposes of being satisfied in respect of any matter in relation to the application, the Authority—
- (a) must have regard to the information specified in the application and the material accompanying it; and
  - (b) may have regard to other information, including information provided by another regulator.
- (5) If the Authority decides to renew a licence, the Authority must—
- (a) notify the applicant in writing of the decision; and
  - (b) specify any conditions to which the renewed licence is subject (see Division 6).
- (6) If the Authority decides to refuse to renew a licence, the Authority must notify the applicant in writing of the decision and must specify the grounds for the refusal.

- (7) A renewed licence—
- (a) comes into force on the day specified in the notice; and
  - (b) remains in force—
    - (i) until the end of the period specified in the renewed licence, which must not be longer than 3 years beginning on the expiry date of the licence; or
    - (ii) if the renewed licence is cancelled or otherwise ceases to be in force before the end of that period, until the licence is cancelled or otherwise ceases to be in force.
- (8) If 2 or more natural persons jointly operate the business that provides labour hire services to which the licence relates, the application for renewal must be made jointly by all of the persons and the application—
- (a) must comply with the requirements of this section in respect of each applicant; and
  - (b) must comply with any additional prescribed requirements in respect of joint applications.
- (9) Upon receiving an application under this section, the Authority must, as soon as is reasonably practicable, publish the following information on the Authority's Internet site—
- (a) that an application was made and the date of the application;
  - (b) the applicant's name and contact details;
  - (c) the business name, ABN and business address of the business through which labour hire services are to be provided under the licence;

- (d) if the licence holder is a body corporate, the ACN or ARBN of the applicant;
- (e) the date of publication of the information referred to in paragraphs (a) to (d).

**Note**

Information about applications for renewal is also published under section 49.

**30 Application may be withdrawn**

- (1) An applicant for renewal of a licence may withdraw the application at any time before the licence is renewed.
- (2) The application fee is not refundable if the applicant withdraws the application.

**31 Authority may require applicant to give further information**

- (1) The Authority may, by notice in writing, require an applicant for renewal of a licence to give the Authority such further information in relation to the application as the Authority requires.
- (2) The notice may specify the period within which the information is to be given.
- (3) The Authority may require information to be given under this section at any time before the Authority decides the application, whether before or after the Authority has begun to consider the application.

**Division 5—Objections to applications**

**32 Objection to application**

- (1) An interested person may, by notice in writing to the Commissioner, make an objection to an application for a licence or for renewal of a licence on the grounds that—

- (a) in the case of an application made by a natural person, the applicant for the licence or renewal is not a fit and proper person to be the holder of a licence; or
  - (b) in the case of an application made by a body corporate, one or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence; or
  - (c) the applicant does not or will not comply with the legal obligations referred to in section 23.
- (2) A notice of objection under subsection (1) must—
- (a) state reasons for the objection; and
  - (b) be made within 14 days of notice of the application being published under section 17(8) or 29(9).
- (3) If the Authority receives a notice of objection under subsection (1) in respect of an application for a licence or for renewal of a licence, the Authority must—
- (a) forward a copy of the notice of objection to the applicant as soon as reasonably practicable after receiving the notice; and
  - (b) allow a period of 14 days from the date of forwarding the notice for the applicant to respond to the notice of objection.
- (4) If an objection has been made in respect of an application for a licence or for renewal of a licence—
- (a) the Authority must not grant or renew the licence unless the Authority has taken into account the objection and the response of the applicant to the objection (if any); and

- (b) if the Authority grants or renews the licence, the Authority must give notice of the grant or renewal to the interested person who made the objection.

## **Division 6—Conditions and notices to comply**

### **33 Licence conditions**

- (1) The Authority may impose one or more conditions to which a licence is subject.
- (2) Without limiting the conditions that may be imposed, they may include the following—
  - (a) conditions directed at ensuring that labour hire services provided under the licence are provided in accordance with all relevant legal obligations;
  - (b) conditions relating to the provision of information to the Authority as and when required;
  - (c) conditions requiring the holder of the licence to allow the Authority or inspectors, at stated reasonable intervals, to inspect premises at which the holder of the licence conducts the business to which the licence relates.
- (3) A condition may be imposed—
  - (a) by stating the condition in the licence at the time it is granted; or
  - (b) by giving written notice to the holder of the licence, after the licence is granted, that the condition has been imposed.

**34 Licence condition relating to information that must be provided annually**

- (1) It is a condition of a licence that the holder of the licence provide to the Authority the following information in respect of each reporting period for the licence—
- (a) whether the holder of the licence was registered with the Australian Taxation Office as prescribed throughout the reporting period;
  - (b) whether the holder of the licence was registered with Work Safe Victoria as prescribed throughout the reporting period;
  - (c) the number of workers supplied by the holder of the licence to hosts during the reporting period, and the information prescribed in relation to those workers;
  - (d) the industrial instruments (however described) that determined the terms and conditions of employment or engagement of those workers during the reporting period;
  - (e) whether those workers held temporary work visas during the reporting period, and if so—
    - (i) the number of workers who held such visas; and
    - (ii) the kinds of visas they held;
  - (f) the industries in relation to which the applicant provided labour hire services;
  - (g) whether, to the knowledge of the holder of the licence, the holder complied with all laws referred to in section 23(1) throughout the reporting period, so far as those laws related to the business to which the licence relates;
  - (h) any other prescribed information.



- (2) Without limiting the information that may be prescribed for the purposes of subsection (1)(h), the information may relate to the following—
- (a) the arrangements between the holders of licences and workers, including but not limited to arrangements relating to employment, engagement or contracting;
  - (b) the kind of work performed;
  - (c) the locations of work performed;
  - (d) the accommodation of workers, whether provided by the holder of the licence or otherwise;
  - (e) the provision of services or goods to workers, including but not limited to transport or meals;
  - (f) incidents that were notified or were required to be notified under a workplace law in relation to workers;
  - (g) workers' compensation applications made by workers.
- (3) The information must be provided—
- (a) within 28 days of the start of the reporting period; and
  - (b) in the prescribed manner.
- (4) The regulations may provide that information that would otherwise be required to be provided under this section is only required to be provided in specified circumstances including, but not limited to, where there has been a change in information previously provided.

- (5) A *reporting period* for a licence means the following—
- (a) the period of 12 months beginning on the day on which the licence first came into force;
  - (b) each subsequent 12-month period that the licence period is in force;
  - (c) if another period is prescribed—the other period.

### **35 Annual licence fee**

- (1) It is a condition of a licence that the holder of the licence must pay to the Authority the prescribed annual licence fee (if any)—
- (a) on the date the licence was specified to come into force under section 26, or specified to be renewed under section 29 (as the case may be) and on each subsequent anniversary of whichever of those dates is applicable; or
  - (b) if another date is prescribed, on the prescribed date.
- (2) An annual licence fee may be paid at any time during the 6 weeks before it falls due.

### **36 Holder of a licence must comply with licence conditions**

The holder of a licence must comply with the conditions of the licence, whether the condition is imposed by this Act, the regulations or the Authority.

#### **Note**

Section 94 provides that this section is a civil penalty provision. Part 6 deals with civil penalty provisions.

**37 Authority may give the holder of a licence a notice to comply**

- (1) If the Authority believes on reasonable grounds that—
- (a) the holder of a licence is not complying with this Act or the regulations; or
  - (b) there are grounds on which the Authority could suspend or cancel the licence—

the Authority may give to the holder of the licence a written notice (a *notice to comply*) requiring the licence holder, within the time specified in the notice, to take such steps as are reasonable in the circumstances to remedy the non-compliance or to remove the grounds on which the licence could be suspended or cancelled.

- (2) A notice to comply must—
- (a) be in the prescribed form; and
  - (b) state that the holder of the licence may apply to VCAT for review of the decision to issue the notice.
- (3) A person must not contravene a notice to comply.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

**Division 7—Variation, suspension and cancellation**

**38 Variation of licence**

- (1) The Authority may vary a licence by giving the holder of the licence written notice of the variation.
- (2) The Authority may vary a licence on its own initiative if it believes on reasonable grounds that it is appropriate to vary the licence.

- (3) The Authority may vary a licence if an application is made by the holder of the licence for the licence to be varied and the Authority is satisfied that it is appropriate to vary the licence.
- (4) An application for a variation of a licence must—
  - (a) include the prescribed information; and
  - (b) be accompanied by the prescribed application fee (if any).
- (5) An application for a variation of a licence may request—
  - (a) that a nominated officer for the licence no longer be a nominated officer; and
  - (b) that another person be the nominated officer for the licence.
- (6) If an application for a variation of a licence is of a kind mentioned in subsection (5), the Authority must not vary the licence unless—
  - (a) the Authority is satisfied that the person who is proposed to be the nominated officer is a fit and proper person at the time of deciding the application for the variation; and
  - (b) the person who is proposed to be the nominated officer has declared that, to the person's knowledge, the person is compliant with legal obligations as described in section 23.
- (7) If the Authority decides to vary a licence on the initiative of the Authority, or to refuse to vary a licence on application, the Authority must give the holder of the licence a written notice stating—
  - (a) the decision and reasons for the decision; and
  - (b) that the holder of the licence may apply to VCAT for review of the decision.

### **39 Suspension of licence**

- (1) The Authority may suspend a licence by giving the holder of the licence written notice of the suspension if—
  - (a) the Authority—
    - (i) believes on reasonable grounds that the holder of the licence has contravened this Act or the regulations; or
    - (ii) is no longer satisfied that each relevant person in relation to the licence is a fit and proper person; or
    - (iii) is not satisfied that each relevant person in relation to the licence is compliant with legal obligations as described in section 23; or
    - (iv) is satisfied that the holder of the licence has given materially incorrect or misleading information to the Authority or that the licence was obtained or renewed because of materially incorrect or misleading information; and
  - (b) the Authority is satisfied that unless the licence is suspended, substantial harm or detriment of any kind will be caused to one or more persons; and
  - (c) the Authority is satisfied of the prescribed matters (if any).
- (2) If the Authority decides to suspend a licence, the Authority must give the holder of the licence a written notice stating—
  - (a) the decision and reasons for the decision; and
  - (b) the period of suspension (which not must begin before the notice is given); and

- (c) that the holder may apply to VCAT for review of the decision—
  - (i) to suspend the licence; or
  - (ii) in respect of the period of suspension.
- (3) A licence is not in force during a period of suspension, other than for specified prescribed purposes.

#### **40 Cancellation of licence—general**

- (1) The Authority may cancel a licence by giving the holder of the licence written notice of the cancellation, if the Authority—
  - (a) believes on reasonable grounds that the holder of the licence has contravened this Act or the regulations; or
  - (b) is no longer satisfied that each relevant person in relation to the licence is a fit and proper person; or
  - (c) is not satisfied that each relevant person in relation to the licence is compliant with legal obligations as required by section 23; or
  - (d) is satisfied that—
    - (i) the holder of the licence has given materially incorrect or misleading information to the Authority; or
    - (ii) the licence was obtained or renewed because of materially incorrect or misleading information; or
  - (e) is satisfied that the holder of the licence is no longer providing labour hire services; or
  - (f) is satisfied of the prescribed matters (if any).
- (2) If the Authority decides to cancel a licence under subsection (1), the Authority must give the holder of the licence a written notice stating—

- (a) the decision and reasons for the decision; and
- (b) the date on which the cancellation takes effect; and
- (c) that the holder may apply to VCAT for review of the decision to cancel the licence.

**41 Cancellation of licence on request**

- (1) The Authority must cancel a licence if the holder of the licence requests in writing that the licence be cancelled.
- (2) The Authority must give the holder of the licence written notice of the cancellation.

**42 Show cause notice before variation or cancellation**

- (1) This section applies if the Authority proposes to—
  - (a) vary a licence under section 38 on the initiative of the Authority; or
  - (b) cancel a licence under section 40.
- (2) The Authority must give the holder of the licence a notice stating—
  - (a) that the Authority proposes to vary or cancel the licence; and
  - (b) the reasons for the proposed variation or cancellation; and
  - (c) that the holder of the licence may, within 14 days after the notice is given, give the Authority a written response to the proposed variation or cancellation.
- (3) The Authority must consider the response, if any, before deciding whether to vary or cancel the licence.

## **Division 8—Obligations of holders of licences**

### **43 Licence holder to notify of certain changes**

The holder of a licence must notify the Authority of any changes in the information provided to the Authority under this Part within 30 days of the change.

**Note**

Section 94 provides that this section is a civil penalty provision. Part 6 deals with civil penalty provisions.

### **44 Licence holder to notify of prescribed changes**

- (1) The holder of a licence must notify the Authority of any changes prescribed by the regulations within 30 days of the change.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (2) A change prescribed by the regulations for the purposes of subsection (1) must be a change of such significance that notification of the change to the Authority would constitute grounds for the cancellation of a licence.

### **45 Licence holder to take reasonable steps to ensure availability of nominated officers**

The holder of a licence must take reasonable steps to ensure that nominated officers for the licence are available to the Authority during hours when—

- (a) labour hire services are being provided under the licence; or
- (b) accommodation associated with those labour hire services is being provided; or



- (c) transport associated with those labour hire services is being provided.

**Note**

Section 94 provides that this section is a civil penalty provision. Part 6 deals with civil penalty provisions.

**46 Offence not to produce licence**

The holder of a licence must produce the licence for inspection upon request by any of the following—

- (a) an inspector;
- (b) a provider, a worker for a provider or a host;
- (c) a police officer;
- (d) a prescribed person.

Penalty: In the case of a natural person,  
12 penalty units;

In the case of a body corporate,  
60 penalty units.

**Division 9—Authority may require information of applicants etc.**

**47 Authority may conduct inquiries and require further information or consent to disclosure of information**

In considering an application for a licence, a variation or renewal of a licence, or in considering information provided under section 34 or changes notified under section 43 or 44, or doing any other thing under this Part in relation to an application or a licence, the Authority may—

- (a) conduct any inquiries that it thinks fit; and

- (b) require a relevant person in relation to the application or the licence, as the case requires, to do any of the following within a specified time—
  - (i) provide further information;
  - (ii) confirm the veracity of any information provided by the relevant person by means of a statutory declaration;
  - (iii) provide any consent to disclosure of information that the Authority requires for the purpose of performing a check in respect of the relevant person, or in respect of any information included with the application, or in respect of the licence or otherwise, provided by the relevant person;
  - (iv) provide access to premises at which the labour hire business to which the application or the licence relates will be carried on.

### **Division 10—Register of Licensed Labour Hire Providers and publication matters**

#### **48 Authority must maintain a Register of Licensed Labour Hire Providers**

- (1) The Authority must establish and keep a register to be called the Register of Licensed Labour Hire Providers.
- (2) The purposes of the Register are—
  - (a) to record information about licence holders; and
  - (b) to record information about licences, including in respect of the following—
    - (i) conditions;

- (ii) variations;
  - (iii) suspensions and cancellations;
  - (c) to record decisions of the Authority under this Act; and
  - (d) subject to section 103, to make the information collected for the purposes of the Register available to the public; and
  - (e) to enable the Authority to provide information to licence holders and other persons affected by this Act.
- (3) The Authority must record in the Register the following information in respect of each licence—
- (a) the licence holder's name and contact details;
  - (b) the business name, ABN and business address of the business through which labour hire services are provided under the licence;
  - (c) if the licence holder is a body corporate, the ACN or ARBN of the holder;
  - (d) the name and contact details of each nominated officer for the licence;
  - (e) the date on which the licence came into force and its expiry date;
  - (f) details of any condition to which the licence is subject;
  - (g) the licence number;
  - (h) any other prescribed matter.
- (4) A person may search and take a copy of an extract from, or a copy of, the Register.
- (5) A person may obtain a certified extract from, or a certified copy of, the Register on the payment of the prescribed fee (if any).

- (6) The Authority may keep and publish the Register in any form that the Authority thinks fit.

**49 Publication of certain information permitted**

The Authority may publish on an Internet site maintained by the Authority the following information—

- (a) the name and business name of an applicant for a licence, if the application is refused or withdrawn;
- (b) the name and business name of the former licence holder, in respect of a licence that is suspended or cancelled, or that the Authority refuses to renew;
- (c) the name and business name of a person against whom enforcement action has been or is being taken under this Act in relation to a licence including, but not limited to—
  - (i) suspension or cancellation of the licence; and
  - (ii) investigations or proceedings on foot in relation to the licence.

**Note**

Information about applications is also published under sections 17 and 29.

## **Part 4—Labour Hire Licensing Authority and Labour Hire Licensing Commissioner**

### **Division 1—Labour Hire Licensing Authority**

#### **50 Labour Hire Licensing Authority**

- (1) The Labour Hire Licensing Authority is established.
- (2) The Labour Hire Licensing Authority is to be constituted by the Commissioner.
- (3) The Labour Hire Licensing Authority—
  - (a) is a body corporate with perpetual succession; and
  - (b) must have an official seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) may acquire, hold and dispose of real and personal property for the purpose of performing its functions; and
  - (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and that are necessary or incidental for the performance of its functions.

#### **51 Functions and powers of Authority**

- (1) The Authority has the following functions—
  - (a) to administer the scheme for granting licences under this Act and related matters;
  - (b) to promote, monitor and enforce compliance with this Act and the regulations;
  - (c) to investigate compliance with this Act and the regulations;
  - (d) to maintain the Register;

- (e) to develop and publish Codes of Practice in relation to this Act;
  - (f) to provide advice and to report to the Minister on a Code of Practice or any other matter referred to the Authority by the Minister (within the time specified by the Minister);
  - (g) to engage in, promote and coordinate the sharing of information with other government agencies and bodies, including agencies and bodies of the government of the Commonwealth or another State or a Territory, to achieve the objects of this Act;
  - (h) to conduct, procure and support research into the labour hire industry;
  - (i) to disseminate information about the duties, rights and obligations of persons under this Act and the regulations;
  - (j) to establish advisory committees to provide advice or information to the Authority regarding the performance of its functions;
  - (k) any other function conferred on the Authority by this or any other Act.
- (2) The Authority has all the powers that are necessary or convenient to perform its functions under this or any other Act.

## **52 Power to delegate**

The Authority, by instrument in writing, may delegate to any person referred to in section 53 any power under this Act, other than this power of delegation.

### **53 Staff**

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the administration of this Act or to enable the Authority to perform its functions and exercise its powers.
- (2) The Authority may engage consultants, contractors or agents for or in connection with the performance of the Authority's functions.
- (3) The Authority may enter into an agreement or arrangement for the use of the services of any person with suitable qualifications or experience to assist the Authority in the performance of the Authority's functions and powers under this Act.
- (4) An agreement or arrangement under subsection (3) may be on any terms and conditions that the Authority is satisfied are appropriate.

### **54 Ministerial directions**

- (1) The Minister may give general written directions to the Authority about the performance of the functions of the Authority, except in relation to those functions under Part 3 that relate to individual licence applications or investigations.
- (2) The Minister, in writing, may direct the Authority to give the Minister reports on specified matters relating to the Authority's functions.
- (3) The Authority must comply with a direction given under subsection (2) within a reasonable time.

## **Division 2—Labour Hire Licensing Commissioner**

### **55 Appointment of Labour Hire Licensing Commissioner**

The Governor in Council, on the recommendation of the Minister, may by instrument appoint a person to be the Labour Hire Licensing Commissioner.

### **56 Terms and conditions of appointment**

- (1) The Commissioner—
  - (a) holds office for a term, not exceeding 5 years, that is specified in the instrument of appointment; and
  - (b) is eligible for reappointment; and
  - (c) is appointed on a full-time or part-time basis; and
  - (d) holds office on the terms and conditions that are specified in the instrument of appointment.
- (2) The Commissioner is entitled to be paid the remuneration and allowances that are fixed from time to time by the Governor in Council.

### **57 Vacancy and resignation**

The Commissioner ceases to hold office if the Commissioner—

- (a) resigns by writing signed and delivered to the Governor; or
- (b) becomes insolvent under administration; or
- (c) is convicted of an indictable offence or of an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for or is elected to—
  - (i) the Parliament of Victoria; or



- (ii) the Parliament of the Commonwealth or of another State or a Territory of the Commonwealth; or
- (iii) a Council, within the meaning of the **Local Government Act 1989**; or
- (e) is removed from office under section 58.

### **58 Removal from office**

The Governor in Council, on the recommendation of the Minister, may remove the Commissioner from office on any of the following grounds—

- (a) any neglect of the Commissioner in carrying out the duties of the office;
- (b) any misconduct by the Commissioner in carrying out the duties of the office;
- (c) an inability of the Commissioner to perform the duties of the office;
- (d) a conflict of interest of the Commissioner when carrying out the duties of the office;
- (e) the Commissioner engaging in paid employment outside of the duties of the office without the consent of the Minister.

### **59 Acting appointment**

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a person to act as the Commissioner—
  - (a) during a vacancy in the office of the Commissioner; or
  - (b) during any period, not exceeding 12 months, when—
    - (i) the Commissioner is absent; or

- (ii) the Commissioner is for any other reason unable to perform the duties of the office of Commissioner.
- (2) A person appointed under subsection (1) is entitled to the remuneration and allowances that are determined from time to time by the Governor in Council.
- (3) While a person is acting as the Commissioner, the person has all the powers and may perform any of the functions of the Commissioner.
- (4) The Governor in Council, on the recommendation of the Minister, may revoke an appointment under subsection (1) at any time.

#### **60 Functions and powers of Commissioner**

- (1) The Commissioner has all the functions and powers of the Authority.
- (2) All acts and things done by the Commissioner in the name of or on behalf of the Authority are taken to have been done by the Authority.

#### **61 Validity of acts and decisions**

An act or decision of the Authority is not invalid—

- (a) only because of a defect or irregularity in, or in connection with, the appointment of the Commissioner or an Acting Commissioner; or
- (b) on the ground that the occasion for an Acting Commissioner to act had not arisen or had ceased.

#### **62 Immunity for carrying out functions**

- (1) The Commissioner, an Acting Commissioner or another person who performs a function of the Authority under this Act or under any other Act is not personally liable for anything necessarily or

reasonably done or omitted to be done in good faith—

- (a) in the performance of the function; or
  - (b) in the reasonable belief that the act or omission was in the performance of the function.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Commissioner, Acting Commissioner or another person attaches instead to the Authority.

### **63 Guiding principles of the Commissioner**

The Commissioner, in carrying out a function or power under this or any other Act, must—

- (a) act in a fair and impartial manner; and
- (b) act in a manner that is transparent, accountable and consistent; and
- (c) act in a consultative and collaborative manner to the extent that is consistent with the carrying out of a function or power.

## **Part 5—Inspectors and enforcement**

### **Division 1—Preliminary**

#### **64 Appointment of inspectors**

The Authority may, by instrument, appoint a person employed under Part 3 of the **Public Administration Act 2004** to be an inspector for the purposes of this Act.

#### **65 Identity cards**

- (1) The Authority must issue an identity card to each inspector containing a photograph of the inspector and the inspector's signature.
- (2) An inspector must produce the inspector's identity card for inspection—
  - (a) before exercising a power under this Part, other than a power exercised by way of post; and
  - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 12 penalty units.

- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Authority within 14 days of ceasing to be an inspector unless the person unintentionally lost or destroyed the identity card or the identity card was destroyed by another person.

Penalty: 12 penalty units.

#### **66 Inspectors subject to Authority's directions**

- (1) An inspector is subject to the Authority's directions in the performance of the inspector's functions or exercise of the inspector's powers under this Act or the regulations.

- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

## **Division 2—Inspection of documents and records**

### **67 Documents to be available for inspection**

- (1) A holder of a licence must, at all reasonable times at each place at which the holder of the licence conducts the business of providing labour hire services, keep all documents relating to the business available for inspection by an inspector in a form in which they can readily be inspected.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (2) If—
- (a) a person is the holder of a licence; and
  - (b) the licence ceases to be in force for any reason and is not renewed—

the person must, during the period of 6 years after the licence ceases to be in force, make all documents relating to the business of providing labour hire services available for inspection by an inspector in a form and at a place where they can readily be inspected.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (3) An inspector may by written notice require a person referred to in subsection (1) or (2) to produce documents relating to the business of providing labour hire services.
- (4) A notice under subsection (3) must state a time for complying with the notice, being not less than 14 days from the date of the notice.

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3).

Penalty: In the case of a natural person,  
150 penalty units;

In the case of a body corporate,  
750 penalty units.

### **68 Powers on production of documents**

If any documents are produced to an inspector under this Division, the inspector may do any one or more of the following—

- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of, or take extracts from, the documents;
- (c) seize the documents if the inspector—
  - (i) considers the documents necessary for the purpose of obtaining evidence for use in any proceedings or proposed proceedings under this Act; or
  - (ii) believes on reasonable grounds that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of this Act;
- (d) secure any seized documents against interference;
- (e) retain possession of the documents.

### **69 Where must documents be produced?**

An inspector may require a person to produce a document—

- (a) at the person's place of business; or

- (b) at the office of the Authority; or
- (c) with the consent of the person, at any other place.

**70 Order requiring supply of information and answers to questions**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the written approval of the Authority, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the inspector—
  - (a) to answer, orally or in writing, any questions put by the inspector relating to a holder of a licence's business of providing labour hire services; or
  - (b) to supply, orally or in writing, information required by the inspector relating to a holder of a licence's business of providing labour hire services.
- (2) If the Magistrates' Court is satisfied on the basis of evidence presented by the inspector that the order is necessary for the purpose of monitoring compliance with this Act or the regulations, the Court may grant the order sought.
- (3) An order under this section must state a date, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

**71 Service of documents**

- (1) A written requirement by an inspector under this Division may be given personally or by registered post to a person—

- (a) at the last known place of business, employment or residence of the person; or
  - (b) in the case of a company, at the registered office of the company.
- (2) A person who provides a document or information in response to a requirement of an inspector under this Division may send that document or information to the Authority by registered post.

### **Division 3—Entry, search and seizure**

#### **72 Entry or search with consent**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the consent of the occupier of the premises, may—
- (a) enter and search the premises; and
  - (b) examine and seize any thing found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations; and
  - (c) inspect and make copies of, or take extracts from, any document found on the premises; and
  - (d) make any still or moving image, audio recording or audiovisual recording.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
- (a) has produced the inspector's identity card for inspection; and



- (b) has informed the occupier of the purpose of the search and that—
- (i) the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
  - (ii) the occupier may refuse to consent to the taking of any copy of, or extract from, a document found on the premises during the search; and
  - (iii) any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (3) If an occupier consents to an entry and search, the inspector who requested consent must, before entering the premises, ask the occupier to sign an acknowledgement stating the inspector has complied with the requirements set out in subsection (2).
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgement stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgement must be given a copy of the signed acknowledgement before the inspector leaves the premises.

### **73 Entry of premises open to the public**

An inspector may enter and inspect any part of a premises that at the time of entry and inspection is open to the public.

### **74 Entry without consent or warrant**

- (1) Subject to subsection (3), for the purpose of monitoring compliance with this Act or the regulations, an inspector may do all or any of the following—
  - (a) enter and search, at any time during the normal business hours of the business being conducted at the premises—
    - (i) any premises at which the business of providing labour hire services is being conducted by a person who is the holder of a licence, or a person whom the inspector reasonably believes is providing labour hire services without a licence, unless the inspector reasonably believes that the person is not at the premises; and
    - (ii) any premises at which the inspector reasonably believes a worker for a person referred to in subparagraph (i) is or has been performing work, unless the inspector reasonably believes that the occupier is not at the premises; and
    - (iii) any premises, at which the inspector reasonably believes there are records or documents, or a person working at the premises who knows information, relevant to the conduct of a business of providing labour hire services, unless the inspector reasonably believes that the occupier is not at the premises;

- (b) seize or secure against interference any thing that the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations that is found in or on premises referred to in paragraph (a);
  - (c) inspect and make copies of, or take extracts from, any document kept in or on premises referred to in paragraph (a);
  - (d) require a person to produce a document or part of a document located at the premises referred to in paragraph (a);
  - (e) require a person at the premises referred to in paragraph (a) to answer any questions put by the inspector;
  - (f) make any still or moving image, audio recording or audiovisual recording at or of premises referred to in paragraph (a).
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
- Penalty: In the case of a natural person,  
150 penalty units;  
In the case of a body corporate,  
750 penalty units.
- (3) For the purposes of subsection (1), *premises* excludes any part of a place of business which is the permanent place of residence of a person referred to in subsection (1)(a)(i).

## 75 Search warrants

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is on the premises evidence that

a person may have contravened this Act or the regulations.

- (2) An application under subsection (1) must not be made without the written approval of the Authority.
- (3) If a magistrate is satisfied by evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is on the premises a thing, or a thing of a particular kind, connected with a contravention of this Act or the regulations, the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.

## **76 Form and content of search warrants**

- (1) A search warrant issued under section 75(3) may authorise the inspector named in the warrant together with a police officer or any other person or persons named or otherwise identified in the warrant and with any necessary equipment, to do any of the following—
  - (a) to enter the premises specified in the warrant, by force if necessary;
  - (b) if the inspector believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with a contravention of this Act or the regulations—
    - (i) to search for the thing; and
    - (ii) to seize the thing; and
    - (iii) to secure the thing against interference; and
    - (iv) to examine and inspect the thing; and
    - (v) to make copies of, or take extracts from, the thing.

- (2) A search warrant issued under section 75(3) must state—
- (a) the purpose for which the search is required; and
  - (b) any condition to which the warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (3) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 75(3).

#### **77 Announcement before entry**

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that the inspector is authorised by the warrant to enter the premises; and
  - (b) must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

- (3) If the occupier is present at premises where a search warrant is being executed, the inspector must—
  - (a) produce the inspector's identity card to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
  - (a) produce the inspector's identity card to a person (if any) at the premises; and
  - (b) give to the person a copy of the warrant.

#### **78 Seizure of things not described in the warrant**

A search warrant issued under section 75(3) authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
  - (i) is of a kind which could have been included in a search warrant issued under this Division; or
  - (ii) is evidence of a contravention of this Act or the regulations; and
- (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or the regulations.

## **79 Embargo notice**

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue a notice in the prescribed form—
  - (a) by causing a copy of the notice to be served on the occupier; or
  - (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by attaching a copy of the notice to the thing in a prominent position.
- (2) Subject to subsection (3), a person who knows that a notice relates to a thing must not, without the written consent of the inspector who issued the notice, sell, lease, transfer, move, dispose of or otherwise deal with the thing or any part of the thing.

Penalty: In the case of a natural person,  
150 penalty units;  
In the case of a body corporate,  
750 penalty units.
- (3) Subsection (2) does not apply to a person who moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

## **80 Inspector may monitor compliance with embargo notice**

- (1) For the purpose of monitoring compliance with an embargo notice, an inspector, with the written approval of the Authority, may apply to the Magistrates' Court for—

- (a) an order requiring the owner of the thing to which an embargo notice relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to answer questions or produce documents at a time and place specified by the inspector; and
  - (b) any other order incidental to, or necessary for, monitoring compliance with the embargo notice or with section 79(2).
- (2) The Magistrates' Court may make the order sought under subsection (1)(a) or (b).

### **81 Search warrants in relation to embargo notice**

- (1) If a thing is subject to an embargo notice, an inspector, with the written approval of the Authority, may apply to a magistrate for the issue of a search warrant permitting entry to the premises where the thing is kept or required to be kept for the purposes of monitoring compliance with an embargo notice.
- (2) The magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989** if the magistrate is satisfied by evidence, on oath or by affidavit, of the inspector that the warrant is necessary for the effective monitoring of compliance with an embargo notice.
- (3) A search warrant issued under subsection (2) may authorise the inspector, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
  - (a) to enter the premises specified in the warrant, by force if necessary; and
  - (b) to search for, seize and secure against interference the thing named in the warrant.



- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to search warrants issued under subsection (2).

## **82 Retention and return of seized documents or things**

- (1) If an inspector retains possession of a document seized from a person under this Division, the inspector must, within 21 days after the seizure, give the person a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) must be received in all courts and VCAT to be evidence of equal validity to the original.
- (3) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (4) If a document or thing seized by an inspector under this Division has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3-month period and those proceedings (including any appeal) have not been completed; or
  - (b) the Magistrates' Court makes an order under section 83 extending the period during which the document or thing may be retained.

### **83 Magistrates' Court may extend 3-month period**

- (1) An inspector may apply to the Magistrates' Court for an extension (not exceeding 3 months) of the period during which a seized document or thing may be retained—
  - (a) within 3 months after the document or thing is seized under this Division; or
  - (b) if an extension has been granted under this section, before the end of the period of the extension.
- (2) The Magistrates' Court may make an order extending the period if it is satisfied that the total period of retention does not exceed 12 months and retention of the document or other thing is necessary—
  - (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
  - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of proceedings under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

### **84 Requirement to assist inspector during entry**

- (1) An inspector exercising a power of entry under a search warrant issued under section 75(3) or 81(2) may require the occupier of the premises or an agent or employee of the occupier to do any one or more of the following—
  - (a) give information to the inspector, orally or in writing;
  - (b) produce documents to the inspector;
  - (c) give reasonable assistance to the inspector.

- (2) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector under this section.

Penalty: In the case of a natural person,  
150 penalty units;

In the case of a body corporate,  
750 penalty units.

### **Division 4—Other matters**

#### **85 Other assistance in exercising powers**

- (1) For the purpose of exercising a power under this Act or the regulations, an inspector may seek the assistance of any person, other than—
- (a) an officer or an employee of an organisation registered under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth; or
  - (b) a person who has had an entry permit under the Fair Work Act 2009 of the Commonwealth refused or cancelled, and that refusal or cancellation has not been overturned.
- (2) If the power being exercised involves entry to a business premises, the person assisting must be allowed access to that premises by—
- (a) the occupier or apparent occupier for the time being of the premises; or
  - (b) the person who has the management and control of the premises.

Penalty: In the case of a natural person,  
75 penalty units;

In the case of a body corporate,  
375 penalty units.

- (3) If an inspector uses the assistance of an interpreter—
- (a) any enquiry or request made by the interpreter on the inspector's behalf is taken to have been made by the inspector; and
  - (b) any answer given to the interpreter is taken to have been given to the inspector.

**86 Prohibition of threats, discrimination etc. against a person**

- (1) A person must not, by threat or intimidation, persuade or attempt to persuade another person—
- (a) not to provide information under this Act; or
  - (b) not to continue with any process under this Act; or
  - (c) not to comply with any other requirement under this Act.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

- (2) A person must not refuse to employ, hire or engage, or dismiss or terminate the employment, hiring or engagement of, another person or subject another person to any detriment because the other person—
- (a) intends to provide, provides or has provided information under this Act; or
  - (b) intends to take part in, takes part in or has taken part in any process under this Act; or
  - (c) intends to comply, complies or has complied with any other requirement under this Act.

**Note**

Section 94 provides that this subsection is a civil penalty provision. Part 6 deals with civil penalty provisions.

### **87 Offence to give false or misleading information**

- (1) A person must not give information to an inspector, the Authority or the Commissioner that the person believes to be false or misleading in a material particular.

Penalty: In the case of a natural person,  
150 penalty units;  
In the case of a body corporate,  
750 penalty units.

- (2) A person must not produce a document to an inspector, the Authority or the Commissioner that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person,  
150 penalty units;  
In the case of a body corporate,  
750 penalty units.

### **88 Offences in relation to inspections**

- (1) A person must not—
- (a) intentionally hinder or obstruct an inspector in the performance of the inspector's functions or exercise of the inspector's powers under this Act or the regulations, or induce or attempt to induce any other person to do so; or
  - (b) intentionally conceal from an inspector the location or existence of any other person or any plant, substance or other thing; or

- (c) intentionally prevent or attempt to prevent any other person from assisting an inspector.

Penalty: In the case of a natural person,  
75 penalty units;

In the case of a body corporate,  
375 penalty units.

- (2) A person must not assault, directly or indirectly intimidate or threaten, or attempt to intimidate or threaten, an inspector or a person assisting an inspector.

Penalty: In the case of a natural person,  
240 penalty units or imprisonment for  
2 years or both;

In the case of a body corporate,  
1200 penalty units.

## **89 Confidentiality**

- (1) An inspector must not give to any other person any information acquired by the inspector in the carrying out of the inspector's functions under this Part unless the giving of information is authorised under this section.

Penalty: 75 penalty units.

- (2) An inspector may give information acquired by the inspector in carrying out a function under this Part in any of the following circumstances—
- (a) if the giving of the information is reasonably necessary for the inspector to perform the inspector's functions under this Part;
  - (b) if the giving of the information is to a court or VCAT in the course of legal proceedings;
  - (c) if the giving of the information is under an order of a court or VCAT;

- (d) if the giving of the information is to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth;
- (e) if the giving of the information is to the Authority;
- (f) if the giving of the information is with the written consent of the Authority;
- (g) if the giving of the information is with the written consent of the person to whom the information relates.

## **90 Infringements**

- (1) An inspector may serve an infringement notice on a person in respect of a prescribed offence if the inspector has reason to believe that the person committed the offence.
- (2) An offence prescribed under subsection (1) is an infringement offence within the meaning of the **Fines Reform Act 2014**.
- (3) The infringement penalty for an offence referred to in subsection (1) is the prescribed penalty for the offence.

## **91 Protection against self-incrimination**

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, or do any other thing that the person is required to do, under this Part if the giving of the information or the doing of the thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce under this Part if the production of the document would tend to incriminate the person.

## **92 Complaints**

- (1) A person may complain to the Authority about the exercise of a power by an inspector under this Part.
- (2) The Authority must investigate any complaint received under this section and provide a written report on the results of the investigation to the complainant.



## **Part 6—Civil penalties**

### **93 Civil action for contraventions**

- (1) The Authority may apply to a court referred to in subsection (6) for an order under this section.
- (2) The court may make one or more of the following orders in relation to a person who has contravened a civil penalty provision—
  - (a) an order that the person pay a pecuniary penalty of not more than the amount set out in the table in section 94(2) in relation to the provision;
  - (b) any other order that the court considers appropriate.
- (3) The orders that may be made under subsection (2)(b) include—
  - (a) injunctions; and
  - (b) any other orders that the court considers necessary to stop the conduct or remedy its effects.
- (4) Nothing in this section is to be construed as limiting any other power of the court.
- (5) For the purposes of determining the amount of a pecuniary penalty under this section the court must have regard to—
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place.

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- (6) An application under this section may be made to—
- (a) in the case of a civil penalty provision for which the maximum penalty is 500 penalty units or less for a natural person or 2500 penalty units or less for a body corporate—the Magistrates' Court or the Supreme Court; and
  - (b) in any other case—the Supreme Court.
- (7) An application under this section must be made within 6 years of the contravention.
- (8) Proceedings under this provision are civil proceedings for all purposes.

**94 Civil penalty provisions**

- (1) A provision of this Act that is set out in the table in subsection (2) is a civil penalty provision.
- (2) The Authority may apply to the Court for an order in relation to a contravention or proposed contravention of a civil penalty provision set out in column 2 of an item of this table, including an order for the payment of the maximum penalty referred to in column 3 of the item of this table in respect of the civil penalty provision.

<i>Item</i>	<i>Civil penalty provision</i>	<i>Maximum penalty for contravention by a natural person</i>	<i>Maximum penalty for contravention by a body corporate</i>
1.	Section 13 (licence required to provide labour hire services)	800 penalty units	3200 penalty units
2.	Section 14 (licence required to advertise labour hire services)	200 penalty units	800 penalty units

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Part 6—Civil penalties

<i>Item</i>	<i>Civil penalty provision</i>	<i>Maximum penalty for contravention by a natural person</i>	<i>Maximum penalty for contravention by a body corporate</i>
3.	Section 15(1) (prohibition on entering into an arrangement for labour hire services with unlicensed provider)	800 penalty units	3200 penalty units
4.	Section 16(2) (prohibition of avoidance arrangements)	800 penalty units	3200 penalty units
5.	Section 16(3) (failure to report avoidance arrangements)	200 penalty units	800 penalty units
6.	Section 36 (failure to comply with a condition of a licence)	200 penalty units	800 penalty units
7.	Section 37(3) (failure to comply with notice to comply)	200 penalty units	800 penalty units
8.	Section 43 (failure to notify changes)	40 penalty units	160 penalty units
9.	Section 44(1) (failure to notify prescribed changes)	800 penalty units	3200 penalty units
10.	Section 45 (failure to ensure availability of nominated officers)	40 penalty units	160 penalty units
11.	Section 67(1) (failure to make documents available for inspection)	200 penalty units	800 penalty units
12.	Section 67(2) (failure to retain certain documents for 6 years)	200 penalty units	800 penalty units

<i>Item</i>	<i>Civil penalty provision</i>	<i>Maximum penalty for contravention by a natural person</i>	<i>Maximum penalty for contravention by a body corporate</i>
13.	Section 86(1) (prohibition of threats, intimidation, etc.)	200 penalty units	800 penalty units
14.	Section 86(2) (prohibition of discrimination, etc.)	200 penalty units	800 penalty units

### **95 Persons involved in contravening civil penalty provision**

- (1) A person must not—
- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (d) conspire to contravene a civil penalty provision.
- (2) This Act applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

### **96 Recovery of a pecuniary penalty**

If the court orders a person to pay a pecuniary penalty for a contravention of a civil penalty provision—

- (a) the penalty is to be paid to the Consolidated Fund; and
- (b) the order is enforceable as a judgment debt.

### **97 Civil proceedings after criminal proceedings**

A court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **98 Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if—
  - (a) criminal proceedings are instituted or have already been instituted against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the pecuniary penalty order may be resumed if the person is not convicted of the offence.
- (3) If proceedings for the pecuniary penalty order are not resumed as referred to in subsection (2), the proceedings are taken to be dismissed.

### **99 Criminal proceedings after civil proceedings**

Criminal proceedings may be instituted against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

**100 Evidence given in proceedings for pecuniary penalty order not admissible in criminal proceedings**

- (1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the person if—
- (a) the person previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the person for a contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) Subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the person in the proceedings for the pecuniary penalty order.

**101 Contravening a civil penalty provision is not an offence**

To avoid doubt, a contravention of a civil penalty provision is not an offence.

## **Part 7—Other matters**

### **Division 1—Review by VCAT**

#### **102 Application for review of certain decisions by VCAT**

(1) An eligible applicant may apply to VCAT for review of the following decisions of the Authority within 28 days of being notified of the decision—

- (a) a decision to grant a licence under section 24;
- (b) a decision to refuse to grant a licence under section 24;
- (c) a decision to renew a licence under section 29;
- (d) a decision to refuse to renew a licence under section 29;
- (e) a decision to impose a condition on a licence under section 33;
- (f) a decision to issue a notice to comply under section 37;
- (g) a decision to vary a licence under section 38;
- (h) a decision to suspend a licence under section 39;
- (i) a decision to cancel a licence under section 40.

(2) In this section—

***eligible applicant*** means—

- (a) in the case of a decision relating to an application for a licence or renewal of a licence, the applicant for the licence or renewal of the licence or an interested person who made an objection to the application; and

- (b) in the case of any other decision relating to a licence, the holder of the licence.
- (3) For the purposes of section 59(1)(b)(iv) of the **Victorian Civil and Administrative Tribunal Act 1998**, if an application is made for review of a decision referred to in subsection (1), the person who is the subject of the decision is a party to a proceeding for review of the decision, whether or not the person was the applicant for the review.
- (4) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Act.

**Note**

Under section 4 of the **Victorian Civil and Administrative Tribunal Act 1998**, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

## **Division 2—Secrecy provision**

### **103 Secrecy provision**

- (1) This section applies to—
- (a) the Commissioner, an Acting Commissioner or a person who has at any time been the Commissioner or an Acting Commissioner; and
- (b) a person who is, or has at any time been, an employee, consultant, contractor, agent or person assisting the Authority referred to in section 53.



- (2) A person to whom this section applies must not, either directly or indirectly, make a record of, or disclose or communicate to any person, any information concerning the affairs of any person acquired under or for the purposes of this Act.

Penalty: 75 penalty units.

- (3) Despite subsection (2), a person to whom this section applies may—
- (a) make a record of, or disclose or communicate any information referred to in that subsection—
    - (i) in any legal proceedings under this Act or under a prescribed law or under an order of a court or VCAT; or
    - (ii) in, or in connection with, the exercise of a function, or performance of a duty, under or in connection with this Act or a labour hire industry law; or
    - (iii) if the information is the subject of or relevant to a complaint, investigation or inquiry under a law referred to in section 23(1); and
  - (b) disclose or communicate any information referred to in that subsection to the following—
    - (i) VCAT;
    - (ii) a police officer for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence;
    - (iii) a police officer who is performing a duty under or in connection with any Act;

- (iv) a regulator responsible for dealing with the matter under the relevant law;
- (v) a prescribed person who is, or a prescribed body that is, performing a duty under or in connection with any Act;
- (vi) any other person, with the consent of the person to whom the information relates.

### **Division 3—Matters relating to proceedings**

#### **104 Who may commence proceedings?**

- (1) Proceedings for an offence against this Act or the regulations may only be commenced by—
  - (a) the Commissioner; or
  - (b) a person authorised by the Commissioner for the purposes of this section.
- (2) In any proceedings commenced for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person commencing the proceedings was authorised to do so.

#### **105 Extension of time for prosecutions**

Despite anything to the contrary in any Act, proceedings for an offence against this Act may be commenced within 6 years after the date on which the offence is alleged to have been committed.

#### **106 Responsible agency for the Crown**

- (1) If proceedings are brought against the Crown for an offence against this Act or a contravention of a civil penalty provision, the responsible agency in respect of the offence or the civil penalty

provision may be specified in any document initiating, or relating to, the proceedings.

- (2) In this section, the *responsible agency* in respect of an offence or a civil penalty provision is the agency of the Crown—
- (a) whose acts or omissions are alleged to constitute the offence or the contravention of the civil penalty provision; or
  - (b) if that agency has ceased to exist, that is the successor of that agency; or
  - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence or a civil penalty provision is entitled to act in proceedings against the Crown for the offence or in respect of the civil penalty provision and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence or the civil penalty provision may change the responsible agency during the proceedings with the leave of the court.

### **107 Proceedings against successors to public bodies**

Proceedings for an offence against this Act or the regulations, or a contravention of a civil penalty provision, that were commenced against a public body before its dissolution, or that could have been commenced against a public body if not for its dissolution, may be continued or commenced against its successor if the successor is a public body.

## **Division 4—Guidelines**

### **108 Authority may issue guidelines**

- (1) The Authority may issue guidelines about matters required by this Act for the purpose of providing practical guidance to persons who may have obligations under this Act, and to other persons to whom this Act may apply.
- (2) The Authority must publish a notice in the Government Gazette stating that guidelines have been issued and how the guidelines may be obtained.

## **Division 5—Codes of Practice**

### **109 Codes of Practice**

- (1) The Authority may make Codes of Practice in accordance with this Division.
- (2) A Code of Practice may specify voluntary standards and procedures for the supply and use of labour hire workers.
- (3) A Code of Practice must be approved by the Minister before it is made.
- (4) A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
  - (a) wholly or partially or as amended by the Code of Practice; or
  - (b) as formulated, issued, prescribed or published at the time the Code of Practice is made or adopted or at any time before then; or
  - (c) as formulated, issued, prescribed or published from time to time.

- (5) Within a reasonable time of making a Code of Practice, the Authority must publish a copy of the Code of Practice on its Internet site.

### **Division 6—Other matters**

#### **110 Conduct of officers, employees and agents of bodies corporate**

- (1) If, in proceedings under this Act in respect of conduct that is engaged in by a body corporate and to which this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show—
- (a) that an officer, employee or agent of the body corporate engaged in that conduct within the scope of the actual or apparent authority of the officer, employee or agent; and
  - (b) that the officer, employee or agent had that state of mind.
- (2) For the purposes of this Act, any conduct engaged in on behalf of a body corporate—
- (a) by an officer, employee or agent of the body corporate acting within the scope of the person's actual or apparent authority; or
  - (b) by any other person at the direction, or with the consent (express or implied) of such an officer, employee or agent—

is taken to be conduct engaged in by the body corporate.

#### **111 Authority may rely on licence, approval etc. under prescribed law or scheme**

- (1) The Authority may, if satisfied that a person is the holder of a licence within the meaning of a prescribed law, or is otherwise accredited or approved (however described) under a prescribed

law, or under a prescribed scheme relating to labour hire (however described), do one or more of the following—

- (a) not require the person to provide to the Authority information that the Authority would otherwise require to determine a matter under this Act or the regulations;
  - (b) determine, without any further consideration, that the person—
    - (i) is a fit and proper person for one or more purposes of this Act or the regulations; or
    - (ii) otherwise satisfies a prescribed condition or requirement of this Act or the regulations.
- (2) For the purposes of subsection (1), the Authority may require a person to verify by statutory declaration that the person is the holder of a licence or is otherwise accredited or approved (however described) under a prescribed law, or under a prescribed scheme relating to labour hire (however described).

## **112 Interstate licensees may be registered**

The Mutual Recognition Act 1992 of the Commonwealth applies as if providing labour hire services were an occupation within the meaning of that Act.

### **Note**

The Mutual Recognition Act 1992 of the Commonwealth is adopted in Victoria by section 4 of the **Mutual Recognition (Victoria) Act 1998**. In accordance with section 17 of the Mutual Recognition Act 1992 of the Commonwealth, a person who holds the right to provide labour hire services in another State or a Territory will be, on notifying the Authority, entitled to be registered as a licensed labour hire provider in Victoria.

### **113 Review of Act**

- (1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years after the day on which this Act receives the Royal Assent.
- (3) The Minister must cause a report on the outcome of the review to be laid before each House of Parliament as soon as practicable after the review is completed.

## **Division 7—Regulations**

### **114 Regulations**

- (1) The Governor in Council may make regulations for or with respect to the following—
  - (a) substituting nominated officers to be appointed for a prescribed period in prescribed circumstances;
  - (b) prescribing forms;
  - (c) prescribing fees;
  - (d) any matter or thing required or permitted by this Act, to be prescribed or necessary to be prescribed, to give effect to this Act.
- (2) The regulations—
  - (a) may be of general or of specially limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may confer a discretionary authority, or impose a duty, on a specified person or body or class of person or body; and

- (d) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and
  - (e) may make provision for or in relation to any matter by applying, adopting or incorporating, with or without modification, the provisions of any Act of the Commonwealth or of any statutory rule or other instrument made under an Act of the Commonwealth, as in force at a particular time or as in force from time to time; and
  - (f) may impose a penalty not exceeding 10 penalty units for a contravention of the regulations.
- (3) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to the first regulations made under this section.

#### **115 Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subsection (1) may be retrospective in operation to the commencement of this Act.
- (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (4) This section expires on 1 November 2020.



## **Part 8—Transitional provisions**

### **116 Definitions**

In this Part—

*commencement day* means the day on which Part 2 comes into operation;

*transition period* means the period commencing on the commencement day and ending on the day 6 months after the commencement day.

### **117 No contravention of Part 2 during transition period or later if application on foot**

- (1) A person does not contravene a provision of Part 2 at any time during the transition period.
- (2) A person does not contravene section 13 or 14 at a time (the *relevant time*) after the end of the transition period, if the person applied for a licence before the end of the transition period and, at the relevant time, the application has not yet been decided.
- (3) A person does not contravene section 13 or 14 at a time (the *relevant time*) after the end of the transition period, if—
  - (a) the person applied for a licence before the end of the transition period; and
  - (b) the application was refused; and
  - (c) at the relevant time, the period within which the person may apply for review of the decision or appeal against the decision has not ended.
- (4) A person does not contravene section 13 or 14 at a time (the *relevant time*) after the end of the transition period, if—
  - (a) the person applied for a licence before the end of the transition period; and

- (b) the application was refused, and
  - (c) the applicant applied for review of the decision or appeal against the decision and the application for review, or the appeal, has not been determined.
- (5) A person (the *host*) does not commit an offence under section 15 at a time (the *relevant time*) after the end of the transition period if—
- (a) at the relevant time, the host entered into an arrangement with a provider; and
  - (b) at the relevant time, the host reasonably believed that subsection (2), (3) or (4) applied to the provider.
- (6) A person does not commit an offence under section 16 at a time (the *relevant time*) after the end of the transition period if—
- (a) at the relevant time, the person proposed to enter into an arrangement with another person; and
  - (b) at the relevant time, the person reasonably believed that subsection (2), (3) or (4) applied to the other person.

### **118 Licence period—transitional**

Despite section 26, if a person applies for a licence under section 17 before the end of the transition period and the Authority decides to grant the licence under Part 3, the Authority may—

- (a) specify the date on which the licence comes into force; and
- (b) specify an expiry date (within the meaning of section 26) that is a date no later than 3 years and 6 months from the date specified under paragraph (a).

**119 Information to be provided with application**

If a person makes an application before the end of the transition period and, at the time the application is made, the person is providing labour hire services, sections 19 and 23 apply to the application as if the person holds a licence.

## **Part 9—Amendment of Public Administration Act 2004**

### **120 Persons with functions of public service body Head**

(1) In section 16(1) of the **Public Administration Act 2004**—

(a) in paragraph (1), for "this paragraph."  
**substitute** "this paragraph;"

(b) after paragraph (l) **insert**—

"(m) the Labour Hire Licensing  
Commissioner within the meaning of  
the **Labour Hire Licensing Act 2018**  
in relation to the office of the Labour  
Hire Licensing Authority."

(2) This Part is repealed on the first anniversary of  
the date on which it comes into operation.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 14 December 2017*

*Legislative Council: 8 February 2018*

The long title for the Bill for this Act was "A Bill for an Act to provide for the regulation and licensing of providers of labour hire services, to establish the Labour Hire Licensing Authority and the office of Labour Hire Licensing Commissioner, to amend the **Public Administration Act 2004** and for other purposes."