

LEGISLATIVE COUNCIL

LABOUR HIRE LICENSING BILL 2017

(Amendments and New Clauses to be proposed in Committee by Mr ONDARCHIE)

1. Clause 22, lines 27 and 28, omit "a court, tribunal or regulator" and insert "a court or tribunal".
2. Clause 22, line 31, after "standard" insert "and, to the extent that the requirement that a person is a fit and proper person relates to a decision to cancel a licence or not to renew a licence, the finding is final, within the meaning of subsection (3)".
3. Clause 22, page 23, line 24, omit "Act;" and insert "Act."
4. Clause 22, page 23, line 25, omit all words and expressions on this line.
5. Clause 22, page 23, after line 25, insert—

"(2) A person is not taken not to be a fit and proper person merely because the person was an officer of a body corporate referred to subsection (1)(a), (b), (c), (d), (e) or (f), unless the person was personally culpable in relation to the matter or matters specified in whichever of those provisions is applicable in respect of the body corporate."
6. Clause 22, page 23, before line 26, insert—

"(3) For the purposes of subsection (1)(b)(i), a finding is *final* if all rights of review or appeal available in respect of the finding have been exhausted, whether because—

 - (a) all applications that are capable of being made for review or appeal have been made and the finding has been upheld; or
 - (b) if not all such applications have been made and been unsuccessful, all time periods within which such applications may be made have expired."
7. Clause 26, lines 5 to 13, omit all words and expressions on these lines and insert—

"(b) remains in force until the licence is cancelled or otherwise ceases to be in force."
8. Clause 39, page 41, after line 7, insert—

"(4) If the Authority has decided to suspend a licence, and has given the holder of the licence a notice under subsection (2), the holder of the licence may give the Authority a written response to the suspension.

(5) The Authority must—

 - (a) consider any response given under subsection (4); and
 - (b) make a decision to revoke the suspension, unless the Authority remains satisfied of the matters specified in subsection (1).

(6) The Authority must make a decision to revoke a suspension if the Authority ceases to be satisfied of the matters specified in subsection (1) in relation to the suspension, whether or not a response has been given under subsection (4)."

9. Clause 45, lines 25 to 26, omit "nominated officers for the licence are available to the Authority during hours" and insert "at least one nominated officer for the licence is available to the Authority during the normal business hours of the holder of the licence".
10. Clause 46, line 7, after "must" insert "not, without reasonable excuse, fail to".
11. Clause 67, lines 6 to 9, omit ", at all reasonable times at each place at which the holder of the licence conducts the business of providing labour hire services, keep" and insert "make".
12. Clause 67, line 10, after "business" insert "of providing labour hire services".
13. Clause 67, page 57, after line 7, insert—

"(6) The requirements in subsection (1) and (2) to make documents available for inspection apply only to the extent that is reasonably practicable to make the documents available."
14. Clause 85, line 12, after "any person" insert ", 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."
15. Clause 89, page 74, after line 5, insert—

"(3) A reference to an inspector in this section is taken to include a reference to a person assisting an inspector."
16. Clause 102, page 83, after line 20, insert—

"(5) The commencement of an application to VCAT for review of a decision to refuse to renew a licence, impose a condition on a licence or cancel a licence (other than at the request of the holder of the licence) is taken to suspend the operation of the decision until the application is determined."

NEW CLAUSES

17. Insert the following New Clause to follow Clause 111—

"AA 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."

18. Insert the following New Clause to follow Clause 111—

"BB Inspection of Register before entering into arrangement for provision labour hire services

For the purposes of section 15(2)(b), it is a reasonable excuse if the person—

- (a) within the period of 3 months immediately before entering into the arrangement, searched the Register in respect of the labour hire provider and ascertained that the provider was a licensed labour hire provider; and
- (b) at the time of entering into the arrangement, was not reasonably aware that the provider had ceased to be a licensed labour hire provider."

19. Clause 113, page 91, lines 7 to 9, omit all words and expressions on these lines.

20. Clause 113, page 91, after line 9, insert—

"(4) The power of the Governor in Council to make regulations is subject to the regulations being disallowed by a House of Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**."

21. Clause 113, page 91, before line 10, insert—

"(5) If regulations are made that prescribe a number of nominated office holders for a licence and, in a particular case, the number exceeds the number of natural persons who are responsible for the day-to-day conducting of the business to which the particular licence relates or will relate (the **relevant number**), the prescribed number is taken for all purposes to be the relevant number."

NEW CLAUSES

22. Page 94, after line 6, insert the following Part heading and New Clauses—

**'Part 9—Amendments relating to the meaning of
*provides labour hire services***

119 New section 10(1) inserted

After the heading to section 10 of the **Labour Hire Licensing Act 2018** insert—

- "(1) Despite sections 7 and 8, and to avoid doubt, a person (a **provider**) does not provide labour hire services if the provider supplies one or more individuals to perform work for another person (a **host**) in any of the following circumstances—
- (a) as part of a genuine supply chain or a contracting or subcontracting arrangement that does not involve the on-hire of a worker to a host to work under the instruction of the host, including, but not limited to, a supply chain or a contracting or subcontracting arrangement in the construction industry;
 - (b) as part of the outsourcing of a business or part of a business to a third party;

- (c) if the supply by the provider of one or more individuals to perform work for other businesses is not the main purpose of the business ordinarily carried on by the provider;
- (d) as part of a short term, ad hoc arrangement between businesses;

Note

Examples of such arrangements are workers of one farm business assisting another farm business by picking crops for a day, or workers of one concrete business providing assistance to another concrete business during a concrete pour.

- (e) if the provider supplies the individual or individuals to perform work—
 - (i) in the case of a provider that is a body corporate, for a related body corporate, within the meaning of the Corporations Act, of the provider; or
 - (ii) in the case of a provider that is a partner in a joint venture, for an entity that is a common joint venture partner of the provider;
 - (iii) in the case of a provider that is part of an entity or group of entities that jointly carry on business as one recognised business, for another entity in the business;
- (f) as part of a bona fide secondment arrangement;
- (g) as part of a consultancy arrangement;
- (h) in the case of a provider that is a body corporate, if an individual supplied by the provider is an executive officer of the body corporate and is the only individual supplied by the provider to perform work for the host;
- (i) if the supply of the individual or individuals to the host is not for the purposes of a business or undertaking conducted by the host, including but not limited to the situation where the supply is for the domestic or personal purposes of the host;
- (j) as part of a group apprenticeship or trainee scheme;
- (k) if the individual or individuals supplied to the host are Australian legal practitioners performing work for a client;
- (l) if the individual or individuals supplied are employees of an organisation registered under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth, in the course of providing assistance to members of that organisation; and
- (m) as part of a work experience arrangement or an educational placement."

120 New section 10(1) inserted

In section 10 of the **Labour Hire Licensing Act 2018** before "Despite" insert "(2)".

121 Commencement of sections 119 and 120

Despite section 2, sections 119 and 120 commence immediately after the commencement of section 10 of the **Labour Hire Licensing Act 2018**."