

## A quick supplementary guide to the South Australian Labour Hire Licensing Act 2017

South Australia's new *Labour Hire Licensing Act 2017* will come into effect on **1<sup>st</sup> March 2018**. We've written a quick guide to the Act to help South Australian growers and their employees understand and prepare for it. Treat this as an extra resource, not as a substitute for legal advice! The full *Labour Hire Licensing Bill 2017* can be found at:

<https://www.legislation.sa.gov.au/LZ/B/CURRENT/LABOUR%20HIRE%20LICENSING%20BILL%202017/UNOFFICIAL%20ROYAL%20ARMS/LABOUR%20HIRE%20LICENSING%20BILL%202017.UN.PDF>

### Where and when it applies

**The Act extends to all conduct (whether in or outside South Australia)** that is connected with labour hire services supplied in South Australia.

**It doesn't apply to any organisation that is a registered group training organisation** (a group training organisation registered in South Australia on the Group Training Organisation National Register maintained by the Commonwealth).

Generally speaking, **if you supply another person with a worker to do work in and as part of another business or commercial undertaking, then you're providing labour hire services according to the Act.** This definition applies regardless of whether or not a written contract was signed. A worker is an individual who enters into an arrangement with the provider of labour hire services, under which that provider may send that person to work for another person, and that provider is obliged to pay the worker, in whole or part, for the work. This includes apprentices and trainees under a training contract entered into with an employer under the *Training and Skills Development Act 2008*.

**The Act includes more rigorous details** on the meaning of labour hire services, the meaning of a worker, when a worker is supplied and when someone is fit and proper to be a responsible person from section 7 to section 10 (pages 5-9). These sections should be read in detail if you're not sure whether you, your business or your employer is a provider of labour hire services. Section 7 (page 5) includes these two examples to help you understand the meaning of labour hire services:

*“Guy runs a plumbing business and has an employment contract with Tracey, under which Tracey is paid to come to work each day at the plumbing business and be assigned work. Corey runs a grape growing business at which there is a problem with the plumbing. Corey enters into a contract with Guy to diagnose and fix the problem at the business and so Guy sends Tracey to Corey's grape growing business to do the work. Guy does not provide labour hire services in sending Tracey to do work at Corey's business.*

*Richard runs a manufacturing business for which he requires a production worker to work on the production line assembling components. Amy has a pre-existing arrangement with Steve under which Amy may, from time to time and at Amy's discretion, send Steve to do work for other persons for which Steve will be paid by Amy. Richard enters into a contract with Amy under which Amy will supply Steve to Richard to perform the work in the manufacturing business.*

*Amy provides labour hire services in supplying Steve to do work at and as part of Richard's business.” (pages 5-6).*

## Prohibited under the Act

**You cannot provide labour hire services unless authorised by a licence.** The maximum penalty for a “natural” person (not a corporate body) who provides labour hire services without a licence is \$140,000 or 3 years imprisonment for one person, or \$400,000 for a corporate body.

**You cannot advertise that you provide, can provide or will provide labour hire services without a licence.** Advertising labour hire services without a licence can result in up to a \$30,000 penalty.

**Labour hire providers’ advertisements have to include their licence number (section 48)** preceded by “LHS”. The maximum penalty for not doing this is \$2500.

**Are you using a labour hire company or provider? You can’t enter into arrangements with any unlicensed providers of labour hire services.** This can result in up to \$140,000 or 3 years imprisonment for one person, or \$400,000 for a corporate body. You won’t be given this penalty if you entered into an arrangement with someone providing labour hire services when that provider was shown on the register as holding a licence.

**You can’t enter into an avoidance arrangement with any labour hire licence provider.** In other words, you can’t enter into an arrangement with another person wherein that person provides labour hire services to you if you know, or reasonably should know, that their arrangement is set up to circumvent or avoid an obligation imposed by this Act. Again, the penalty for doing this is \$140,000 or 3 years imprisonment for a person and \$400,000 for a corporate body.

**If you’ve become aware of an avoidance arrangement, you have to report it as soon as possible.** You need to give the Commissioner for Consumer Affairs the following information in writing: the name of the person setting up or intending to set up an avoidance arrangement, and a brief description of the avoidance arrangement. The Maximum penalty for failing to report an avoidance arrangement is \$30,000.

## Licensing

**To get a licence for providing labour hire services, you must apply to the Commissioner for Consumer Affairs.** This is done by filling out an application form that has been approved by the Commissioner (of course including your name and any other information required by the commissioner), along with payment of the prescribed fee/s. We’ll add the link to this application when we have it at [agpick.com/resources](http://agpick.com/resources).

**You’re not eligible for a licence if:**

- You were the holder of a licence that was cancelled less than 2 years before your application;
- You’re a related body corporate of a person who has had their licence cancelled less than 2 years before your application, or;
- You’ve had an application refused and were notified of this refusal less than 3 months before applying again
- You’ve had an application refused, appealed against this refusal and were notified of the result less than 3 months before applying again

**Your licence application will be objected if** you (the applicant), a person nominated to be a responsible person for the use of the licence, or one or more members of an applying body corporate, are not thought to be “fit and proper” person/s to hold this licence.

**Your licence will be granted if** the Commissioner for Consumer Affairs is satisfied that you (or every member of your corporate body) are a fit and proper person to hold a licence and have the financial resources to properly do business under the conditions of the licence. In granting a licence, the Commissioner for Consumer Affairs needs to specify who exactly can hold the licence and who exactly can be a nominated responsible person under the licence.

**Section 18 (page 13) states the full conditions of the licence.** The following excerpt from that section is especially important: “The Commissioner may, at any time after the grant of a licence, vary or revoke a condition of the licence or impose a further condition on the licence as the Commissioner thinks fit.”

**The holder of a licence must not transfer, sell, dispose of, lend or hire out the licence to another person.** Doing so can result in up to \$25,000 in penalties or imprisonment for up to 1 year.

**A licence is in force until:**

- The licence is suspended or cancelled.
- The licence holder dies.
- The corporate body holding the licence is dissolved.

**A licence holder must lodge a report and pay the prescribed fee within 28 days after each reporting period.** Reporting periods are every 12 months from the date the licence has started. If reports aren’t lodged and payments aren’t made, the Commissioner will give written notice and you’ll have 28 days from the date of this notice to fulfil these obligations. If you fail to do this, your licence will be cancelled.

**The report will be in a form approved by the Commissioner for Consumer Affairs and must contain all the information as stated in section 20, pages 13-15.** This includes (but is not limited to) details about the business, the number of workers in that year, the kind of work contracted, and any other services provided to workers (e.g. accommodation).

**You must notify the Commissioner for Consumer Affairs within 14 days of any circumstance changes that affect your licence as displayed on the register.** This includes, but is not limited to, whether the licence holder is a fit and proper person to hold a licence, whether all members of a corporate body are still fit and proper persons to hold the licence, or any activities relating to the licence (e.g. providing accommodation for supplied workers). The maximum penalty for failing to do this is \$4000.

**You must provide information to the Commissioner for Consumer Affairs upon request.** If the Commissioner asks in writing whether you are a fit and proper person to hold a licence, whether your business has the financial resources to continue under the licence, or about the provision of labour hire services, then you need to provide that information. With notice, the commissioner might also require the licence holder to verify specific information with a statutory declaration. The Commissioner might ask for this more than once, or in specified intervals, as the Commissioner sees fit. If the licence holder fails to provide this information, the Commissioner will ask again in writing, and the licence holder will have 28 days to provide the information. If the licence holder fails to comply with this request within 28 days, the licence will be cancelled.

**Sections 23-25 (pages 15-16) hold the details for licence surrender and cancellation.** If your licence is surrendered or cancelled and the Commissioner for Consumer Affairs asks you to send back any evidence of your holding this licence, you have to comply within 14 days. Failing to do so is an offence with a maximum penalty of \$4000.

**Sections 26-31 (pages 17-20) hold the details for who can and should be a responsible person for a licence.**

**Under section 27:**

“The holder of a licence must ensure that each responsible person for the licence is reasonably available to be contacted by the Commissioner, an authorised officer or a member of the public during business hours.

Maximum penalty: \$4 000.”

You can apply to change (section 28) or temporarily substitute (section 29) a responsible person.

### Monitoring and Enforcement

Sections 32-33 (on page 20) explain cases where the Commissioner for Consumer Affairs may refer some matters to the Commissioner of Police, and that information that is classified by the Commissioner for Police as criminal intelligence can only be disclosed to certain parties who need to see it (e.g. the court).

An authorised officer may require a licence holder or responsible person under that licence to answer any questions (verbally or in writing), or to produce books or documents. An authorised officer might also need that person to provide this information in person at a specific time or place. Failure to provide this information or attend in person without a reasonable excuse can result in up to a \$20,000 penalty. Full details are in section 35 on page 22.

An authorised officer is the Commissioner or an appointed officer as explained in section 34.

**At a reasonable time, an authorised officer may:**

- enter and search any premises
- stop, enter and search any vessel or vehicle
- open any container, package or other item found in the premises, vessel or vehicle
- make any inspection
- conduct any analysis or test
- take any samples
- examine, copy and take extracts from any books or documents
- take any books or documents
- seize and remove anything that constitutes evidence of an offence against the Act
- take photographs, films or video recordings
- take measurements and make notes
- give directions in connection with the administration, operation or enforcement of the Act

They need a warrant to do any of the above in any premises that isn't or might not be a workplace, or any part of the workplace used for residential purposes (see section 36, subsection 2). An authorised officer must also exercise the rights above in a way that avoids disrupting business or work.

It is an offence not to comply with the direction of an authorised officer in these circumstances, with a maximum penalty of \$20,000.

Section 37 covers documents produced for or taken by an authorised officer, and circumstances where they might be kept for long periods of time.

**Under section 38: "A person who hinders an authorised officer, or a person assisting an authorised officer, acting in the exercise of powers conferred by or under this Act is guilty of an offence."** The maximum penalty for this offence is \$10,000.

**It is an offence to try to persuade anyone to fail to comply with anything in this Act through threats or intimidation.** The maximum penalty for this offence is \$10,000. See section 39.

**The maximum penalty for impersonating an authorised officer is \$10,000.** See section 40.

### Proceedings and Appeals

**Section 41 on evidentiary provisions (page 24)** explains what counts as proof of authorised officers, true copies of documents and others under this Act.

**Section 42 explains the process of appealing to court.** You can appeal against decisions to refuse a licence, impose conditions on a licence, a licence suspension or cancellation, a refusal to appoint someone as a responsible person for a licence, a cancellation appointment of a substitute responsible person in respect of a licence, a refusal to extend the appointment of a person as a substitute responsible person, or a refusal to appoint a substitute responsible person.

### Part 7 – Miscellaneous (pages 26-30) includes sections on the following:

The register; Delegations; Commissioner may rely on licence, approval etc under prescribed law; Exemptions (to this Act); False or misleading information; advertisements needing to include licence numbers; defences; confidentiality of information; service; regulations, and; how and when the Act may be reviewed. **As usual, it's an offence to give any false statements** for anything under this Act. The maximum penalty for this offence is \$10,000.

### Schedule 1 at the end of the Act (pages 30-31)

**"If a person supplies, to another person, a worker to do work for the other person within 6 months after the commencement of this Act, the person is taken not to be a provider of labour hire services in relation to the supply until—** (a) ... 6 months after that commencement; or (b) if the person applies for a licence within 6 months after that commencement—the day the application is decided, whichever is the later."

**Transitional Regulations on page 31** state that the Commissioner for Consumer Affairs may add conditions for this Act that would come into effect on the same day of the Act or later.