

09 July 2018

NAT 017/18

### Important developments – Victoria, Queensland and South Australian licensing legislation for the supply of labour

#### SUMMARY

The Victorian *Labour Hire Licensing Act 2018* has been passed by Parliament. The Victorian Government has announced that the licensing requirements under the Act will not commence before early 2019.

On 16 June 2018 the licensing requirements under the Queensland *Labour Hire Licensing Act 2018* became enforceable.

The South Australian Government has announced that the licensing requirements under the *Labour Hire Licensing Act 2017* (SA) will not be enforced until 1 February 2019.

The licensing schemes extend beyond those arrangements that are commonly understood as 'labour hire', to cover many other types of arrangements where workers employed by one business carry out work for other businesses. Heavy penalties apply for non-compliance, including jail terms in some circumstances.

#### Relevant previous Ai Group Member Advices

In Ai Group Member Advices [NAT 023/17](#), [NAT 018/17](#), and [NAT 008/18](#), Members were advised of developments regarding labour hire licensing legislation in Queensland, South Australia and Victoria.

There have been a number of further developments in Victoria, Queensland and South Australia.

#### The Victorian Labour Hire Licensing Scheme

The Victorian *Labour Hire Licensing Act 2018* (**Victorian Act**) was passed by the Victorian Parliament on 20 June 2018.

While similar in many respects to the labour hire licensing schemes in Queensland and South Australia, the Victorian Act contains some key differences. Ai Group was successful in influencing some important amendments that

should reduce the impact on businesses, as outlined below.

#### When will the Victorian licensing scheme commence?

On 27 June 2018, certain provisions of the Victorian Act came in to effect. These provisions only relate to the establishing of the Victorian Labour Hire Licensing Authority and other related provisions.

The Victorian Government has announced that the licensing requirements under the Act are not expected to begin before early 2019, and the commencement date will be announced well in advance.

#### What business arrangements are covered by the Victorian licensing scheme?

A business is considered a provider of labour hire services under the Victorian legislation if, in the course of conducting the business, it

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.

The Victorian licensing scheme adopts a broad definition of “*worker*” that is not confined to employees. The definition extends to contractors placed with another person to do work.

The Victorian Government has announced that it will introduce Regulations excluding particular business arrangements from the requirement to hold a licence. Late last year, the Victorian Government released a [consultation paper](#) which identified a number of business arrangements that could potentially be excluded from the requirement to hold a licence.

Following strong representations by Ai Group about the problematic and broad coverage of the licensing scheme, the Victorian Government made a statement in Parliament during the Parliamentary debate on the legislation expressing its intention to exclude many of the business arrangements identified in the consultation paper. This statement was influential in convincing key Crossbench Parliamentarians to support the legislation.

### **How do I apply for a licence?**

Providers of labour hire services will be able to apply for a licence through the website of the Victorian Labour Hire Licensing Authority. The website has not yet been created.

The Victorian licensing scheme will require applicants to provide extensive information and supporting declarations to apply for a licence and will require licensees to be “fit and proper persons” (as defined in the Act).

### **What if a business holds a licence under a labour hire licensing scheme in another State or Territory?**

Following representations by Ai Group, a late amendment to the Victorian Act provides for mutual recognition of labour hire licences held in another State or Territory. The relevant section in the Act states:

#### **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.*

This provision is designed to alleviate the regulatory burden on businesses required to hold a licence under the Victorian scheme, if they can demonstrate that they hold a licence under a labour hire licensing scheme in another State, such as Queensland or South Australia.

### **What are the reporting obligations under the Victorian licensing scheme?**

Licence holders will be required to comply with extensive reporting requirements every 12 months, including on matters relating to the number of workers supplied during the reporting period, the types of employment arrangements, the types of work performed and work locations.

### **What is the term of a labour hire licence under the Victorian Act?**

Licences granted by the Labour Hire Licensing Authority will carry a maximum term of 3 years.

A licence holder must apply to renew a licence if it wishes to provide labour hire services beyond the licence term.

### **How will users of labour hire services in Victoria know whether the provider of the labour is licensed?**

A register of licence holders will be available on the website of the Victorian Labour Hire Licensing Authority. The website has not yet been created.

### **What penalties will apply for breaches of the Victorian legislation?**

The Victorian legislation includes penalties of up to \$507,424 for companies and \$126,856 for individuals.

The penalties apply to those who provide “labour hire services” without a licence and to those who use an unlicensed labour hire

provider. The penalties also apply to persons who enter into an arrangement to avoid obligations under the legislation.

There are a range of other offences under the Victorian legislation attracting financial penalties, including a prohibition on advertising for the provision of labour hire services without a licence.

## The Queensland Labour Hire Licensing Scheme – Latest Developments

On 16 June 2018, the Queensland *Labour Hire Licensing Act 2017* (**Queensland Act**) became enforceable against businesses who are labour hire service providers and businesses who use labour hire service providers.

Labour hire service providers under the Queensland Act had until 15 June 2018 to lodge their licence application to enable them to continue operations while their licence application is determined by [Labour Hire Licensing Queensland](#).

Labour hire service providers which did not submit their licence application by 15 June 2018 must now be licensed to provide labour hire services. These businesses may still lodge a licence application but must not provide labour hire services until such time as a licence is granted by Labour Hire Licensing Queensland.

Businesses using labour hire service providers must now only use providers that are licensed or providers that have an application pending if the application was lodged by 15 June 2018 as shown on the [Labour Hire Licensing Queensland Pending Applications List](#).

Businesses can view an [online register](#) of the providers who have been granted a licence.

The Queensland Act includes penalties of up to \$378,450 for companies. The maximum penalty for individuals is \$130,439 or imprisonment for up to three years.

The penalties apply to those who provide “labour hire services” without a licence and to those who use an unlicensed labour hire provider. The penalties also apply to persons who enter into an arrangement to avoid obligations under the legislation or the licensing scheme.

## The South Australian Labour Hire Licensing Scheme – Latest Developments

The South Australian *Labour Hire Licensing Act 2017* (**South Australian Act**) commenced on 1 March 2018.

Under the South Australian Act, labour hire service providers originally had until 1 September 2018 to lodge an application. However, following concerns raised by stakeholders, including Ai Group, the South Australian Government has [announced](#) that the licensing requirements will not be enforced until 1 February 2019 and that “*businesses may wish to postpone seeking a licence until further information is available.*”

The South Australian Act includes penalties of up to \$400,000 for companies. The maximum penalty for individuals is \$140,000 or imprisonment for up to three years. The penalties apply to those who provide “labour hire services” without a licence and to those who use an unlicensed labour hire provider. The penalties also apply to persons who enter into an arrangement to avoid obligations under the legislation or the licensing scheme.

### Do you require further advice?

For more information or assistance about the licensing legislation please contact the **Ai Group Workplace Advice Service** on 1300 55 66 77.

Should you require detailed advice relating to the coverage of the licensing schemes, assistance in liaising with the relevant licensing authorities, or advice on other obligations, our team of professional workplace relations advisers and lawyers at [Ai Group](#) and [Ai Group Workplace Lawyers](#) are available to assist you.

Ai Group has conducted a series of webinars about the licensing schemes. Further webinars will be scheduled in the future to discuss developments.



**Stephen Smith**  
Head of National Workplace Relations Policy