

20 November 2018

NAT 026/18

Labour Hire Licensing Developments – Victoria & South Australia

SUMMARY

There have been a number of developments relating to the labour hire licensing schemes in Victoria and South Australia:

- On 23 October 2018, the Victorian Government made the *Labour Hire Licensing Regulations 2018* to support the operation of the Victorian labour hire licensing scheme.
- Stephen Dargarvel, former Victorian State Secretary of the AMWU, has been appointed by the Victorian Government as Commissioner of the Labour Hire Authority – the regulatory body responsible for administering and enforcing the labour hire licensing scheme.
- On 19 September 2018, the South Australian Government announced that it would repeal the *Labour Hire Licensing Act 2018* (SA) following concerns raised by stakeholders, including Ai Group, about significant problems with the licensing scheme.

South Australian Government to repeal labour hire licensing legislation

The South Australian Government announced on 19 September 2018 that it would introduce legislation this year to repeal the *Labour Hire Licensing Act 2018* (SA). It remains to be seen whether there will be sufficient support in Parliament for the legislation to be repealed.

The Government has advised that it is not presently accepting applications for labour hire licences and that any licence application fees paid by licence holders will be refunded if the licensing legislation is successfully repealed in Parliament.

Members were advised of the details of the *Labour Hire Licensing Act 2018* (SA) in Member Advices [Nat 017/18](#) and [Nat 008/18](#).

Labour Hire Licensing Scheme– Victoria

Members were advised of the details of the Victorian Labour Hire Licensing Scheme in Member Advices [Nat 017/18](#) and [Nat 008/18](#).

Under the Victorian licensing scheme, businesses that meet the definition of a provider of labour hire services will be required to hold a licence. Businesses that use a provider of labour hire services will be required to only use a licensed provider.

While certain administrative provisions of the *Labour Hire Licensing Act 2018* (Vic) took effect on 27 June 2018, the Victorian Government has announced that compliance obligations will not begin before early 2019.

New Labour Hire Licensing Regulations 2018

On 23 October 2018 the Victorian Government made the [Labour Hire Licensing Regulations 2018](#) to support the operation of the Victorian labour hire licensing scheme.

During the Government's consultation process, Ai Group made a [submission](#) raising numerous concerns with the draft Regulations that had been released for public comment, particularly in relation to the lack of clarity around the licensing scheme's scope and coverage, the limited benefit of mutual recognition and the scale of licence fees.

In its [Response](#), the Victorian Government reiterated its intention regarding the licensing scheme's coverage:

“The content of the Regulations sits in the context of the Act. Statements were made during the debate and passage of the Bill explaining working arrangements that are already excluded by the existing definitions and provisions of the Labour Hire Licensing Act 2018 (Vic) (Act) and therefore do not require exclusion by Regulations. For example, arrangements are not generally ‘labour hire’ if they do not include ‘a worker performing work in and as part of the business of the host’. These working arrangements include: the supply of a worker to an individual who is not conducting a business or undertaking; the provision of professional or trade services to a third party where the professional or trade services are being provided under the standard operating model for such companies; genuine subcontracting arrangements; genuine outsourcing arrangements; and the supply of volunteers.”

The Government has also announced that guidance material, information and an education campaign will be released prior to the commencement of the licensing scheme.

What business arrangements are covered by the Victorian licensing scheme?

Subject to some limited exclusions and additional inclusions, a business is considered a provider of labour hire services under the Victorian legislation if, in the course of conducting a business, the provider supplies one or more workers 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 independent contractors placed with another person to perform work in and as part of a business or undertaking of the host.

What business arrangements are not covered by the licensing scheme?

The Regulations provide a list of limited exclusions for persons who are not considered a “*Worker*” for the purpose of the licensing scheme's coverage. A provider of labour hire services who supplies an individual who is not considered a Worker by the Regulations will not be required to hold a licence for the supply of that individual.

The Regulations state that an individual is **not** a Worker if the individual is:

- (a) a class of secondee, other than where the provider is predominantly in the business of providing the services of workers to other persons;
- (b) a person whom a provider provides to another person to do work in the circumstances where the provider and other person are each part of an entity or group of entities that carry on business collectively as one recognisable business, other than where the provider is predominantly in the business of providing the services of workers to other persons where those persons include persons that are not part of the entity or group;
- (c) a person whom the provider provides to another person to do work if the provider is a body corporate with no more than 2 directors and the person provided by the body corporate is a director of the body corporate who participates in the management of the body corporate or shares in its profits;
- (d) employed by a public sector body within the meaning of the *Public Administration Act 2004* (Vic) who are seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act;
- (e) a student to whom Division 1 or 2 of Part 5.4 of the *Education and Training Reform Act 2006* (Vic) applies; or

- (f) is a person undertaking work or services under a vocational placement within the meaning of the *Fair Work Act 2009* (Cth).

What is a secondee for the purposes of the relevant exclusion?

A secondee is a Worker of a provider that is provided to another person to do work on a temporary basis and:

- (a) is engaged as an employee by the provider on a regular and systematic basis; and
- (b) has a reasonable expectation that the employment with the provider will continue; and
- (c) primarily performs work for the provider, other than as a worker supplied to another person to do work for that other person.

The Regulations provide the following examples of a secondee:

- A lawyer employed by a law firm is seconded for a period of time to a client of the law firm to do work for the client.
- A consultant employed by a consultancy business is supplied to a business to conduct a review.
- A farmer who assigns a worker (the secondee) to work on a neighbouring farm to fulfil an immediate need at the neighbouring farm which may be fully or partly on a goodwill basis.

What additional requirements apply to businesses supplying to or operating in the cleaning, horticultural or meat industry?

The Victorian Government's [Inquiry into the Labour Hire Industry and Insecure Work](#) identified the industries of contract cleaning, horticulture and meat processing as higher risk industries for labour exploitation.

The Regulations provide for additional circumstances in which a Worker is taken to be performing work in and as part of a business or undertaking of a host, for the purpose of their providers holding a licence in these industries.

Businesses providing or using such Workers in these industries should carefully consider how the licensing scheme applies to them.

Who will administer the Victorian labour hire licensing scheme?

Victoria's labour hire licensing scheme will be administered by an independent regulatory body, the [Labour Hire Authority](#).

The Victorian Government has appointed former Australian Manufacturing Workers Union (AMWU) Victorian State Secretary, Stephen Dargavel, as Commissioner of the Labour Hire Authority.

The Labour Hire Authority will have responsibility for promoting compliance with and enforcing the licensing scheme.

Through its inspectors, the Labour Hire Authority will have broad powers to search, investigate and enter premises to ensure compliance with the scheme. Certain conditions apply for the exercise of these powers.

How do I apply for a licence?

Applications for licences will be able to be made online through the [Labour Hire Authority](#) website.

The Labour Hire Authority has [outlined the required information](#) to be provided with a licence application. The Labour Hire Authority will also conduct a 'fit and proper person' test for each application and ask applicants to make declarations in respect of compliance with relevant laws.

What is the maximum licence term?

The maximum licence term under the legislation is 3 years.

How much does a licence cost?

The Regulations set out the relevant licence fees based on the annual turnover of a business. The fees include an application fee and an annual fee. The application fee also applies to applications to renew a licence.

The fees are calculated by reference to the value of a fee unit prescribed by the *Monetary Units Act 2004* (Vic) and which may be varied each financial year.

The annual fee is payable on the date the licence was specified to come into force (or specified to be renewed as the case may be) and on each subsequent anniversary.

Tier	Annual turnover of the business	Application Fee	Annual Fee
1	No more than \$2,000,000 in a financial year immediately preceding the day the application is made	\$1,560.60	\$1,083.75
2	Between \$2,000,001 and \$10,000,000 in a financial year immediately preceding the day the application is made	\$4,161.60	\$2,890.00
3	More than \$10,000,000 in a financial year immediately preceding the day the application is made	\$7,687.40	\$5,317.60

Do you require further advice?

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

Ai Group will be hosting a further webinar on the Victorian labour hire licensing scheme early in 2019.



Stephen Smith
Head of National Workplace Relations Policy

What mutual recognition arrangements apply for businesses that hold a labour hire licence in another State?

In Member Advice [Nat 008/18](#), members were advised of the mutual recognition arrangements in the *Labour Hire Licensing Act 2018* (Vic) for holders of interstate labour hire licences.

In releasing its Regulations, the Government and Labour Hire Authority have announced that the mutual recognition provisions apply only to natural persons, but the Labour Hire Authority may waive various application and reporting requirements for any licence holder if they hold a licence under the Queensland or South Australian licensing legislation. Evidence of holding an interstate licence will need to be provided.

What arrangements apply to Group Training Organisations?

The Labour Hire Authority may waive particular application or reporting requirements for Group Training Organisations that supply apprentices and trainees, which are recognised by the Victorian Registration and Qualifications Authority.