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Concurrent Session Paper

THE AUSTRALIAN INDUSTRY GROUP
NATIONAL PIR GROUP CONFERENCE
30 APRIL 2018

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OVERVIEW – PIR CONSTRUCTION CONCURRENT SESSION

The construction industry, as well as those sectors associated with it, have had significant regulatory impacts from Building Codes (and Implementation Guidelines) since 2006.

From 2 December 2016, the Building Code 2016 replaced the *Building Code 2013* with some transitioning arrangements. This has created a whole of business impact for many businesses in the industry.

Businesses, including those in the supply chain have been working through these impacts with a major focus on ensuring that enterprise agreements that cover the business with respect to building work, were compliant by 1 September 2017. This involved many businesses needing to renegotiate agreements with unions and navigating procedural delays in having agreements approved by the Fair Work Commission (FWC).

Businesses are now focussing on the conduct requirements under the Building Code 2016. These include ensuring that subcontractors working on Federal Government projects that fall within the scope of the Building Code 2016, are compliant.

The PIR Construction Concurrent Session will focus on the on the challenges and opportunities businesses are facing in implementing the Building Code 2016 on their activities and projects, as well as other issues of relevance to the industry. A key purpose of the Concurrent Session is to exchange concerns, ideas and practices between Member companies as to how they are managing the implementation of the Code.

The following questions are posed to assist participants in the discussions about the Building Code:

Questions

(a) What challenges and opportunities did (or does) your business face in relation to implementing the Building Code 2016?

(b) Are you confident that your subcontractors who tender for work on Federal Government projects are similarly compliant?

(c) What barriers, either externally or internally, has your business faced?

(d) What steps or initiatives have worked?

BUILDING CODE 2016 – SUMMARY OF REQUIREMENTS

The Building Code 2016 applies to businesses that carry out "building work" on projects which are wholly or partially funded by the Commonwealth Government. The definition of "building work" for the purposes of the Building Code 2016, is as set out in Section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (ABCC Act) with the following exclusions:

- the transport and supply work described in s.6(1)(e) of the Act; and
- the off-site prefabrication of made-to-order components to form part of any building, structure or works, as described in s.6(1)(d)(iv) of the Act, unless that work is performed on an auxiliary or holding site that is separate from the primary construction site or sites.

Once a business is covered:

- It will need to apply the Building Code 2016 on all building work undertaken, including private work; and
- Its related entities are also deemed to be covered by the Building Code 2016 for all building work.

The Building Code enables certain businesses to apply to the ABC Commissioner for limited exemptions from the Code. The ABC Commissioner may exempt a building contractor or building industry participant from compliance with the Code if the building work involves the provision of essential services related to the supply of electricity, natural gas, water, waste water or telecommunications. Note: This is not a general exemption from the Building Code 2016.

The Code contains detailed requirements in the following areas:

- From 1 September 2017, a business can only express interest in, tender for, or be awarded Commonwealth funded building work if:
    - All enterprise agreements made by the employer and its related entities on or after 2 December 2016 (that apply to building work) comply with the Building Code 2016; and
    - All enterprise agreements made between 25 April 2014 and 1 December 2016 by the employer and its related entities (that apply to building work) comply with the Building Code 2016 by 1 September 2017.
- Businesses must ensure that their subcontractors undertaking building work on their Commonwealth funded works are compliant to the Building Code 2016. This is a positive obligation that cannot be discharged by merely requiring a subcontractor to sign a statutory declaration stating that they are compliant.
- Businesses must comply with relevant laws, instruments and orders, including the *Fair*

Work Act 2009, the *Independent Contractors Act 2006*, the *Competition and Consumer Act 2010*, work health and safety laws, security of payment laws, applicable awards, applicable enterprise agreements, and Court and Tribunal orders (s.9).

- Particular conduct, practices and arrangements are prohibited (see s.11(4) and (5)).
- Unregistered agreements are generally prohibited, other than common law agreements with individual employees (s.10).
- A Code covered entity must not engage in sham contracting (s.11B) or collusive tendering practices (s.11C).
- A Code covered entity must comply with security of payment laws, ensure that payments which are due are made in a timely manner, and comply with various other related requirements as outlined in s.11D of the Code.
- A Code covered entity must report any disputed or delayed progress payment to the ABC Commissioner and the relevant funding entity as soon as practicable after the date on which the payment falls due, and comply with various other requirements relating to disputed payments as outlined in s.11E of the Code.
- As set out in s.11F of the Code, a Code covered entity must ensure that no person who is not an Australian citizen or Australian permanent resident (within the meaning of the *Migration Act 1958*) is employed to undertake building work for the Code covered entity unless:
    - The position is first advertised in Australia;
    - The advertising was targeted in such a way that a significant proportion of suitably qualified Australian citizens and Australian permanent residents would be likely to be informed about the position;
    - Any skills or experience requirements set out in the advertising were appropriate to the position; and

- The employer demonstrates that no Australian citizen or Australian permanent resident is suitable for the job.

Note: The *Migration Act 1958* and associated Regulations contain requirements relating to the engagement of persons who are not Australian citizens or Australian permanent residents.

- Coercion, undue influence or undue pressure on contractors, subcontractors and consultants to provide above award-entitlements, to contribute to a particular fund or scheme, or to support a particular product, service or arrangement are prohibited (e.g. pressure to contribute to a particular redundancy scheme or to select a particular income protection insurance provider or to use a particular training provider is prohibited) (s.12).

- Businesses must implement policies which protect freedom of association (s.13).

- Where a union official wishes to enter premises, businesses must strictly apply laws governing right of entry including ensuring that the official complies with the permit and notice requirements of the relevant legislation (s.14).

- Businesses must report actual or threatened industrial action (protected and unprotected) to the ABCC as soon as practicable but no later than 24 hours after becoming aware of the threat or action (s.16).

- Businesses must report to the ABCC any request or demand by a union that the business engage in conduct that appears to be for a secondary boycott within the meaning of the *Competition and Consumer Act 2010,* as soon as practicable but no later than 24 hours after becoming aware of the threat or action (s.16(4)).

- A Code covered entity must ensure there is an approach to managing drugs and alcohol issues in the workplace to help ensure that no person attending the site is under the influence of alcohol or drugs (s.16A and Schedule 4).

- For projects where the Commonwealth's funding is above a specified amount, a Workplace Relations Management Plan (WRMP) must be developed for the project (ss.25, 30-34 and Schedule 2 of the Code).

- WRMPs must include a fitness for work policy to manage alcohol and other drugs in the workplace, including drug and alcohol testing (s.32(2)(a) and Schedule 4).

- Businesses must notify the ABCC of a breach or suspected breach of the Code as soon as practicable but no later than two working days after becoming aware of the breach and must advise the ABCC of the steps proposed to rectify the breach (s.17).

- In relation breaches of WHS laws, notification is required if there is a finding of non-compliance, such as a court finding. An outcome such as an enforceable undertaking should also be reported. The issuing of a provisional improvement notice does not constitute a breach of the Code and does not need to be reported.

- Before entering a contract in respect of Commonwealth funded building work, the Government must ensure that preferred tenderers provide the following information (s.25A):

    - The extent to which domestically sourced and manufactured building materials will be used to undertake the building work;

    - Whether the building materials to be used to undertake the building work comply with relevant Australian standards published by, or on behalf of, Standards Australia;

    - The preferred tenderer's assessment of the whole-of-life costs of the project to which the building work relates;

    - The impact on jobs of the project to which the building work relates; and

    - Whether the project to which the building work relates will contribute to skills growth.

CURRENT ISSUES – BUILDING CODE 2016

Section 11F – Engagement of non-citizens and non-residents

Prior to employing an employee to undertake building work, code covered contractors must undertake labour market testing and demonstrate that no Australian citizen or Australian permanent resident is suitable for the job.

These provisions apply where the position advertised requires the prospective employee to undertake building work. The ABCC has provided the following examples of positions which would be determined as undertaking building work.

- Skilled tradespersons;
- Unskilled tradespersons and labourers;
- Managers including project managers, site managers and forepersons;
- Engineers and other specialty occupations; and
- Project directors, superintendents and other higher management if their role includes undertaking building work, i.e. if they are making decisions or contributing to a particular project.

Roles which are not likely to be determined to be undertaking building work include:

- Clerical and IT staff located at the head office of a company;
- Corporate management not undertaking building work;
- Front end bid teams; and
- Other head office staff not undertaking building work.

Businesses need to ensure that they have evidence to ensure that they are compliant with Section 11F of the Building Code 2016 by ensuring the appropriate recruitment processes are followed and that documentary evidence is retained. These can include:

- Advertisements;
- Comprehensive job descriptions
- Job applications;
- Interview notes;
- Documents from recruitment processes which identify why an Australian citizen or permanent resident who may have applied for the role was not appointed; and
- Employment contracts.

Freedom of association – logos, mottos and indicia

The Building Code 2016 promotes proactive approaches to freedom of association. The ABCC has provided guidance on what would be a breach of the freedom of association requirements of the Building Code 2016.

Relevant businesses must not allow union logos, mottos or indicia on any property or equipment supplied or provided by the employer. This includes circumstances where the employer pays an allowance for such property (e.g. tool allowance).

The presence of such logos, mottos or indicia is taken as implying that membership of union is *"anything other than an individual choice for each employee".*

The ABCC has indicated in a recent a fact sheet that *"logos, mottos and indicia include:*

- *symbols or trademarks that identify an organisation*
- *an organisation's name in its standard, recognisable font, size, style and colour*

- *images generally attributed to, or associated with an organisation, such as the iconic symbol of the five white stars and white cross on the Eureka Stockade flag*
- *phrases that express an organisation's guiding principle*
- *signs*
- *markings*
- *indications."*

These must not be placed on equipment or property (e.g. clothing, flags, hard hats, notice boards, crib sheds) that the employer supplies or pays for either directly or indirectly. Examples provided by the ABCC include:

- *"personal protective equipment*
- *uniforms*
- *tools*
- *vehicles*
- *mobile phones*
- *cranes*
- *scaffolding*
- *first aid boxes*
- *notice boards*
- *amenities on-site including lunch rooms, crib rooms, bathrooms and all site walls, fences or gates around the site."*

Businesses should note that the ABCC's statement that this "*also applies when the code covered entity arranges for the supply of equipment. For example, where a code covered entity enters into a contract with another entity for crane or scaffolding equipment, under which the second entity will supply such equipment.*"

Strike pay

The *Fair Work Act 2009* (FW Act) and the ABCC Act prohibit the payment of strike pay.

Where an employee fails to attend work, or absents themselves from work, that absence is not *industrial action* if it has been authorised or agreed to by their employer in advance and in writing. A failure to obtain authorisation or agreement for a stoppage of building work in advance and in writing may constitute industrial action.

Payment of strike pay will be a breach of the ABCC Act. It is also unlawful to make a claim for strike pay or accept strike pay. Employees or unions who make such demands may be prosecuted.

Penalties which may be imposed are:

- Up to $210,000 in respect of strike payments made by a body corporate;
- Up to $12,600 in respect of strike payments by or to an individual.

Right of entry for WHS reasons

The ABCC has strictly enforced the provisions of the FW Act in relation to right of entry. Union officials who seek to exercise a right of entry on site where building work is occurring for any reason including to exercise the right of entry under relevant state WHS laws, must hold a valid federal permit issued in accordance with the FW Act. There are 34 CFMEU officials who do not hold a valid federal permit and an additional two who have conditions placed on those permits.

In a recent case, CFMEU official Michael Powell was invited four times by a health and safety representative to enter a construction site in Melbourne, allegedly in accordance with the Victorian WHS legislation. The specific provisions in that legislation provide that a HSR may invite any person in order to provide assistance in health and safety matters. The provisions purport to permit entry to any individual so invited, irrespective of whether that individual has a permit. CFMEU officials who ceased to hold a valid federal permit had been utilising these provisions to gain entry on sites.

On each occasion that Mr Powell entered the site, he was asked to leave and refused. The ABCC prosecuted Mr Powell on the basis that s.494 of the FW Act states that "*an official of an organisation must not exercise a State or Territory OHS right unless the official is a permit holder*". At first instance, the Federal Court found that the *"operation of ss.58 and 70 of the Occupational Health and Safety Act 2004 (Vic) did not, for the purposes of s 494, confer a right to enter premises on Mr Michael Powell"*.[1]. The effect of this was that the Mr Powell did not require a federal permit to be able to enter on these grounds

The Full Federal Court disagreed with this construction and found that the *"plain words of s 494(1) and (2) and the construction of ss 58(1)(f) and 70 of the 2004 Victorian Act mean that Mr Powell as an official of an organisation required a permit under the FW Act to enter the premises…"*[2]

The matter was unsuccessfully appealed to the High Court by the CFMEU and Worksafe Victoria.

The ABCC has taken the position that the High Court's decision has application beyond the Victorian legislation:

> *"While the case before the High Court concerned an invitation under sections 58 and 70 of the Victorian Occupational Health and Safety Act 2004, the case has broader*

1 *Australian Building and Construction Commissioner v Powell* [2017] FCAFC 89, paragraph 1

2 *Australian Building and Construction Commissioner v Powell* [2017] FCAFC 89, paragraph 59

application to the equivalent provisions of the uniform Work Health and Safety laws (sections 68 and 70). The uniform laws apply in all other States and Territories (except Western Australia).”[3]

Until recently, few issues have arisen regarding unions officials without permits attempting to enter premises on WHS grounds. In the last few weeks, CFMEU officials in Queensland, with the support of WorkCover Queensland, have sought entry. The ABCC is involved in the matter and encourages employers who may be facing similar issues, to contact them immediately. The ABCC's position, supported by the *Powell* decision, is that: *“union officials are required to hold a valid federal right of entry permit even when invited onto site to assist a health and safety representative (HSR) under a State or Territory OHS law”*.

Review into the ABCC Act and the ABCC

Jaguar Consulting has been commissioned by the Federal Government to conduct a review into the ABCC Act and the ABCC.

Ai Group made a submission to the Review in April 2018, and also filed a supplementary submission responding to a number of follow-up questions asked by Jaguar Consulting.

FAIR WORK BILLS BEFORE PARLIAMENT

Three important workplace relations Bills are before Parliament: the *Fair Work Amendment (Proper Use of Worker Benefits) Bill 2017*, the *Fair Work Amendment (Repeal of 4 Yearly Reviews of Modern Awards and Other Measures) Bill 2017*, and the *Fair Work (Registered Organisations) Amendment (Ensuing Integrity) Bill 2017*. The Bills have not yet been called on for debate this year.

3 ABCC E- Alert dated 17 November 2017

The Ensuring Integrity Bill is unlikely to pass given opposition from some Crossbench Senators. At this stage it is unclear whether the other two Bills will be passed and, if so, the timing of this. Parliament next sits in May for the Budget session.

The *Fair Work Amendment (Repeal of 4 Yearly Reviews of Modern Awards and Other Measures) Bill 2017* would amend the *Fair Work Act* to:

- Abolish 4 yearly Reviews of Awards; and
- Give the FWC more discretion to overlook minor procedural non-compliance in the enterprise agreement-making process, provided that the employees are unlikely to have been disadvantaged.

The *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017* would implement appropriate governance standards for employee entitlement funds such as construction industry redundancy funds. The Bill addresses the widespread, inappropriate current practice of unions deriving millions of dollars a year from money contributed by employers to employee entitlement funds for the benefit of their own employees. The Bill also implements recommendation 47 of the Heydon Royal Commission by requiring that registered organisations (i.e. unions and employer associations) disclose to employers and employees the financial benefits (e.g. commissions) that they receive from income protection insurance and other products that they promote or arrange.

The *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017* would:

- Introduce a public interest test for amalgamations of registered organisations.
- Expand the categories of 'prescribed offence' which lead to automatic disqualification of a person from acting as an official of a registered organisation, and allow the Federal Court to issue orders prohibiting officials of registered organisations from holding office in certain circumstances, including where they have contravened particular laws.

- Allow the Federal Court to cancel the registration of an organisation on a range of grounds, and allow applications to be made to the Federal Court for other orders, including suspending the rights and privileges of an organisation.

CFMEU, MUA AND TCFUA MERGER

The Construction, Forestry, Mining and Energy Union (CFMEU), the Maritime Union of Australia (MUA) and the Textile, Clothing and Footwear Union of Australia have merged. The merger took effect on 27 March 2018. The new union is called the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU).

In effect the CFMEU's coverage rules have been expanded and the MUA and TCFUA have been deregistered. On 16 March 2018, Vice President Hatcher rejected an application to stay Deputy President Gostencnik's decision until after the appeal and this enabled the merger to proceed on 27 March.

On 9 April, a Full Bench of the FWC heard an appeal against the decision of Deputy President Gostencnik to approve the merger. At the time of writing, the decision of the Full Bench was reserved.

KEY COURT DECISIONS

High Court *ALDI v SDA* decision – implications for the BOOT and greenfields agreements

On 6 December 2017, the High Court handed down its decision in a case involving Aldi Foods and the Shop, Distributive and Allied Employees Association (SDA). The decision presents some opportunities for employers wishing to make an enterprise agreement for a new project.

The High Court has confirmed that an employer can make an agreement for a new project with a group of existing employees who will work on the new project, even if the project has not commenced at the time when the agreement is made and the employees are engaged in

another part of the employer's business at the time. In appropriate circumstances, the decision provides an alternative to the negotiation of a greenfields agreement for a new project. The group of employees with whom the agreement is made would need to be a "fairly chosen group" and genuine agreement would need to be reached with them.

High Court *ABCC v CFMEU* decision – Courts can order union officials to pay their own fines

On 14 February 2018, the High Court confirmed the power of Courts to order union officials to pay their own fines through personal payment orders.

In its public comments in response to the decision, Ai Group said that "the decision will discourage CFMEU officials from blatantly disregarding industrial laws because, if they do, they can be ordered to personally pay large fines from their own assets. Despite numerous fines being imposed on the CFMEU and numerous strong criticisms from Judges, the CFMEU has not changed its unlawful behaviour. Hopefully, this decision will finally lead to CFMEU officials taking responsibility for their own actions and complying with the law like every citizen in a civilised society is rightly expected to do."

LABOUR HIRE LEGISLATION

The Queensland licensing scheme

The Queensland *Labour Hire Licensing Act 2017* commenced on 16 April 2018. Labour hire providers have until 15 June 2018 to lodge an application for a licence.

The Queensland licensing legislation has broad coverage, beyond arrangement that are commonly understood as being "labour hire". A business is covered if it meets the relevant definitions as a provider of labour hire services, or as a user of labour supplied by a provider of labour hire services.

Subject to some limited exclusions, a business is considered a provider of labour hire services if, in the course of carrying on the business, it supplies to another person or business, a worker to do work.

The Queensland 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.

A list of examples of businesses that are considered to be providers of labour hire services under the Queensland licensing scheme, is available on the Queensland Government's labour hire licensing website. Please note that this is not an exhaustive list and businesses will need to give careful consideration to whether or not they are providers of labour hire services.

Under the Queensland licensing scheme, the following businesses are not considered to be providers of labour hire services:

- Businesses that are private employment agents under the *Private Employment Agents Act 2005 (Qld);*
- Building contractors that carry out building work under the *Building and Construction Industry Payments Act 2004 (Qld)* and engage subcontractors to carry out the work.

On 6 April 2018, the Queensland Government released the *Labour Hire Licensing Regulations 2018 (Qld)* that excludes from the licensing scheme the following workers:

(a) An individual employed by a provider whose annual "wages" are equal to or more than the amount of the "high income threshold" under s.333 of the Fair Work Act (currently $142,000 per annum) ***and*** *who is not employed under a modern award. enterprise agreement or other industrial instrument. "Wages" has the meaning given by the Workers' Compensation and Rehabilitation Act 2003 (Qld).*

(b) For a provider who is a corporation – an individual who is an executive officer of the corporation and the only individual the provider supplies, in the course of carrying on a business, to another person to do work.

(c) An ***"in-house employee"*** *of a provider whom the provider supplies to another person* ***"to do work on a temporary basis"*** *on one or more occasions.*

Examples of the supply of an individual to do work on a temporary basis—

- *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 for the other business*
- *a person employed by a community care organisation on an ongoing basis and who usually works for the organisation in a variety of locations, including in another person's home.*

*An "**in-house employee**" of a provider is an individual who:*

(i) is engaged as an employee by the provider on a regular and systematic basis; and

(ii) has a reasonable expectation the employment with the provider will continue; and

(iii) primarily performs work for the provider other than as a worker supplied to another person to do work for the other person.

(d) *an individual who a provider supplies to another person to do work if the provider and the other person are each part of an entity or group of entities that carry on business collectively as one recognisable business.*

Examples—

1 *A landscaping business is comprised of a number of companies that are responsible for different aspects of the business. The business's workers are all employed by 1 of the companies and are supplied to work for 1 or more of the other companies within the business.*

2 *A business that operates a group of medical centres employs workers for the centres through a trust entity. The workers, including doctors, nurses and reception staff, are supplied to the medical centres to perform work.*

Providers of labour hire services can apply for a licence on the Queensland Government's labour hire licensing website. The website includes detailed information about the application process and the licensing requirements.

Licence holders are required to comply with extensive reporting requirements every 6 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 location. Information on the reporting requirements is available on the Queensland Government's labour hire licensing website. A register of labour hire licenses will be available on the website.

The Queensland legislation 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 licensing scheme

The South Australian *Labour Hire Licensing Act 2017* commenced on 1 March 2018. Labour hire providers have until 1 September 2018 to lodge an application for a licence.

Subject to some limited exclusions, a business is considered a provider of labour hire services under the South Australian legislation if, in the course of carrying on the business, it supplies to another person or business, a worker to do work in and as part of the commercial undertaking of the other person or business.

The South Australian 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.

Section 7 (Meaning of *labour hire services*) of the South Australian *Labour Hire Licensing Act 2017* provides the following note and examples.

Note

The definition of labour hire services is mainly directed at engagement arrangements generally referred to in industry as "on-hire" but also includes other engagement arrangements that (unless exempted in accordance with this Act) satisfy the requirements of this section because the nature or structure of the engagement or arrangement involves a worker being supplied in circumstances where the provider has a pre-existing agreement with the worker under which the provider may, from time to time and at the provider's discretion, send the worker to work in another person's business or commercial undertaking but be paid by the provider for the work.

Examples

1 *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.*

2. *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.

A list of examples of businesses that are considered to be providers of labour hire services under the South Australian licensing scheme, is available on the South Australian Government's labour hire licensing website. Please note that this is not an exhaustive list and Members will need to give careful consideration to whether or not they are providers of labour hire services.

Under the South Australian licensing scheme, the following businesses are not considered to be providers of labour hire services:

- Businesses that are employment agents under the *Employment Agents Registration Act 1993 (SA);*
- Building contractors that carry out building work within the meaning of the *Building Work Contractors Act 1995 (SA)* and engage subcontractors to carry out the work.

Registered group training organisations are also exempt from the South Australian licensing legislation to the extent that they supply apprentices or trainees to do work for other persons.

In addition, the South Australian Government has published on its labour hire licensing website a list of additional arrangements where a licence will not be required. These arrangements are:

- Individuals and companies that hold a current contractors' licence for building, plumbing, gas fitting, electrical or security work issued by Consumer and Business Services.

- Individuals and companies that provide a service rather than a worker do not require a licence – e.g. a customer asks for a financial audit and an accounting business delivers the service.
- A business subcontracting work to another business – e.g. a building company subcontracting work to a tiler.
- A business outsourcing work to another business – e.g. a nursing home outsourcing maintenance tasks.
- Hiring someone for a particular task through the sharing economy – e.g. Airtasker.
- A business that has been granted an exemption from the requirement to be licensed.

Businesses can apply for an exemption from the requirement to hold a licence on the South Australian Government's labour hire licensing website.

Providers of labour hire services can apply for a licence on the South Australian Government's labour hire licensing website. The website includes detailed information about the application process and the licensing requirements.

Licence holders are 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 location. Information on the reporting requirements is available on the South Australian Government's labour hire licensing website. A register of licence holders will be available on the website.

The South Australian legislation 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.

The Victorian Labour Hire Licensing Bill

The Victorian *Labour Hire Licensing Bill 2017* is currently before the Victorian Parliament. If the Bill is passed by Parliament, the legislation will introduce a labour hire licensing scheme with many similar features to the Queensland and South Australian schemes.

The Victorian Bill contains similar coverage provisions to the South Australian licensing legislation.

Given that the Bill is still before Parliament, regulations have not yet been made providing for exclusions from the legislation. Late last year the Victorian Government released a consultation paper which identifies a number of business arrangements that could potentially be excluded from the requirement to hold a licence. However, at this stage, there is no certainty regarding the extent of any exclusions.