

Licensed Labour Hire: Do the right thing for your workers, your business and your industry

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- Labour hire businesses must be licensed in Qld, Vic and SA
- Those farms that use labour hire must only use licensed providers
- There are significant fines in place for breaches of your obligations as an employer using labour hire services
- Compliance officers are out there and actively checking throughout the year

VICTORIA

The Labour Hire Authority is responsible for implementing the Labour Hire Licensing Act 2018. The Act introduced a licensing scheme for providers of labour hire across all industry sectors. The scheme was established in response to the Victorian Inquiry into the 'Labour Hire Industry and Insecure Work' which uncovered widespread abuse and exploitation of labour hire workers across Victoria.

The key elements of the licensing scheme are that:

- labour hire providers must be licensed to operate in Victoria,
- those who use labour hire providers must only engage licensed providers, and
- labour hire providers must report annually on their labour hire activities.

The Labour Hire Authority is responsible for licensing labour hire providers and undertaking education, enforcement and compliance activity.

Workers will be protected against exploitation from unlicensed labour hire providers and host employers not engaging licensed providers.

The scheme seeks to achieve a level playing field, such that reputable labour providers do not face unfair competition from unscrupulous operators, and labour hire workers are not subject to exploitation.

If you conduct a business that engages labour hire providers to supply you with individuals to work in your business then you are defined as a 'host' and you must only use licensed labour hire providers.

The Labour Hire Authority has a team of inspectors whose role is to promote, monitor, investigate and enforce compliance with the Act and regulations.

Inspectors have a variety of powers to monitor compliance with the scheme including, where there are reasonable grounds, the power to:

- enter and search premises
- examine and seize anything suspected of being connected with a possible contravention of the Act or regulations
- inspect, copy or take extracts from documents on the premises and make images or recordings
- seek the assistance of other persons
- where necessary apply to the Magistrates' Court for a search warrant.

Hosts are prohibited from using an unlicensed labour hire provider, and hosts doing so will be exposed to significant fines, with a maximum penalty exceeding \$500,000.

There are also significant penalties for hosts who seek to enter into arrangements aimed at avoiding or circumventing obligations that would otherwise be imposed by the Labour Hire Licensing Act 2018 on the client, supplier or someone else. Avoidance arrangements must be reported to the Labour Hire Authority.

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QUEENSLAND

Queensland's Labour Hire Licensing Scheme – Tips for the upcoming season

Queensland's landmark Labour Hire Licensing Scheme commenced on 16 April 2018. There are currently 3,332 labour hire providers licensed to operate in the state. Labour hire providers are required to hold a licence, while those who use labour hire must only use licensed providers. There are significant penalties for breaches of these obligations, including fines of more than \$400,000.

Director of the Labour Hire Licensing Compliance Unit Natalie Wakefield said the scheme is helping vulnerable workers and ensuring operators who do the right thing aren't disadvantaged.

"Through education and auditing, we help operators comply with the standards required," Ms Wakefield said. "Added to that, compliance actions such as refusing licence applications, or suspending and cancelling licences where operators are not fit and proper, ensure we weed out rogue operators from the industry.

"We encourage the grower community to let us know if they have issues with their labour hire provider."

To date, five unlicensed labour hire providers and one user of an unlicensed labour hire provider have been prosecuted. Court-imposed fines for these offences have ranged from between \$50,000 and \$120,000. Directors have also been pursued for their role in the offences.

As we head into the winter strawberry season in Queensland, growers are reminded that when engaging workers through contractors, they must only use providers who hold a current labour hire licence.

The Labour Hire Licensing Compliance Unit also recommends you:

- Check the current licence status via the online register prior to engaging a provider, and keep evidence of that (for example, by saving a screenshot of your search). The online register always contains the up-to-date licence status of the provider. Visit ols.oir.qld.gov.au/licence-register/search
- Have a written contract that properly identifies the contractor, including their Australian Business Number. Include an obligation in the contract to advise you of any change to their licence status (e.g. suspension or cancellation). Consider limiting the ability of the labour hire provider to subcontract.
- Check the identity and bona fides of the person approaching you to provide labour, in particular that they are authorised to bind the licensed labour hire provider in a contract. By clicking on the licence number in the register, you can see the names of the persons who are nominated and executive officers for that provider. If the person approaching you is not one of those persons, you should ask further questions.
- Do spot checks with employees – check on whether they are experiencing any issues and ask for proof of pay (including super) and conditions and visa status from the labour hire provider.

W www.labourhire.qld.gov.au
P 1300 576 088
E www.labourhire.qld.gov.au/contact-us

SOUTH AUSTRALIA

Amendments to South Australia's labour hire laws commenced on 20th July 2020.

The scope of the licensing scheme has been narrowed to apply to labour hire providers operating within industries where workers are at a greater risk of exploitation due to the low-skilled, labour-intensive nature of the work that they are engaged to undertake. This includes horticulture.

Significant penalties apply if you:

- provide labour hire services without being licensed
- engage an unlicensed labour hire provider.

Penalties also apply if:

- a labour hire provider does not provide licence particulars to either the agent or the host employer (whichever is applicable)
- an agent/intermediary does not provide licence particulars to either another agent or to the host employer (whichever is applicable)

What are the key obligations of labour hire providers?

Labour hire providers must **provide the host employer** with:

- their labour hire licence number
- their name and contact details
- the name and contact details of the 'responsible person' for the licence.

Labour hire providers must provide each **worker** with:

- the **Labour Hire Worker Information Notice**
 - each time a worker is supplied to a new host employer
 - when the circumstances on the notice change for an existing host employer e.g. the pay rate changes
- a copy of the **Fair Work Information Statement (FWIS)**.

The **Labour Hire Worker Information Notice** provides these important details to the worker:

- The name and licence number of the labour hire provider,
- The commencement date with the host employer,
- The name of the business the worker is being supplied to,
- The pay rate, pay criteria and method of payment,
- Whether accommodation is to be provided, and
- Must be signed by both the worker and the labour hire provider.

The **Fair Work Information Statement (FWIS)** has been created by the Fair Work Ombudsman and ALL employers have to give every new employee a copy of the FWIS before, or as soon as possible after, they start their new job. The FWIS provides new employees with information about their conditions of employment.

What are the key obligations of Agents and intermediaries?

Agent and intermediaries who source workers from a labour hire provider and then provide the workers to a host employer, must provide the host with the labour hire provider's:

- licence number
- name and contact details
- name and contact details of the responsible person for the licence

Agents or intermediaries who are involved in the arrangement must ensure this information is passed along the chain to all parties involved, so that the host ultimately receives this information.

What are the key obligations of host employers?

When a business (the host) requests another business to supply them with workers, the host must ensure that the other business holds a current labour hire licence.

Penalties apply to the host if they use an unlicensed labour hire provider.

In the event that the host requests an agent or intermediary to provide them with workers, the host should expect the agent or intermediary to provide them with the details, and licence number, of the labour hire provider which the workers were sourced from.

To check the status of a licence in South Australia, visit secure.cbs.sa.gov.au/OccLicPubReg/index.php where you can search by Name Location or Licence Number.

Host employers are also recommended to carry out frequent spot checks on workers supplied through a labour hire arrangement. Check that the worker has received a fully completed Labour Hire Worker Information Notice and a copy of the FWIS. Check that the information provided to the worker about their pay criteria and rate of pay match your agreement with the labour hire provider, and that the worker has been receiving the correct payments including superannuation contributions.

W www.sa.gov.au/topics/business-and-trade/licensing/labour-hire
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