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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/083/NAT/083/19
DATE: 12 September 2019
SUBJECT: Obligations under Labour Hire Licensing schemes
ATTENTION: Chief Executive Officer

This circular serves as an update to employers regarding Victoria's new Labour Hire Licensing Scheme, and a reminder of existing schemes operating in Queensland and South Australia.

Victoria

The *Labour Hire Licensing Act 2018* (Vic) (**Vic LHL Act**) implements a labour hire licensing scheme (**Vic Scheme**) for providers of labour hire across all industry sectors in Victoria. The Labour Hire Authority (**Authority**) established under the Vic LHL Act is responsible for the rollout of the Vic Scheme and will support its implementation with education, enforcement and compliance activities.

Key aspects of the Vic Scheme are that:

1. Labour hire providers must be licenced. While the Scheme took effect from 29 April 2019, the deadline (30 October 2019) for labour hire providers to apply for a licence is fast approaching.
2. Host employers (i.e. organisations that use the workers employed by labour hire providers) are prohibited from using unlicensed labour hire providers.

The Victorian Scheme

The Vic Scheme was established in response to the *Victorian Inquiry into the Labour Hire Industry and Insecure Work* which revealed widespread abuse and exploitation of labour hire workers across Victoria.

To obtain a licence, labour hire providers will be required to pass a 'fit and proper person test' and show compliance with workplace laws, labour hire laws and minimum accommodation standards.

The *Labour Hire Licensing Regulations 2018* (Vic) (**Vic Regulations**) provide guidance on a range of matters, including the coverage of the licensing scheme. Relevantly, the Vic Regulations state that the Vic Scheme will cover the common scenario of a business engaging another business to provide a cleaner to perform cleaning work on commercial premises. This means that, under the Act, the above scenario is a 'host' obtaining the labour of a 'worker' who is employed by a 'labour hire provider', and therefore, the host must undertake due diligence to ensure the labour hire provider is licensed.

The Authority's website includes a range of practical examples to set out the coverage of the Vic Scheme and therefore, when a licence is required. See the examples at **Appendix 1**, which includes consideration of another common scenario where a business engages security persons through a contract security company.

Obligations of labour hire hosts under the Victorian Act

The main obligation on hosts is to use only licensed labour hire providers to obtain the services of labour hire workers. Hosts that fail to ensure that they contract with only licensed operators will be exposed to significant fines, with a maximum penalty exceeding \$500,000.

Before engaging a labour hire provider, hosts will be able to find out whether the provider they plan to use is licensed by checking the online Register of Licensed Labour Hire Providers on the Authority's website (see below link). Hosts can also determine whether their planned provider has applied to be licensed by checking the separate online list of 'Applications received'.

Hosts can also obtain information about the Vic Scheme by contacting the Authority through their enquiry hotline or attending a free information session hosted by the Authority across Victoria. These sessions outline key dates and obligations, and what the labour hire licensing scheme means for business, workers and providers.

- Website: <https://labourhireauthority.vic.gov.au>; Phone no: 1300 545 200
- Information sessions: <https://labourhireauthority.vic.gov.au/events/>

South Australia

The South Australian state government had previously expressed an intention to repeal the *Labour Hire Licensing Act 2017* (SA) and had begun the process, introducing the *Labour Hire Licensing Repeal Bill 2018* into parliament. During this period, labour hire providers were not required to obtain a license.

However, following repeated unsuccessful attempts to repeal the legislation, Consumer and Business Services has begun taking applications again. All labour hire providers operating in South Australia must now be licensed by 1 November 2019.

Obligations on labour hire hosts under the South Australian Act

Users of labour hire services in South Australia must only engage the services of a licensed labour hire provider. Engaging the services of an unlicensed labour hire provider is considered an offence, which carries penalties up to \$400,000 for corporations and \$140,000 or 3-years imprisonment for individuals.

Unlike the Vic Scheme, the SA Regulations do not list certain businesses that the scheme will cover by default, such as cleaning services on commercial premises. In contrast, information regarding the coverage of the scheme is outlined in the Consumer and Business Services website which provides a list of circumstances where a business or worker will not require a labour hire licence.

Further information regarding the scheme can be found by contacting Consumer and Business Services:

- Website: <https://www.cbs.sa.gov.au/#>; Phone no: 131 882

Queensland

The Queensland scheme commenced on 16 April 2018 and similarly to Victorian and South Australian legislation, it established a mandatory scheme to protect labour hire workers and support responsible labour hire providers.

All labour hire providers operating in Queensland must obtain a license. This includes providers that are based interstate or overseas who supply workers in Queensland. Similarly, to other states, providers must also meet a 'fit and proper person' standard in order to obtain a license and submit six-monthly reports to retain one.

Obligations on labour hire hosts under the Queensland Act

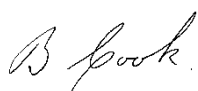
Under the Queensland Act, users of labour hire services are obligated to only use a licensed labour hire provider. It is an offence for any host to enter into an arrangement with an unlicensed labour provider or enter into an arrangement designed to circumvent the Queensland. Penalties for these offences can exceed \$400,000 for corporations and \$130,000 or 3-years imprisonment for individuals.

Although the QLD Regulations do not list certain businesses that the scheme will cover by default, the Labour Hire Licensing Queensland website provides practical examples like Victoria which sets out coverage of the scheme for common scenarios such as cleaning and security services.

Further information and news regarding the scheme can be found by contacting Labour Hire Licensing Queensland:

- Website: <https://www.labourhire.qld.gov.au/>; Phone no: 1300 576 088

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



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APPENDIX 1

We are a security business. Do we need a licence under the Labour Hire Licensing Act 2018?

Scenario 1:

Shop with Us Ltd (Shop with Us) owns and operates several large shopping centres. As part of its business undertaking it is required to meet basic security and safety expectations of tenant retailers and their customers, and to fulfil insurance obligations. Shop with Us arranges for external security to fulfil these requirements and obligations. Shop with Us is of the view that its arrangement is a services contract.

Safety First Pty Ltd (Safety First) provides security guards to Shop with Us. Safety First security guards patrol the Shop with Us shopping centre during retail opening hours and are subject to overall direction of the shopping centre management.

Gardit Pty Ltd (Gardit) provides a 'gate checking' service to the Shop with Us shopping centre. Gardit's staff perform occasional cursory, after hour checks, to:

- verify that the facility is secured internally and externally
- provide an alarm monitoring service
- report damage or refer matters to police where appropriate.

The two security businesses (Safety First and Gardit) are licensed under the *Private Security Act 2004 (Vic)*, administered by the Victoria Police. One of the requirements of their licences is that Safety First, Gardit and their respective staff meet certain character tests and related other requirements.

Question: Is a private security licence enough for an individual or business to comply with the *Labour Hire Licensing Act 2018*?

Answer: No. It is a mandatory requirement for a business providing labour hire services to hold a licence under the *Labour Hire Licensing Act 2018*. A business may be required to hold multiple licences or accreditations, for example in this scenario, Safety First and Gardit are required to have valid labour hire licences and security licences.

Question: Is Safety First a labour hire provider?

Answer: Yes. Under the *Labour Hire Licensing Act 2018* and the Labour Hire Licensing Regulations 2018, Safety First is supplying workers to perform work in and as part of the business or undertaking of the Shop with Us shopping centre. It is irrelevant how Shop with Us describes the arrangement.

Question: Is Gardit a labour hire provider?

Answer: No. Gardit is not supplying workers to work in and as part of the business or undertaking of the Shop with Us shopping centre. It is supplying a service.

Scenario 2:

Market Festival Pty Ltd (Market Festival) holds weekly night markets in Melbourne. Market Festival employs 20 security guards to perform crowd control at the night markets. Under its contract with the local council, Market Festival must have 20 security guards working each night that the night market operates.

A security guard employed by Market Festival phones in sick on the day of the night market. To cover the sick security guard and fulfil its obligations under its contract with the local council, Market Festival enters into an arrangement with Protect Pty Ltd (Protect). Protect is a business that provides security guards to other businesses who run public events.

Sam is an employee of Protect. Under the arrangement between Market Festival and Protect, Sam works as a security guard at the night market to cover the sick Market Festival security guard. Sam patrols alongside the remaining 19 security guards employed by Market Festival.

Question: Is the arrangement between Protect and Market Festival a labour hire arrangement?

Answer: Yes, the arrangement between Protect and Market Festival is a labour hire arrangement.

- Market Festival **is a host** – Protect supplies Sam to perform work in and as part of Market Festival's business
- Protect **is a labour hire provider** – it supplies Sam to Market Festival to perform work in and as part of Market Festival's business and must pay Sam
- Sam **is a worker** – he has an arrangement with Protect under which Protect supplies him to Market Festival to perform work.

Protect must hold a labour hire licence under the *Labour Hire Licensing Act 2018*. Protect is a labour hire provider whether or not they supply Sam on a temporary or ongoing basis.

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