



Queensland

*Labour Hire Licensing Act 2017*

# **Labour Hire Licensing Regulation 2018**

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Queensland

# Labour Hire Licensing Regulation 2018

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# Labour Hire Licensing Regulation 2018

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

This regulation may be cited as the *Labour Hire Licensing Regulation 2018*.

#### 2 Commencement

This regulation commences on 16 April 2018.

### Division 2 Interpretation

#### 3 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

#### 4 Individuals who are not workers—Act, s 8

(1) For section 8(2) of the Act, the following individuals are prescribed—

(a) an individual employed by a provider—

(i) whose annual wages are equal to or more than the amount of the high income threshold under the *Fair Work Act 2009* (Cwlth), section 333; and

(ii) other than under an industrial instrument under the *Industrial Relations Act 2016* or a modern award or enterprise agreement under the *Fair Work Act 2009* (Cwlth);

[s 4]

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- (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 1 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
- (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 1 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.
- (2) For subsection (1)(c), an *in-house employee* of a provider is an individual who—
    - (a) is engaged as an employee by the provider on a regular and systematic basis; and
    - (b) has a reasonable expectation 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 the other person.

## Part 2 Applications for licences

### Division 1 Preliminary

#### 5 Definitions for part

In this part—

*associate*, of an applicant, means—

- (a) if a proposed nominated officer for the application is a person other than the applicant—the proposed nominated officer; or
- (b) if the applicant is a corporation—the corporation and each person who is an executive officer of the corporation.

*related person*, in relation to an applicant, means—

- (a) if the applicant is an individual—a corporation of which the applicant is or has been an executive officer; or
- (b) if the applicant is a corporation—
  - (i) each person who is an executive officer of the corporation; and
  - (ii) each other corporation of which a person mentioned in subparagraph (i) is or has been an executive officer.

**WHS undertaking** means an undertaking given under the *Work Health and Safety Act 2011*, section 216(1).

## **Division 2                      Financial viability**

### **6                      Information about financial viability of business—Act, s 13**

For section 13(3)(c)(ii) of the Act, the prescribed information is a description of the financial documents held by the applicant relating to the business's ability to—

- (a) meet its actual, or projected, operating costs and expenses; and
- (b) pay each worker supplied by the business as and when the worker is due to be paid; and
- (c) pay other financial obligations or entitlements in relation to workers, including, for example, the payment of payroll tax and superannuation for workers.

*Examples of financial documents—*

- a profit and loss statement
- a balance sheet
- an independent accountant's report
- a financial plan
- a statement of actual, or projected, cash flow
- a bank statement
- a document showing amounts withheld from payments made to employees and paid to the Australian Taxation Office
- a document showing payment of employee superannuation

## **Division 3                      Work health and safety and workers compensation obligations**

### **7                      Information about work health and safety and workers compensation obligations—Act, s 13**

For section 13(3)(c)(iii) of the Act, the following information is prescribed—



- 
- (a) whether, within 5 years before the application is made, the applicant or a related person has—
    - (i) been convicted of an offence against the *Work Health and Safety Act 2011* or the *Workers' Compensation and Rehabilitation Act 2003*; or
    - (ii) had a WHS undertaking accepted under the *Work Health and Safety Act 2011*;
  - (b) whether the applicant—
    - (i) is currently insured under a WorkCover policy under the *Workers' Compensation and Rehabilitation Act 2003*; or
    - (ii) is currently licensed as a self-insurer under the *Workers' Compensation and Rehabilitation Act 2003*, chapter 2, part 4;
  - (c) if the applicant is currently insured under a WorkCover policy under the *Workers' Compensation and Rehabilitation Act 2003*—the policy number for the policy of insurance.

## **Division 4                      Additional matters**

### **8                      Information about other licences**

- (1) This section applies if the applicant or an associate of the applicant has applied for, or held—
  - (a) an interstate licence under a corresponding law; or
  - (b) a licence, accreditation or other authority, under an Act, to carry on a business or carry out an occupation.
- (2) For section 13(3)(c)(iv) of the Act, the information prescribed includes whether, within 5 years before the application is made—
  - (a) the application was refused; or
  - (b) any of the following happened—

[s 9]

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- (i) a condition was imposed on the licence, accreditation or authority;
  - (ii) the licence, accreditation or authority was suspended or cancelled;
  - (iii) other disciplinary action was taken in relation to the licence, accreditation or authority.
- (3) In this section—

*corresponding law* means a law, or former law, of another State or the Commonwealth that provides for, or provided for the same, or substantially the same, matter as the Act.

*interstate licence* means a licence, however described, issued under a corresponding law that is similar to a licence under the Act.

## 9 Information about migration matters

For section 13(3)(c)(iv) of the Act, the following information is also prescribed—

- (a) whether the applicant or an associate of the applicant holds a visa under the *Migration Act 1958* (Cwlth);
- (b) whether, within 5 years before the application is made, the applicant or a related person has—
  - (i) been issued an infringement notice under the *Migration Act 1958* (Cwlth); or
  - (ii) been convicted of an offence against the *Migration Act 1958* (Cwlth);
- (c) whether the applicant supplies workers who hold visas under the *Migration Act 1958* (Cwlth);
- (d) if the applicant supplies workers who hold visas under the *Migration Act 1958* (Cwlth)—how many workers the applicant supplies, or intends to supply;
- (e) whether the applicant is an approved employer for the program established by the Commonwealth and known as the Seasonal Worker Programme.

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## 10 Information about solvency of entities associated with applicant

- (1) For section 13(3)(c)(iv) of the Act, the following information is also prescribed—
- (a) if the applicant is an individual—whether a close associate of the individual has been an insolvent under administration under the Corporations Act, section 9;
  - (b) if the applicant is a corporation—whether a related body corporate, under the Corporations Act, of the applicant—
    - (i) has executed a deed of company arrangement under the Corporations Act; or
    - (ii) is the subject of a winding-up, whether voluntarily or under a court order, under that Act; or
    - (iii) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.

- (2) In this section—

*close associate*, of an individual, means—

- (a) a spouse, de facto partner, parent, brother, sister or child of the individual; or
- (b) a step-parent, stepbrother, stepsister or stepchild of the individual; or
- (c) a member of the same household as the individual; or
- (d) a person with whom the individual is in a partnership; or
- (e) a person who is in a position to control or substantially influence the conduct of the individual.

## 11 Information about workplace, work health and safety and workers' compensation matters

For section 13(3)(c)(iv) of the Act, the information prescribed also includes whether, within 5 years before the application is made, the applicant or a related person has—

- (a) been convicted of an offence against—
  - (i) the *Fair Work Act 2009* (Cwlth); or
  - (ii) a law of another State or the Commonwealth that provides for the same, or substantially the same, matters as the *Work Health and Safety Act 2011* or the *Workers' Compensation and Rehabilitation Act 2003*; or
- (b) had an enforceable undertaking accepted under the *Fair Work Act 2009* (Cwlth), section 715; or
- (c) had an undertaking that corresponds to a WHS undertaking accepted under a law of another State or the Commonwealth that provides for the same, or substantially the same, matters as the *Work Health and Safety Act 2011*; or
- (d) been given an infringement notice under the *Fair Work Act 2009* (Cwlth).

## 12 Information about offences

For section 13(3)(c)(iv) of the Act, the following information is also prescribed—

- (a) whether the applicant or an associate of the applicant has been convicted of a serious criminal offence;
- (b) whether, within 5 years before the application is made, the applicant or a related person has been convicted of an offence against any of the following laws—
  - (i) the *Coal Mining Safety and Health Act 1999*;
  - (ii) the *Electrical Safety Act 2002*;
  - (iii) the *Explosives Act 1999*;
  - (iv) the *Fire and Emergency Services Act 1990*;
  - (v) the Heavy Vehicle National Law (Queensland);
  - (vi) the *Mining and Quarrying Safety and Health Act 1999*;

- (vii) the *Radiation Safety Act 1999*;
- (viii) the *Residential Services (Accreditation) Act 2002*;
- (ix) the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (x) the *Safety in Recreational Water Activities Act 2011*;
- (xi) the *Transport Operations (Marine Safety) Act 1994*;
- (xii) the *Transport Operations (Passenger Transport) Act 1994*;
- (xiii) a law of another State or the Commonwealth that provides for the same, or substantially the same, matters as a law or a provision of a law mentioned in subparagraphs (i) to (xii).

### **13 Information about discrimination and sexual harassment matters**

- (1) This section also prescribes information for section 13(3)(c)(iv) of the Act.
- (2) If, within 5 years before the application is made, the applicant or an associate of the applicant has been—
  - (a) convicted of an offence against an anti-discrimination law—the information is that the applicant or associate was convicted of the offence; or
  - (b) the subject of a complaint alleging sexual harassment under an anti-discrimination law—the information is that the applicant or associate was the subject of the complaint.
- (3) In this section—

***anti-discrimination law*** means—

  - (a) the *Anti-Discrimination Act 1991*; or
  - (b) a corresponding law; or

(c) the *Sex Discrimination Act 1984* (Cwlth).

**corresponding law** means a law, or former law, of another State that provides for, or provided for the same, or substantially the same, matter as the *Anti-Discrimination Act 1991* or a provision of that Act.

## 14 Miscellaneous information

For section 13(3)(c)(iv) of the Act, the following information is also prescribed—

- (a) if the applicant is an individual—the applicant’s date of birth;
- (b) whether, within 5 years before the application is made, an industry or professional body has—
  - (i) refused to grant the applicant, or an associate of the applicant, membership of the body; or
  - (ii) if the applicant or an associate of the applicant is a member of the body—
    - (A) taken any disciplinary action against the applicant or person; or
    - (B) suspended or cancelled the applicant’s or person’s membership of the body;
- (c) whether the applicant is liable to make long service leave payments under—
  - (i) the *Building and Construction Industry (Portable Long Service Leave) Act 1991*; or
  - (ii) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*;
- (d) whether the applicant charges, or intends to charge, a worker a fee for any service provided to the worker in connection with the provision of labour hire services;
- (e) the regions in Queensland where the applicant provides, or intends to provide, labour hire services;

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- (f) the industries to which the applicant provides, or intends to provide, labour hire services.

## Part 3 Obligations of licensees

### 15 Prescribed matters for report—Act, s 32

- (1) For section 32 of the Act, the following matters are prescribed—
  - (a) whether a relevant worker paid a fee or bond to the licensee for being supplied to another person;
  - (b) whether any arrangement entered into between the licensee and a relevant worker was a piecework contract;
  - (c) whether a relevant worker accrued any entitlements including, for example, long service leave, sick leave or annual leave;
  - (d) if the licensee supplied relevant workers who held a visa under the *Migration Act 1958* (Cwlth)—
    - (i) the number of workers supplied; and
    - (ii) the classes of visa held by the workers supplied;
  - (e) if the licensee provided accommodation to a relevant worker in connection with the provision of labour hire services—for each address—
    - (i) the total number of bedrooms in the accommodation; and
    - (ii) the total number of relevant workers who used the accommodation at any time; and
    - (iii) whether use of the accommodation was a precondition of the worker being supplied as a worker;
  - (f) if the licensee is aware accommodation was provided by another person to a relevant worker, to the best of the licensee's knowledge whether use of the

accommodation by the relevant worker was a precondition to being supplied as a worker;

(g) if another service mentioned in section 31(2)(j) of the Act was provided to a relevant worker by the licensee or, to the best of the licensee's knowledge, by a person to whom the worker was supplied—

(i) whether a fee was charged for the service; and

(ii) if a fee was charged for the service—the amount of the fee.

*Examples of other services—*

meals, transport, job-finding

(2) In this section—

***relevant worker***, for a licensee, means a worker supplied by the licensee to another person, who does work for the other person during the reporting period mentioned in section 31(3) of the Act.

## 16 Licensees to notify chief executive of particular changes in circumstances—Act, s 40

For section 40(3) of the Act, definition *prescribed change*, each of the following is a prescribed change—

(a) a change in any of the following details contained in the register for the licensee—

(i) name;

(ii) business name;

(iii) contact details;

(b) a change in a matter mentioned in section 27(1)(b) and (d) to (g) of the Act for the licensee;

(c) a change in a matter mentioned in section 27(1)(b), (d), (e) and (g) of the Act for either of the following—

(i) a nominated officer for a licensee;



- (ii) if a licensee is a corporation—an executive officer of the corporation;
- (d) the licensee starts to—
  - (i) provide accommodation for workers supplied to another person by the licensee; or
  - (ii) supply workers who hold visas under the *Migration Act 1958* (Cwlth);
- (e) any of the following persons are convicted of a serious criminal offence—
  - (i) if the licensee is an individual—the licensee;
  - (ii) if a nominated officer for the licensee is an individual other than the licensee—the nominated officer;
  - (iii) if the licensee is a corporation—a person who is an executive officer of the corporation.

## **17 Report to be in approved form**

A report under section 31 of the Act must be in the approved form.

# **Part 4 Miscellaneous**

## **Division 1 Fees**

### **18 Fees**

The fees payable under the Act are prescribed in schedule 1.

## **Division 2                    Register**

### **19        Register—Act, s 103**

If the business to which the licence relates is known by a name other than the business name shown in the register, the business's other name is prescribed for section 103(2)(n) of the Act.

## **Division 3                    Approved forms**

### **20        Approved forms**

- (1) The availability under the Act of a form, or a new version of a form, must be notified on a website with a URL that contains 'qld.gov.au', other than the website of a local government.
- (2) A form, a new version of a form or a notice is published on the website mentioned in subsection (1) if it is published on, or accessible through, the website.
- (3) This section applies despite the *Acts Interpretation Act 1954*, section 48(5) and (6).

## **Division 4                    Keeping of records and documents**

### **21        Requirement to keep supporting financial documents**

A licensee must keep a copy of each financial document the licensee described in the licensee's application for a licence under section 6.

Maximum penalty—20 penalty units.

### **22        Requirement to keep documents used for reporting**

A licensee must keep a copy of each document the licensee used to prepare a report for section 31 of the Act.

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Maximum penalty—20 penalty units.

### **23 Record keeping**

- (1) A licensee must ensure a record or document kept under the Act is kept, or is capable of being produced, in the English language.

Maximum penalty—10 penalty units.

- (2) A licensee must keep each record or document the licensee is required to keep under the Act in a secure, orderly and accessible way.

Maximum penalty—10 penalty units.

- (3) A licensee must keep each record or document the licensee is required to keep under the Act for at least 7 years after the licensee stops being a licensee.

Maximum penalty—20 penalty units.

### **24 Keeping documents in electronic form**

- (1) This section applies if—

- (a) a licensee is required to keep a document under the Act; and
- (b) the document is stored in electronic form on a computer.

- (2) The licensee must ensure—

- (a) the computer system has enough capacity and backup capability to record the information required to be kept under the Act; and
- (b) the computer system is backed up at least once a month; and
- (c) a computer disk or other electronic device used to store the backed-up information is kept in a location that—
  - (i) is not the licensee's principal place of business or the licensee's registered address; and

- (ii) is unaffected by magnetic interference or another thing that may adversely affect the stored information.

Maximum penalty—10 penalty units.

- (3) In this section—

*registered address*, for a licensee, means the address for the business to which the licence relates contained in the register.

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## Schedule 1      Fees

### section 18

	<b>Fee units</b>
1    Application fee for an application for a licence (Act, s 13(3)(c)(i))—	
(a) for a tier 1 business	1,057.00
(b) for a tier 2 business	3,171.00
(c) for a tier 3 business	5,285.00
2    Renewal fee for an application for the renewal of a licence (Act, s 18(2)(b))—	
(a) for a tier 1 business	1,057.00
(b) for a tier 2 business	3,171.00
(c) for a tier 3 business	5,285.00
3    Restoration fee for an application for the restoration of a licence (Act, s 19(2)(c))—	
(a) for a tier 1 business	1,057.00
(b) for a tier 2 business	3,171.00
(c) for a tier 3 business	5,285.00

## Schedule 2 Dictionary

### section 3

*associate*, of an applicant, for part 2, see section 5.

*register* means the register of licences kept under section 103 of the Act.

*related person*, in relation to an applicant, for part 2, see section 5.

*serious criminal offence* means—

- (a) an offence against an Act or another law of the State, the Commonwealth, another State or another country involving any of the following and punishable on conviction by imprisonment for 2 years or more—
  - (i) the intentional use of violence towards another person;
  - (ii) the causing of death or injury to a person;
  - (iii) the endangerment of the life or health of a person;
  - (iv) the rape or sexual assault of a person;
  - (v) the indecent treatment of a child;
  - (vi) child pornography;
  - (vii) the abduction, kidnapping or deprivation of liberty of a person;
  - (viii) the theft of property;
  - (ix) the importation or exportation of, dealing with, trafficking in, or production of, drugs;
  - (x) burglary or the unlawful entry of property;
  - (xi) the importation, sale, misuse or concealment of weapons;
  - (xii) fraud, dishonesty, extortion or bribery;

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- (xiii) the damage or destruction of property or the environment;
  - (xiv) a breach of the peace or public order;
  - (xv) the hindrance of, or interference with, the administration of law or justice or the conduct of a government entity or public authority;
- (b) an offence against an Act or another law of the State, the Commonwealth, another State or another country of counselling or procuring the commission of an offence mentioned in paragraph (a); or
  - (c) an offence against an Act or another law of the State, the Commonwealth, another State or another country of attempting, or of conspiring, to commit an offence mentioned in paragraph (a).

***tier 1 business***, for an application for a licence or an application for a renewal or restoration of a licence, means—

- (a) for a business that did not operate in the financial year immediately preceding the day the application is made—the business is projected to pay a total amount of wages in the financial year in which the application is made and the next financial year of less than \$1.5m; or
- (b) otherwise—the business paid a total amount of wages of less than \$1.5m in the financial year preceding the day on which the application is made.

***tier 2 business***, for an application for a licence or an application for a renewal or restoration of a licence, means—

- (a) for a business that did not operate in the financial year immediately preceding the day the application is made—the business is projected to pay a total amount of wages in the financial year in which the application is made and the next financial year of \$1.5m or more but less than \$5m; or
- (b) otherwise—the business paid a total amount of wages of \$1.5m or more but less than \$5m in the financial year preceding the day on which the application is made.

***tier 3 business***, for an application for a licence or an application for a renewal or restoration of a licence, means—

- (a) for a business that did not operate in the financial year immediately preceding the day the application is made—the business is projected to pay a total amount of wages in the financial year in which the application is made and the next financial year of \$5m or more; or
- (b) otherwise—the business paid a total amount of wages of \$5m or more in the financial year preceding the day on which the application is made.

***wages*** has the meaning given by the *Workers' Compensation and Rehabilitation Act 2003*.

***WHS undertaking***, for part 2, see section 5.