

# Labour Hire Licensing Regulations

## Exposure Draft

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**Victoria**

## **Labour Hire Licensing Regulations**

### **Exposure Draft**

#### **Part 1—Preliminary**

##### **1 Objectives**

The objectives of these Regulations are—

- (a) to prescribe persons who are not workers for the purposes of the Act; and
- (b) to prescribe the circumstances in which an individual is taken to perform work as part of a business or undertaking; and
- (c) to prescribe the circumstances in which a business or undertaking is taken to be a business or undertaking of a host; and
- (d) to prescribe requirements for an application and renewal of a labour hire service licence; and

- (e) to prescribe the application, renewal and annual fees for a labour hire licence; and
- (f) to prescribed conditions of a labour hire licence; and
- (g) to prescribe requirements for a holder of a labour hire licence; and
- (h) to prescribe the form of a notice to comply and an embargo notice; and
- (i) to prescribe infringement offences and infringement penalties for those offences; and
- (j) to prescribe laws and schemes which may be relied upon by the Authority; and
- (k) to provide for other matters.

## **2 Authorising provision**

These Regulations are made under section 114 of the **Labour Hire Licensing Act 2018**.

## **3 Definitions**

In these Regulations—

***annual turnover*** is the total ordinary income that is derived in the course of running a business;

***seconded*** means a worker of a provider who the provider provides 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
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- (c) primarily performs work for the provider, other than as a worker supplied to another person to do work for the other person;

**Examples**

- 1 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
- 2 A consultant employed by a consultancy business is supplied to a business to conduct a review for the other business
- 3 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.

***the Act*** means the **Labour Hire Licensing Act 2018**;

***tier 1 business***, in relation to an application for a licence or the holder of a licence means—

- (a) a business that for the financial year immediately preceding the day on which the application is made, had an annual turnover of no more than \$2 000 000; or
  - (b) a business that did not operate in the financial year immediately preceding the day on which the application is made but the business is projected to have an annual turnover in the financial year in which the application is made and in the next financial year of no more than \$2 000 000;
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***tier 2 business***, in relation to an application for a licence or the holder of a licence means—

- (a) a business that for the financial year immediately preceding the day on which the application is made, had an annual turnover of between \$2 000 001 and \$10 000 000; or
- (b) a business that did not operate in the financial year immediately preceding the day on which the application for a licence is made but the business is projected to have an annual turnover in the financial year in which the application is made and in the next financial year of between \$2 000 001 and \$10 000 000;

***tier 3 business***, in relation to an application for a licence or the holder of a licence means—

- (a) a business that for the financial year immediately preceding the day on which the application is made, had an annual turnover of more than \$10 000 000; or
- (b) a business that did not operate in the financial year immediately preceding the day on which the application for a licence is made but the business is projected to have an annual turnover in the financial year in which the application is made and in the next financial year of more than \$10 000 000.

## **Part 2—Labour hire services**

### **4 When an individual is not a worker**

- (1) For the purposes of section 11(a) of the Act, the following classes of individuals are prescribed—
- (a) classes of secondees;
  - (b) persons who a provider provides to another person to do work in the circumstances where 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, 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;

#### **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 one of the companies and are supplied to work for one 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.
- (c) persons who 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) persons employed by a public sector body within the meaning of the **Public Administration Act 2004** who is seconded, transferred, provided or made available to do work for another person, however described, pursuant to an Act;
  - (e) students to whom Division 1 or 2 of Part 5.4 of the **Education and Training Reform Act 2006** applies;
  - (f) persons undertaking work or services under a vocational placement within the meaning of the Fair Work Act 2009 of the Commonwealth.
- (2) Subregulation (1) does not apply to a class of persons declared by the Minister by notice in writing to be a worker.

**5 Circumstances in which an individual is taken to perform work in and as part of a business or undertaking**

- (1) For the purposes of section 12(a) of the Act, an individual is taken to perform work in and as part of a business or undertaking in the following circumstances—
- (a) an individual is performing activities as a cleaner in a commercial premises that is not a place occupied as a residence;
  - (b) an individual is performing any one or more of the following horticulture activities in relation to fruit or vegetables at a place where a business or undertaking is being conducted—
    - (i) picking;
    - (ii) sorting;
    - (iii) labelling;
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Part 2—Labour hire services

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- (iv) packing;
  - (v) grading;
  - (c) an individual is performing any one or more of the following activities at a meat manufacturing establishment or meat processing establishment—
    - (i) killing;
    - (ii) dressing;
    - (iii) boning;
    - (iv) slicing;
    - (v) preparation;
    - (vi) packing;
    - (vii) processing;
  - (d) an individual is performing any one or more of the following activities at a poultry processing establishment—
    - (i) killing;
    - (ii) processing;
    - (iii) preparation;
    - (iv) packing.
  - (2) Subregulation (1) applies whether or not the individual is also performing other duties or activities in connection with the business, undertaking or establishment.
  - (3) For the purposes of this regulation—

***meat manufacturing establishment*** means an establishment wholly or predominantly concerned with the manufacturing or processing of fresh meat into any form of edible manufactured or processed meat, meat products, smallgoods, ham, bacon, or similar products in which meat is a
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substantial ingredient, including any related activities such as retail or wholesale sales, and killing, dressing, boning, slicing, preparation, and packing of fresh meat, where such activities are conducted at any place as an ancillary part of the manufacturing or processing business;

***meat processing establishment*** means an establishment wholly or predominantly concerned with killing, dressing, boning, slicing, preparation, or packing fresh meat and includes any related activities conducted at any place as an ancillary part of such business, such as manufacturing or processing meat, the treatment and processing of skins or hides, rendering, processing of by-product, and retail or wholesale sales;

***poultry processing establishment*** means a place wholly or predominantly concerned with the killing, processing, preparation or packing, of uncooked poultry, poultry products or poultry by-products which takes place in connection with a business or undertaking.

**6 Circumstances in which a business or undertaking is taken to be a business or undertaking of a host**

For the purposes of section 12(b) of the Act a business or undertaking is taken to be a business or undertaking of a host in circumstances where regulation 5 applies to the individual working there.

## **Part 3—Licensing and Register**

### **Division 1—Application for labour hire licence**

#### **7 Prescribed information to be included in application for labour hire licence**

For the purposes of section 17(2)(h) of the Act, the prescribed information is—

- (a) if the applicant is a natural person, copies of proof of identity documents as required by the Authority and specified in the form of application for a licence;
- (b) if the applicant is a body corporate—
  - (i) a copy of the certificate of incorporation; and
  - (ii) proof of identity documents referred to in paragraph (a) for each director;
- (c) if the applicant is an unincorporated association—
  - (i) a copy of the certificate of registration under the Corporations Act (if applicable); and
  - (ii) a copy of the rules under which the association operates; and
  - (iii) proof of identity documents referred to in paragraph (a) for each member of the association; and
  - (iv) if the applicant is an agent or trustee of the unincorporated association, proof of the agency or trust.

- (d) if the applicant is a partnership, the proof of identity documents referred to in paragraph (a) in respect of each partner;
- (e) if the relevant person is intending to procure or provide accommodation, for the purposes of section 19(4)(d), the location of that accommodation.

### **8 Prescribed fee for application for a labour hire licence**

For the purposes of sections 17(6) and 24(1)(d) of the Act, the prescribed fee is—

- (a) for a tier 1 business—108 fee units;
- (b) for a tier 2 business—288 fee units;
- (c) for a tier 3 business—532 fee units.

### **9 Prescribed circumstances of cancellation of licence preventing the making of a valid application**

For the purposes of section 18(1)(a)(ii) and 18(1)(b)(ii) of the Act, the prescribed circumstances are that the holder of the cancelled or refused licence (as the case may be) was a corporation and because of a genuine sale, the following requirements apply in respect of the corporation—

- (a) no person who at the time of the cancellation or refusal was a shareholder of, or held a beneficial interest in, the corporation is a shareholder of, or holds a beneficial interest in, the corporation, at the time of the application for a licence; and
  - (b) no person who at the time of the cancellation or refusal was in a position to control or influence the affairs of the corporation is, at the time of the application for a licence, in a position to control or influence the affairs of the corporation.
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**10 Prescribed requirements for registration with Australian Taxation Office and WorkSafe Victoria**

- (1) For the purposes of sections 19(1)(a) and 34(1)(a) of the Act, the following requirements for registration with the Australian Taxation Office are prescribed—
  - (a) registration for goods and services tax, if required;
  - (b) registration for pay as you go withholding tax, if required;
  - (c) registration for fringe benefits tax, if required.
- (2) For the purposes of sections 19(1)(b) and 34(1)(b) of the Act, the requirements for registration with WorkSafe Victoria are that applicants have a certificate of currency issued by WorkSafe Victoria verifying that the employer is currently registered for WorkCover insurance with WorkSafe Victoria.

**11 Prescribed information for application where applicant is conducting a business that provides labour hire services**

For the purposes of sections 19(2)(a) and 34(1)(c) of the Act, the prescribed information is—

- (a) the total number of employees; and
  - (b) the total number of independent contractors; and
  - (c) the total number of workers that are or had been employed or engaged as both an employee and an independent contractor.
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**12 Prescribed information for application where applicant is not conducting a business that provides labour hire services**

For the purposes of section 19(3)(a) of the Act, the prescribed information is—

- (a) the total number of employees; and
- (b) the total number of independent contractors; and
- (c) the total number of workers that are or had been employed or engaged as both an employee and an independent contractor.

**Division 2—Renewal of labour hire licence**

**13 Prescribed time for making an application for renewal of labour hire licence**

For the purposes of section 28(1) of the Act, the prescribed period before the expiry of the licence is 6 months.

**14 Prescribed information to be included in application for renewal of labour hire licence**

For the purposes of section 28(2)(a) and section 29(1)(a) of the Act, the prescribed information is the information required under section 17(2), (3) and (7) of the Act for an application for a licence.

**15 Prescribed declarations required for licence renewal**

For the purposes of section 29(1)(c) of the Act, the prescribed declarations and consents are—

- (a) the declarations required under section 17(4) of the Act; and
  - (b) the consents required under section 17(5) of the Act.
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**16 Prescribed application fee for renewal of labour hire licence**

For the purposes of sections 28(2)(b) and 29(1)(d) of the Act, the prescribed fee is—

- (a) for a tier 1 business—108 fee units;
- (b) for a tier 2 business—288 fee units;
- (c) for a tier 3 business—532 fee units.

**Division 3—Conditions of labour hire licence**

**17 Prescribed information to be provided by holder of labour hire licence**

For the purposes of section 34(1)(h) of the Act, the prescribed information is whether, during the reporting period—

- (a) to the knowledge of the holder of the licence, an investigation by a regulator or a proceeding in a court or tribunal is or was on foot, in relation to an alleged contravention, by or with the involvement of, the relevant person or a body corporate of which the relevant person is an officer, of any of the following—
  - (i) a labour hire industry law;
  - (ii) a workplace law;
  - (iii) minimum accommodation standards;
- (b) to the knowledge of the holder of the licence, an incident occurred that the relevant person or a body corporate of which the relevant person was an officer was required to notify to a regulator (however described) under a law relating to occupational health and safety;

- (c) to the knowledge of the holder of the licence, the relevant person or a body corporate of which the relevant person is or was an officer was the subject of a claim for compensation or damages (however described) under a law relating to workers' compensation;
- (d) the relevant person procured or provided accommodation or transport to a worker in connection with labour hire services supplied under the licence and, if accommodation was provided, the location of that accommodation.

#### **18 Prescribed manner of providing information**

For the purposes of section 34(3)(b) of the Act, the prescribed manner is in writing and sent to the Authority—

- (a) by uploading the information to an internet site maintained by the Authority for the purpose of providing information to the Authority; or
- (b) in another manner agreed by the Authority.

#### **19 Annual licence fee**

For the purposes of section 35(1) of the Act, the prescribed annual licence fee is—

- (a) for a tier 1 business—75 fee units;
- (b) for a tier 2 business—200 fee units;
- (c) for a tier 3 business—368 fee units.

#### **20 Form of notice to comply with licence condition**

For the purposes of section 37(2)(a) of the Act, the prescribed form is a form that contains the following information—

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- (a) the name of the licence holder to whom the notice applies;
- (b) the provision of the Act or these Regulations (as the case may be) that are reasonably believed to have been contravened;
- (c) the grounds for suspension or cancellation (as the case may be) that are reasonably believed to exist;
- (d) a statement that requires the licence holder, within the time specified in the notice, to take such steps as are reasonable in the circumstances to remedy the non-compliance or to remove the grounds on which the licence could be suspended or cancelled;
- (e) the time within which the notice must be complied; and
- (f) that the holder of the licence may apply to VCAT for review of the decision to issue the notice.

#### **Division 4—Variation, suspension and cancellation of labour hire licence**

##### **21 Prescribed information to be included in application for variation of labour hire licence**

For the purposes of section 38(4)(a) of the Act, the prescribed information is—

- (a) information as to the variation sought; and
  - (b) the reasons for the variation; and
  - (c) any additional information that would have been required under the Act or these Regulations if the licence as proposed to be varied was the subject of the original application for a licence.
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**22 Prescribed application fee for variation of labour hire licence**

For the purposes of section 38(4)(b) of the Act the prescribed fee is 10 fee units, or such lesser amount as determined by the Authority.

**23 Matters of which Authority to be satisfied for cancellation of labour hire licence**

For the purposes of section 40(1)(f) of the Act, the prescribed matter is that the notice to be given under section 40(2) of the Act is to ensure that any cancellation does not state a date on which the cancellation takes effect that is less than 14 days from the date of the notice.

**Division 5—Obligations of licence holder**

**24 Significant changes that must be notified by licence holder**

For the purposes of section 44(1) of the Act, the prescribed changes are that to the licensee's knowledge—

- (a) a relevant person is no longer a fit and proper person as required by section 22 of the Act; or
- (b) a relevant person is no longer compliant with legal obligations required by section 23 of the Act.

**Division 6—Register of labour hire providers**

**25 Fee for certified extract or copy of Register**

For the purposes of section 48(5) of the Act, the prescribed fee for a certified copy or certified extract from the Register is—

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Part 3—Licensing and Register

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- (a) one fee unit plus 50 cents for every page that is in excess of 20 pages; or
- (b) such lesser amount determined by the Authority.

## **Part 3—Other matters**

### **26 Embargo notice**

For the purposes of section 79(1) of the Act, a notice is in the prescribed form if it contains the following information—

- (a) a description of the things to which the notice applies;
- (b) a statement that the thing or any part of the thing cannot be sold, leased, transferred, moved, disposed of or otherwise dealt with, except as provided for in section 79;
- (c) a statement of the penalty that applies for contravening the notice.

### **27 Infringements**

(1) For the purposes of section 90(1) of the Act, an offence against any of the following sections is prescribed as an infringement offence—

- (a) section 46;
- (b) section 65(2);
- (c) section 65(3);
- (d) section 67(5);
- (e) section 74(2);
- (f) section 85(2);
- (g) section 89(1);
- (h) section 103(2).

(2) For the purposes of section 90(3) of the Act, the prescribed infringement penalty for an offence—

- (a) against sections 46, 65(2) and 65(3) is—
  - (i) one penalty unit for a natural person;  
and
  - (ii) 5 penalty units for a body corporate;  
and
- (b) against section 85(2), 89(1) and 103(2) is—
  - (i) 5 penalty units for a natural person; and
  - (ii) 30 penalty units for a body corporate;  
and
- (c) against section 67(5) and 74(2) is—
  - (i) 10 penalty units for a natural person;  
and
  - (ii) 60 penalty units for a body corporate.

**28 Prescribed laws and schemes under which a licence or accreditation may be relied upon by the Authority**

- (1) For the purposes of section 111(1) of the Act—
    - (a) the prescribed laws are—
      - (i) the Labour Hire Licensing Act 2017 (Queensland); and
      - (ii) the Labour Hire Licensing Regulations 2018 (Queensland); and
      - (iii) the Labour Hire Licensing Act 2017 (South Australia); and
      - (iv) the Labour Hire Licensing Regulations 2018 (South Australia).
    - (b) a prescribed scheme is a scheme under which the Victorian Registration and Qualifications Authority registers an organisation as a Group Training Organisation but does not include any organisation that provides workers other than apprentices and trainees.
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Part 3—Other matters

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- (2) In this regulation, the Victorian Registration and Qualifications Authority means the Victorian Registration and Qualifications Authority established under Chapter 4 of the **Education and Training Reform Act 2006**.
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## Endnotes

### Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2018 is \$14.45. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

### Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2018 is \$161.19.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.