

South Australia

Labour Hire Licensing Bill 2017

A BILL FOR

An Act to provide for the licensing and regulation of persons who provide labour hire services; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Division 1—Preliminary

1—Short title

This Act may be cited as the *Labour Hire Licensing Act 2017*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

Division 2—Objects and application of Act

3—Objects of Act

(1) The objects of this Act are to—

- 10 (a) protect workers from exploitation by providers of labour hire services; and
- (b) protect licensed labour hire businesses from predatory business practices that may be engaged in by persons unsuitable to be licensed to provide labour hire services; and
- (c) promote the integrity of the labour hire industry.

15 (2) The objects are to be primarily achieved by establishing a licensing scheme to regulate the provision of labour hire services.

4—Extraterritorial application

(1) This Act is intended to have extraterritorial application to the extent that the legislative powers of the State permit.

20 (2) Without limiting subsection (1), this Act extends to conduct either in or outside the State that is in connection with labour hire services supplied in the State.

Part 2—Interpretation

5—Interpretation

In this Act, unless the contrary intention appears—

25 *authorised officer* means a person appointed under section 30 as an authorised officer;

avoidance arrangement—see section 12;

Commissioner means the Commissioner for Consumer Affairs;

corresponding law means a law, or part of a law, of a State or a Territory of the Commonwealth—

- 30 (a) that corresponds to this Act or a part of this Act; or
- (b) that is declared by the regulations to be a corresponding law for the purposes of this Act;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

District Court means the Administrative and Disciplinary Division of the District Court;

labour hire services—see section 6;

licence means a licence under Part 4;

premises includes the following:

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) a workplace;
- (f) a place where workers are accommodated in connection with their supply;

register—see section 39(1);

relevant law means—

- (a) this Act; or
- (b) the *Work Health and Safety Act 2012*; or
- (c) the *Fair Work Act 1994*; or
- (d) the *Employment Agents Registration Act 1993*; or
- (e) the *Return to Work Act 2014*; or
- (f) the *Training and Skills Development Act 2008*; or
- (g) the *Payroll Tax Act 2009*; or
- (h) the *Taxation Administration Act 1996*; or
- (i) the *Fair Work Act 2009* of the Commonwealth; or
- (j) a corresponding law; or
- (k) a provision of any other Act or law of the State, the Commonwealth or another State imposing an obligation on a person in relation to workers, including, for example, obligations about—
 - (i) keeping records about workers; and
 - (ii) the payment of tax or superannuation for workers; and
 - (iii) ensuring the health and safety of workers; or
- (l) a provision of an Act or law about the standards of buildings and structures, to the extent it relates to a building or structure used to provide accommodation to a worker; or

- (m) an Act or provision of an Act prescribed by the regulations for the purposes of this definition;

responsible person—see section 24;

substitute responsible person—see section 27(1);

5 *worker*—see section 7.

6—Meaning of *labour hire services*

- (1) A person provides *labour hire services* if, in the course of carrying on a business, the person supplies, to another person, a worker to do work.
- (2) Without limiting subsection (1), a person provides labour hire services regardless of—
- 10 (a) whether or not the worker is an employee of the person; and
- (b) whether or not a contract is entered into between the worker and the person, or between the person and the person to whom the worker is supplied; and
- (c) whether the worker is supplied by the person to another person directly or indirectly through 1 or more agents or intermediaries; and
- 15 (d) whether the work done by the worker is under the control of the person, the person to whom the worker is supplied or another person.
- (3) However, a person does not provide labour hire services merely because—
- (a) the person is an employment agent under the *Employment Agents Registration Act 1993*; or
- 20 (b) the person is a contractor who enters into a contract to carry out building work within the meaning of the *Building Work Contractors Act 1995*, and engages subcontractors to carry out the work; or
- (c) the person is, or is of a class of person, prescribed by the regulations.
- (4) The regulations may only prescribe a person, or a class of person, under
- 25 subsection (3)(c) if the supply of a worker by the person or class of person is not a dominant purpose of the business ordinarily carried on by the person or class of person.

7—Meaning of *worker*

- (1) An individual is a *worker* for a person if the individual enters into an arrangement
- 30 with the person under which—
- (a) the person may supply, to another person, the individual to do work; and
- (b) the person is obliged to pay the individual, in whole or part, for the work.
- (2) However, an individual is not a worker if the individual is, or is of a class of person, prescribed by the regulations.
- 35 (3) To avoid doubt, a *worker* includes an apprentice or trainee under a training contract entered into with a person who is an employer under the *Training and Skills Development Act 2008*.

8—When a worker is supplied

For purposes of this Act, the supply of a worker to do work for a person commences when the worker first starts to do work for the person in relation to the supply.

9—Fit and proper person

- 5 (1) Without limiting the matters to which the Commissioner may have regard in determining whether a person is a fit and proper person to be the holder of a licence or a fit and proper person to be the director of a body corporate that is the holder of a licence, the Commissioner may have regard to the following matters:
- 10 (a) the reputation, honesty and integrity of the person;
- (b) whether the person has previously held a licence under this Act or a corresponding law and whether such a licence lapsed or was suspended or cancelled;
- (c) demonstrated compliance by the person with relevant laws;
- 15 (d) information provided to the Commissioner by the Commissioner of Police under section 28;
- (e) in the case of a natural person—whether the person has sufficient business knowledge, experience and skills for the purpose of properly carrying on business under the licence;
- (f) in the case of a body corporate—
- 20 (i) whether the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business carried on under the licence;
- (ii) whether the body corporate is being wound up or is under official management or in receivership.
- 25 (2) A person is not a fit and proper person to be the holder of a licence if—
- (a) the person has been found guilty or convicted of an offence, or an offence of a class, prescribed by the regulations; or
- (b) in the case of a natural person, the person—
- 30 (i) is a member of, or a participant in, a prescribed organisation; or
- (ii) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
- (iii) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- 35 (iv) has, during the period of five years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—
- (A) when the body was being so wound up; or
- 40 (B) within the period of six months preceding the commencement of the winding up; or

- (c) in the case of a body corporate—
- (i) the body corporate is a body corporate, or is a body corporate of a class, prescribed by the regulations; or
 - (ii) the body corporate is a prescribed organisation.
- 5 (3) A person is not a fit and proper person to be the director of a body corporate that is the holder of a licence if the person—
- (a) has been found guilty or convicted of an offence, or an offence of a class, prescribed by the regulations; or
 - (b) is a member of, or a participant in, a prescribed organisation; or
 - 10 (c) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or
 - (d) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - 15 (e) has, during the period of five years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—
- (i) when the body was being so wound up; or
 - (ii) within the period of six months preceding the commencement of the winding up.
- 20 (4) For the purposes of this Act, a person is a ***fit and proper person to be a responsible person*** if the person is a fit and proper person to be the holder of a licence.
- (5) In this section—
- close associate***—see subsection (6);
- 25 ***domestic partner*** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;
- member***, of an organisation, includes an associate member or a prospective member, however described;
- participant***, in a prescribed organisation, means—
- 30 (a) if the organisation is a body corporate—a director or officer of the body corporate; or
 - (b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises their membership of, or association with, the organisation; or
 - 35 (c) a person who (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the organisation; or
 - (d) a person who attends more than 1 meeting or gathering of persons who participate in the affairs of the organisation in any way; or
 - (e) a person who takes part in the affairs of the organisation in any other way,
- 40 but does not include a lawyer acting in a professional capacity;

prescribed organisation—the following are prescribed organisations:

- (a) a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;
 - (b) any other organisation prescribed by the regulations for the purposes of this definition.
- (6) For the purposes of this section, 2 persons are *close associates* if—
- (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are in partnership; or
 - (d) they are related bodies corporate; or
 - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
 - (f) 1 is in a position to exercise control or significant influence over the conduct of the other.
- (7) For the purposes of this section, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.

Part 3—Prohibited conduct

10—Licence required to provide labour hire services

- (1) A person must not provide labour hire services except as authorised by a licence under this Act.

Maximum penalty:

- (a) in the case of a natural person—\$140 000 or imprisonment for 5 years;
- (b) in the case of a body corporate—\$400 000.

- (2) A person must not advertise, or in any way hold out, that the person provides, is entitled to provide or is willing to provide labour hire services unless authorised to provide labour hire services by a licence under this Act.

Maximum penalty: \$30 000.

11—Person must not enter into arrangements with unlicensed providers

- (1) A person must not, without a reasonable excuse, enter into an arrangement with another person for the provision of labour hire services to the person unless the other person is authorised to provide labour hire services by a licence under this Act.

Maximum penalty:

- (a) in the case of a natural person—\$140 000 or imprisonment for 5 years;
- (b) in the case of a body corporate—\$400 000.

- (2) It is a reasonable excuse for the person not to comply if, when the person entered into the arrangement, the person providing the labour hire services was shown on the register as the holder of a licence.

12—Person must not enter into avoidance arrangements

A person must not enter into an arrangement with another person (an *avoidance arrangement*) for the supply of a worker if the person knows, or ought reasonably to know, the arrangement is designed to circumvent or avoid an obligation imposed by this Act, unless the person has a reasonable excuse.

Maximum penalty:

- (a) In the case of a natural person—\$140 000 or imprisonment for 5 years;
- (b) In the case of a body corporate—\$400 000.

13—Persons must report avoidance arrangements

(1) This section applies if—

- (a) a person (the *non-complying person*) has supplied, or intends to supply, a worker to another person; and
- (b) the other person (the *client*) is aware, or ought reasonably to be aware, the supply or intended supply by the non-complying person is an avoidance arrangement.

(2) As soon as practicable after the client becomes aware, or ought reasonably to have become aware, of the matter mentioned in subsection (1)(b), the client must, unless the client has a reasonable excuse, give the Commissioner the following information in writing:

- (a) the name of the non-complying person;
- (b) a brief description of the avoidance arrangement.

Maximum penalty: \$30 000.

Part 4—Licences**Division 1—Application and grant****14—Application for licence**

- (1) Subject to this section, a person may apply to the Commissioner for a licence authorising the provision of labour hire services by the person.
- (2) An application under subsection (1) must—
 - (a) be in a form approved by the Commissioner; and
 - (b) specify the names of the person or persons nominated to be responsible persons for the purposes of the licence; and
 - (c) include the information required by the Commissioner to determine the application; and
 - (d) be accompanied by the prescribed fee.
- (3) The Commissioner must cause notice of each application for a licence made under this section to be published on a website determined by the Commissioner.

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Part 4—Licences

Division 1—Application and grant

- (4) The following persons are not eligible, for the periods specified, to apply for a licence—
- (a) a person who was the holder of a licence that was cancelled, for a period of 2 years from the date of the cancellation;
 - 5 (b) a related body corporate of a person referred to in paragraph (a), for a period of 2 years from the date of the cancellation referred to in that paragraph;
 - (c) a person who has had an application under this section refused, for a period of 3 months from—
 - (i) the date of notification of the refusal of the application; or
 - 10 (ii) if the person applied for a review of or appeal against the decision to refuse the application, the date when the review or appeal (as the case requires) was finally determined.
- (5) Subsection (4) does not apply in relation to a body corporate that has been the holder of a licence that was cancelled or that has had an application for a licence refused, or a related body corporate of such a body corporate, if the Commissioner is satisfied that, because of a genuine sale occurring after the cancellation or refusal—
- 15 (a) no person who was a shareholder of, or held a beneficial interest in, the body corporate when the cancellation or the refused application was made, is a shareholder of, or holds a beneficial interest in, the body corporate; and
 - 20 (b) no person who was in a position to control or influence the affairs of the body corporate when the cancellation or refused application was made is in a position to control or influence the affairs of the body corporate.
- (6) In this section—
- related body corporate* has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth.
- 25

15—Objection to application

- (1) A designated entity may, by notice in writing, lodge with the Commissioner an objection to an application for a licence made under section 14 on the grounds that—
- 30 (a) the person applying for the licence is not a fit and proper person to be the holder of a licence; or
 - (b) in the case of an application made by a body corporate—1 or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence.
- (2) A notice of objection under subsection (1) must—
- 35 (a) state reasons for the objection; and
 - (b) be made within 28 days of notice of the application being published under section 14(3).

- (3) If the Commissioner receives a notice of objection under subsection (1) in respect of an application for a licence, the Commissioner must—
- (a) forward a copy of the notice of objection to the person making the application for the licence as soon as reasonably practicable after receiving the notice; and
 - (b) allow a period of 14 days from the date of forwarding the notice for the applicant to respond to the notice of objection.
- (4) If a notice of objection has been lodged in respect of an application for a licence—
- (a) the Commissioner must not grant the licence under section 16 unless the Commissioner has taken into account the objection and the response of the applicant to the objection (if any); and
 - (b) if the Commissioner grants the licence, the Commissioner must give notice of the grant to the designated entity that lodged the notice of objection.
- (5) In this section—
- designated entity* means any of the following entities:
- (a) an industrial association (within the meaning of the *Return to Work Act 2014*);
 - (b) an agency or instrumentality of this State or of the Commonwealth, another State or a Territory of the Commonwealth;
 - (c) a council (within the meaning of the *Local Government Act 1999*).

16—Grant of licence

- (1) Subject to this Act, the Commissioner may, on application under section 14, grant a licence to an applicant if satisfied that—
- (a) in the case of an applicant who is a natural person, the applicant—
 - (i) is a fit and proper person to be the holder of the licence; and
 - (ii) has sufficient financial resources for the purpose of properly carrying on business under the licence; or
 - (b) in the case of an applicant that is a body corporate—
 - (i) the body corporate is a fit and proper person to be the holder of the licence; and
 - (ii) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence; and
 - (iii) the body corporate has sufficient financial resources for the purpose of properly carrying on business under the licence; and
 - (c) each person to be specified as a responsible person under subsection (2)(b) is a fit and proper person to be a responsible person.
- (2) The Commissioner must, in granting a licence under subsection (1), specify—
- (a) the number of responsible persons required for the licence; and
 - (b) the name of each person authorised to be a responsible person for the purposes of the licence.

- (3) The Commissioner may issue to a person evidence, in a manner and form determined by the Commissioner, that the person is the holder of a licence.

17—Conditions of licence

- 5 (1) A licence granted under section 16 is subject to such conditions as the Commissioner thinks fit.
- (2) The Commissioner may, at any time after the grant of a licence, vary or revoke a condition of the licence or impose a further condition on the licence as the Commissioner thinks fit.
- 10 (3) If the Commissioner proposes to impose a further condition on a licence or vary a condition of a licence under subsection (2), the Commissioner must give the holder of the licence a notice stating—
- (a) the proposed condition or variation of a condition; and
 - (b) the reasons for the proposed condition or variation; and
 - 15 (c) that the holder of the licence may, within 14 days after the notice is given, give the Commissioner a written response to the proposed condition or variation.
- (4) The Commissioner must, before imposing a further condition on a licence or varying a condition of a licence under subsection (2), take into account the response of the holder of the licence to the notice under subsection (3) (if any).

20 Division 2—Duration of licences and reporting

18—Duration of licence, periodic fee and report

- (1) A licence remains in force (except for any period for which it is suspended) until—
- (a) the licence is surrendered or cancelled; or
 - 25 (b) the licence holder dies or, in the case of a licensed body corporate, is dissolved.
- (2) The holder of a licence must, within 28 days after a reporting period for the licence ends—
- (a) pay to the Commissioner the fee prescribed by regulation; and
 - 30 (b) lodge with the Commissioner a report in a form approved by the Commissioner containing the prescribed information.
- (3) If the holder of a licence fails to pay the fee or lodge the report in accordance with subsection (2), the Commissioner may, by notice in writing, require the holder of the licence to make good the default.
- (4) If the holder of a licence fails to comply with a notice under subsection (3) within 35 28 days after service of the notice, the licence is cancelled.
- (5) The Commissioner must notify the holder of a licence in writing of the cancellation of the licence under subsection (4).

(6) In this section—

prescribed information means the following information:

- (a) the full name and contact details of the holder of the licence;
- 5 (b) the business name, ABN and address of the business that is the subject of the licence;
- (c) the full name and contact details of each of the responsible persons for the licence;
- (d) the number of workers, supplied by the holder of the licence to another person, who do work for the other person during the reporting period (the *relevant workers*);
- 10 (e) a description of the arrangements entered into between the holder of the licence and the relevant workers;
- (f) details of the industry in which the work was carried out by the relevant workers;
- 15 (g) if the holder of the licence provided accommodation to the relevant workers in connection with the provision of labour hire services—
 - (i) the address of the accommodation; and
 - (ii) whether the relevant workers paid a fee for the accommodation; and
 - (iii) the number of relevant workers that used the accommodation;
- 20 (h) if the holder of the licence is aware that accommodation was provided by another person to the relevant workers, to the best of the knowledge of the holder of the licence—
 - (i) who provided the accommodation; and
 - (ii) the address of the accommodation; and
 - 25 (iii) whether the relevant workers paid a fee for the accommodation; and
 - (iv) the number of relevant workers that used the accommodation;
- (i) whether any other services were provided to the relevant workers by the holder of the licence or, to the best of the knowledge of the holder of the licence, by a person to whom a relevant worker was supplied;
- 30 (j) information about compliance with relevant laws for the reporting period by the holder of the licence;
- (k) disclosure of any disciplinary action or enforcement action taken, or started, against the holder of the licence by a regulatory body under a relevant law during the reporting period;
- 35 (l) to the best of the knowledge of the holder of the licence, the number of notifiable incidents involving a relevant worker notified under section 38 of the *Work Health and Safety Act 2012* during the reporting period;
- (m) to the best of the knowledge of the holder of the licence, the number of applications for compensation made by a relevant worker under the *Return to Work Act 2014* during the reporting period;
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Part 4—Licences

Division 2—Duration of licences and reporting

- (n) any other information prescribed by the regulations.

reporting period, in relation to a licence, means—

- (a) the period of 12 months starting on the day the licence is granted; and
 (b) each subsequent period of 12 months.

5 **19—Notification of certain changes in circumstances**

- (1) The holder of a licence must give the Commissioner notice of a change in respect of a prescribed matter relating to the licence within 14 days after the change.

Maximum penalty: \$4 000.

- (2) In this section—

10 **prescribed matter**, relating to a licence, means a matter prescribed by regulation relating to—

- (a) whether a person is a fit and proper person to be the holder of a licence; or
 (b) whether a person is a fit and proper person to be a director of a body corporate that is the holder of a licence; or
 15 (c) details about the licence shown on the register; or
 (d) activities undertaken under or relating to the licence (such as, without limitation, accommodation provided by the holder of the licence for workers supplied to another person).

20—Provision of information

- 20 (1) The holder of a licence must, if so required by the Commissioner by notice in writing, provide the Commissioner with such information as the Commissioner requires relating to—

- (a) the provision of labour hire services by the licence holder; and
 25 (b) whether the holder of the licence is a fit and proper person to be the holder of a licence; and
 (c) whether the licensee's business has sufficient financial resources for the purpose of properly carrying on business under the licence; and
 (d) any other matters relating to the objects of this Act.

- 30 (2) The Commissioner may require the holder of a licence to provide information under subsection (1)—

- (a) on 1 or more specified occasions; or
 (b) at periodic intervals as specified by the Commissioner.

- 35 (3) If the holder of a licence fails to provide information in accordance with subsection (1), the Commissioner may, by notice in writing, require the holder of the licence to make good the default.

- (4) If the holder of a licence fails to comply with a notice under subsection (3) within 28 days after service of the notice, the licence is cancelled.

- (5) The Commissioner must notify the holder of a licence in writing of the cancellation of the licence under subsection (4).

- (6) The Commissioner may, in a notice under subsection (1), require the holder of a licence to verify specified information by statutory declaration.

Division 3—Suspension, cancellation and surrender

21—Suspension and cancellation

- 5 (1) The Commissioner may suspend or cancel a licence by notice in writing to the holder of the licence if the Commissioner is satisfied that—
- (a) the licence was obtained because of materially incorrect or misleading information; or
- 10 (b) the holder of the licence has given materially incorrect or misleading information in a report under section 18 or 20; or
- (c) the holder of the licence, or an employee or representative of the holder of the licence, has contravened a condition of the licence; or
- (d) the holder of the licence, or an employee or representative of the holder of the licence, has failed to comply with, or has contravened or is contravening, a provision of this Act or the regulations; or
- 15 (e) the holder of the licence, or an employee or representative of the holder of the licence, has contravened or is contravening a relevant law; or
- (f) the holder of the licence is no longer a fit and proper person to be the holder of a licence; or
- 20 (g) if the holder of the licence is a body corporate—
- (i) 1 or more directors of the body corporate are no longer fit and proper persons to be directors of a body corporate that is the holder of a licence; or
- (ii) the holder of the licence has been wound up or deregistered under the *Corporations Act 2001* of the Commonwealth; or
- 25 (h) the business to which the licence relates no longer has sufficient financial resources for the purpose of properly carrying on business under the licence; or
- (i) for any other reason, the licence should be suspended or cancelled.
- 30 (2) Suspension under subsection (1)—
- (a) takes effect at a date and time specified in the written notice; and
- (b) may be for a period of not more than 90 days as specified in the written notice.
- (3) Cancellation under subsection (1) takes effect on the date and time specified in the written notice of cancellation.
- 35

22—Return of evidence of suspended or cancelled licence

- (1) If a licence is suspended or cancelled under a provision of this Act, the Commissioner may require the holder of the licence to return any evidence of the licence issued to the person within 14 days after receiving notice of the suspension or cancellation.

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Part 4—Licences

Division 3—Suspension, cancellation and surrender

- (2) A person who fails to comply with a requirement of the Commissioner under subsection (1) is guilty of an offence.

Maximum penalty: \$4 000.

23—Surrender

- 5 (1) The holder of a licence may surrender the licence by notice in writing to the Commissioner.
- (2) The Commissioner may require a person giving notice under subsection (1) to return any evidence of the licence issued to the person within 14 days.
- 10 (3) A person who fails to comply with a requirement of the Commissioner under subsection (2) is guilty of an offence.
- Maximum penalty: \$4 000.
- (4) A licence surrendered under this section stops having effect on the day it is surrendered.

Division 4—Responsible persons**15 24—Requirements for responsible persons**

- (1) A business conducted under a licence must, at all times during business hours, be personally supervised and managed by a natural person (a *responsible person*) who is responsible for the day-to-day management and operation of the business to which the licence relates.
- 20 (2) A responsible person, for a licence, must—
- (a) be a fit and proper person to be a responsible person; and
 - (b) satisfy any other requirements prescribed by regulation.

25—Responsible person must be reasonably available

- 25 The holder of a licence must ensure that each responsible person for the licence is reasonably available to be contacted by the Commissioner, an authorised officer or a member of the public during business hours.

Maximum penalty: \$4 000.

26—Application to change responsible person

- (1) The holder of a licence may apply to the Commissioner to—
- 30 (a) remove a person as a responsible person for the licence; and
- (b) appoint another individual as a responsible person for the licence.
- (2) An application under subsection (1) must be accompanied by enough information about the person proposed to be appointed to enable the Commissioner to decide whether the person is suitable for appointment as a responsible person.
- 35 (3) The Commissioner may approve the application if satisfied that the proposed appointee is suitable for appointment as a responsible person.
- (4) If the Commissioner approves the application, the Commissioner must update the register to record the change to the licence details.

27—Substitution of responsible person for limited period

- (1) The holder of a licence may, by notice in writing, appoint an individual who is suitable for appointment as a responsible person as a *substitute responsible person* for the licence for a period of not more than 30 days if—
- 5 (a) a responsible person for the licence will be absent from the licence holder's business; and
- (b) the individual consents in writing to the appointment.
- (2) The holder of a licence must, as soon as reasonably practicable after the appointment of a person under subsection (1), notify the Commissioner of the appointment in a manner and form approved by the Commissioner.
- 10 Maximum penalty: \$4 000.
- (3) The Commissioner may cancel the appointment of a person under subsection (1) if satisfied that the person is not a fit and proper person to be a responsible person.
- (4) The holder of a licence must ensure the notice of appointment and the written consent are—
- 15 (a) kept at the premises where the substitute responsible person will be responsible for the day-to-day management and operation of the business; and
- (b) made available for immediate inspection by an authorised officer who asks to see them.
- 20 Maximum penalty: \$4 000.
- (5) A substitute responsible person is taken to be a responsible person for the licence for the period of the appointment.
- (6) The Commissioner may, on application by the holder of a licence, extend the appointment of a substitute responsible person if the Commissioner is satisfied that it
- 25 is appropriate in the circumstances to do so.

Part 5—Monitoring and enforcement**Division 1—Referral to Commissioner of Police****28—Commissioner may refer matters to Commissioner of Police**

- (1) This section applies to the following matters:
- 30 (a) an application under section 14 for the grant of a licence;
- (b) an application under section 26 to change a responsible person;
- (c) the appointment of a person as a substitute responsible person under section 27;
- (d) a question as to whether a specified person is a fit and proper person to be the holder of a licence;
- 35 (e) a question as to whether a specified person is a fit and proper person to be the director of a body corporate that is the holder of a licence;

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Part 5—Monitoring and enforcement

Division 1—Referral to Commissioner of Police

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- (f) a question as to whether a specified person is a fit and proper person to be a responsible person.
- (2) The Commissioner may refer a matter to which this section applies to the Commissioner of Police.
- 5 (3) As soon as reasonably practicable following receipt of a referral under subsection (2), the Commissioner of Police—
- (a) must make available to the Commissioner information about criminal convictions of persons relevant to the referred matter; and
- 10 (b) may make available to the Commissioner other information to which the Commissioner of Police has access relevant to the referred matter (such as whether the application should be granted or the person is a fit and proper person for the purposes of this Act).

29—Criminal intelligence

- 15 (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If—
- 20 (a) the Commissioner refuses an application for a licence, suspends or cancels a licence under section 21, refuses to appoint a proposed appointee as a responsible person for a licence under section 26(1)(b), cancels the appointment of a person under section 27(3) or takes any other action under this Act; and
- 25 (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,
- the Commissioner is not required to provide any grounds or reasons for the decision other than that it was made in the public interest.
- (3) In any proceedings under this Act, the Commissioner and the court before which the proceedings are being heard—
- 30 (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- 35 (b) may take evidence consisting of or relating to information so classified by the Commissioner of Police by way of affidavit of a police officer of or above the rank of superintendent.
- (4) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.
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Division 2—Authorised officers**30—Authorised officers**

- (1) The Commissioner is an authorised officer.
- 5 (2) The Commissioner may appoint persons to be authorised officers for the purposes of this Act.
- (3) The appointment of an authorised officer may be made subject to conditions specified in the instrument of appointment.
- (4) The Commissioner may, at any time, revoke an appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of
10 appointment.
- (5) An authorised officer must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer under this Act.
- (6) If the powers of an authorised officer have been limited by conditions, the identity
15 card issued to the authorised officer must indicate those limitations.
- (7) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person the officer's identity card.
- (8) An authorised officer may, in exercising powers under this Act, be assisted by such
20 other persons as are reasonably necessary for the purpose.

31—Obtaining information

- (1) For the purposes of this Act an authorised officer may require a person—
- (a) to answer any questions, orally or in writing; or
 - (b) to produce books or documents.
- 25 (2) For an electronic document, compliance with the requirement requires the making available or production of a clear printed reproduction of the electronic document.
- (3) An authorised officer may, for the purposes of subsection (1), by notice in writing served on a person, require the person to attend at a specified time and place.
- (4) A person must not—
- 30 (a) refuse or fail to comply with a reasonable requirement under this section; or
 - (b) without reasonable excuse, refuse or fail to attend at the time and place specified in a notice under subsection (3) (or some other time and place allowed by an authorised officer); or
 - 35 (c) knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in an answer given or information provided under this section.

Maximum penalty: \$20 000.

- (5) An authorised officer may require that the answer to a question under this section be verified by statutory declaration or given under oath.
- (6) A person is not required to answer a question or produce a book or document if the answer or the production of the book or document would result in or tend towards self-incrimination.

32—Entry and inspection

- (1) For the purposes of this Act, an authorised officer may at any reasonable time—
- (a) enter and search any premises; and
 - (b) stop, enter and search any vessel or vehicle; and
 - (c) open any container, package or other item found in the premises, vessel or vehicle; and
 - (d) make any inspection; and
 - (e) conduct any analysis or test; and
 - (f) take any samples; and
 - (g) examine, copy and take extracts from any books or documents; and
 - (h) take any books or documents; and
 - (i) seize and remove anything that constitutes evidence of an offence against this Act; and
 - (j) take photographs, films or video recordings; and
 - (k) take measurements and make notes; and
 - (l) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- (2) A person who, without reasonable excuse, fails to comply with a direction of an authorised officer under this section is guilty of an offence.
Maximum penalty: \$20 000.
- (3) The powers conferred by subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of business or performance of work.

33—Use and inspection of books or documents produced or seized

- (1) This section applies to a book or document that has been produced to an authorised officer or taken by an authorised officer.
- (2) A book or document to which this section applies may be retained for the purpose of enabling the book or document to be inspected and enabling copies of, or extracts or notes from, the book or document to be made or taken by or on behalf of the Commissioner.
- (3) However, if the book or document is required by the Commissioner as evidence for the purposes of legal proceedings, the book or document may be retained until the proceedings are finally determined.

- (4) The Commissioner must permit a person who would be entitled to inspect the book or document if it were not in the possession of the Commissioner to inspect the book or document at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the book or document.

5 **34—Hindering an authorised officer**

A person who hinders an authorised officer acting in the exercise of powers conferred by or under this Act is guilty of an offence.

Maximum penalty: \$10 000.

35—Offence relating to intimidation

10 A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to fail to cooperate with an authorised officer in the performance or exercise of powers or functions conferred by or under this Act; or
- 15 (b) to fail to provide information or give evidence to an authorised officer as authorised or required under this Act; or
- (c) to provide information or give evidence that is false or misleading in a material particular, or to provide information or give evidence in a manner that will make the information or evidence false or misleading in a material particular, to an authorised officer under this Act.

20 Maximum penalty: \$10 000.

36—Impersonating an authorised officer

A person who falsely represents, by words or conduct, that the person is an authorised officer is guilty of an offence.

Maximum penalty: \$10 000.

25 **Part 6—Proceedings and appeals**

37—Evidentiary provisions

- (1) In any proceedings an apparently genuine certificate, purporting to be signed by the Commissioner, stating that a person named in the certificate is an authorised officer is, in the absence of proof to the contrary, proof that the person is such an officer.
- 30 (2) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister or the Commissioner (as the case requires) containing particulars of a delegation under this Act is, in the absence of proof to the contrary, proof of the particulars.
- 35 (3) In any proceedings an apparently genuine copy of any book or document, taken by an authorised officer pursuant to this Act, certified by the Commissioner to be a true copy of the original is proof of the existence of the original and of its contents.
- (4) A finding of fact made by a court in proceedings under this Act will, in the absence of proof to the contrary, be accepted as proof of that fact in other proceedings (except criminal proceedings) under this Act.

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- (5) A finding to which subsection (4) applies may be proved by production of a document under the seal of the court by which the finding was made.
- (6) In any proceedings in which a civil or criminal liability is dependent on a state of mind—
- 5 (a) the state of mind of a director, servant or agent of a body corporate will be imputed to the body corporate; and
- (b) the state of mind of a servant or agent of a natural person will be imputed to that person.

38—Appeals to District Court

- 10 (1) A person may appeal to the District Court against any of the following decisions:
- (a) a refusal to grant a licence under section 16 on application by the person under section 14;
- (b) a decision under section 17(2) to impose a condition on, or vary a condition of, a licence held by the person;
- 15 (c) a refusal to appoint a proposed appointee as a responsible person under section 26(1)(b) for a licence held by the person;
- (d) a decision to cancel the appointment of a substitute responsible person under section 27(3) in respect of a licence held by the person;
- (e) a decision to suspend or cancel a licence held by the person under section 21.
- 20 (2) If the Commissioner grants a licence to a person after receiving a notice of objection under section 15 in respect of the application for the licence, the designated entity that lodged the notice of objection may appeal to the District Court against the granting of the licence on the grounds that—
- (a) the holder of the licence is not a fit and proper person to be the holder of a licence; or
- 25 (b) in the case of a licence granted to a body corporate—1 or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence.
- (3) An appeal under this section must be instituted within—
- 30 (a) in the case of an appeal under subsection (1), 28 days after the making of the decision appealed against;
- (b) in the case of an appeal under subsection (2), 14 days after the Commissioner gives notice under section 15(4)(b).
- (4) Subject to section 29, the Commissioner must, if so required by an appellant, state in writing the reasons for the Commissioner's decision.
- 35 (5) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within the time allowed for instituting the appeal) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those
- 40 reasons.

Part 7—Miscellaneous

39—The register

- (1) The Commissioner must maintain a register of licences granted under this Act (the *register*).
- 5 (2) The register must contain the following particulars for each licence—
- (a) the name and contact details of the holder of the licence;
 - (b) the business name, ABN and address for the business to which the licence relates;
 - (c) the name and contact details of each responsible person for the licence;
 - 10 (d) the licence number;
 - (e) the date of issue of the licence;
 - (f) any conditions imposed on the licence by the Commissioner under section 17;
 - (g) the details of any enforcement action taken under this Act against the holder of the licence, including information about prosecutions or a suspension of
 - 15 the licence;
 - (h) any other particulars prescribed by regulation.
- (3) The Commissioner must make the register available, free of charge, on a website determined by the Commissioner.

40—Delegations

- 20 (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
- (a) to a person employed in the Public Service; or
 - (b) to the person for the time being holding a specified position in the Public Service.
- 25 (2) The Minister may delegate any of the Minister's functions or powers under this Act.
- (3) A delegation under this section—
- (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - 30 (d) does not prevent the delegator from acting in any matter.
- (4) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

41—Commissioner may rely on licence, approval etc under prescribed law

- (1) The Commissioner may, if satisfied that a person is the holder of a licence, or is otherwise accredited or approved (however described), under a law prescribed by the regulations for the purposes of this section, do 1 or more of the following:
- 5 (a) dispense with the requirement of the person to provide to the Commissioner certain information that the Commissioner would otherwise require to determine a matter under this Act;
- (b) determine, without any further consideration, that the person—
- (i) is a fit and proper person to be the holder of a licence; or
- 10 (ii) is a fit and proper person to be a director of a body corporate that is the holder of a licence; or
- (iii) is a fit and proper person to be a responsible person; or
- (iv) has sufficient financial resources for the purpose of properly carrying on business under a licence.
- 15 (2) The Commissioner may require a person to verify that the person is the holder of a licence or is otherwise accredited or approved (however described) under a prescribed law by statutory declaration.

42—Exemptions

- 20 (1) The Commissioner may grant an exemption from this Act or specified provisions of this Act—
- (a) to a specified person by notice in writing to that person; or
- (b) to persons of a specified class by notice in the Gazette.
- (2) An exemption under subsection (1) may—
- (a) be subject to such conditions as the Commissioner thinks fit; and
- 25 (b) apply for a specified period, until further notice or indefinitely; and
- (c) vary according to the circumstances to which it is expressed to apply.
- (3) The Commissioner may, by subsequent notice in writing or notice in the Gazette (as the case requires)—
- (a) vary or revoke an exemption; or
- 30 (b) vary or revoke a condition of an exemption or attach new conditions to an exemption; or
- (c) vary the circumstances to which an exemption is expressed to apply.
- (4) A person who contravenes or fails to comply with a condition of an exemption imposed under this section is guilty of an offence.
- 35 Maximum penalty: \$10 000.

43—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: \$10 000.

44—Vicarious liability

- (1) If an agent or employee is convicted of an offence against this Act, the principal or employer is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the offence committed by the agent or employee, unless it is proved that the principal or employer could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the agent or employee.
- (2) If an offence is committed against this Act in relation to the formation of a contract, a person who has derived or would, if the contract were carried out, expect to derive a direct or indirect pecuniary benefit from the contract is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the principal offence, unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence.
- (3) If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
 - (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the director failed to exercise due diligence to prevent the commission of the offence.

45—Defences

- (1) Subject to subsection (3), in a prosecution for a contravention of a provision of this Act, it is a defence if the defendant establishes—
 - (a) that the contravention was due to reasonable mistake; or
 - (b) that the contravention was due to reasonable reliance on information supplied by another person; or
 - (c) that—
 - (i) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In subsection (1)(b) and (c)—

another person does not include a person who was—

 - (a) a servant or agent of the defendant; or

- (b) in the case of a defendant that is a body corporate—a director, servant or agent of the defendant,

at the time when the contravention occurred.

- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without permission, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

- (4) This section does not apply in relation to a person who is charged with an offence under section 44(3).

46—Confidentiality of information

- (1) A person who obtains information or gains access to a document in exercising a power or function under this Act must not—

- (a) disclose to another person—

(i) the information; or

(ii) the contents of or information contained in the document; or

- (b) give access to the document to another person; or

- (c) use the information or document for any purpose.

Maximum penalty:

(a) in the case of an individual—\$10 000;

(b) in the case of a body corporate—\$50 000.

- (2) Subsection (1) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—

(a) about a person, with the person's consent; or

(b) that is necessary for the exercise of a power or function under this Act; or

(c) that is made or given by the Commissioner or a person authorised by the Commissioner if the Commissioner reasonably believes the disclosure, access or use—

(i) is necessary for administering, monitoring or enforcing compliance with this Act; or

(ii) is necessary for administering, monitoring or enforcing compliance with a relevant law; or

(iii) is necessary for the administration or enforcement of another Act or law prescribed by the regulations; or

(iv) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety or to otherwise protect the public interest; or

- (d) that is required by a court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
- (e) that is required or authorised under a law; or
- (f) to a Minister.

47—Service

- (1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may—
 - (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
 - (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
 - (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

48—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) be of general or limited application; and
 - (b) confer powers or impose duties in connection with the regulations on the Minister, the Commissioner or an authorised officer; and
 - (c) provide that a matter is to be determined according to the discretion of the Minister or the Commissioner; and
 - (d) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and
 - (e) impose penalties not exceeding \$2 500 for contravention of a regulation.

Schedule 1—Transitional provisions

1—Transitional provision

5 If a person supplies, to another person, a worker to do work for the other person within 6 months after the commencement of this Act, the person is taken not to be a provider of labour hire services in relation to the supply until—

- (a) after the expiry of 6 months after that commencement; or
- (b) if the person applies for a licence within 6 months after that commencement—the day the application is decided,

whichever is the later.

10 2—Transitional regulations

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later day.