

## LABOUR HIRE LAWS? TIME TO A.C.T. NOW

On 27 May 2021, [Labour Hire Licensing Act 2020 \(ACT\)](#) (**LHL Act**) will commence. This article outlines the key changes to labour hire licensing laws and information that labour hire providers and workers in the Australia Capital Territory (ACT) need to know.

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On 27 May 2021, the Labour Hire Licensing Act (**LHL Act**) will commence in the ACT.

The LHL Act will:

- 1) require providers to hold a labour hire license to operate in the ACT;
- 2) implement a 'suitable person' test to determine suitability for licensing;
- 3) implement serious penalties; and
- 4) require licensees to demonstrate a history of, and ongoing compliance with, industry standards and workplace laws.

### Who requires a license?

All labour hire providers, except those who engage workers who do not fall within the meaning of a 'worker' within the LHL Act, must hold a labour hire license by 27 November 2021. The definition of 'worker' is extremely broad. However, provides for the minister to declare that persons are not a 'worker' for the purpose of the LHL Act (see below).

Fortunately, the LHL Act provides a six-month grace period to allow labour hire providers and hosts additional time to apply for and obtain a labour hire license.

## Exempt workers

The *Labour Hire Licensing (Exempt Workers) Declaration 2020 (No1) (ACT)* outlines persons who are not considered 'workers' for the purpose of the LHL Act. Specifically:

- 1) public servants;
- 2) high income earners, being individuals whose annual wages are above **\$153,600** (currently) – as defined by the high income threshold under section 333 of the *Fair Work Act 2009* (Cth) (**FWA**) (as indexed each year) and, where those individuals are not employees covered by a modern award;
- 3) in-house employees, including an in-house secondee who is seconded on a temporary basis on one or more occasions (noting that an in-house employee is strictly defined to mean a person who is engaged as an employee by the provider on a regular and systematic basis, has a reasonable expectation that the employment with the provider will continue and primarily performs work for the provider other than as a worker supplied to another person to work for the other person);
- 4) an employee of an entity that is one of a group of entities that carry on business as a group, to the extent the employee does work for another entity in that group; and
- 5) directors or senior managers of a corporation, where the corporation has not more than two directors and that person is the only person who is supplied by the corporation to undertake work for another person.

Of note, businesses that only engage workers who earn greater than the high income threshold and are award free, may be exempt from licensing requirements.

## Non-compliance

The LHL Act imposes penalties on those who providing labour hire services without a license, breaching a labour hire licence condition or engage an unlicensed labour hire service provider.

We note that penalties under division 4.2 of the LHL Act will not apply until six months after the Act commences.

While there does not appear to be a similar scheme to that applying in Victoria as of yet regarding transitional licensing, the delay upon implementation of penalties may be a proactive step to manage the scheme and likely influx of licensing requests.

## Anticipated questions

*1) If I apply for my labour hire license in the transition period can I still operate in the ACT while I wait?*

Yes, you can continue to operate in the ACT during the transition period. However, from 27 November 2021, if you do not have a labour hire license you may be penalised. Of course, as we have seen in other jurisdictions, depending upon the volume of applications, this date may be amended.

*2) I have a business located in QLD and place contractors in the ACT through a payroll company do I need to obtain a licence?*

Yes! All contractors providing labour hire in the ACT are required to hold a license, regardless of which state the payroll company is located.

## GUIDANCE NOTE

3) If I place a contractor in the ACT for a 3 month period on a day rate of \$1500 – is this calculated on an annualised basis and therefore deemed exempt as a high income worker?

To apply a conservative approach, it is best to apply and obtain a labour hire license in any situations where a worker could potentially reach the high income cap within the financial year. Ultimately, this will depend upon the manner in which the individual is engaged and the contractual document in place.

**We are here to help**

If you require assistance understanding how these new labour laws may affect you or your business, please contact the Gadens *Employment Advisory* team.

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GEORGE HAROS



WILLIAM MARSHALL