

For the first time, Australia is set to have three states operating under three different mandatory labour hire licensing schemes, which will broadly impact the recruitment industry as well as the businesses that engage them.

The schemes currently operating throughout Australia are not generally directed towards labour hire providers, and a number expressly exclude labour hire. The recent push towards increased regulation and extensive scrutiny was triggered by the Australian Broadcasting Corporation's Four Corners program, "Slaving Away", in May 2015, which exposed exploitation of mostly migrant workers through unscrupulous labour hire companies operating on farms and in factories around the country.

In response to public outcry, federal and (some) state governments commissioned inquiries (which are at varying levels of completion) into such exploitation and misconduct. Inconsistent and newly proposed industry regulation across various Australian states will particularly impact global and national recruitment and staffing companies with operations across Australia. It is not just recruitment companies who may be impacted and penalised, as the legislation will also apply to end-user clients who engage the services of unlicensed recruitment and labour hire companies.

Summary of the Current State of Play

Queensland – The Queensland government has pressed ahead with its plan to licence all labour hire providers, despite failing to obtain bipartisan committee support for the *Labour Hire Licensing Bill 2017 (Qld Bill)*. The Qld Bill passed the parliamentary process on 7 September 2017 and (at the time of writing) is awaiting Royal Assent. It is expected to be operational by 2018. Under the scheme, labour hire providers will have to hold a license, which is renewable annually, to do business in Queensland and their clients will only be able to engage licensed labour hire providers.

The Qld Bill is aimed at protecting vulnerable workers and will apply to all "labour hire providers" operating in Queensland, regardless of whether their business is registered in another state. Although the preceding labour hire inquiry only found evidence of mistreatment and exploitation in industries such as agriculture and horticulture, the Qld Bill applies to all industries, including those engaging highly skilled and well-remunerated professionals.

A "labour hire provider" is broadly defined and includes a person or business that supplies workers to do work for another person, regardless of how the activity might be described. The application is extremely broad and the regulations, which are purported to exclude certain arrangements, are yet to be published.

There are significant penalties for non-compliance. For example, operating without a licence will incur a maximum penalty of AU\$130,439.10 for an individual or three years' imprisonment and AU\$378,450 for a corporation. The same penalties will also apply to persons that enter into arrangements with unlicensed providers.

Whilst the licence application and annual renewal fees will be structured according to the size of a business, it is not yet clear which companies would be classified as either a small, medium or large provider.

In applying for a licence, labour hire providers (including a company's executive officers) must satisfy a broad and subjective "fit and proper person test" to establish that they comply with all relevant laws and that the business is financially viable. This includes consideration of the person's honesty, integrity and professionalism. There is also broad scope for an aggrieved third party to oppose the granting of a licence or apply for review of a decision.

A licence holder will be required to report regularly on their operations, including the number of workers they have supplied, how they are engaged, the type of work performed and location at which it is performed. Such information will be kept on a public register freely available to interested parties.

Inspectors will also be appointed, with search and seizure powers to investigate and prosecute suspected breaches.

After public consultation, the parliamentary committee failed to reach a decision on whether the scheme should become law, with the non-government committee members opposing it as they believed that the legislation is neither warranted nor efficacious. Despite this, the Queensland government has pressed ahead.

South Australia – Hot on the heels of Queensland, the South Australian government recently tabled the *Labour Hire Licensing Bill 2017 (SA) (SA Bill)*. The proposed SA Bill closely mirrors the Queensland scheme but has a few key differences, including:

- Higher penalties for non-compliance, being AU\$140,000 or imprisonment for five years in the case of a person and AU\$400,000 in the case of a company, and also imposes a further burden on clients if they are aware or ought to have been aware that the supply of a person is an avoidance arrangement
- Licenses are ongoing until cancelled or suspended, which removes some of the administrative burden
- An annual fee and reporting obligation will be required
- Limiting the types of entities that may object to a license application
- The “fit and proper person test” is slightly less subjective but includes more extensive provisions for when a person is not a fit and proper person
- Grants more extensive powers for imposing or varying conditions on licenses

Victoria – The Victorian government has now announced it will introduce draft legislation later this year. Whilst the extensive Victorian labour hire inquiry only recommended a licensing scheme in three sectors where evidence of exploitation was found to occur, being the cleaning, horticulture and meat industries, the Victorian government has announced a broad universal scheme. Key elements of the proposed scheme include an independent statutory authority being established, a “fit and proper person test” and licensed providers being listed on a public register.

Australian Capital Territory (ACT) – The ACT government is currently conducting a labour hire inquiry into insecure work and its report is expected in late October 2017.

New South Wales (NSW), Tasmania and the Northern Territories – No inquiries have been conducted to date and there is no current or proposed licensing scheme for these territories. However, the NSW Labour party has recently announced that it also intends to introduce a broad licensing scheme. No details of a proposal scheme have been released as yet.

Closing Comments

Clearly, the recruitment industry is being closely examined by certain state governments with a view to addressing concerns raised in the media and by unions and in the absence of the federal government introducing a harmonised national scheme. The inconsistent and unharmonised regulation across the country does, however, result in a difficult position for those reputable businesses who are already compliant with and do not flaunt Australian workplace, migration and safety laws.

Start Preparing

The devil is in the detail and until draft regulations are released, it is difficult to comprehend the actual impact these schemes will have on businesses. For now, any business that provides or utilises labour hire in Queensland, South Australia and soon Victoria should review their arrangements in preparation of the new laws or risk substantial penalties. Queensland businesses, in particular, will only have 60 days to prepare and submit their applications once the Qld Bill commences operating. There is also little guidance on what conditions may potentially be applied to licences being granted.

What recruitment companies can do to prepare for the changes is review their operations to determine:

- Whether you have or will have operations or do business in Queensland, South Australia and Victoria
- The composition of your workforce (i.e. the number of workers you engage, the types of engagements used and the location of those workers)
- The annual turnover of the business
- Any past non-compliance with workplace laws
- Which nominated officers or executive officers will be required to meet the “fit and proper person test” (and whether they will in fact meet such a test)

Recruitment providers should also consider implementing systems to assist with regular reporting requirements.

Businesses that use labour hire arrangements in these states should consider safeguarding themselves by seeking assurance in contractual arrangements that labour hire providers they engage are properly licensed.

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