

Article Information

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Further changes to labour hire licensing in South Australia: Is your business involved in “prescribed work”?

On 25 June 2020 the South Australian Parliament passed the Labour Hiring Licensing (Miscellaneous) Amendment Act 2020, which significantly adjusts the scope of the South Australian labour hire licensing scheme, following much confusion at the time of its initial implementation.

In 2017, the then South Australian Labor Government passed the *Labour Hire Licensing Act 2017* (SA). The Act was one of a number of similar pieces of legislation introduced around Australia as a result of a Four Corners investigation alleging the exploitation and under payment of migrant workers in several industries including produce picking and food production work.

The Act created an obligation for organisations said to be engaged in “*labour hire*” to be licensed and made it an offence to accept “*labour hire*” from an unlicensed person. Even in 2017, the scheme came under significant scrutiny from business groups, who argued that the definition of labour hire providers was too broad and too ambiguous.

Following the State election in March 2018 the Labor Government was replaced by a Liberal Government. In September 2018, the Government stated an intention to repeal the legislation, however it was not able to secure enough numbers in the Legislative Council to do that. Additional exemptions were gazetted in June 2019 to try to further limit the definition of labour hire.

We published an [insight on this issue](#) at the time.

Now, in 2020, legislation has been introduced and now passed which significantly changes the scope of the labour hire licensing scheme in South Australia.

In presenting the Bill to Parliament, the Attorney-General noted that the Government had received numerous complaints about the scheme’s broad application as well as many submissions outlining “*confusion, angst and concern*” about the scheme. With the passing of this legislation, labour hire licensing will now only be required for “*prescribed work*”.

Prescribed work now means the following:

- cleaning work;
- horticultural processing work;
- meat processing work;
- seafood processing work;
- trolley work; and
- any other work of a kind prescribed by the Regulations.

This narrowing of the scheme appears to more closely align the scope to cover the particular vulnerable workers and high risk industries identified in the previous reviews of labour hire in Australia.

However, the amendments to the Act go further. It substitutes key sections 7, 8 and 9 of the former Act with new provisions that define labour hire *services*, labour hire *workers*, and what it means to *supply* labour hire.

It is now clearer that if a business is engaged to do a particular job and sends their staff to the client’s workplace to do that job, it will not be an automatic instance of labour hire. The Attorney-General’s comments in Parliament confirmed that the

legislation is not intended to cover situations such as IT consultants who are outsourced to businesses, legal firms providing lawyers to work as in-house counsel or on some other sort of “secondment”.

Those sorts of situations (if they were still within the definition of prescribed work) are seemingly no longer considered labour hire. This is because the business would not be considered to be supplying a “*labour hire worker*”.

The Amendment Act also removes the ability for persons who do not comply with the Act to be imprisoned, meaning that only monetary penalties for failing to comply with the legislation will now apply.

Businesses that have been caught (or potentially caught) by the South Australian labour hire licensing laws will need to reassess whether they are still subject to the amended legislation. The information released by the Government suggests that partial refunds may be available for businesses that are “*no longer required*” to have a licence. If you are unsure about how these amendments will apply to your business, please contact a member of Piper Alderman’s Employment Relations team for assistance.