



# Labour Hire Be Warned

The new Labour Hire Licensing Act 2017 (QLD) passed Queensland parliament on 7 September 2017 with a commencement date of 16 April 2018.

It introduces a mandatory licence scheme whereby all labour hire providers in Queensland must obtain a licence to operate, and persons who engage labour hire providers must only engage labour hire providers who are licenced.

This wide-ranging legislation will impact almost every business operating in Queensland in some way and the consequences for non-compliance are significant (maximum of \$126,044 or 3 years imprisonment for individual, and \$365,700 for a corporation).

The concerning news is we believe a large proportion of business owners may be at risk of non-compliance and operational stress and may not even know it.

## The new norm

Whilst the regulations accompanying the Act have not yet been released (the consultation period for these closed 2 February 2018), this extremely broad legislation currently applies to:

1. All labour hire providers in Queensland who carry on a business of supplying workers to work for any other person; and
2. Users of labour hire services in Queensland.

The challenge for SME businesses (including accounting or law firms) is the scope of the new legislation. The definition of provider and labour hire services is as follows:

*“A person (a provider) provides labour hire services if, in the course of carrying on a business, the person supplies, to another person, a worker to do work”.*

## So, what does this really mean for businesses?

Below are two simple examples that highlight the new changes:

### 1. Traditional labour hire business

John is a director/shareholder of ABC Pty Ltd, which provides labour to the construction industry. ABC is required to apply for a licence and if it is not successful, the company (and maybe any of John’s other entities) is unable to legally operate that business and will be at risk of severe penalties if he continues to do so.

### 2. User of labour hire businesses

As a user of a labour hire service, you must only engage entities that are licenced.

In the example above, if a ‘construction’ company intends to hire ABC’s workers it must check ABC is licenced. It’s expected Queensland Government will provide a register of licenced labour hire service providers.

Failure of both entities and the director to comply will incur significant penalties as well as result in the potential loss of

revenue, risk valuable contract relationships and jeopardise the operational reputation of their business.

## The challenge of securing a licence

Unfortunately, some directors may find it a challenge to secure a licence because their business (or themselves) may not be financially sound, or they may struggle with an aspect of the “fit and proper” person test which business owners and/or directors will be required to pass annually.

The test assesses a person’s eligibility based on the following criteria:

- the person’s character (their honesty, integrity and professionalism);
- whether the person — has a history of compliance with relevant laws; or is able to demonstrate an ability to comply with relevant laws;
- whether the person has previously held a licence that has been cancelled or suspended, or for which conditions have been imposed;
- whether the person has been convicted of an offence against a relevant law or another law that affects the person’s suitability;
- whether the individual has been an insolvent or whether a corporation has been placed into administration, receivership or liquidation while the person was an executive officer of the corporation;
- whether the person has been disqualified from managing corporations under the Corporations Act 2001 (Cth);
- whether the person is under the control of, or substantially influenced by, another person whom the chief executive considers is not a fit and proper person.

Parties have 60 days from commencement of the Act (by 15 June 2018) to lodge an application for a 12-month licence (which can be done online). In addition, licencees must pay an annual fee and provide a report every six months on their labour hire and associated activities and compliance with relevant laws (such as the Work Health and Safety Act 2011 and the Workers’ Compensation and Rehabilitation Act 2003).

Of note, once a licence is issued, it may be revoked, varied, or have conditions set at any time during its term. If a licence has been cancelled, the person is unable to apply for another licence for a period of two years.

## It's time to Act!

For accountants and advisors, now is the time to consider whether your clients’ business will be subject to the new legislation and what steps should be taken to ensure compliance.

We believe a significant number of business owners will not pass the “fit and proper” test and they may not even be aware of the situation they are about to find themselves in when this transpires.

If you think your clients’ may not pass the “fit and proper” test, we recommend you start looking at the alternatives available as soon as possible. Importantly, if your client is suffering financial stress, they may not be eligible to obtain or maintain a licence, and on that basis, may not be able to continue to operate now or in the future.

We can provide several services including restructuring, insolvency advice and appointments, litigation support, valuation, interim management as well as financial management and performance improvement solutions to assist your clients.

*Similar legislation has recently been proposed in Victoria and South Australia.*

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals

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