

Australian Capital Territory

# Labour Hire Licensing Regulation 2021

Subordinate law SL2021–9

made under the

*Labour Hire Licensing Act 2020*, section 76 (Regulation-making power)

## EXPLANATORY STATEMENT

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### Overview

The *Labour Hire Licensing Act 2020* (LHL Act) and supporting *Labour Hire Licensing Regulation 2021* establishes a licensing scheme to regulate the provision of labour hire services in the ACT. In doing so, the new scheme seeks to:

- a) Protect workers from exploitation by providers of labour hire services; and
- b) Ensure labour hire service providers meet their workplace obligations and responsibilities to the workers they supply; and
- c) Promote the integrity of the labour hire service industry; and
- d) Promote responsible practices in the labour hire services industry.

The Regulation prescribes matters to support the objects of the LHL Act including the matters that must be submitted for the purposes of a labour hire licence application and inclusion in the labour hire licence register.

The Regulation further provides suitability information to be considered as part of the application assessment by the Labour Hire Licence Commissioner, including matters relating to regulatory action or discipline taken against a labour hire service provider in another jurisdiction.

Together, the Regulation and the Labour Hire Licensing Act encourage responsible employment practices in the ACT labour hire sector and ensure that labour hire businesses meet their workplace obligations. They establish a framework for preventing and responding to non-compliance and provide appropriate mechanisms to ensure that the health, safety and rights of workers are being protected to the high standard expected in the Territory.

### Application of the Regulation

The Regulation applies to all providers of labour hire services operating in the ACT.

### Human Rights

The information requirements for a labour hire licence application may engage the right to privacy under section 12 of the *Human Rights Act 2004* (HR Act). This has been considered and addressed as part of the Explanatory Statement for the Labour

Hire Licensing Bill 2020. As the Explanatory Statement for the Bill demonstrates, the information requirements are appropriate and justified in order to determine the suitability of applicants based on a number of factors going to the applicant's character, integrity, professionalism, history of compliance with workplace laws and standards and past regulatory actions or convictions for the purposes of the new scheme.

## **Details of the Regulation**

### **Section 1 – Name of Regulation**

*Section 1* names the Regulation the Labour Hire Licensing Regulation 2021.

### **Section 2 – Commencement**

*Section 2* details the commencement date of the Regulation.

### **Section 3 – Dictionary**

*Section 3* provides the dictionary at the end of the Regulation is part of the Regulation and defines certain terms used in the Regulation.

### **Section 4 – Notes**

*Section 4* specifies that a note included in the Regulation is explanatory and is not part of the Regulation.

### **Section 5 – Application for a licence – general information**

*Section 5* prescribes the general matters that must be included in an application for a labour hire licence.

### **Section 6 – Application for licence – suitability information**

*Section 6* sets out the specific suitability matters that an application for a licence must state in the event that any of the matters so prescribed have occurred in the previous five years and provides definitions for the purposes of this section.

Section 6 allows for the applicant to not state the matters in subsections 6(1) and (2) where an applicant holds a labour hire licence in another jurisdiction that is not subject to regulatory action as these applicants are deemed suitable under section 28(3) of the LHL Act. An applicant with a labour hire licence in another jurisdiction would still need to apply for a licence and provide the general matters set out in section 5 of this Regulation required for all licence applications.

Section 6 allows for the discretion of the Labour Hire Licensing Commissioner to decide when an applicant need not state the information set out in subsections 6(1) and (2). This allows for a streamlined application process to be considered by the Commissioner where the applicant is a registered group training organisation for the purposes of the *National Vocational Education and Training Regulator Act 2011* (Cwlth) or in circumstances where the Commissioner is satisfied that the applicant can otherwise demonstrate suitability.

### **Section 7 – Licence conditions**

*Section 7* establishes the authority for collection by the Labour Hire Licence Commissioner of changes in suitability information or information provided by a licensee in their application or once they are licensed.

### **Section 8 – Labour hire licence register**

*Section 8* sets out additional matters that must be included in the labour hire licence register. Matters relating to the privacy of labour hire licensees have been addressed by the Explanatory Statement to the Labour Hire Licensing Bill 2020.

### **Section 9 – Workplace law or standard**

*Section 9* prescribes laws for the purposes of the Act. Under the LHL Act, a workplace law or standard includes a corresponding Commonwealth, State or Territory law.

The Regulations includes the prescribed laws for the purposes of workplace laws, which allows the Commission to disclose any information that has been disclosed to, or obtained by, the commissioner in the exercise of a function under the Act to the corresponding responsible entity, if the commissioner considers that the information is relevant and appropriate. Before making such a disclosure, the commission is to consider:

- a) whether the information is relevant to the exercise of the functions of the responsible entity; and
- b) whether the disclosure of the information to the responsible entity is appropriate,  
for the administration of a workplace law or standard or a labour hire law.

The Explanatory Statement to the Labour Hire Licensing Bill 2020 provides more detail in relation to the privacy consideration required of the disclosure authority, including the appropriate consideration of the Territory's *Information Privacy Act 2014* in exercising any such authority.

### **Dictionary**

The Dictionary defines certain terms used in the Regulation.