



Australian Capital Territory

Labour Hire Licensing Act 2020

A2020-21

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Australian Capital Territory

Labour Hire Licensing Act 2020

A2020-21

An Act to provide for the licensing and regulation of providers of labour hire services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Labour Hire Licensing Act 2020*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*connected*, for part 7 (Enforcement)—see section 46.’ means that the term ‘connected’ is defined in that section for part 7.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects and important concepts

6 **Objects of Act**

- (1) The objects of this Act are 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 services industry; and
 - (d) promote responsible practices in the labour hire services industry.
- (2) The objects are to be achieved by—
 - (a) establishing a licensing scheme to regulate the provision of labour hire services; and
 - (b) establishing a register of labour hire licensees.

7 **Meaning of *labour hire services***

- (1) For this Act, a person (a *provider*) provides *labour hire services* if, in the course of carrying on a business, the person supplies to another person (the *hirer*) a worker to do work.
- (2) For subsection (1), a worker is supplied by a provider when the worker starts to do work for the hirer.
- (3) A provider provides labour hire services regardless of whether—
 - (a) the worker is employed by the provider; or
 - (b) there is a contract for the worker to do the work; or
 - (c) the worker is supplied to the hirer directly or indirectly; or
 - (d) the work completed by the worker is under the control of the provider or the hirer.

- (4) A regulation may prescribe that a stated person is not a provider of labour hire services for this section.

8 Meaning of *worker*

- (1) For this Act, an individual is a ***worker*** for a provider if the individual enters into an arrangement with the provider under which—
- (a) the provider may supply, to another person, the individual to do work; and
 - (b) the provider is obliged to pay the worker for the work—
 - (i) in whole or part; or
 - (ii) directly or indirectly.
- (2) The Minister may declare that a person is, or is not, a worker for this Act.
- (3) A declaration is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (4) In this section:
provider—see section 7 (1).

Part 3 Labour hire licence commissioner and committee

Division 3.1 Appointment of commissioner

9 Appointment of commissioner

- (1) The Minister must appoint a person as the Labour Hire Licence Commissioner.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) The Minister must not appoint a person as the commissioner unless satisfied that the person has the experience or expertise necessary to exercise the commissioner's functions.

- (3) A person must be appointed for a term not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (4) The commissioner's conditions of appointment are the conditions agreed between the Minister and the commissioner stated in the instrument of appointment, subject to any determination under the [Remuneration Tribunal Act 1995](#).

- (5) The appointment of the commissioner is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (6) If an appointment is not made under subsection (1), the person appointed under the [Work Health and Safety Act 2011](#), schedule 2, part 2.2 is the Labour Hire Licence Commissioner.

10 Functions of commissioner

The commissioner has the following functions:

- (a) to promote an understanding and acceptance of, and compliance with, this Act;
- (b) to promote the integrity of the labour hire industry;
- (c) to undertake research and develop educational and other programs for the purpose of enabling licensees to comply with the Act;
- (d) to advise the Minister on any matter relevant to the operation of this Act;
- (e) any other function given to the commissioner under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

11 Independence of commissioner

- (1) Subject to subsection (2), the commissioner is not subject to the direction of anyone else, and must act independently in relation to the exercise of a function under this Act or another territory law under which the commissioner exercises a function.
- (2) However, the Minister may, in writing, give directions to the commissioner in relation to the exercise of the commissioner's functions.
- (3) A direction given under subsection (2) must be of a general nature and not direct the commissioner in relation to a particular complaint, licensee or regulatory action.
- (4) The Minister must present a copy of any direction under subsection (2) to the Legislative Assembly within 5 sitting days after the day it is given to the commissioner.

12 Disclosure of interests

The commissioner must give the Minister a written statement of the commissioner's personal and financial interests within 7 days after—

- (a) the day the commissioner is appointed; and
- (b) the first day of each financial year; and
- (c) the day there is a change in the interest.

13 Commissioner must not do inconsistent work etc

The commissioner must not—

- (a) have paid employment that is inconsistent with the commissioner's functions; or
- (b) engage in any unpaid activity that is inconsistent with the commissioner's functions.

14 Ending appointment

(1) The Minister may end a person's appointment as the commissioner—

- (a) for misconduct; or
- (b) if the person becomes bankrupt or personally insolvent; or

Note **Bankrupt or personally insolvent**—see the [Legislation Act](#), dict, pt 1.

- (c) if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (d) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

- (2) The Minister must end the commissioner's appointment for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions.

Note A person's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

15 Arrangements for staff and facilities

The commissioner may arrange with the head of service to use the services of a public servant or Territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

16 Engagement of consultants and contractors

- (1) The commissioner may engage—
- (a) an approved auditor to assist the commissioner in ensuring a licensee's compliance with this Act; and
 - (b) any other consultant or contractor that may be necessary or convenient to exercise the commissioner's functions.
- (2) The conditions of a consultant's or contractor's engagement are the conditions agreed between the commissioner and the consultant or contractor.
- (3) However, this section does not give the commissioner the power to enter into a contract of employment with a consultant or contractor.
- (4) In this section:

approved auditor means an auditor approved under the [Government Procurement Act 2001](#), section 22O.

17 Independence of commissioner's staff

- (1) A member of the commissioner's staff is, in relation to the exercise of a function under this Act or another territory law under which the member exercises a function, not subject to the direction of anyone except—
 - (a) the commissioner; or
 - (b) another member of the commissioner's staff who is authorised by the commissioner to give directions.
- (2) In this section:
commissioner's staff means—
 - (a) a public servant mentioned in section 15; and
 - (b) a consultant or contractor engaged by the commissioner under section 16.

18 Delegation of functions

- (1) The commissioner may delegate the commissioner's functions under this Act or another territory law under which the commissioner exercises a function to a member of the commissioner's staff.
Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.
- (2) In this section:
commissioner's staff—see section 17 (2).

Division 3.2 Labour hire licensing advisory committee

19 Establishment of committee

The Labour Hire Licensing Advisory Committee is established.

20 Functions of committee

The committee has the following functions:

- (a) to advise the Minister about—
 - (i) matters relating to the operation of this Act; and
 - (ii) if required by the Minister—anything else in relation to labour hire services;
- (b) any other function given to the committee under this Act.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

21 Membership of committee

- (1) The committee consists of—
 - (a) the commissioner; and
 - (b) 3 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees; and

- (c) 3 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employers.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) A person must be appointed to the committee for not longer than 3 years.
- (3) The Minister must appoint a chair of the committee from the members appointed under subsection (1).

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (4) The commissioner is a non-voting member of the committee.

22 Procedures of committee

- (1) Meetings of the committee are to be held when and where the committee decides.
- (2) The committee may conduct its proceedings (including its meetings) as it considers appropriate.
- (3) The committee may publish its considerations as the committee considers appropriate.

Part 4 Labour hire licences

Division 4.1 Licences generally

23 Requirement to hold labour hire licence

A person must not provide labour hire services unless the person holds a labour hire licence.

Note Section 33 makes it an offence to provide labour hire services without a licence.

24 Application for licence

- (1) A person may apply to the commissioner for a licence.
- (2) The application must—
 - (a) be in writing; and
 - (b) include any information prescribed by regulation.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

25 Commissioner may request more information

- (1) The commissioner may, by written notice, require an applicant for a licence to give the commissioner information that the commissioner reasonably needs to decide the application, within a stated time, at a stated place.
- (2) If the applicant does not comply with a requirement in the notice, the commissioner may refuse to consider the application further.

26 Change of information must be provided

- (1) This section applies if the information in an application for a licence changes before the application is decided.
- (2) The applicant must give the commissioner written notice of the details of the change.

27 Issue of licence

- (1) If a person applies for a licence, the commissioner must, within a reasonable period—
 - (a) issue the licence; or
 - (b) refuse to issue the licence.

Note A licence may be issued with a condition (see s 29).

- (2) The commissioner may issue the licence to the applicant, only if the commissioner is satisfied that the applicant is a suitable person to hold the licence.

28 Who is a *suitable person*?

- (1) For this Act, in deciding whether an applicant is a *suitable person* to hold a licence, the commissioner must consider the following:
 - (a) the applicant's character, including, for example, the applicant's honesty, integrity and professionalism;
 - (b) whether the applicant—
 - (i) has a history of compliance with workplace laws or standards; or
 - (ii) is able to demonstrate an ability to comply with workplace laws or standards;
 - (c) whether the applicant has previously held a licence that has been cancelled or suspended, or for which conditions have been imposed under section 29;

- (d) whether the applicant has been the subject of regulatory action under a labour hire law;
 - (e) whether the applicant has been convicted of an offence against a workplace law or standard or another law that affects the applicant's suitability to provide labour hire services;
 - (f) if the applicant is an individual—
 - (i) whether the applicant has been an insolvent under administration under the [Corporations Act](#), section 9; or
 - (ii) whether a corporation has been placed into administration, receivership or liquidation while the applicant was an executive officer of the corporation; or
 - (iii) whether the applicant has been disqualified from managing a corporation under the [Corporations Act](#).
- (2) If the applicant is a corporation, the commissioner must also consider the matters mentioned in subsection (1) for each influential person for the corporation.
- (3) Also, the applicant is a suitable person if—
- (a) the applicant holds a licence under another labour hire law; and
 - (b) the licence is not the subject of any regulatory action under that law.
- (4) The commissioner—
- (a) must consider any matter prescribed by regulation; or
 - (b) may consider any other matter the commissioner considers relevant.

(5) In this section:

influential person, for a corporation, means—

- (a) an executive officer of the corporation; or
- (b) a person who may exercise a relevant power in relation to the corporation; or
- (c) a related corporation; or
- (d) an executive officer of a related corporation.

related corporation means a related body corporate under the [Corporations Act](#).

relevant power, for a corporation, means a power to—

- (a) take part in a directorial, managerial or executive decision for the corporation; or
- (b) elect or appoint a person as an executive officer in the corporation; or
- (c) significantly influence the conduct of the corporation.

29 Licence—conditions

A labour hire licence includes—

- (a) a condition that the licensee must comply with this Act; and
- (b) a condition that the licensee must not contravene workplace laws or standards; and
- (c) a condition that the licensee notify the commissioner of any regulatory action taken against the licensee under a labour hire law; and
- (d) any other condition the commissioner considers appropriate; and
- (e) any other condition prescribed by regulation.

30 Licence—period

- (1) A labour hire licence starts on the day stated in the licence.
- (2) The commissioner must not issue a labour hire licence for longer than 12 months or any longer period prescribed by regulation.
- (3) A labour hire licence expires on the day stated in the licence.

31 Labour hire licence register

- (1) The commissioner must keep a register.
- (2) The register—
 - (a) must include the following:
 - (i) the licensee’s registered business name;
 - (ii) if the licensee operates the business under another name—the business’s trading name;
 - (iii) the licensee’s ABN or ACN;
 - (iv) the expiry date for the licence;
 - (v) any condition on the licence;
 - (vi) any other information prescribed by regulation; and
 - (b) may include any other information the commissioner considers appropriate.
- (3) The information mentioned in subsection (2) (a) must be available for public inspection.
- (4) The commissioner may correct a mistake, error or omission in the register.

32 Licensee must update details

- (1) This section applies if any of the following information changes:
 - (a) contact details for the licensee;
 - (b) if the licensee operates the business under another name—the business's trading name.
- (2) The licensee must tell the commissioner, in writing, about the change as soon as practicable, but not later than 7 days after the change happens.

Maximum penalty: 50 penalty units.

Division 4.2 Offences and penalties

33 Providing labour hire services without licence

- (1) A person commits an offence if the person—
 - (a) provides labour hire services; and
 - (b) does not hold a labour hire licence.
- Maximum penalty:
- (a) for an individual—800 penalty units; or
 - (b) for a corporation—3 000 penalty units.
- (2) A person commits an offence if the person falsely represents that the person holds a labour hire licence.

Maximum penalty: 200 penalty units.

34 Breach of labour hire licence condition

A person commits an offence if—

- (a) the person holds a labour hire licence; and
- (b) the licence is subject to a condition; and

- (c) the person fails to comply with the condition.

Maximum penalty: 200 penalty units.

35 Engaging unlicensed labour hire service provider

- (1) A person must not enter into an arrangement for the provision of labour hire services to the person unless the proposed provider of the labour hire services is the holder of a licence.
- (2) Subsection (1) does not apply if—
- (a) the provider was included in the register under section 31 as the holder of a labour hire licence at the time the arrangement was entered into; or
 - (b) the person has a reasonable excuse for entering into the arrangement.

Example—par (b)

Kevin decides that he needs a cleaner for his house. He sees an advertisement on a social media site by a company offering domestic cleaning services. Kevin did not know that the company was an unlicensed labour hire services provider nor was there anything in the advertisement or otherwise to make him aware that he should check that the company was licensed.

- (3) If a person contravenes subsection (1), the person must pay as a debt due to the Territory a civil penalty—
- (a) for an individual—a maximum penalty equivalent to 800 penalty units; or
 - (b) for a corporation—a maximum penalty equivalent to 3 000 penalty units.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

Part 5 Compliance auditing

36 Complaints about labour hire licensees

- (1) If the commissioner receives a complaint about a licensee, the commissioner may—
 - (a) investigate the complaint; or
 - (b) if the complaint relates to a failure to comply with a workplace law or standard—refer the complaint to the authority responsible for administering the workplace law or standard; or
 - (c) take no action if the commissioner reasonably believes the complaint—
 - (i) lacks substance; or
 - (ii) is frivolous, vexatious or was not made in good faith; or
 - (iii) has been adequately dealt with.
- (2) The commissioner must—
 - (a) deal with the complaint in accordance with any complaints guideline under section 37; and
 - (b) give written notice of the action taken under subsection (1) unless the complainant has not provided contact details.

37 Complaints guideline

- (1) The Minister may determine guidelines for how a complaint about a licensee must be dealt with (a *complaints guideline*).
- (2) A complaints guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

38 Licensee must provide information about compliance

- (1) The commissioner may request, in writing, that a licensee give the commissioner information about the licensee's compliance with this Act within a stated reasonable period—
 - (a) on receiving a complaint about the licensee; or
 - (b) on the commissioner's own initiative.
- (2) The licensee must give the commissioner the information within the stated period.

Note The commissioner may take regulatory action if the licensee does not comply with this section (see s 40).

- (3) However, any information obtained, directly or indirectly, because of the giving of the information is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding relating to regulatory action under part 6.

Note The [Legislation Act](#), s 170 deals with the application of the privilege against self-incrimination.

Part 6 Regulatory action

39 Meaning of *regulatory action*—pt 6

In this part:

regulatory action, against a licensee, means any of the following actions:

- (a) imposing, or amending, a condition on the licence;
- (b) suspending the licence for either a fixed period or until a particular event happens;
- (c) disqualifying the licensee from applying for another licence for a fixed period or until a particular event happens;
- (d) cancelling the licence.

40 When regulatory action may be taken

The commissioner may take regulatory action against a licensee only if satisfied on reasonable grounds that the licensee—

- (a) stopped operating the business the subject of the licence; or
- (b) used false or misleading information to obtain the licence; or
- (c) contravened a condition of the licence; or
- (d) fails to give the commissioner information requested under section 38; or
- (e) failed to comply with a provision of this Act; or
- (f) is no longer a suitable person to hold a licence; or
- (g) has contravened a workplace law or standard.

41 Notification of proposed regulatory action

- (1) Before the commissioner takes regulatory action against a licensee, the commissioner must give the licensee a written notice (a *show cause notice*) stating—
 - (a) the grounds on which, under section 40, the commissioner considers regulatory action may be taken; and
 - (b) details of the proposed regulatory action; and
 - (c) that the licensee may, not later than 14 days after the day the licensee is given the notice, give a written submission to the commissioner about the proposed regulatory action.
- (2) The commissioner must consider any written submission received by the commissioner in response to the show cause notice when making a decision to take regulatory action against the licensee.

42 Taking regulatory action

- (1) This section applies if the commissioner, after complying with section 41, is satisfied on reasonable grounds that it is appropriate to take the regulatory action.
- (2) The commissioner may—
 - (a) if the proposed regulatory action is imposing or amending a condition on a licence—impose or amend the condition; or
 - (b) if the proposed regulatory action is suspending a licence—take any of the following action:
 - (i) the action mentioned in paragraph (a);
 - (ii) suspend the licence for a period; or
 - (c) if the proposed regulatory action is disqualifying a licensee from applying for a further licence—take any of the following action:
 - (i) the action mentioned in paragraph (b);

- (ii) disqualify the licensee from applying for a further licence for a period; or
- (d) if the proposed regulatory action is cancelling a licence—take any of the following action:
 - (i) the action mentioned in paragraph (c);
 - (ii) cancel the licence.

Note A decision under this subsection is a reviewable decision (see s 71).

- (3) Before taking regulatory action against a licensee under this section, the commissioner must tell the licensee, by written notice (a ***notice of regulatory action***)—
 - (a) the regulatory action that will be taken; and
 - (b) the day on which the regulatory action takes effect.
- (4) Regulatory action against the licensee takes effect on the day stated in the notice of regulatory action.
- (5) In this section:

proposed regulatory action, in relation to a licensee, means regulatory action mentioned in a show cause notice given to the person under section 41 (1).

43 Not taking regulatory action

- (1) This section applies if, after considering a submission under section 41 (2) received from a licensee, the commissioner is satisfied on reasonable grounds that regulatory action against the licensee—
 - (a) may not be taken; or
 - (b) may be taken, but it is not appropriate to take the action.
- (2) The commissioner must give the licensee written notice telling the licensee that regulatory action will not be taken against the licensee in relation to the matters stated in the show cause notice.

44 Regulatory action in another jurisdiction

- (1) This section applies if—
 - (a) a licensee holds a licence under another labour hire law; and
 - (b) regulatory action is taken, or is proposed to be taken, against the licensee in relation to that licence.
- (2) The licensee must, as soon as possible after the licensee becomes aware of the regulatory action, tell the commissioner—
 - (a) the proposed regulatory action or regulatory action taken; and
 - (b) the day on which the regulatory action takes effect.

Note The commissioner must consider regulatory action against a licensee in deciding if the person is a suitable person to hold a licence (see s 28 (1) (d)).

45 Effect of suspension

If the commissioner suspends a licence, the licensee is taken not to hold the licence during the period of suspension.

Part 7 Enforcement

Division 7.1 Preliminary

46 Definitions—pt 7

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes land.

warrant means a warrant issued under subdivision 7.2.3 (Search warrants).

Division 7.2 Authorised people

Subdivision 7.2.1 Authorised people generally

47 Appointment

The director-general may appoint a public servant as an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

48 Identity cards

- (1) The director-general must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—
 - (a) a recent photograph of the person; and
 - (b) the date of issue of the card; and
 - (c) the date of expiry of the card; and
 - (d) anything else prescribed by regulation.
- (2) A person commits an offence if the person—
 - (a) stops being an authorised person; and
 - (b) does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if the person's identity card is—
- (a) lost or stolen; or
 - (b) destroyed by someone else.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An offence against this section is a strict liability offence.

49 Authorised person must show identity card on exercising power of entry

- (1) If an authorised person exercises a power under this Act (other than a power under section 54) that affects an individual, the authorised person must first show the authorised person's identity card to the individual.
- (2) If an authorised person exercises a power under this Act (other than a power under section 54) that affects a person, other than an individual, the authorised person must first show the authorised person's identity card to an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

Subdivision 7.2.2 Powers

50 Power to enter premises

- (1) For this Act, an authorised person may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or

- (c) at any time, enter premises if the authorised person believes on reasonable grounds that the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
 - (d) enter premises in accordance with a search warrant.
- (2) However—
- (a) subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes; and
 - (b) subsection (1) (c) does not authorise entry into premises that are used for residential purposes, unless the premises are also the place from which a labour hire business is conducted.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An authorised person may—
- (a) for subsection (1) (a), (b) or (c)—enter the premises with necessary assistance; and
 - (b) for subsection (1) (d)—enter the premises with necessary assistance and force.
- (6) In this section:
- necessary assistance***, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person to carry out their function.

51 Production of identity card

An authorised person and any other person other than a police officer who is accompanying the authorised person may not remain at premises entered under this part if the authorised person does not produce their identity card when asked by the occupier.

52 Consent to entry

- (1) When seeking the consent of an occupier to enter premises under section 50 (1) (b), an authorised person must—
 - (a) produce their identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused; and
 - (b) that the occupier consents to the entry; and

- (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
 - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

53 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) examine anything;
 - (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
 - (c) take photographs, films, or audio, video or other recordings;
 - (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under this Act;
 - (e) require the occupier, or anyone else at the premises, to give the authorised person copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this Act;

(f) require the occupier, or anyone else at the premises, to give the authorised person reasonable help to exercise a power under this part.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (d), (e) or (f).

Maximum penalty: 50 penalty units.

54 Power to obtain, inspect and copy records

- (1) An authorised person may, in writing, require any of the following people to give the authorised person information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person for this Act:

- (a) a licensee;
- (b) a bank or other financial institution that holds accounts for a licensee;
- (c) an accountant or bookkeeper engaged by a licensee.

Example

request and obtain by email a list of employees

- (2) A person must take reasonable steps to comply with a requirement made of the person under this section.

Maximum penalty: 50 penalty units.

55 Abrogation of privilege against self-incrimination

- (1) A person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

- (2) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

56 Warning to be given

- (1) Before requiring a person to comply with a requirement under section 53 (1) (d) or (e) or section 54, an authorised person must warn the person—
- (a) that failure to comply constitutes an offence; and
 - (b) about the effect of section 55.
- (2) It is not an offence for an individual to refuse to answer a question put by an authorised person or provide information or a document to an authorised person under section 53 (1) (d) or (e) or section 54 on the ground that the question, information or document might tend to incriminate the individual, unless the individual was first given the warning in subsection (1) (b).
- (3) Nothing in this section prevents an authorised person from obtaining and using evidence given to the authorised person voluntarily by any person.

57 Power to seize things

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
 - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.

58 Direction to give name and address

- (1) This section applies if an authorised person believes on reasonable grounds that a person—
- (a) has committed, is committing or is about to commit an offence against this Act; or
 - (b) may be able to assist in the investigation of an offence against this Act.

(2) The authorised person may direct the person to give the authorised person, immediately, any of the following personal details:

- (a) the person's full name;
- (b) the person's home address.

Note 1 The authorised person must first show the person the authorised person's identity card (see s 49).

Note 2 It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

(3) If the authorised person believes on reasonable grounds that a personal detail given by a person in response to a name and address direction is false or misleading, the authorised person may direct the person to produce evidence immediately of the correctness of the detail.

(4) If an authorised person gives a direction to a person, the authorised person must tell the person that it is an offence if the person fails to comply with the direction.

(5) If an authorised person gives a direction to a person, the authorised person must give the direction in a language, or in a way of communicating, that the authorised person believes on reasonable grounds the person is likely to understand.

59 Offence—fail to comply with direction to give name and address

(1) A person commits an offence if the person fails to comply with a direction under section 58.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

- (3) This section does not apply to a person if the authorised person, before giving the direction, did not—
- (a) produce the authorised person’s identity card for inspection by the person; or
 - (b) tell the person that failure to comply with the direction is an offence.
- (4) Also, for a direction under section 58 (3), this section does not apply if the person produces evidence of the correctness of the detail not more than 3 days after the day the direction was made.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see [Criminal Code](#), s 58).

Subdivision 7.2.3 Search warrants

60 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must—
- (a) be sworn; and
 - (b) state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity connected with an offence against this Act; and

- (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant’s issue, when the warrant ends.

61 Warrants—application other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio, email, letter or other form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately give a written copy to the authorised person if it is practicable to do so.

- (5) If it is not practicable to give a written copy of the warrant to the authorised person—
- (a) the magistrate must tell the authorised person—
 - (i) what the terms of the warrant are; and
 - (ii) the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person’s powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) a question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

62 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the authorised person or any person assisting an authorised person); or
 - (b) that the effective execution of the warrant is not frustrated.

63 Details of search warrant to be given to occupier etc

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

64 Occupier entitled to be present during search etc

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Subdivision 7.2.4 Return and forfeiture of things seized

65 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure under section 57 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

66 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.

- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

67 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

68 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
 - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
 - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or

- (ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or
- (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section; or
 - (ii) the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
 - (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the commissioner directs.

Subdivision 7.2.5 Miscellaneous

69 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.

- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

70 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
- (a) an authorised person; or
 - (b) a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
- (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 8 Notification and review of decisions

71 Meaning of *reviewable decision*—pt 8

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

72 Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

73 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

Part 9 Miscellaneous

74 Disclosure of information by commissioner

- (1) The commissioner may disclose any information that has been disclosed to, or obtained by, the commissioner in the exercise of a function under this Act to a responsible entity if the commissioner considers that—
 - (a) the information is relevant to the exercise of the functions of the responsible entity; and
 - (b) the disclosure of the information to the responsible entity is appropriate.
- (2) In this section:

responsible entity means an entity responsible for the administration of a workplace law or standard or a labour hire law.

75 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

76 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

77 Review of Act

- (1) The Minister must review the operation of this Act as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 4 years after the day it commences.

Part 15 Transitional

100 Offences and penalties do not apply for first 6 months

Division 4.2 (Offences and penalties) does not apply until 6 months after the day this Act, section 3 commences.

101 Expiry—pt 15

This part expires 12 months after the day this Act, section 3 commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see pt 8)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	27 (1) (b)	refuse to issue licence	applicant for licence
2	29	issue licence on condition	licensee
3	42 (2)	take regulatory action	licensee

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- corporation
- Corporations Act
- Criminal Code
- disallowable instrument (see s 9)
- Executive
- exercise
- found guilty
- function
- individual
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- person (see s 160)
- State
- the Territory.

commissioner means—

- (a) the person appointed under section 9 (1); or
- (b) if a person has not been appointed under section 9 (1)—the person appointed under the [Work Health and Safety Act 2011](#), schedule 2, part 2.2.

committee means the Labour Hire Licensing Advisory Committee established under section 19.

complaints guideline—see section 37.

connected, for part 7 (Enforcement)—see section 46.

labour hire law means—

- (a) this Act; and
- (b) a law of another jurisdiction corresponding, or substantially corresponding, to this Act.

labour hire licence means a licence issued under section 27.

labour hire services—see section 7.

occupier, of premises, for part 7 (Enforcement)—see section 46.

offence, for part 7 (Enforcement)—see section 46.

premises, for part 7 (Enforcement)—see section 46.

regulatory action, against a licensee, for part 6 (Regulatory action)—see section 39.

reviewable decision, for part 8 (Notification and review of decisions)—see section 71.

suitable person—see section 28.

warrant, for part 7 (Enforcement)—see section 46.

worker—see section 8.

workplace law or standard means any of the following:

- (a) a labour hire law;
- (b) a law of the Commonwealth or a State imposing an obligation on a person in relation to workers, including about—
 - (i) keeping records about workers; and
 - (ii) the payment of tax or superannuation for workers; and

- (iii) ensuring the health and safety of workers;
- (c) a law prescribed by regulation.

Examples—par (b)

- the *Discrimination Act 1991*
- the *Fair Work Act 2009* (Cwlth)
- the *Income Tax Assessment Act 1997* (Cwlth)
- the *Long Service Leave Act 1976*
- the *Long Service Leave (Portable Schemes) Act 2009*
- the *Migration Act 1958* (Cwlth)
- the *Superannuation Act 1976* (Cwlth)
- the *Superannuation Act 1990* (Cwlth)
- the *Superannuation Act 2005* (Cwlth)
- the *Workers Compensation Act 1951*
- the *Work Health and Safety Act 2011*.

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 February 2020.

2 Notification

Notified under the [Legislation Act](#) on 27 May 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Labour Hire Licensing Bill 2020, which was passed by the Legislative Assembly on 21 May 2020.

Clerk of the Legislative Assembly

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