

# Labour Hire Licensing Complaints Guideline 2022

**Notifiable instrument NI2022–619**

made under the

***Labour Hire Licensing Act 2020*, section 37 (Complaints guideline)**

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**1 Name of instrument**

This instrument is the *Labour Hire Licensing Complaints Guideline 2022*.

**2 Commencement**

This instrument commences on the day after it is notified.

**3 Complaints Guideline**

Pursuant to section 37(1), I make the Labour Hire Licensing Complaints Guideline attached to this instrument.

Mick Gentleman MLA  
Minister for Industrial Relations and Workplace Safety  
5 December 2022



**ACT**  
Government

# Labour Hire Licensing

## Complaints Guideline

December 2022

## 1. Background, purpose and legal authority

The objects of the *Labour Hire Licensing Act 2020* (the Act) are to protect workers from exploitation by providers of labour hire services, ensure labour hire service providers meet their workplace obligations and responsibilities to the workers they supply, promote the integrity of the labour hire services industry, and promote responsible practices in the labour hire services industry.

The objects are to be achieved by establishing a licensing scheme to regulate the provision of labour hire services and establishing a register of labour hire licensees.

The Act provides direction for regulatory and compliance management and provides authorised people the power to impose sanctions for non-compliance with the scheme.

The Labour Hire License Commissioner (the Commissioner) is responsible for responding to allegations of non-compliance with the scheme. Officers within WorkSafe ACT are authorised persons for the purposes of complaints handling.

Under section 37 of the Act, the Minister may determine guidelines for complaints handling about a labour hire licensee (the Licensee). While section 37 of the Act deals with complaints about a licensee, these guidelines should be applied when making and handling a complaint about an unlicensed labour hire provider that is operating in the ACT and is reasonably believed to require a license, but may not hold a labour hire licence. In these guidelines, the term Licensee is taken to include an unlicensed labour hire provider for the purposes of making and handling a complaint. This document is issued by the Minister as the Complaints Guideline under section 37 of the Act.

The Complaints Guideline should be read in conjunction with the published WorkSafe ACT Labour Hire Licensing Compliance and Enforcement Policy, if any.

The Commissioner may provide advice and other information on the WorkSafe ACT website to assist complainants through the complaints process under the Complaints Guideline.

## 2. Making a complaint

Any person, which includes an individual or company/organisation, can make a complaint to the Commissioner, for example, a worker, an industry peak body or union (known as the Complainant). Those wishing to make a complaint about a Licensee and/or an unlicensed labour hire provider may complete a notification form, if available, and submit it with supporting documentation substantiating the complaint to the Commissioner at [labourhirelicensing@worksafe.act.gov.au](mailto:labourhirelicensing@worksafe.act.gov.au). If no form is available, the complaint can be made by telephone or in writing by post or email to the Commissioner at [labourhirelicensing@worksafe.act.gov.au](mailto:labourhirelicensing@worksafe.act.gov.au).

The Complainant must ensure details in the form required by the Commissioner and supporting documentation are true and correct.

### **3. Receiving a complaint**

After receiving notification of a complaint, the Commissioner will acknowledge the complaint within 3 business days.

Where relevant, the Commissioner must give the Complainant an opportunity to provide further information or the opportunity to clarify information within a specified time.

The Client Service Charter attached to the Labour Hire Licensing Compliance and Enforcement Policy sets out the expectations and standards from WorkSafe ACT and complainants, including when making and responding to complaints.

### **4. Licensee must provide information**

Under section 38 of the Act, the Commissioner may request information from a Licensee, and/or host organisation ('person') about their compliance with the requirements of the Act. This information is to be provided within a stated reasonable period. The Commissioner's request may be initiated by the following triggers:

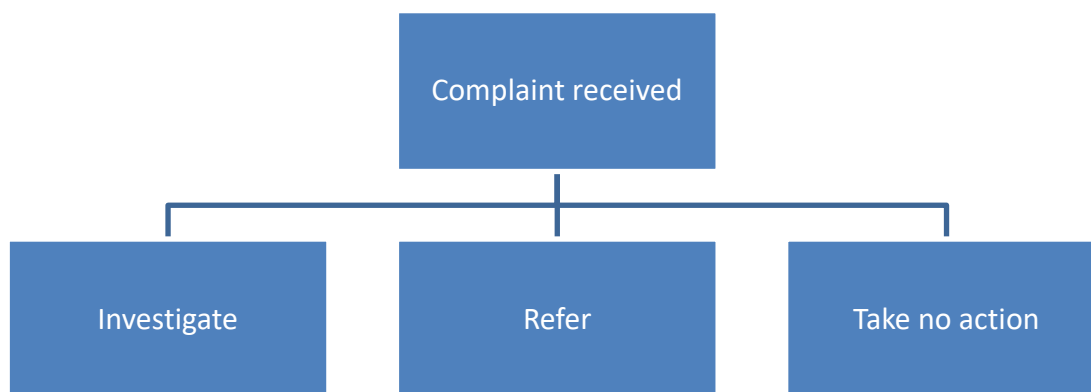
- the Commissioner receives a complaint; or
- from the Commissioner's own initiative.

The Licensee and/or person must give the Commissioner the requested information within a stated period. The Commissioner may take regulatory action if the Licensee does not comply with the request.

Any information obtained through the Commissioner's request is not admissible in evidence against the Licensee or person in a civil or criminal proceeding, other than a proceeding relating to regulatory action.

### **5. Managing complaints**

The following complaint management model is available to the Commissioner:



Under section 36 of the Act, the Commissioner can either investigate, refer or take no further action when a complaint is received and assessed.

The Commissioner will consider if the subject of the complaint impacts or breaches other legislation (such as the *Work Health and Safety Act 2011*) and refer to the relevant regulatory authority as required.

## 6. Regulatory action

Regulatory action is covered in Part 6 of the Act. Regulatory action against a Licensee may include:

- 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.

The Commissioner may take regulatory action against a Licensee if they are satisfied on reasonable grounds that the Licensee:

- e) stopped operating the business the subject of the licence; or
- f) used false or misleading information to obtain the licence; or
- g) contravened a condition of the licence; or
- h) fails to give the Commissioner information requested under section 38; or
- i) failed to comply with a provision of this Act; or
- j) is no longer a suitable person to hold a licence; or

- k) has contravened a workplace law or standard.

### **Notification of proposed regulatory action**

The Commissioner must give the Licensee written notice (a show cause notice) prior to taking regulatory action against the Licensee. The show cause notice must state:

- a) the grounds the Commissioner considers regulatory action may be taken;
- b) the details of the proposed regulatory action; and
- c) that the Licensee may give a written submission to the Commissioner about the proposed regulatory action.

The Licensee has 14 calendar days, after the day the Licensee is given the notice, to provide this written submission.

The Commissioner must consider any written submission in response to the show cause notice when deciding to take regulatory action against the Licensee.

### **Taking regulatory action**

Before taking regulatory action against a Licensee, the Commissioner must tell the Licensee, by written notice (a notice of regulatory action).

Where the Commissioner is satisfied on reasonable grounds that it is appropriate to take the regulatory action, they may:

- impose or amend a condition on a licence;
- suspend the licence;
- suspend the licence for a period;
- disqualify the Licensee from applying for a further licence for a period; or
- cancel the licence.

The Commissioner may take other enforcement action under the Compliance and Enforcement Policy, such as prosecution and legal proceedings for offences under the Act.

### **Not taking regulatory action**

Where the Commissioner is satisfied on reasonable grounds that regulatory action against the Licensee may be taken, but it is not appropriate to take the action, the Commissioner must write to the Licensee advising that regulatory action will not be taken against the Licensee following the show cause notice.

### **Regulatory action in another jurisdiction**

Where a Licensee holds a licence under another labour hire law and regulatory action is taken, or is proposed to be taken, against the Licensee in relation to that licence, the Licensee must tell the Commissioner about the proposed regulatory action or regulatory action taken and the day on which the regulatory action takes effect.

### **Effect of suspension**

If the Commissioner suspends a licence, the Licensee cannot conduct work under their licence during the period of suspension.

### **Review Process**

If the Commissioner proposes to apply any sanctions outlined above, a Licensee and/or Complainant will first be given the opportunity to show reasons why the sanctions should/should not be applied.

The Commissioner will issue a Show Reasons Notice and the Licensee and Complainant will be given not more than 14 business days to respond.

Submissions received from the Licensee and/or Complainant within this response period will be considered by the Commissioner in the determination of any sanctions.

If, by the time specified by the Commissioner, the Licensee and/or Complainant fails to respond or to satisfy the Commissioner that sanctions should not be applied, the Commissioner may apply the sanctions.

The Licensee and/or Complainant may apply to the [ACT Civil and Administrative Tribunal](#) for a review of the decision of the complaint undertaken in accordance with these Complaints Guideline.

Compliance and enforcement decisions of the Commissioner are made in accordance with the Compliance and Enforcement Policy. Decisions made by the Commissioner may be referred for internal review. A complaint can also be made to the [ACT Ombudsman](#) to investigate the decisions and administrative actions taken by the Commissioner.