



Australian Capital Territory

Labour Hire Licensing Regulation 2021

Subordinate Law SL2021-9

The Australian Capital Territory Executive makes the following regulation under the *Labour Hire Licensing Act 2020*.

Dated 11 May 2021.

MICK GENTLEMAN
Minister

ANDREW BARR
Minister



Australian Capital Territory

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[Labour Hire Licensing Act 2020](#)

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1 Name of regulation

This regulation is the *Labour Hire Licensing Regulation 2021*.

2 Commencement

This regulation commences on the commencement of the *Labour Hire Licensing Act 2020*, section 3.

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

3 Dictionary

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

4 Notes

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

5 Application for licence—general information—Act, s 24 (2) (b)

- (1) An application for a licence must state the following:
 - (a) the applicant’s name and contact details;
 - (b) if the applicant is an individual—the applicant’s date of birth;
 - (c) if the applicant operates the business under a registered business name—the registered business name;
 - (d) if the applicant operates the business under a trading name—the trading name;
 - (e) if the applicant operates the business with contact details other than the applicant’s contact details—the business’s contact details;
 - (f) if the applicant has an ABN—the ABN;

- (g) if the applicant has an ACN—the ACN;
 - (h) each industry in which the applicant intends to provide labour hire services;
 - (i) for each industry mentioned in paragraph (h)—the industrial instruments to be used by the applicant for the workers the applicant intends to supply;
 - (j) if the applicant intends to provide labour hire services in more than one industry—the main industry in which the applicant intends to provide labour hire services;
 - (k) if the applicant is a corporation—the name and contact details of each influential person for the corporation;
 - (l) if the applicant is not a corporation—the name and contact details of each close associate of the applicant’s business;
 - (m) the number of workers who are visa holders that the applicant intends to supply.
- (2) An application for a licence must include—
- (a) if the applicant holds a compulsory insurance policy for the *Workers Compensation Act 1951*—a copy of the applicant’s certificate of currency; and
 - (b) if the applicant is self-insured for the *Workers Compensation Act 1951*—a copy of the applicant’s self-insurer licence; and
 - (c) if the applicant is registered as an employer for a covered industry under the *Long Service Leave (Portable Schemes) Act 2009*—a copy of the applicant’s certificate of registration.

(3) In this section:

close associate—a person is a ***close associate*** of the applicant's business if the person—

- (a) holds or will hold a position (however described), including on behalf of someone else, in the applicant's business that is concerned with, or takes part in, the management of the business; or
- (b) is or will be able to exercise a significant influence, including on behalf of someone else, in relation to the conduct of the applicant's business because the person holds or will hold a financial interest, or is entitled to exercise a relevant power, in the business.

financial interest, in a business, means—

- (a) a share in the capital of the business; or
- (b) an entitlement to receive income derived from the business, however the entitlement arises.

relevant power, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person responsible for directorial, managerial or executive decisions in the business.

6 Application for licence—suitability information—Act, s 24 (2) (b)

- (1) Unless subsection (3) or (4) applies, an application for a licence must state if, in the previous 5 years, the applicant—
 - (a) had an application for a licence refused under a labour hire law; or

- (b) held a licence under a labour hire law that was cancelled or suspended, or for which conditions were imposed; or
- (c) was subject, under a labour hire law, to—
 - (i) regulatory action, even if the action is under review or appeal; or
 - (ii) a court or tribunal proceeding; or
 - (iii) another form of discipline or investigation in relation to the applicant's conduct; or
- (d) was convicted, or found guilty, of an indictable offence; or
- (e) was convicted, or found guilty, of an offence against a workplace law or standard; or
- (f) was—
 - (i) the subject of a complaint under an anti-discrimination law; or
 - (ii) convicted, or found guilty, of an offence against an anti-discrimination law; or
- (g) was—
 - (i) the subject of a WHS undertaking accepted by the regulator under the *Work Health and Safety Act 2011* or a corresponding undertaking under a corresponding WHS law; or
 - (ii) the subject of a civil proceeding under the *Work Health and Safety Act 2011*, division 6.3 or a corresponding proceeding under a corresponding WHS law; or
 - (iii) served with an infringement notice for an infringement notice offence against the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011* or a corresponding notice for an offence against a corresponding WHS law; or

- (h) entered into an enforceable undertaking under the *Fair Work Act 2009* (Cwlth) in relation to the contravention of obligations about employee payments and entitlements and protections; or
 - (i) was found to have contravened the *Fair Work Act 2009* (Cwlth) in relation to obligations about employee payments and entitlements and protections; or
 - (j) if the applicant is an individual—had action taken against them under the *Migration Act 1958* (Cwlth) in relation to—
 - (i) the applicant being a visa holder; or
 - (ii) the supply of a worker who is a visa holder; or
 - (k) if the applicant is a corporation—had action taken against an influential person for the corporation under the *Migration Act 1958* (Cwlth) in relation to—
 - (i) the influential person being a visa holder; or
 - (ii) the supply of a worker who is a visa holder.
- (2) An application for a licence must also include information about the applicant's financial capacity to meet its obligations under workplace laws or standards including the applicant's capacity to pay the workers to be supplied by the applicant the wage, allowances, superannuation contribution and other payments to which the workers are entitled.
- (3) The applicant need not state the matters mentioned in subsection (1), or include the matters mentioned in subsection (2), if the applicant—
- (a) holds a licence under another labour hire law; and

- (b) gives the commissioner evidence that the licence is not the subject of any regulatory action under that law.

Note 1 The applicant is taken to be a suitable person if the applicant holds a licence under another labour hire law and the licence is not the subject of any regulatory action under that law (see [Act](#), s 28 (3) (b)).

Note 2 The commissioner may, by written notice, require the applicant to provide more information reasonably needed to decide the application (see [Act](#), s 25).

- (4) The commissioner may decide that an applicant does not need to state the matters mentioned in subsection (1), or include the matters mentioned in subsection (2), if the commissioner is satisfied the applicant—

- (a) is a registered group training organisation; or
- (b) can otherwise demonstrate that the applicant is a suitable person to hold a licence.

- (5) In this section:

anti-discrimination law means—

- (a) the [Discrimination Act 1991](#); or
- (b) the [Sex Discrimination Act 1984](#) (Cwlth); or
- (c) a law of a State or another Territory corresponding, or substantially corresponding, to a law mentioned in paragraph (a) or (b).

corresponding WHS law—see the [Work Health and Safety Act 2011](#), dictionary.

registered group training organisation means a registered training organisation that employs apprentices or trainees.

registered training organisation—see the [National Vocational Education and Training Regulator Act 2011](#) (Cwlth), section 3.

WHS undertaking—see the *Work Health and Safety Act 2011*, section 216 (1).

7 Licence conditions—Act, s 29 (e)

It is a condition of a labour hire licence that if information in the application for the licence (or if section 6 (3) or (4) applies, other information relevant to the licensee being a suitable person to hold a licence) changes the licensee must give the commissioner written notice of the details of the change within 7 days after becoming aware of the change.

8 Labour hire licence register—Act, s 31 (2) (a) (vi)

- (1) The register must include—
 - (a) the licensee’s business contact details; and
 - (b) if the licensee is a corporation—the name and contact details of each influential person for the corporation; and
 - (c) if the applicant’s business has a close associate—the name and contact details of each close associate; and
 - (d) the industry, or the main industry, in which the licensee provides labour hire services.
- (2) In this section:
close associate—see section 5 (3).

9 Workplace law or standard—Act, dict, def *workplace law or standard*, par (c)

The following laws are prescribed:

- (a) the *Superannuation Guarantee (Administration) Act 1992* (Cwlth);
- (b) the *Superannuation Guarantee Charge Act 1992* (Cwlth);
- (c) the *Training and Tertiary Education Act 2003*.

Dictionary

(see s 3)

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

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

- change
- corporation
- found guilty
- indictable offence (see s 190)
- individual.

Note 3 Terms used in this regulation have the same meaning that they have in the [Labour Hire Licensing Act 2020](#). For example, the following terms are defined in the [Labour Hire Licensing Act 2020](#), dict:

- commissioner
- labour hire law
- labour hire licence
- labour hire services
- regulatory action
- worker (see s 8)
- workplace law or standard.

influential person, for a corporation—see the [Act](#), section 28 (5).

visa holder—see the [Migration Act 1958](#) (Cwlth), section 5.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 19 May 2021.

2 Republications of amended laws

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

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