



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED



Wine Grape Council
South Australia

14 December 2017

NOTICE TO WINE GRAPE COUNCIL OF SOUTH AUSTRALIA MEMBERS: NEW LABOUR HIRE LICENSING LAWS TO COMMENCE LABOUR HIRE LICENSING BILL 2017

BACKGROUND

The South Australian State Parliament on 30 November 2017 passed the *Labour Hire Licensing Bill 2017*.

This Bill establishes a licensing scheme for labour hire providers and a requirement on clients utilising labour hire providers, including wineries and wine grape growers, to only use licensed providers or running risk of 3 years imprisonment and up to \$400,000 in penalties.

SAWIA made its significant concerns with the Bill known throughout the legislative process and engaged in extensive lobbying of members of State Parliament to ensure better outcomes for the South Australian wine industry.

Whilst SAWIA primary position was that the legislation was not required to achieve greater compliance, we did seek extensive amendments to the Bill, the final version of the legislation not our ideal but is a much improved outcome for SAWIA and WGCSA members – although there are some still some concerning issues for those wine industry operations that may be subject to the coverage.

As a result of SAWIA's lobbying the following key changes have been to the final version of the legislation that now will become law:

- greater clarity around the type of businesses that will be required to be licensed;
- ensuring that a business applying for licensing will obtain a license if meeting the criteria;
- reducing the maximum penalty 5 to 3 years imprisonment;
- mandatory review of the legislation within 3 years;
- entry to workplaces has been limited to government inspectors; and
- Government inspectors will not be able enter premises, vessels or vehicles that are not workplaces without a court warrant.

KEY PROVISIONS

Licensing requirements:

- Definition of 'labour hire providers' – Guidance Note¹
 - *A person, (a provider) provides labour hire services if, in the course of conducting a business, the person supplies, to another person, a worker to do work in and as part of a business or commercial undertaking of the other person.*
- Must not provide services except as authorised by a licence² and a must not use, without reasonable excuse, the services of a labour hire provider unless they are authorised by a licence³

¹ Section 7 of the final Bill

² Section 11 of the final Bill

³ Section 12 of the final Bill

- The licence holder needs to demonstrate they are a 'fit and proper person'⁴ (please see the attached for the criteria the Commissioner of Business Affairs has regard for)
- Cost of annual licence (yet to be revealed) – unofficial indications are the lowest fee would be \$1,000 and up to \$3,000.
- Applications published and there is an ability for a designated entity to object to an application for a licence⁵ on the basis that the person applying is not a fit and proper person to be issued a licence.
- Nomination of a responsible person – operational person doing the day to day management of the business to which the licence relates. Substitute responsible person if nominate one is on leave.

Penalties – fines and imprisonment:

- For labour hire providers not licenced (\$140,000 or 3 years imprisonment for an individual or \$400,000 for a body corporate)
- For host employers who do not use licenced providers of labour hire (\$140,000 or 3 years imprisonment for an individual or \$400,000 for a body corporate)
- Note this breach would be in addition are breaches of wage rates, visa conditions, safety issues etc.. If a labour hire provider is complying with these laws will still be in breach of this Act if not licenced.

Review of the operation of the legislation – on the third anniversary of commencement⁶.

Inspectors' powers⁷ are exercised by Authorised Officers and there will be extensive power of entry and inspection for the purposes of obtaining information.

COMMENCEMENT & OPERATION

- Will be commence from 1 March 2018, with a 6 months lead time for operation from 1 September.
- During the transition period providers of labour hire services will be able to apply for a licence.

ISSUES FOR THE WINE INDUSTRY EMPLOYERS PRE-OPERATION

- Makes sure your 'favourite' or usual labour hire provider apply for and are licenced before 1 September 2018
- Do your due diligence before pruning season and vintage 2019
- Check that your operations are not caught by occasional provision of labour
- Interstate operations?
 - o Victoria is planning its legislative response currently – SAWIA will monitor this
 - o Queensland already have an Act in operation

FURTHER INFORMATION AND ASSISTANCE

Information sessions will be run by SAWIA across regional South Australia to assist WGCSA members understand the new laws from 1 March 2018 - keep an eye out for the dates via the WGCSA website.

For further information or assistance now, including application of these laws to your business, please contact either: Sarah Hills, Business Services Manager, via email: sarah@winesa.asn.au or telephone: 08 8222 9212 **OR** Henrik Wallgren, Business and Workplace Adviser, via email henrik@winesa.asn.au or telephone: 08 8222 9270.

⁴ Section 10 of the final Bill

⁵ Section 16 of the final Bill

⁶ Section 53 of the final Bill

⁷ Section 34 of the final Bill