

LHA COMPLIANCE AND ENFORCEMENT POLICY



Policy number	3.001.1.0
Endorsing committee	Executive Team
Date endorsed by committee	30 March 2022
Responsible area	Compliance and Enforcement
Responsible position	Manager, Compliance and Enforcement
Date approved by Commissioner	1 April 2022
Date revised	N/A
Review date	3 years after the date approved by the Commissioner or before that date in circumstances prescribed below.

BACKGROUND

The Labour Hire Authority (LHA) is an independent statutory authority established by the *Labour Hire Licensing Act 2018* (LHL Act).

The objects of the LHL Act are to protect workers from exploitation and improve the transparency and integrity of the labour hire industry.

Our functions include:

- administering the scheme for granting licences to labour hire providers and related matters
- promoting, monitoring, and enforcing compliance with the LHL Act and associated regulations
- investigating compliance with the LHL Act and regulations, and
- engaging in, promoting and coordinating the sharing of information with other government agencies and bodies regarding the labour hire industry.


We are equipped with tools to promote, monitor and enforce compliance with the LHL Act and regulations, including:

- allegations of prohibited conduct, which includes providing or advertising labour hire services without a licence and using an unlicensed provider, and
- compliance with workplace laws, taxation and superannuation laws, work health and safety laws, accommodation standards and other legal obligations.

Each year, the Compliance and Enforcement Program outlines our strategic priorities and focus areas for compliance for the coming year.

As part of that Program as well as ensuring that applicants meet the requirements for grant of a labour hire licence, we:

- conduct compliance audits on licence holders

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- respond to complaints, information and intelligence
 - where appropriate, collaborate and share information with other regulators and enforcement agencies
 - conduct proactive compliance campaigns to address particular harms or to provide an industry compliance focus, and
 - investigate and bring civil penalty proceedings for prohibited conduct under the LHL Act.

The Compliance and Enforcement Program focusses resources at addressing those practices and risks that cause the greatest harm to Victorian workers and the Victorian community. Overall, our approach to compliance and enforcement is to:

- make it easy for compliant businesses by providing simple online processes, guidance and tools to support them in complying with the requirements of the LHL Act,
- educate and influence operators with non-compliance who are capable and willing to comply towards compliance, and
- remove egregious operators who have neither the capacity nor willingness to comply from the market.

PURPOSE

This policy:

- sets out the principles for improving compliance in the labour hire industry
- outlines strategies and tools we use to monitor compliance, conduct investigations, and enforce compliance, and
- explains how we will publicise compliance and enforcement actions.

PRINCIPLES


In regulating the labour hire industry, we are guided by the principles set out below:

Alignment with objects of the LHL Act

- We will work with businesses, workers, peak bodies, community groups and government agencies with the aim of protecting workers from exploitation and improving transparency and integrity of the labour hire industry.

Fairness and impartiality

- We will make independent, objective decisions, having regard to the facts of each case and a consideration of the public interest, including efficient and effective use of public resources.
- We will make consistent decisions, having regard to the similarities and differences in particular matters.
- We will balance the legitimate interests of those subject to licensing or enforcement decisions against our role in the Victorian community generally, and the labour hire industry specifically.

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- We will give providers a reasonable opportunity to make submissions regarding any decision that might adversely affect them.

Transparency

- We will publish:
 - policies that guide compliance and enforcement decision-making
 - details about licensing decisions
 - a [Register of Licensed Labour Hire Providers](#) to record information about licence holders and licences, including conditions, variations, suspensions, and cancellations, and
 - outcomes of court or tribunal proceedings
- We will give written reasons to providers about decisions which adversely affect them.

Accountability

- We will ensure compliance and enforcement decisions are made having proper regard to relevant considerations.

Helpfulness

- We will provide appropriate and timely information to help participants meet their obligations.
- We will educate the community about our functions.

Proportionality

- We will respond proportionately to suspected or proven non-compliance and consider the willingness to rectify any issues.

AVAILABLE COMPLIANCE AND ENFORCEMENT RESPONSES

A licence holder may be non-compliant if it:


- breaches a condition of its licence
- breaches the LHL Act or regulations, and/or
- is not compliant with the legal obligations set out in section 23 of the LHL Act.

Other persons may be non-compliant if they engage in prohibited conduct, for example by providing labour hire without a licence.

The following responses are available where non-compliance is found. The factors affecting the choice of the appropriate compliance response are dealt with in the next section.

Engagement and education

Promote improved compliance through broad or specific education or accepting an undertaking to implement measures directed at improving a provider's business practices.



Caution or warning

Give a written caution or warning to a provider outlining details of non-compliance and setting out potential consequences if it is not remedied.

Referral

Refer information to another regulator or enforcement agency.

Infringement notice

Give an infringement notice to a licence holder for the following non-compliance outlined in the LHL Act:

Section	Description
46	Failure to produce licence for inspection upon request
67(5)	Failure or refusal to produce documents relating to the business of providing labour hire services
74(2)	Failure or refusal to comply with a requirement under s.74(1) (entry of premises without consent or warrant)
85(2)	Refusal to allow access to premises of a person assisting an inspector

In place of issuing an infringement, an official warning may also be given under section 8 of the *Infringements Act 2006*.

Licence conditions

Impose licence conditions at the time of, or after, a licence is granted.

An applicant or licensee can comment on or object to proposed conditions. Licence conditions are generally aimed at promoting a provider's compliance with its legal obligations or providing greater transparency.

A decision to impose a condition is reviewable by the Victorian Civil and Administrative Tribunal (VCAT).

Notice to Comply

Serve a Notice to Comply if we believe on reasonable grounds that a licence holder is not complying with the LHL Act or regulations, or there are grounds on which the licence could be suspended or cancelled. The notice will specify the steps to remedy non-compliance and the timeframe for doing so.

Non-compliance with a Notice to Comply may attract a civil penalty under section 94 of the LHL Act.



Licence suspension

Suspend a licence if:

- the licence holder has contravened the LHL Act or regulations
- relevant persons in relation to the licence are not fit and proper
- relevant persons are not compliant with legal obligations, or
- the licence holder has given materially incorrect or misleading information, or the licence was obtained or renewed because of materially incorrect or misleading information,

and we are satisfied that unless the licence is suspended, substantial harm or detriment will be caused to one or more persons.

A decision to suspend a licence is reviewable by VCAT.

Licence variation

Vary a licence if there are reasonable grounds to do so.

The licence holder will be given a show cause notice with 14 days to respond to the proposed variation. Examples of variation include imposing conditions or shortening the period for which the licence is valid.

A decision to vary a licence is reviewable by VCAT.

Licence cancellation

Cancel a licence if:

- the licence holder has contravened the LHL Act or regulations, or
- relevant persons in relation to the licence are not fit and proper, or
- relevant persons are not compliant with legal obligations, or
- the licence holder has given us materially incorrect or misleading information, or the licence was obtained or renewed because of materially incorrect or misleading information, or
- the licence holder is no longer providing labour hire services.


The licence holder will be given a show cause notice with at least 14 days to respond to the proposed cancellation.

A decision to cancel a licence is reviewable by VCAT.

Where the cancellation is at our initiative, the former licence holder is not eligible to apply for another licence for two years.

Civil penalty proceedings

Bring civil penalty proceedings for contraventions of the following provisions of the LHL Act:



Section	Description
13	Providing labour hire services without a licence
14	Advertising labour hire services without a licence
15	Entering an arrangement with an unlicensed labour hire provider
16	Avoidance arrangements
36	Failure to comply with a licence condition
37(3)	Failure to comply with a notice to comply
43	Failure to notify of changes
44(1)	Failure to notify of prescribed changes
45	Failure to ensure availability of nominated officers
67(1)	Failure to make documents available for inspection
67(2)	Failure to retain certain documents for 6 years
86(1)	Threatening or intimidating conduct
86(2)	Adverse action

In addition to pecuniary penalties, courts can make other orders including mandatory or prohibitive injunctions directed at stopping or preventing contravening conduct or remedying the effects of a contravention.


The LHL Act also imposes accessorial liability on those who aid, abet, counsel, procure or who are otherwise involved in a contravention of the civil penalty provisions.

A civil penalty proceeding must be commenced within six years of the contravention.

DECISION-MAKING CONSIDERATIONS

Choice of the appropriate compliance response will consider the principles set out above and the facts and circumstances of the case. The following matters may be relevant considerations:

- the relative seriousness of the non-compliance, particularly in the context of harm to others,
- whether the non-compliance is inadvertent, negligent, deliberate or arising from blatant disregard by the person for their legal obligations,
- whether we have previously engaged with the person about the subject matter, and any response to that engagement,
- any fact or circumstance that demonstrates or suggests recidivism,
- in the case of natural persons, any personal mitigating circumstances of which we are aware,
- the interests of other regulators or enforcement agencies,
- the effect of the compliance response on the viability of the licence-holder,
- proportionality of the compliance response to the contravention,
- the need to deter others from engaging in similar conduct,
- whether the person has cooperated with us and if so, the nature and extent of that cooperation,
- any submission that the person has made about the conduct and proposed compliance response, and
- whether the person has suffered or is likely to suffer some other penalty or punishment for the same conduct.



We may use more than one compliance response to address conduct. For example, we may take an educative approach but also impose a condition on the provider's licence, or in some cases, we may both cancel a provider's licence and bring a civil penalty proceeding against the provider.

Specific considerations regarding prohibited conduct

In determining which matters to investigate, we have regard to a range of factors, including:

- the nature and seriousness of the alleged contravention,
- its strategic and operational priorities,
- the efficient use of public resources,
- the sanction that applies to the alleged contravention, and
- the need for specific and/or general deterrence.

Investigations

During an investigation, we may gather evidence by:

- conducting interviews with witnesses and taking statements or affidavits,
- requiring persons to produce documents or provide information,
- documenting relevant information, including by taking photographs or audio-visual recordings,
- working collaboratively with law enforcement agencies and other regulatory bodies, and
- entering and searching premises for evidential material under a power conferred by the LHL Act or pursuant to a search warrant.

Prior to bringing proceedings, a respondent will be given a reasonable opportunity to respond to the substance of the alleged prohibited conduct. A respondent may make submissions as to the course that should be taken by us.

Enforcement


At the conclusion of an investigation, we may do one or more of the following:

Take no further action

We will take no further action if we form the view that:

- there is no reasonable prospect a court could be satisfied on the balance of probabilities that a contravention of the LHL Act has occurred, or
- it is not in the public interest to take any further action.

We will have regard to the matters outlined in the [Policy of the Director of Public Prosecutions for Victoria](#), in particular as they pertain to considering public interest factors in proceeding with a civil penalty matter.



Civil penalty proceedings

We may seek orders from a court in its civil jurisdiction under section 93 of the LHL Act, including:

- payment of a pecuniary penalty, and/or
- a mandatory or prohibitive injunction requiring a person to do something, or refrain from doing something, in connection with a contravention, and/or
- any other order that is necessary to remedy the effects of a contravention or stop the conduct that constitutes the contravention.

PUBLICATION OF COMPLIANCE AND ENFORCEMENT ACTIVITIES

Our statutory functions include promoting compliance with the LHL Act, disseminating information about the duties, rights, and obligations of persons under the LHL Act, and maintaining the [Register of Licensed Labour Hire Providers](#).

These functions are furthered by publication of information about compliance and enforcement outcomes. Subject to the LHA's Communications Policy, we may publish on our website and in other public forums (including by way of media release) information including:

- decisions to suspend, vary or cancel a licence,
- a decision to commence a criminal or civil proceeding against a person,
- de-identified case studies of investigations, whether or not the investigation results in enforcement action, and
- statistics about our compliance activities.

REVIEW

This policy must be reviewed three years after the date approved by the Labour Hire Licensing Commissioner or before that date in the following circumstances:

- the LHA is affected by a machinery of government change,
- the LHA undergoes a major organisational change,
- major operational issues are identified in respect of the policy,
- a new Labour Hire Licensing Commissioner is appointed,
- a review is requested by the Executive Team or the Audit Review Committee.

The review must consider the effectiveness of the policy in meeting its purpose, whether it has promoted the policy principles and any other matter that would be relevant to assessing its operation, including any specific, measurable, achievable, relevant and time-based key performance indicators.

The Executive Team will be notified of the outcome of the review and whether the policy needs to be revised.



REVISION AUTHORITY

Any major change to this policy that would significantly affect the intention, outcomes, and operation of the policy, and any change following a review of the policy, must be endorsed by the Executive Team, and approved by the Labour Hire Licensing Commissioner.

Any minor change that would not result in a substantive change can be approved by a relevant Manager. A minor change may include minor changes to the text of the policy (for instance to correct typographical errors or changes to names, expressions, and terminology to align with current practices), updates to relevant contact persons and details, and minor updates to relevant dates, timeframes, and metrics.

VERSION CONTROL

Date	Author	Approved by	Description
18/10/2019	General Counsel	Commissioner	Created document
16/07/2020		Chief Operating Officer	Format changes
03/09/2021	Special Counsel	Commissioner	Revised document
09/03/2022	Manager, Strategy and Governance		Format changes
23/03/2022	Director, Complex Harms Taskforce		Review of document

CONTACTS

The Manager, Compliance and Enforcement will be able to assist with any questions regarding this policy.

APPROVAL

This policy was approved by the Labour Hire Licensing Commissioner at the Executive Team meeting on 30 March 2022.



Steve Dargavel

Labour Hire Licensing Commissioner

1 April 2022