

Reasons to impose conditions

1. You intend to provide, or are providing workers, in the meat manufacturing or meat processing industries, prescribed industries under the *Labour Hire Licensing Act 2018* (Vic) (**the Act**) and *Labour Hire Licensing Regulations 2018* (Vic) (**the Regulations**).
2. **‘Meat manufacturing establishment’** means an establishment wholly or predominantly concerned with the manufacturing or processing of fresh meat into any form of edible manufactured or processed meat, meat products, smallgoods, ham, bacon, or similar products in which meat is a substantial ingredient, including any related activities such as retail or wholesale sales, and killing, dressing, boning, slicing, preparation and packing of fresh meat, where such activities are conducted at any place as an ancillary part of the manufacturing or processing business.
3. **‘Meat processing establishment’** means an establishment wholly or predominantly concerned with killing, dressing, boning, slicing, preparation or packing fresh meat, and includes any related activities conducted at any place as an ancillary part of such a business, such as manufacturing or processing meat, the treatment and processing of skins or hides, rendering, processing of by-product, and retail or wholesale sales.
4. The objects of the Act are:
 - a. to protect workers from being exploited by providers of labour hire services and hosts
 - b. to improve the transparency and integrity of the labour hire industry.
5. Prescribed industries are defined as those where there are significant risks of worker mistreatment and exploitation. Key issues in the meat manufacturing and meat processing industries are outlined in the Labour Hire Authority’s (LHA) [industry guidance](#).

Limitation on use of independent contractors

6. Misclassification of employees as independent contractors and sham contracting is consistently identified through various inquiries and reports as one of the most used and harmful practices in the labour hire industry. The practice causes serious harms:
 - a. to workers, through undercutting minimum wages set in the modern award or enterprise agreement that would otherwise apply if the worker were correctly engaged as an employee, and the perceived ability to avoid other legal obligations such as superannuation
 - b. to the community, through the perceived ability to avoid taxation obligations such as PAYG withholding and payroll tax, and failing to pay adequate premiums for workers’ compensation and
 - c. to compliant businesses, who are unfairly disadvantaged when competing against non-compliant providers who have unlawfully lowered their costs.
7. Evidence presented to the *Victorian Inquiry into the Labour Hire Industry and Insecure Work (2016)* showed sham contracting to avoid workplace laws, and other statutory obligations, as being particularly prevalent in the meat manufacturing and meat processing industries.
8. LHA’s licensing, compliance and enforcement activities highlight worker misclassification and sham contracting as an ongoing and prevalent harm in the meat manufacturing and meat processing industries.

9. LHA's view is that workers who are engaged to perform meat manufacturing or processing activities, outlined in the Regulations, are ordinarily employees, rather than genuine independent contractors because typically they:
 - a. perform work under the direction and control of providers and/or hosts who control hours, work location and how work is done
 - b. carry no financial responsibility or risk for the work performed
 - c. use chemicals and equipment provided by the labour hire provider or host
 - d. are required to do the work themselves and employed principally for their labour.
10. While it is conceivable there may be exceptions to this view, LHA believes it is appropriate to prevent you from engaging/supplying workers performing these activities as independent contractors.
11. If these licence conditions are imposed, and you wish to engage a worker performing the above activities as an independent contractor (and you consider doing so would not result in the worker being incorrectly classified as an independent contractor rather than an employee) then you must apply to vary the licence. You will be required to make out a compelling case.

Labour Hire Information Sheet

12. The Labour Hire Information Sheet (**LHIS**) complements the Fair Work Information Statement and, when applicable, the Fixed Term Contract Information Statement or Casual Employment Information Statement (these are the **FWSs**).
13. The FWSs are mandatory documents that inform new employees of their rights and entitlements under Australian employment laws. All new employees must receive the relevant FWSs. The FWSs can be accessed on the [Fair Work Ombudsman's website](#).
14. The obligations on labour hire providers to give their employees FWSs remain, and LHA may make checks to ensure compliance, but the FWSs do not cover the important work LHA does to protect workers.

Use of subcontractors and payroll service providers

Subcontractors

15. Subcontracting increases the risks of non-compliance with legal obligations under workplace, taxation, superannuation and occupational health and safety laws by shifting the risk down the supply chain.
16. While subcontracting can be a perfectly legitimate business model, it can also be used by unscrupulous operators to illegitimately minimise cost and obscure operators lower in the chain from regulators.
17. Every time an additional tier of subcontracting is added in a labour hire arrangement, the arrangement becomes increasingly opaque. Also, the potential for providers' profit margins reduces leading to a greater inducement to exploit workers.
18. The condition addresses the risks created by a subcontracting business structure by limiting subcontracting tiers and requiring supply chain transparency.

Payroll service providers

19. Outsourcing payroll services can lead to loss of control over payroll, compliance issues, data breaches and make it difficult for businesses to manage payroll processing effectively. These risks may lead to contraventions of the legal obligations contained within section 23 of the Act.

Cash payments

20. Cash payments increase the risk of non-compliance with legal obligations and worker exploitation. These risks include underpayment of wages, non-payment of superannuation, avoidance of tax obligations and failure to pay workers compensation insurance. Such non-compliance harms workers, puts legitimate businesses at a disadvantage, and results in loss of revenue for government services.
21. Cash payments can be used to hide unlawful practices such as worker underpayment, unlicensed labour hire, and illegal activities such as money laundering or illegal phoenixing.
22. Cash payments are particularly widespread in industries with fluctuating work, and a high proportion of migrant workers from a range of backgrounds.
23. Cash payments make it harder for LHA and other regulators to identify a worker's real employer and confirm that workers are receiving their lawful entitlements. They hinder LHA's capacity to monitor compliance by licence holders with their legal obligations.
24. Requiring licence holders to make electronic payments to workers and subcontractors will make it easier for LHA and other regulators to monitor and investigate compliance with legal obligations. The use of electronic payments for the payment of wages and subcontractors is well established in modern business.
25. The conditions will support a more level playing field for providers who do the right thing.
26. The conditions allow for flexibility where there is a genuine need for cash payments.

Change in industry

27. Different industries carry unique risks to workers. LHA needs to assess your capacity to comply with the legal obligations in section 23 of the Act relevant to the industry.

Workplace health and safety

28. Under the *Occupational Health and Safety Act 2004* (Vic) (**OHS Act**), both labour hire providers and hosts have a duty to workers—employees and independent contractors—to, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health.
29. This requires both hosts and labour hire providers to cooperate in this duty. In these conditions, the focus is on the provision and use of protective equipment and clothing (**PPE**). When hazards in the workplace cannot be eliminated or reduced by other risk controls, the safety duty requires the provision and use of suitable PPE to minimise any remaining risks to health and safety.

30. Outside of Victoria, the model workplace health and safety laws apply. These contain express provisions that deal with the supply and use of PPE in labour hire, and prohibit a worker being required to pay for PPE. Under the OHS Act and its regulations, such can be inferred, but it is not express. Moreover, some contracts, awards and enterprise agreements deal with the provision of PPE, and some do not.
31. To make labour hire providers' duties on the provision of PPE clearer, especially in industries where higher levels of worker exploitation have been recorded, a condition on this issue is reasonable and proportionate.
32. Note that PPE includes:
- a. overalls and protective aprons
 - b. high visibility vests
 - c. protective headgear - safety helmets, wide brimmed hats to protect against the sun
 - d. safety boots or shoes
 - e. safety glasses or goggles
 - f. gloves
 - g. respirators and masks
 - h. earmuffs and earpieces.
33. As well as providing PPE, workers should be trained in the proper use, wearing, storage and maintenance of PPE. This training and instruction must be provided prior to the commencement of work that requires the use of that PPE.

Accommodation

34. LHA has identified the meat manufacturing and meat processing industries of being at high risk of non-compliance with minimum accommodation standards.
35. LHA holds information indicating the procurement or provision of accommodation for workers is a feature of licence holders operating in the meat manufacturing and meat processing industries.
36. LHA's observations during field visits, intelligence received from workers, other State and Commonwealth regulators and non-governmental support agencies, along with media reporting, shows that accommodation procured or provided to workers by licence holders in the meat manufacturing and meat processing industries is often substandard, including:
- a. overcrowding
 - b. significant fire safety risks posed by use of gas bottles in makeshift kitchens, non-functional or insufficient smoke alarms, informal building works and insufficient cooking facilities leading to the use of rice cookers powered by extension cords/power boards
 - c. significant mould
 - d. holes in ceilings and roofs and broken or boarded up windows
 - e. failures to provide sufficient functioning facilities for the numbers of occupants (such as those supporting cooking, bathing, toileting and washing).
37. The procurement or provision of substandard accommodation to workers can lead to a range of risks of significant harms to workers, including:
- a. risks to health and safety arising from lack of fire safety controls, unhygienic conditions and poor quality rest and nutrition

- b. increased risks of psychosocial harm and of experiencing sexual harassment or assault magnified by overcrowding, lack of privacy and security facilities and poor attention to accommodation makeup
 - c. making of unreasonable deductions on wages, in contravention of section 323(1)(a) of the *Fair Work Act 2009* (Cth), which is a form of financial exploitation.
- 38. Obligations to comply with applicable minimum accommodation standards are introduced by way of subsections 23(1A), (2) and (3) of the Act.
- 39. Non-compliance with a minimum accommodation standard may result in a person being deemed not fit and proper under section 22 of the Act. LHA may refuse, not renew, suspend, or cancel a licence if it is not satisfied that a relevant person to a licence is compliant with their obligations to comply with any applicable minimum accommodation standards.
- 40. Ensuring that licence holders procure or provide accommodation for workers that is safe and of a reasonable standard, remains so throughout the entire period of workers' occupancy, and complies with minimum accommodation standards aligns with the objects of the Act to protect workers from being exploited by providers of labour hire services and hosts.
- 41. The definition of minimum accommodation standards provided in section 3 of the Act currently incorporates a broad range of legislation, some of which is technical in nature. LHA imposes this licence condition to provide practical guidance to licence holders about compliance with their legal obligations and LHA's minimum expectations about the safety and standard of accommodation procured or provided to workers.