

A collage of various workers in different industries, including manufacturing, healthcare, and logistics, arranged in a hexagonal pattern. The text "State changes legal ons" is partially visible on the left, and "LABOUR HIRE AUTHORITY" is visible on the right. The collage includes images of a person working on a machine, a person in a hard hat and safety gear, a person in a lab coat, a person in a warehouse, a person in a factory, a person in a hospital, a person in a warehouse, a person in a factory, a person in a warehouse, and a person in a factory.

13 October 2022



**LABOUR
HIRE
AUTHORITY**

The Labour Hire Authority acknowledges the Aboriginal Traditional Owners of the land on which we meet, and pays respect to their cultures and Elders past and present.

Today I am joining you from the traditional lands of the Dja Dja Wurrung and Taungurung Peoples of the Kulin Nation.

LHA also acknowledge Aboriginal Elders of other communities who may be here today.



Agenda

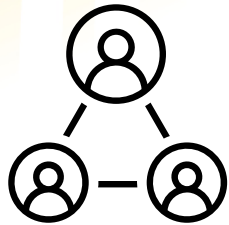
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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| • Labour Hire Authority update <ul style="list-style-type: none">• Compliance / engagement• Recent case studies• Employee or contractor | 20 mins |
| • Questions for LHA | 10 mins |
| • Changes to OHS obligations presented by WorkSafe | 20 mins |
| • Questions for WorkSafe | 10 mins |

Submit any questions in the Q&A box

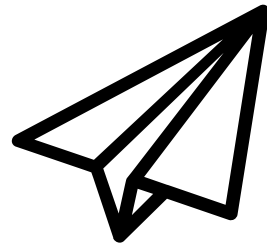
After the presentation, please complete our survey – link in the Q&A box



Labour Hire Authority



Today we have hundreds of providers, and some hosts, from many different industries



If you have a question we can't get to today, email enquiries@labourhireauthority.vic.gov.au with '13 October' in the subject heading



We will hold further in-person seminars offering more time for discussion and Q&A in more focused groups for specific industries and regions



Compliance and engagement



Labour hire provider obligations

- Providers **must** hold a valid labour hire licence and comply with relevant laws
- LHA engages with businesses and supports them in compliance
- LHA investigates and deals with non-compliance



Supporting engagement FY2021-22

- 8,367 phone calls to our general enquiries line
- 1,867 requests for information sent to providers
- 5,675 emails received by our enquiries box
- 4,205 Annual Reports
- 110,825 visitors to labourhireauthority.vic.gov.au
- Publication of e-newsletter
- Register & follow the provider
- Engagement with industry bodies, providers and hosts

A healthcare worker, likely a nurse or doctor, is shown in a hospital setting. She is wearing blue scrubs and a blue lanyard with the word 'STAFF' repeated. She is looking down at a document or chart she is holding. In the foreground, there is a metal cart with various medical supplies, including a bottle of hand sanitizer and some containers. The background is a blurred hospital hallway with other people and lights.

Engagement and guidance

- Making provider and host obligations clear
- Influencing behaviour change of head labour hire providers in respect of their supply chain of smaller providers
- Providing guidance about what it **costs** to comply
- Making obligations to workers clear
- Security industry case study



Case study: Security industry engagement

- Identified a range of compliance problems
- Invited security industry providers to a forum, with LHA and other regulators
- Consulted industry on cost guidance material
- Published guidance material
- Introduced licence conditions for larger labour hire providers about their supply chains
- We have a range of industries to focus on

Non-compliance FY2021-22

- **373** involuntary licence cancellations
- **18** with specific conditions imposed
- **118** licence applications refused
- **192** investigations into non-compliance completed, including site inspections
- **258** investigations underway
- **20** matters in VCAT and the Supreme Court

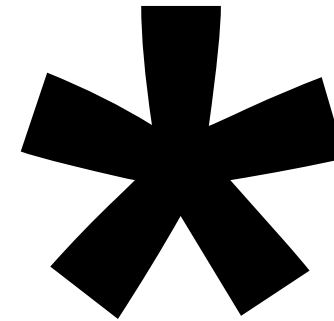




Recent case studies

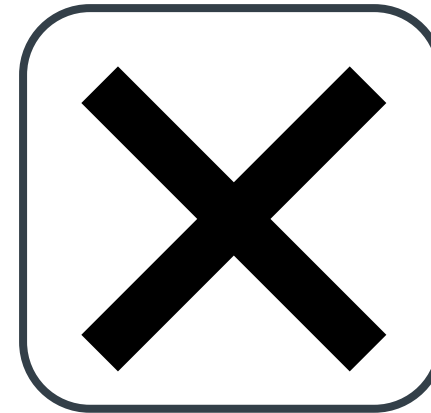
Case study: Condition imposed

- A provider didn't pay workers for site inductions and failed to provide necessary PPE gear
- The provider cooperated and wished to address the problem
- LHA issued licence condition requiring the provider to pay for inductions and PPE
- LHA were satisfied that the condition was met by the provider



Case study: Licence cancellation

- LHA investigated complaints about underpayment and illegal “off the books” payment of workers
- The investigation found evidence of underpayment, avoidance of superannuation and tax obligations
- We issued a show cause notice asking the provider to explain why we should not cancel
- After carefully considering their response
LHA cancelled their license



Case study: Legal proceedings

- A provider **deliberately tried to avoid** the licensing scheme
- LHA issued proceedings in the Supreme Court against the business and the Director personally
- The Court decided that both the Company and the Director personally would be subject to penalties



Next Steps for LHA

- Multiple industry and regional forums
- Horticulture and commercial cleaning industries
- **Compliance focus:**
 - Unlicensed providers
 - Misuse of independent contracting
 - Pyramid contracting
 - Phoenix behaviour



You should know:

Employee or contractor

The High Court recently made an important decision in *Personnel* about labour hire and independent contractors

The contract stated the labourer was an 'independent contractor'. The provider sent the worker to a host and **did not comply with the Award rate**

The High Court found that the worker was in fact an employee and entitled to award conditions. **The Court disbanded its previous approach, e.g. in *Odco***

The nature of a labour hire arrangement, in and of itself, challenges *whether a low skilled worker can be an independent contractor despite a contract which says so*

LHA is targeting any misuse of independent contracting to pay less than the award

**For more information, visit:
labourhireauthority.vic.gov.au**



WorkSafe Victoria

Changes to labour hire obligations

Labour Hire Authority Webinar
13 October 2022

Natalie Wellard

Manager – Legislative Services and Reform

Anita Forde

Manager – Industry and Representation Support

David Leermakers

Senior Legislative Services Advisor



**Reducing
workplace
harm.**

**Improving
outcomes for
injured workers.**

COMMERCIAL IN CONFIDENCE — Do not circulate without WorkSafe's written permission.

What we will discuss

Amendments to the *Occupational Health and Safety Act 2004* (OHS Act) relating to labour hire arrangements commenced on 22 March 2022.

This presentation will explain the driver for those changes, implications for employers and workers, and where you can find further information.

1. Policy background to the amendments
2. Extended definition of “employer and employee”
3. Duty of consultation, cooperation and coordination
4. Q&A

Policy context – the Forsyth Inquiry

A lack of clarity around responsibility for the safety of labour hire workers

...category of workers need a more appropriate regulatory approach to ensure the safety of labour hire workers than current Victorian regulation.

This conclusion is strengthened once the 'horizontal' (concurrent) consultation obligation of relevant duty-holders is also taken into account (p 136)

A lack of representation rights, and protections against victimisation

...labour hire employees should have access to the same rights of representation in relation to OHS issues as other Victorian employees.

However, the OHS Act offers only limited protection to labour hire staff, particularly in respect of their treatment or representation at the main locus of activity: the host's worksite (p 140)

Extended definition of “employer” and “employee”

New section 5A of the OHS Act extends the definitions of “employer” and “employee” so labour hire workers are considered employees of both the provider and the host.

This ensures that labour hire workers have the same rights and protections as direct employees of an employer

Section 5A is drafted so as to only apply to labour hire relationships regulated by the *Labour Hire Licensing Act 2018*.

- Labour hire workers are now treated as an “employee” of both the provider and the host
- Labour hire workers will benefit from OHS representation and protections against discrimination at their host’s workplace
- Hosts have additional duties towards labour hire workers, notably those under s 22
- Existing obligation of hosts towards labour hire workers under sections 21 and 35 remain
- No changes to obligations for providers
- No changes to obligations under other Acts

New duty of consultation, cooperation and coordination

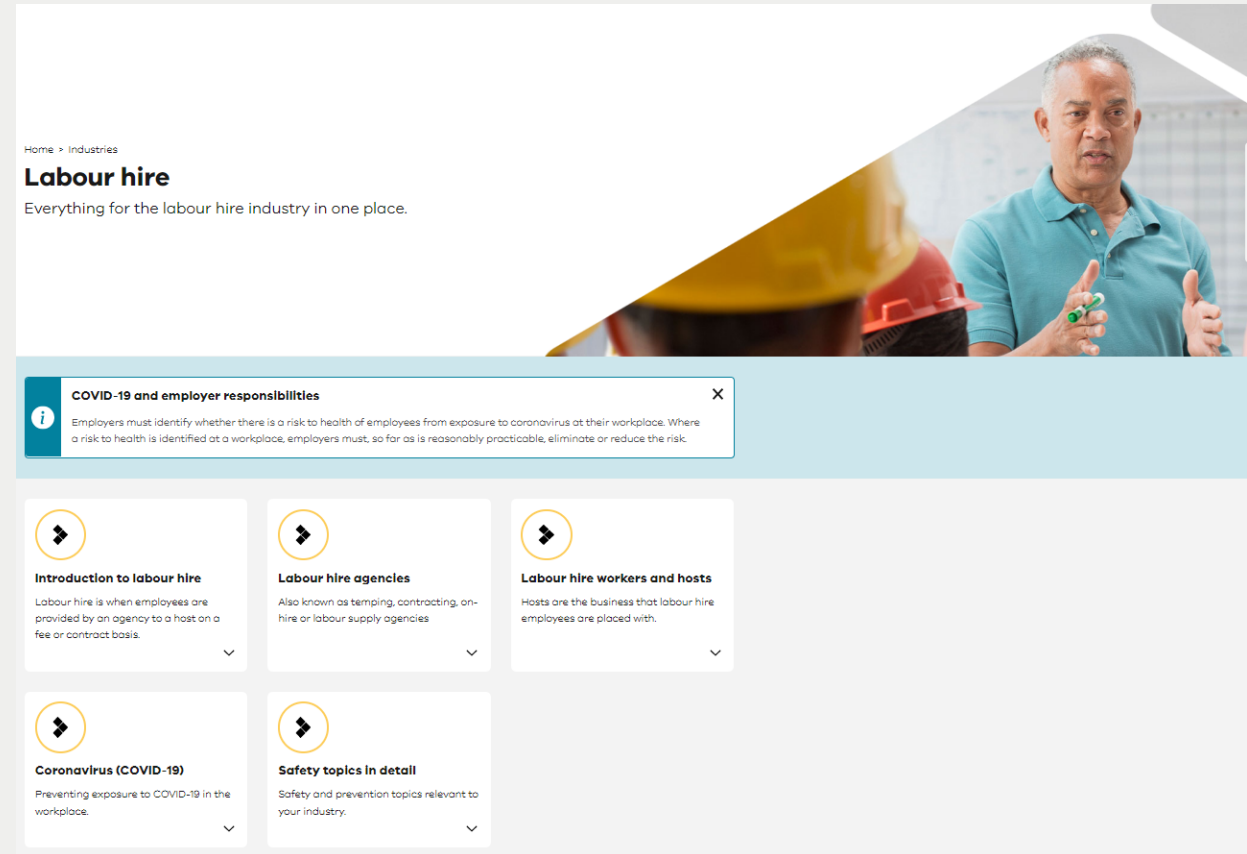
New section 35A of the OHS Act requires providers and hosts to consult, cooperate and coordinate where they share OHS Act duties in respect of the same workers.

Maximum penalties for non-compliance are approximately \$33,285 for individuals and \$166,428 for body corporates

- Introduces a “horizontal” duty of consultation between providers and hosts
- “Consultation”, “cooperation” and “coordination” are not defined in the Act, but WorkSafe has published guidance
- Does not apply to any employers outside of a labour hire arrangement
- Does not create a new requirement for employers to consult with employees

Further information is on our website

- Summary of the recent changes
- Detailed guidance on the duty of consultation, cooperation and coordination
- Guidance for providers and hosts
- Industry-specific case studies



Questions



Contact WorkSafe



legislation@worksafe.vic.gov.au

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