

LABOUR HIRE AUTHORITY

REGULATORY APPROACH

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1 INTRODUCTION

This regulatory approach sets out how the Labour Hire Authority (LHA) ensures labour hire providers and hosts comply with the *Labour Hire Licensing Act 2018* (Vic) (**Labour Hire Licensing Act**). It provides an overview of who we are and what we do, our vision and strategic priorities. It covers the principles that guide us in performing our regulatory functions. It informs regulated parties of the objectives and decision-making principles that guide our licensing, compliance and enforcement activities.

1.1 OUR ROLE

The Victorian Inquiry into the Labour Hire Industry and Insecure Work (2016) investigated the practices of labour hire providers. The Inquiry found a wide variety of legal compliance. Some highly transparent businesses complied with workplace, health and safety laws and other applicable laws. Other businesses operated almost entirely outside the existing legal framework. It found systemic issues in the labour hire industry including the exploitation of workers. The Inquiry delivered recommendations to address these issues. The recommendations resulted in the Labour Hire Licensing Act.

The LHA was established in 2019 to administer the Labour Hire Licensing Act . Our primary purpose is to protect workers in the labour hire industry from exploitation. We aim to improve the transparency and integrity of the labour hire industry. This will ensure transparent and compliant labour hire providers do not face unfair competition from dishonest operators.

We are responsible for ensuring:

- only labour hire providers who comply with relevant laws are licensed
- no unregulated labour hire services take place.

Our role is not to seek redress or enforcement of related laws such as workplace law. Instead, our role is to:

- only license labour hire providers who comply with their relevant obligations
- enforce the Labour Hire Licensing Act and deal with unlicensed providers.

We work closely with other regulators who administer other laws labour hire providers must comply with.

The key objectives of the Labour Hire Licensing Act are to:

- protect workers from exploitation by labour hire services providers and hosts
- improve the transparency and integrity of the labour hire industry.

Our key functions

Licensing

We license providers of labour hire services in Victoria. We also maintain a public register of licensed labour hire providers.

Educating

We educate labour hire providers about relevant laws such as workplace law.

We distribute information about the rights of labour hire workers and about the obligations of labour hire providers and hosts.

Compliance monitoring

We monitor labour hire providers' compliance with relevant laws.

Enforcing

We enforce compliance with the Labour Hire Licensing Act.

We investigate suspected breaches of relevant laws by labour hire providers. We then cancel or suspend licences or introduce licence conditions, where appropriate.

We collaborate with other regulators responsible for compliance with relevant laws, when appropriate.

Intelligence gathering

We conduct, procure and support research into the labour hire industry.

Industry regulation

We regulate the entire labour hire industry regardless of occupation, or sector of supply.

We ensure labour hire providers comply with their workplace-related obligations, including workplace law, taxation law, migration law, and transport and accommodation standards.

To comply with workplace law, labour hire providers must follow:

- the modern awards
- occupational health and safety law
- prohibitions against sham contracting
- workplace injury rehabilitation and compensation law
- superannuation law
- long service leave law
- equal opportunity law
- child employment law

We operate our labour hire registration and licensing scheme to manage labour hire providers.

Labour hire providers must comply with their obligations to be licensed. They must be licensed to provide and advertise their services.

Under the Labour Hire Licensing Act

- Labour hire providers must be registered and licensed to advertise and provide labour hire services in Victoria.
- Labour hire providers must comply with all workplace laws to be licensed and demonstrate this annually.
- Hosts must only use licensed labour hire providers.

Failing to meet these requirements breaches the Labour Hire Licensing Act.

1.2 OUR STRATEGIC INTENT

We are determined to stop the exploitation of labour hire workers. To do this, we use tools proportionate to the harms involved. We:

- put labour hire workers at the centre of everything we do
- protect workers from dishonest labour hire providers and their hosts
- understand there are labour hire workers who are being exploited in different ways
- recognise that labour hire workers are at a higher risk of being exploited because of the nature of labour hire
- recognise that exploitation is widespread in industries that rely upon low- or semi-skilled workers
- recognise labour hire workers experience harms with significant impacts in all industries and occupations.

Low-skilled or semi-skilled workers are often found in horticulture, commercial cleaning, meat processing and the security industries.

We focus on addressing non-compliant labour hire providers and those hosts who exploit workers.

Labour hire workers, providers, and hosts now have an authority who is dedicated to ensure integrity and transparency in their industry.

1.3 OUR REGULATORY APPROACH

Our primary aim is to protect workers from exploitation. We also ensure the labour hire industry operates fairly and with integrity and transparency.

Our approach is to engage the industry broadly and take clear, determined and targeted action to address worker exploitation. We adapt our actions to the characteristics of industries or businesses we deal with. We collaborate with other regulators and law enforcement agencies on intelligence, resources, and enforcement. We use licensing and ongoing compliance monitoring to achieve our objectives.

Our approach includes:

- risk-based assessments of licence applications to seek to ensure only those who should be operating in the industry can do so

- prioritising action against unlicensed labour hire providers who cause harm
- acting against hosts who use unlicensed labour hire providers
- identifying and ridding the industry of those who are deliberately breaking the law
- cancelling a labour hire provider's licence to stop unlawful behaviour.

As part of our approach, we also:

- collaborate and share information and intelligence with other regulators to target specific providers, specific areas of non-compliance and specific industries
- know the labour hire industry well, including the culture of the industry, the level of compliance in the industry, how the risk of exploitation is evidenced, and where the worst exploitation is happening
- inform labour hire industry providers about their obligations
- publicise the outcomes of our investigations and enforcement actions as a deterrent
- inform labour hire workers about their rights under workplace laws to empower them.

2 OUR REGULATORY PRINCIPLES

Our regulatory principles guide how we function and meet our objectives.

2.1 DETERMINED

Determination is central to our regulatory approach. We are determined to act to protect labour hire workers from unlawful exploitation in a transparent and accountable way.

We monitor all industries, providers and hosts. We use our licensing and ongoing compliance monitoring to great effect. We are determined to ensure the labour hire industry is fair. We support providers and hosts who do the right thing. We discourage and act against those who do not.

We will not hesitate to act where providers or hosts are not complying with their obligations. Where we identify behaviour that creates the risk of widespread exploitation or criminal conduct, or harms with significant impact, we will take urgent action to stop the behaviour. This includes immediately suspending or cancelling licences. Where providers operate without a licence, we will act.

2.2 COLLABORATIVE AND CONSULTATIVE

We collaborate to achieve our objectives. We collaborate and consult with providers and hosts who want to be compliant.

We use our relationships with other regulators and enforcement agencies to consult on and share intelligence and resources. We work together on targeted enforcement action against non-compliant providers and hosts.

We maintain and grow our collaborative and high-performing culture, and efficient work practices and processes to maximise compliance outcomes and achievements.

2.3 INTELLIGENCE-LED

Our approach to regulation is intelligence-led. It informs how we make decisions about managing key compliance risks. Subject to law, we share intelligence with other regulators and law enforcement agencies to target high-risk industries, behaviours and non-compliant providers and hosts.

This information includes company, operational health and safety, payroll and taxation information. It also includes intelligence from national and state regulators, law enforcement agencies, local governments and industries. We combine and integrate this information to create clear industry and business intelligence.

We use this intelligence to adapt and target our licensing decisions and enforcement actions. We also use it to continually improve our operational practices and performance.

2.4 CLEAR, TARGETED AND TAILORED

We are clear, targeted and tailored in performing our regulatory functions. Through our intelligent-led and risk-based approach, we have evidence to make consistent decisions about industries and business we target to minimise worker harm. We adapt our approach to fit compliance problems. We use our licensing and enforcement tools in a way that is consistent, fair and impartial.

Through this approach, we change industry behaviours, create a fair system, reduce worker exploitation and improve conditions.

3 OUR COMPLIANCE POLICY

Our compliance policy describes how we perform our regulatory functions. This includes how we:

- make licensing decisions
- implement compliance and enforcement action for providers and hosts
- make decisions to use the range of tools at our disposal

3.1 OUR APPROACH TO LICENSING DECISIONS

When managing licence applications and renewals, we set high standards. We use discretion to grant licences, grant them with conditions, or refuse licences. When making licensing decisions, we consider applications on completeness, accuracy and integrity. We also consider the situation and context of the applicant. Where further investigation is warranted, we work with other regulators and law enforcement agencies to gather the evidence we need to make a licensing decision.

During our licensing process, we:

- validate that applicants provide the correct information

- validate the applicant's declarations of compliance with the laws covered under the Labour Hire Licensing Act
- conduct a 'fit and proper person test' for applicants
- ensure licence application fees are paid
- validate the application and licence information with other organisations, including other regulators and law enforcement agencies
- consider concerns raised by labour hire workers
- assess specific and general compliance risk involving the applicant, which may need further inquiry or guide our compliance monitoring and enforcement regime after issuing a licence
- deal with formal objections.

To determine if we are satisfied and it is appropriate to grant, condition, suspend or refuse a licence, we:

- consider non-compliance with relevant obligations and the extent and nature of harm to workers, or compliance behaviours in the sector of supply
- compare compliance statements made by parties for inconsistencies using intelligence from WorkSafe, AUSTRAC, Australian Border Force, the Australian Taxation Office, Victoria Police, the Australian Federal Police and others
- consider complaints and reported problems made about the conduct of providers and hosts.

3.2 OUR APPROACH TO COMPLIANCE MONITORING

We have dedicated Inspectors with specific powers to monitor, investigate and enforce compliance. We do this by conducting periodic inspections of:

- holders of licences with conditions, or providers who have received notices to comply.
- licence holders with high-risk profiles for non-compliance.

We also:

- respond to reported problems about worker conditions, conduct of providers and hosts, and non-compliant activities to determine what enforcement action we should take
- use our intelligence-led and risk-based approach to focus monitoring activities in specific industries or occupations
- share data and intelligence about non-compliance with other regulators.

To address systemic problems in industries based on their risk characteristics and identified problems, we design and execute tailored compliance campaigns to address those problems. We use our discretion to prioritise targets and work effectively with other regulators and law enforcement agencies.

3.3 OUR APPROACH TO ENFORCEMENT

We enforce the Labour Hire Licensing Act 2018 with focussed determination.

There are three priority areas where we concentrate our investigation and enforcement of prohibited conduct:

1. Hosts who enter arrangements with unlicensed providers.
2. Unlicensed labour hire providers.
3. Avoidance arrangements.

We work with other regulators to enforce prescribed laws. We use our licence powers to ensure those who defy their obligations either stop doing so or stop operating. In this way, we help other regulators achieve their objectives.

We disrupt unlawful behaviour in the industry by acting against hosts. We make sure unlicensed providers cannot operate outside of the licensing system. We act against those who deliberately defy the law.

We have significant powers to monitor and enforce compliance with the licensing scheme. Where there are reasonable grounds, our inspectors can:

- enter and search premises
- examine and take anything suspected of being connected with possible non-compliance
- inspect documents and make copies or take extracts from documents
- make images or recordings
- apply to the Magistrates' Court for search warrants.

We use these powers to gather the evidence required to bring court action.

When determining to take court action, we consider:

- if educative or deterrent effect is likely to change behaviour
- the seriousness of the conduct where there is evidence of, or potential for, significant harm to workers, and particularly where this conduct is ongoing
- criminal activity, blatant disregard for the law, or pattern of apparent deliberate non-compliance
- any special circumstances, such as substantial conduct affecting vulnerable or disadvantaged workers.

3.4 OUR APPROACH TO INFORMING AND EDUCATING WORKERS, PROVIDERS AND HOSTS

We work to educate workers, providers and hosts so they know their rights and obligations. We do this by:

- providing clear information on our website
- running education forums
- issuing informative e-newsletters.

Through this action, we help willing parties to improve their compliance and to operate reputably. We also provide workers and business with the knowledge to know what to do when providers or hosts do not comply.

By targeting hosts and unlicensed providers, cancelling licences of unfit and non-compliant providers and combining our efforts with other regulators we will change the behaviour of the labour hire industry and protect workers from continued exploitation.