

LABOUR HIRE COMPANY

Information sheet

What is a labour hire company/labour hire provider?

A labour hire company (LHC) – also known as a labour hire provider (LHP) – supplies one or more workers to perform work (not a specialised service) “in and as part of” a business/undertaking of a host.

- LHCs must to be licensed in Queensland (since 16 April 2018), and Victoria, to operate legally (or have applied before midnight 30 June 2020 and can operate whilst being assessed and if there is no evidence of non-compliance)
- In horticulture, LHCs supply workers (labour hire workers) to a host to perform any number of the following: picking, sorting, labelling, packing, planting, thinning, pruning, spraying, repetitive work on automatic, semi-automatic or single-purpose machines or equipment on a host’s property and under the host’s supervision
- If you supply one or more workers to perform work in and as part of a business or undertaking of another person, you’re likely to be an LHC
- Businesses are classified as LHCs if they meet the following three criteria: the business supplies workers to another business; the workers perform work “in and as part of” that other business; and the workers are within the meaning of the *Labour Hire Licencing Act* (LHL Act)
- If the business provides recruitment or placement services, and provides or procures accommodation for the workers, then it may also fall within the role of LHC. This is the case even if the business is not obligated to pay the workers for the work engaged. Likewise, businesses can also be classified as LHCs if they provide contractor management services, such as payroll and administration functions, or supervisory and project management functions.

Who is a labour hire worker?

Workers are generally individuals employed and paid by LHCs and supplied to host businesses on a full-time, part-time or casual basis.

In addition, if a person supplied by a LHC is entitled to be paid by a host, that person will be a worker under the LHL Act if the labour hire provider also procures or provides accommodation for the person.

A person who is an independent contractor supplied to a host by an LHC will also be a worker under the LHL Act if the labour hire provider continues to manage the performance of the contract – for example by providing administrative and payroll functions or performance management in relation to the contractor.

However, under the *Victorian OHS Act 2004*, labour hire workers performing work for a host employer are classified as the employee of the host employer, meaning labour hire workers have all the rights and protections of employees under the Act when attending their host employer’s workplace, see [worksafe.vic.gov.au/resources/summary-occupational-health-and-safety-act-2004-handbook-workplaces](https://www.worksafe.vic.gov.au/resources/summary-occupational-health-and-safety-act-2004-handbook-workplaces)



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What does a host/grower need to know?

Queensland

- Labour Hire Licensing Queensland sits within the state government's Office of Industrial Relations
- An LHC can only operate if they hold a current license (unlike in Victoria, where they can even if they have only made an application), see labourhire.qld.gov.au/i-provide-labour-hire/laws-and-compliance)
- If a host is using an unlicensed LHC, both can face maximum penalties of three years imprisonment or a fine
- Avoidance arrangements, designed to circumvent or avoid the requirement to have a license to supply workers, also incur strong penalties from both providers and users
- See website for details on penalties (labourhire.qld.gov.au/i-provide-labour-hire/laws-and-compliance/penalties-and-offences)
- A list of active, suspended and cancelled LHCs can be found here: ols.oir.qld.gov.au/licence-register/

Victoria

- The Labour Hire Authority (LHA) is the overarching authority tasked with providing a fair environment for labour hire workers and providers in Victoria, see labourhireauthority.vic.gov.au/
- LHCs can operate while being assessed and if there is no evidence of non-compliance
- If a host is using an unlicensed LHC, both can face maximum penalties of \$145,392 (individual), or \$581,568 (corporation); hosts must also notify LHA if they become aware (or reasonably suspect) that the LHC is trying to avoid obligations, or face penalties.
- LHA's "Follow my provider" publishes when LHC applications are refused, withdrawn; licenses are granted, suspended or cancelled; conditions are added to a licence; or suspended licenses are re-issued, see labourhireauthority.vic.gov.au/host/follow-my-providers/
- LHA also has a register of LHCs on its website. Click "Find a provider" at labourhireauthority.vic.gov.au

Labour hire company obligations

Queensland

- LHCs must demonstrate that the relevant people are fit and proper to provide labour hire services, that their businesses are financially viable and that they have a history of, and ability to, comply with relevant laws
- Pay a licence fee calculated according to the total amount of wages or salary paid to labour hire workers supplied in Queensland during the financial year
- LHCs must report every six months on their activities, and must report any prescribed changes in circumstances within 14 days.
- They must produce a copy of a licence if asked by an inspector, worker or other person
- They must not sell, transfer or hire out a licence to another person

Victoria

- LHCs must pass a fit and proper person test and comply with relevant laws (e.g. taxation and superannuation, OH&S and workers compensation, labour hire and workplace, as well as migration and applicable minimum accommodation standards).
- If an LHC wants to procure and provide accommodation/transport, they must declare that it will comply with the minimum accommodation standard/applicable laws relating to transport
- Pay a licence and annual fee based on turnover
- Allow inspectors to monitor compliance
- Report every 12 months on labour hire activities (taxation, WorkCover registration, number of workers, locations of workers, accommodation and other goods or services provided to workers, workers with temporary visas, etc.)