

Tips for completing the Dairy Industry Labour Agreement Application Form (updated Oct 2020)

Note: This document may be changed by the Department Home Affairs from time to time so we advise that you confirm with the Department before you begin that you have the current document at labour.agreement.section@homeaffairs.gov.au

These tips relate to the version dated April 2018.

All queries about the application process or the information required should be directed in the first instance to the Department of Home Affairs on labour.agreement.section@homeaffairs.gov.au

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TYPE OF LABOUR AGREEMENT REQUESTED

Tick the box marked “Dairy”.

Table 1- Current Sponsorship details

Complete this table if you are currently a standard business sponsor or you are already a labour agreement sponsor.

I confirm there is no additional adverse information regarding this organisation that was not reported to the Department in the above form or a previous sponsorship application:

This section requires you to tell the Department of Home Affairs if there have been any adverse findings regarding workplace relations, workplace health and safety or migration compliance in the last 5 years.

The Department of Home Affairs has advised Dairy Australia that it does not require you to provide information about investigations, such as an investigation by the Fair Work Ombudsman or the taxation office unless there was an actual finding that you had breached the law or if there is an ongoing investigation at the time of your application.

Table 2 – New organisation details

This section requires you to provide information with details about your business.

Business name and ABN of any relevant associated entities (as defined in section 50 AAA of the Corporations Act 2001)

Associated entities are defined in this section of the Corporations Act as follows:

CORPORATIONS ACT 2001 - SECT 50AAA

Associated entities

- (1) One entity (the **associate**) is an associated entity of another entity (the **principal**) if [subsection](#) (2), (3), (4), (5), (6) or (7) is satisfied.
- (2) This [subsection](#) is satisfied if the associate and the principal are related bodies corporate.
- (3) This [subsection](#) is satisfied if the principal [controls](#) the associate.
- (4) This [subsection](#) is satisfied if:
 - (a) the associate [controls](#) the principal; and
 - (b) the operations, resources or affairs of the principal are material to the associate.
- (5) This [subsection](#) is satisfied if:
 - (a) the associate has a qualifying investment (see [subsection](#) (8)) in the principal; and
 - (b) the associate has significant influence over the principal; and
 - (c) the [interest](#) is material to the associate.
- (6) This [subsection](#) is satisfied if:
 - (a) the principal has a qualifying investment (see [subsection](#) (8)) in the associate; and
 - (b) the principal has significant influence over the associate; and
 - (c) the [interest](#) is material to the principal.
- (7) This [subsection](#) is satisfied if:
 - (a) an entity (the **third entity**) [controls](#) both the principal and the associate; and
 - (b) the operations, resources or affairs of the principal and the associate are both material to the third entity.
- (8) For the purposes of this section, one entity (the **first entity**) has a **qualifying investment** in another entity (the **second entity**) if the first entity:
 - (a) has an [asset](#) that is an investment in the second entity; or
 - (b) has an [asset](#) that is the beneficial [interest](#) in an investment in the second entity and has [control](#) over that [asset](#).

Please briefly explain the nature of your organisation's business activities

Provide details of the location of the farm, size of the farm, number of cows milked and any other activities undertaken.

Industry in which the business operates as defined by ANZSIC –

Enter - **Group 016-Dairy Cattle Farming**

A statement from a registered chartered accountant or certified practising accountant (including CPA #) has been provided confirming your business:

- *has been actively operating in Australia for at least 12 months; and*
- *has the financial capability to meet your sponsorship obligations*

You will need a letter from your accountant stating that the accountant has been managing your affairs for however long and that *'the business is financially viable and has the viability to meet the sponsorship obligations under the terms and conditions of the Labour Agreement'*.

Is there any other adverse information relating to the suitability of the business to sponsor overseas workers that you need to declare?

This section requires you to tell the Department of Home Affairs if there have been any adverse findings regarding workplace relations, workplace health and safety or migration compliance in the last 5 years.

The Department of Home Affairs has advised Dairy Australia that it does not require you to provide information about investigations, such as an investigation by the Fair Work Ombudsman or the taxation office unless there was an actual finding that you had breached the law or if there is an ongoing investigation at the time of your application.

Table 3 Position Details

The **482 visa** is the new TSS visa which replaces the 457 visa. Fill in on this line.

The **186 Visa** is not currently available for the farm hands in the dairy industry.

The **occupation** is **Senior Dairy Cattle Farm Worker**

There is no **ANZSCO Code**. Use the number **070499**.

Job Description

Dairy Australia and the Department of Home Affairs have agreed on a Job Description for the Senior Dairy Cattle Farm Worker available at https://thepeopleindairy.org.au/wp-content/uploads/2019/03/PD_LA_TemplateNov2015.pdf

Dairy Australia and the Department of Home Affairs have agreed that the overseas worker must have at least a Certificate III (or equivalent) and 3 years of recent and relevant experience **or** 5 years recent and relevant experience if they do not have the formal qualification.

NOTE: You cannot use the Dairy Industry Labour Agreement template for an overseas worker with less qualifications than this.

Table 4 Workforce Profile

This section requires you to provide an Occupation Chart and to attach it at **Attachment 9**.

This is a chart showing your workforce from senior management level down to farm hand level including all casual and part time employees and family members working on the farm.

Table 5 Salary requirements and employment conditions

The **occupation** is **Senior Dairy Cattle Farm Worker**.

Terms of Employment

This section requires you to provide an employment contract and a letter of Offer.

DA has agreed with the Department on the format of this letter and a template has been prepared for you to use. Download the letter of offer at <https://thepeopleindairy.org.au/wp-content/uploads/2019/03/LabAgreeTemplateLetterOfferofEmployMay2018.docx>

The letter is part of the application process and is required **BEFORE** you actually nominate the overseas worker so you can leave the name and address blank at this stage.

If you have other workers on TSS visa, then you should send a copy of their contract.

If you do not have other workers on TSS visas, then you should send a copy of the draft proposed employment contract.

The letter of offer and the contract must meet the 'market salary rate'. See below.

What have you determined to be the annual market salary rate for this position to be?

Dairy Australia and the Department of Home Affairs have agreed that the overseas worker must be paid at least the Temporary Skilled Migration Threshold (TSMIT) which is currently \$53,900.00 or the going market rate whichever is the *greater* for 38 ordinary hours and 'guaranteed overtime.'

The wages paid must be in accordance with the Pastoral Award 2010.

The minimum rate of pay should be calculated at least midway between the FLH5 and FLH7 classification.

The terms and conditions which apply to overseas workers under the Labour Agreement must be no less favourable than the terms and conditions which apply to Australian workers.

Visit the [pay rates section](http://www.thepeopleindairy.org.au/payrates) at www.thepeopleindairy.org.au/payrates for further information about how to pay employees. If you wish to pay a flat rate of pay for all hours worked, you will need to enter into an Individual Flexibility Agreement (IFA) with the overseas worker to formalise this.

Read about IFAs at www.thepeopleindairy.org.au/eski/ifa

TIP: The TSMIT is increased periodically so employers are advised to check with the Department of Home Affairs to confirm the correct amount at www.legislation.gov.au/Details/F2013L01231

Accommodation

The cost of accommodation provided on farm can be deducted from the amount paid to the overseas worker so long as this is in accordance with a written agreement with the worker.

Download an example Authority to Deduct template you can use to develop your own at <https://thepeopleindairy.org.au/wp-content/uploads/2019/05/authoritytodeduct.doc>

Are any concessions required to standard salary arrangements required?

Answer **NO to this question**

Table A – my business has an equivalent Australian worker

Is there a relevant enterprise agreement or industrial award?

An enterprise agreement is a formal document which specifies terms and conditions of employment at your workplace. It must be formally lodged with the Fair Work Commission before it is enforceable.

The award is the **Pastoral Award 2010**.

The salary level range/occupation group that applies is **FLH5 to FLH7**.

You can find the wage rates at **clause 28.1 of the Pastoral Award 2010**.

TIP: Remember that these rates change on July 1 every year.

Table B – my business does not have an equivalent Australian worker

Is there a relevant enterprise agreement or industrial award?

An enterprise agreement is a formal document which specifies terms and conditions of employment at your workplace. It must be formally lodged with the Fair Work Commission before it is enforceable.

The relevant award is the **Pastoral Award 2010**.

The salary level range/occupation group that applies is **FLH5 to FLH7**.

You can find the wage rates at **clause 28.1 of the Pastoral Award 2010**.

TIP: Remember that these rates change on July 1 every year.

Table 6 Labour Market Need

Part A

You do not have to provide this information.

Dairy Australia has reached an agreement with the Department Home Affairs that Dairy Australia will provide the information contained in italics at the bottom of this page.

Part B

Before your application will be accepted, you have to show that you have genuinely tried to fill the position with Australian workers in the occupations and locations covered by your proposed labour agreement and you must attach evidence of this testing with the application. This is called labour market testing (LMT).

The Department of Home Affairs will provide you with a template which you can complete.

Labour market testing must have taken place within the past 4 months.

Advertising

Advertising of the nominated position must meet **all** of the below:

- the advertisement must be in Australia, in **English** and included the following information:
 - the title, or a description, of the position **Note:** multiple positions in one advertisement are acceptable
 - the skills or experience required for the position
 - the name of the approved sponsor or the name of the recruitment agency being used by the sponsor, and
 - the salary for the position - if the annual earnings for the position are lower than AUD96,400. **Note:** it is acceptable to publish a salary range—for example AUD80,000 to AUD90,000.
- at least two advertisements must be published in any of the below:
 - on a prominent or professional recruitment website with national reach (for example, jobactive.gov.au) that publishes advertisements for positions throughout Australia. **Note:** industry specific recruitment websites relevant to the occupation that are in significant use by the industry are an acceptable method of LMT advertising. **Note:** a general classifieds website or an advertisement solely through social media notification (such as Twitter or Instagram) are not acceptable methods. LinkedIn's online recruitment platform is acceptable for LMT purposes.

Note: Job vacancies restricted to LinkedIn profile members only are NOT acceptable for LMT purposes.

- in national print media—that is, newspapers or magazines with national reach that are published at least monthly and marketed throughout Australia;
 - on national radio—that is, radio programs that are broadcast or syndicated nationally, or
 - on the business' website if the sponsor is an accredited sponsor.
- Advertisements including on websites, are expected to have run for at least four weeks.
 - Applications or expressions of interest for the advertised position must have been accepted for at least four weeks.

Note:

- the nominated position may be advertised in the same medium (such as newspaper advertisements - on two separate occasions) or in any two different mediums simultaneously, or on two separate occasions
- advertising may have been undertaken by a third party if authorised to do so by the sponsor (for example, an associated entity or a contracted party, such as a recruitment agency) - there is no requirement that the sponsor placed the advertisement themselves.

New Labour market testing requirements as of 1 October 2020

As of 1 October 2020, there are new rules for further Labour Market testing.

The rules are contained here

<https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing>

Essentially in addition to previous requirements, you must also do the following:

- advertise the nominated position on the Government's [jobactive](#) website
 - the jobactive advertisement must have included all of the information required to be included previously which is detailed on the link above
 - jobactive advertisements are expected to have run for at least 4 weeks
 - applications or expressions of interest for the advertised position must have been accepted for at least 4 weeks
- provide evidence of a total of 3 advertisements, including an advertisement published on the Government's jobactive website, must be provided at the time the nomination is lodged

Here is a link to the jobactive website registration page for advertisements.

<https://jobsearch.gov.au/employers/registration?workflowId=3d372695-6e8e-4a3e-8f0a-bbf38b5f1ab7>

You will need to complete the template for activities undertaken in the previous four months, including information on the period of job advertising, the number of applications received, the number of applicants who were hired and reasons why those unsuccessful were found to be unsuitable, supported by evidence of job advertising.

You will need to complete the table at the bottom of **Table 6 on page 7** for activities undertaken in the previous twelve months, including information on the period of job advertising, the number of applications received, the number of applicants who were hired and reasons why those unsuccessful were found to be unsuitable, supported by evidence of job advertising.

Additional supporting evidence of your labour market testing activities can also be provided to strengthen your case, this could include:

- information regarding your company's participation in job and career expos, including any associated fees, the dates and locations of these and whether any positions were filled as a result;
- written evidence from clients demonstrating demand for the nominated occupations – this may include service contracts, unfilled client orders or letters of support from client organisations;
- relevant industry (or other) research released in the last 12 months related to labour market trends;
- letters of support from state government authorities with the responsibility for employment; and
- strategies for retaining Australian workers

Table 8 Skills and English Requirements

Are you seeking a concession from standard skilled visa program requirements in terms of the skills and qualifications requirements?

Answer this question “**Yes- but only as per already agreed industry template arrangements**”.

Are you seeking a concession from standard skilled visa program requirements in terms of the English language proficiency of the nominees?

Answer this question “**No – not required standard English requirements will be met.**”

The overseas worker must be able to speak good English.

There are specific requirements which the overseas worker must meet.

Alternatively, they are able to sit a test.

Table 9 Permanent Residence pathway and age concessions

Have you requested a permanent visa pathway for your employees?

On 1 April 2019, the Dairy Industry Template Labour Agreement was amended to provide a pathway to permanent residency for overseas workers who have been engaged under a Labour Agreement for a period of at least 3 years.

You can answer this question with a yes or a no depending on your intention.

Table 10 Stakeholder Consultation

Stakeholder consultation 1 – Industry Body

The Department of Home Affairs typically requires applicants to consult with stakeholders such as the industry body (in this case, Dairy Australia), the relevant union (in this case, the Australian Workers

Union, or AWU), local government and other local service providers

You do not need to 'consult' with Dairy Australia as the industry body, as Dairy Australia has sent the Department a cover letter of support for labour agreements on behalf of all 6000 dairy farmers nationwide.

Stakeholder consultation 2 – Union

The Department of Home Affairs has also agreed that DA will consult with the AWU on behalf of all dairy farmers every six months, so you do not have to contact the union when preparing your application.

Stakeholder consultation 3 – Other

The Department of Home Affairs has advised Dairy Australia that you only need to consult with local councils and service providers such as health and education if the overseas workers will have a 'significant impact' on the services these bodies provide.

One or two overseas workers would not be regarded as having a 'significant impact' on any of these services in any of the dairy regions.

If you are required to consult the local council and local service providers, there is a template at https://thepeopleindairy.org.au/wp-content/uploads/2020/10/Stakeholder-template-letter_2018.docx or the Labour Agreement Section will provide you with the template stakeholder letter.

It is suggested that you detail the location and size of the farm, number of cows milked, number of staff and any other activities the business undertakes as well as the proposed number of overseas workers and family members.

Appendix A Submission Attachment Checklist:

You **DO NOT** have to provide the following documents:

Numbers:10, 12,13,15,16,17,18,19,