

DAIRY INDUSTRY TEMPLATE LABOUR AGREEMENT (DILA)

FREQUENTLY ASKED QUESTIONS (FAQ) UPDATED SEPTEMBER 2023

While this FAQ provides some guidance, **all questions about the application process** for a labour agreement should be directed in the first instance to the department of Home Affairs via email at: labour.agreement.section@homeaffairs.gov.au

About the labour agreement

1 What is the template labour agreement?

The dairy industry has negotiated a standard template labour agreement which can be accessed by all dairy farmers.

A labour agreement is between the individual farmer and the Immigration Department.

A labour agreement allows employers to recruit overseas workers on TSS Subclass 482 visas (482 visas were previously called subclass 457 visas) and subclass 494 (SESR visas) who would otherwise not be recognised as skilled and therefore be ineligible.

Having a template agreement means individual employers don't have to negotiate an agreement from scratch, including defining the type of worker sought.

The dairy industry template recognises senior farmhands (FLH5-7) and farmhands (FLH3) as skilled and now eligible for TSS and SESR visas.

2 How do I get a labour agreement?

You prepare an application to the department, making the business case for requiring this type of employee.

3 How much does a labour agreement cost?

No fees are charged to apply for the labour agreement itself. However, there are fees at other stages of the process such as nomination.

4 How long does a labour agreement last?

Five years, during which time you can hire workers on TSS visas lasting up to four years and SESR visas lasting five years.

5 How long does the worker's visa last?

You can hire workers on TSS visas lasting up to four years and SESR visas lasting five years with a possibility of extension.

6 Can labour agreement workers apply for permanent residency down the track?

On 1 April 2019, the Dairy Industry Template labour agreement (DILA) 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 three years.

Dairy Australia understands that labour market testing undertaken for subclass 457/482 and 494 visas will suffice for a labour agreement stream 186 (ENS) visa application. Dairy Australia understands that there is no requirement for further labour market testing for the ENS visa.

The English language requirement for the ENS visa is at least an IELTS (or equivalent test) score of five overall and at least 4.5 in each test component.

Submitting an application

7 Can I apply for a Dairy Industry labour agreement now?

Yes

8 Do I need to use a migration agent?

Not necessarily – it depends how confident you feel filling out the paperwork yourself.

9 Is there a pro forma application form?

Yes. You need to apply online see below.

10 Can I apply online?

You must make the application on line using the Labour Agreement Request Form in immiAccount. If you do not have an immiAccount you will need to create one here. **ImmiAccount**.

There is a guide for completing the application form **here**.

11 Do I need to apply separately to become an approved sponsor?

No. You are automatically an approved sponsor once the agreement is granted.

12 How do I describe the worker when applying?

Senior Farmhand is defined in the template as a 'Senior Dairy Cattle Farm Worker' and Farmhand is described as 'Dairy Cattle Farm Operator'.

13 What is the right ANZSCO code?

There is no ANZSCO code for a 'Senior Dairy Cattle Farm Worker' or 'Dairy Cattle Farm Operator.' Instead, use the code 070499 for both occupations when nominating this position in your labour agreement application.

About the employee

14 What are the duties for this worker?

The template labour agreement includes Duty Statements describing the expected tasks for both occupations. They do not have to undertake all tasks in the list, but a majority of the tasks (80/20 rule).

15 What are the qualifications/experience required for this worker?

The 'Senior Dairy Cattle Farm Worker' must have at least: an AQF Certificate III (or equivalent), and at least two years recent and relevant experience; or, three years' 'recent and relevant experience'.

The 'Dairy Cattle Farm Operator' must have at least: an AQF Cert II or III or at least 1 year of recent and relevant experience for TSS visas; or at least two years of recent and relevant experience for SESR visas.

'Recent' means within the last few years. Working casually on a farm 10 years ago as a teenager for pocket money may not be regarded as 'recent' by the department.

'Relevant' means working on a dairy farm, or similar. Experience working in horticulture or grains, for example, would not be considered 'relevant' by the department.

16 What should I pay this worker?

They must be paid the Temporary Skilled Migration Income Threshold (TSMIT) (\$70,000.00 pa for all applications after 1 July 2023) or the going market rate, **whichever is the greater**. If you are in a regional location you must pay at least 90 per cent of the

TSMIT or the going market rate, whichever is the greater.

The worker can work 38 hours a week plus guaranteed overtime for the TSMIT.

They must be paid appropriate overtime and penalty rates consistent with the Pastoral Award 2020.

Rule of thumb: overseas workers hired under a labour agreement must be employed on the same pay, terms and conditions as an Australian working in the same job in your area.

Read about the Pastoral Award 2020 at thepeopleindairy.org.au/employment-rewards/pastoral-award-2020/

17 Do they need to speak English?

Yes. The worker must have studied for at least five years in a school and/or university where courses are in English. Alternately, they need to have sat an approved test. For TSS and SESR visas the worker must have at least an IELTS (or equivalent) minimum score of 5 with no minimum component score. See point six above for ENS visas.

For more information, see: homeaffairs.gov.au/about/corporate/information/faqs/how-can-i-prove-i-have-functional-english

18 Are overseas workers subject to Australia's Fair Work Act?

Yes. Overseas workers have equal rights with Australian workers under Australia workplace laws. The same applies for Workplace Health and Safety.

See the Department of Home Affairs information regarding overseas workers' rights at [immi.homeaffairs.gov.au/visas/working-in-australia/work-rights-and-exploitation](https://homeaffairs.gov.au/visas/working-in-australia/work-rights-and-exploitation)

19 Are there standards for workers' accommodation?

There are no prescribed standards for housing workers. But use your common sense – if you would not live in it yourself, then don't expect your Australian or overseas workers to live in it.

Substandard housing carries a substantial risk to the health and wellbeing of your workers, and also to your and the industry's reputation if the worker complains and/or media or union attention is attracted.

Some accommodation tips:

- Weatherproof
- Clean – no vermin, no interesting petri dish Experiments in dank corners
- Suitable heating
- Hot and cold running water
- A decent bathroom
- A properly equipped kitchen
- If shared, then one person per bedroom unless you have a couple working for you.

Tip: An old caravan parked in a shed is unlikely to be considered suitable accommodation for workers.

20 Will the Immigration Department check up on me and my overseas worker?

The department can audit you at any time, to check your overseas worker is doing the job they were hired to do, consistent with the Duty Statement in the labour agreement.

The department will also check, among other things, whether you are paying your overseas worker appropriately for the hours that they are working.

As of December 2017, the department commenced collection of tax file numbers to enable data matching with the ATO to ensure that overseas workers are receiving the nominated salary.

Tip: By law, you must keep proper payroll records and timesheets – read more at thepeopleindairy.org.au/eski/payroll/

Collecting evidence

21 Do I need to have tried to hire Australians first to fill the vacancy?

Yes. Hiring Australian must always be your first priority. The department will require proof that you have tried to fill the vacancy from the Australian labour pool over the previous 12 months. This is called labour market testing.

At least one of these advertisements must have been published on an industry website or a prominent recruitment forum with national reach and run for at least four weeks. As of 1 October 2020 you need to advertise the position on the Federal Government's **Workforce Australia** website and run the advertisement for at least four weeks. This will be accepted as the national forum.

One advertisement may be local and this can include your business' website.

Evidence includes print, online advertising (i.e. Seek, Indeed), labour hire firms, local print media and radio.

A copy of the advertisement must be provided.

You will also need to explain what happened, i.e., no one applied; or, the reasons the people who did apply were not suitable or didn't work out when hired. The Department of Home Affairs will provide you with a template to complete. For more information on labour market testing go to thepeopleindairy.org.au/employment-rewards/hiring-people-from-overseas/

For more information visit thepeopleindairy.org.au/eski/employing-someone/#advertising

22 Do I need to show a commitment to training benchmarks?

The training requirements changed as of 12 August 2018.

From that date employers nominating a worker with a TSS and SESR visa are required to pay a contribution to the 'Skilling Australians Fund' (SAF).

The amount for the TSS visa is \$1,200 per year for small businesses with a turnover of less than \$10 million and \$1,800 for other businesses payable in full when the worker is nominated and for each year of the visa.

The amount for the SESR visa is a one-off payment of \$3,000 for small businesses with a turnover of less than \$10 million and \$5,000 for other businesses.

Refunds are only available in specific circumstances such as if the sponsored employee leaves the employment within the first 12 months of employment where the visa period was for more than 12 months and only for unused full years.

The new sponsoring employer will be required to pay the levy for the intended period of the employment of the overseas worker at the time of lodging the nomination.

23 Do I need to consult stakeholders?

The department typically requires applicants to consult with stakeholders such as the industry body (in this case, DA), the relevant union (in this case, the Australian Workers Union, or AWU), local government and your State farmer representative body (i.e., UDV, SADA, NSWFA, QDO, WAFF, TFGA).

You should not need to 'consult' with DA as the industry body, as we have sent the department a cover letter of support for labour agreements on behalf of all 6,000 dairy farmers.

The department 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 individually when preparing your application.

Check with the department if you need to consult other parties, email: labour.agreement.section@homeaffairs.gov.au.

If yes, the department will give you a template letter to use – you can download a copy at thepeopleindairy.org.au/employment-rewards/hiring-people-from-overseas/

24 Do I need to show labour market need?

DA has already demonstrated the generalised industry labour need. Check with department if you need to do it: email labour.agreement.section@homeaffairs.gov.au.

Call DA if the department says yes.

Next steps

25 Once I have the labour agreement, what next?

You can begin seeking suitable workers overseas.

26 What do I do when I find a worker I want to hire?

Lodge a nomination online. The worker will lodge a visa application separately online. **Fees apply.**

27 How do I certify my nominated worker has required qualifications/experience?

Skills recognition is available through accredited training providers offering Agriculture qualifications.

This process, called skills recognition, offers individuals the opportunity to have the skills and knowledge they have attained through work recognised and credited into a full or partial qualification. Download the skills assessment factsheet at: thepeopleindairy.org.au/wp-content/uploads/2019/03/LA-SkillsRecognition-May2018.pdf

To find registered training providers – visit myskills.gov.au/registeredtrainers/search for more information.

Fees apply: variable.

28 Can I transfer an existing overseas worker to a TSS visa under my labour agreement?

Yes. Workers can be nominated once a labour agreement application is lodged. You will receive a PRID number which will enable you to apply for a Bridging visa. Contact the department for more information – email labour.agreement.section@homeaffairs.gov.au

29 Can my overseas farmhand resign and go to work for another dairy farmer?

Yes – provided the other farmer is an approved sponsor for workers on TSS or SESR visas, and the department is notified of the change in employer.

General information

30 A farmer gets a labour agreement for the senior dairy cattle farm worker. They decide they also want to recruit a farm manager, or mechanic on a standard TSS visa. Do they have to apply separately to become an approved sponsor for this second worker?

Yes – separate standard business sponsorship is required for workers in the standard TSS stream.

31 A farmer is already an approved sponsor with a standard 482 visa worker on the farm. Now they want a senior farmhand – do they need to apply for a labour agreement?

Yes – the standard business sponsorship only relates to the standard 482 stream.

32 How many overseas workers can a farmer hire?

The department does not have a set percentage in a given workplace. While a percentage may work in larger workplaces, it is problematic in small companies such as dairy farms with small workforces.

The department instead considers factors, such as the total number of Australian workers; the number in the position when the labour agreement is requested; the number of overseas workers requested in each year of the agreement; whether a reduced reliance on overseas workers is demonstrated, and so forth.

The department will advise employers if it is concerned about the number of workers requested.

33 Are employers obliged to pay compulsory superannuation for overseas workers?

Yes. You are required to meet all workplace laws, including any requirements to pay superannuation.

34 Is superannuation included in the TSMIT, or paid in addition to the TSMIT?

Superannuation is not included in the salary for the purpose of calculating TSMIT.

35 Can workers on TSS visas bring their spouse and/or children with them?

Yes. Please refer to immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482 for further information.

36 Do children include adult children?

Adult children may only be included where they are assessed as dependants – refer to the above link.

37 Can the spouse and/or adult children also work, or do they need to apply separately for their own visas?

Yes, they will be granted work rights.