

Dairy Industry Template Labour Agreement Frequently Asked Questions (FAQ)

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 Immigration and Border Protection, email labour.agreement.section@border.gov.au

About the labour agreement

1. What is the template labour agreement?

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

An agreement allows employers to recruit overseas workers on 457 visas who would otherwise not be recognised as skilled and therefore eligible.

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 as skilled and now eligible for 457 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.

See [FAQs - Attachment B](#) for guidance on what information should be included in your application. Please see questions 22 and 23 in this FAQs for advice on sections 7 and 11 in [FAQs - Attachment B](#)

3. How much does a labour agreement cost?

No fees are charged to apply for the labour agreement itself.

4. How long does a labour agreement last?

Two to three years, during which time you can hire workers on visas lasting up to four years.

5. How long does the worker's visa last?

Up to four years, with possibility of extension.

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

The template does not include a clear pathway to permanent residency, but this will be sought. To go down the residency pathway, you will need to ensure that your labour agreement is current at all times.

Submitting an application

7. Can I apply for a template labour agreement now?

Yes

8. Do I need to use a migration agent?

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

9. Is there a pro forma application form?

Not yet – the Department is still working on it.

10. Will the template and pro forma be on the DIBP website?

See above. Dairy Australia (DA) has the template on The People in Dairy website at www.thepeopleindairy.org.au/labouragreement or you can request a copy from the Department: email labour.agreement.section@border.gov.au

11. Can I apply online?

No. The Department prefers to receive applications by email: labour.agreement.section@border.gov.au

12. What if my server can't send such a large file?

You can post the paperwork to:

Director
Labour Agreement Section
Department of Immigration and Border Protection
6 Chan Street
BELCONNEN ACT 2616

13. Do I need to apply separately to become an approved sponsor?

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

14. How do I describe the worker when applying?

Senior Farmhand is defined in the template as a 'senior dairy cattle farm worker'.

15. What is the right ANZSCO code?

There is no ANZSCO code for a 'senior dairy cattle farm worker'. Instead, use the code 070499 when nominating this position in your labour agreement application.

About the employee

16. What are the duties for this worker?

The template includes a Duty Statement describing the expected tasks for this worker. They do not have to undertake all tasks in the list, but a majority of the tasks (80/20 rule).

17. What are the qualifications/experience required for this worker?

The worker must have at least:

- i. An AQF Cert III (or equivalent), and at least 3 years recent and relevant experience; or,
- ii. Five years recent and relevant experience

'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.

18. What should I pay this worker?

They must be paid the Temporary Skilled Migration Income Threshold (TSMIT) (\$53,900 pa) or the going market rate, **whichever is the greatest**.

The worker can work 38 hours plus up to seven hours guaranteed overtime a week for the TSMIT. If they work more than 45 hours a week, they must be paid appropriate overtime and penalty rates consistent with the Pastoral Award 2010.

Rule of thumb: overseas workers hired as senior farmhands 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 at www.thepeopleindairy.org.au/engagement-reward/pastoral-award.htm

19. 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 more information, see www.border.gov.au/about/corporate/information/faqs/how-can-i-prove-i-have-functional-english

20. 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 Occupational Health and Safety.

See Immigration Department fact sheet regarding overseas workers' rights at www.border.gov.au/visas/SiteAssets/457-your-rights-work.pdf

21. 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.

22. 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.

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

Collecting evidence

23. 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 Australian labour pool for at least six months.

Evidence includes print, online advertising (i.e. employment Made easy at www.eme.org.au , Gumtree), social media (i.e. your farm Facebook page), labour hire firms, word of mouth.

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.

24. Do I need to show a commitment to training benchmarks?

Yes. The department will require evidence of one of the following:

- i. At least 2% of gross payroll to industry approved training fund.
 - A portion of your DA levy goes towards funding the National Centre for Dairy Education (NCDE) and associated courses. Ask DA to work out how much your farm business is paying towards the NCDE. If the amount falls short of 2% of your gross payroll, then you can pay the difference to DA and receive a credit for a course for yourself or your workers. Please contact Matt Milburn, on mmilburn@dairyaustralia.com.au
- ii. At least 1% of gross payroll (evidence of on-farm and other training for staff).

25. Do I need to consult stakeholders, as in section 11 in 'FAQs - Attachment A'?

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 (ie, 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 6100 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 Department if you need to consult other parties, email labour.agreement.section@border.gov.au If yes, use the template stakeholder letter in the pro-forma application (FAQs – Attachment B).

26. Do I need to show labour market need, as in section 7 in 'FAQs - Attachment B'?

Section 7 requires demonstrating generalised industry labour need, over and above your individual efforts to recruit a suitable worker in your region. DA has already demonstrated the generalised industry labour need. Check with Department if you need to do it nonetheless: email labour.agreement.section@border.gov.au **Call DA if Dept says yes.**

Next steps

27. Once I have the labour agreement, what next?

You can begin seeking suitable workers overseas.

28. 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. www.border.gov.au/Trav/Visa-1/457-

Fees apply

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

Contact:

Luke Prime, National Centre for Dairy Education (NCDE)
Commercial Manager - NCDE GOTAFE Gippsland
Goulburn Ovens Institute of TAFE
Phone: 03 5624 1401
Email: lprime@gotafe.vic.edu.au

Fees apply: variable

30. Can I transfer an existing overseas worker to a 457 visa under my labour agreement?

Yes. Workers can be nominated once a labour agreement application is lodged. Bridging visas can be arranged. Contact the Department for more information - email labour.agreement.section@border.gov.au

31. 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 457 visas, and the Department is notified of the change in employer.

General information

32. 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 457. 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 457 stream.

33. A farmer is already an approved sponsor with a standard 457 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 457 stream.

34. How many overseas workers can a farmer hire?

The Department does not have a set ratio in a given workplace. While a ratio 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.

Tip: While the Department does not have a set ratio, overseas workers should account for no more than 30% of your workforce in the absence of exceptional circumstances.

35. Are employers obliged to pay compulsory superannuation for overseas workers?

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

36. If yes, 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.

37. Can workers on 457 visas bring their spouse and/or children with them?

Yes. Please refer to www.border.gov.au/Trav/Visa-1/457- for further information.

38. Do children include adult children?

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

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

Yes, they will be accorded work rights.