



ISC Modern Slavery Coalition

Guidance Note: Addressing labour hire related modern slavery risks in Australia's infrastructure sector

How is labour hire used in the Australian infrastructure sector?¹

Labour hire refers to the temporary² procurement of labour through a third party labour hire provider, which manages the employment relationship with the workers. Labour hire workers can be used at all levels of the infrastructure value chain. In the Australian infrastructure context, labour hire workers at sites may be engaged for diverse roles ranging from traffic management, to demolition labour, to trades. Labour hire workers may be engaged through a third party provider directly by a head contractor, or by subcontractors on site.

When engaged responsibly, use of labour hire workers can provide flexibility for companies involved in infrastructure development. This includes situations where companies may need to address workforce shortages to meet peaks in demand, or labour is required for short periods for which it is not feasible to engage permanent workers.

Why does labour hire in the Australian infrastructure sector involve modern slavery risks?

While labour hire can fulfil an important role, using labour hire to support infrastructure projects can also involve a range of human rights risks. This includes risks relating to modern slavery, where someone's freedom is taken away so they can be exploited. It is important companies across the infrastructure value chain are aware of these risks. As outlined below, potential modern slavery risks primarily relate to the reduced visibility companies have over labour hire workers and the types of workers likely to be recruited for labour hire roles (such as lower skilled migrant workers). Other factors, such as strong pricing competition for labour hire services, can exacerbate these risks by putting pressure on labour hire providers to reduce costs, with flow on impacts on labour hire workers' wages and working conditions (including the standards of any provided accommodation). The New South Wales (NSW) Anti-Slavery Commissioner's [Modern Slavery Inherent Risk Identification Tool](#) identifies industrial and construction contingent labour as having a high inherent risk of modern slavery.

Reduced visibility: Labour hire workers can experience greater vulnerability to exploitation because the structure of the labour hire process (where the labour hire provider manages

¹ This guidance note is intended to be generally applicable to the infrastructure sector, recognising this sector involves a diverse range of industries. Companies should consider how to apply the general guidance set out in this note to their specific operating contexts.

² The duration of labour hire engagements can vary significantly, but the focus of this guidance note is on shorter term engagements in the infrastructure sector.



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the employment relationship with the workers) may make it more difficult for host companies to monitor workers' wellbeing. This means host companies (whether a head contractor or a subcontractor on site) that engage workers through a labour hire provider have less visibility over how these workers are recruited and treated than for workers they directly engage. Visibility can be further reduced where the primary labour hire provider subcontracts to additional labour hire agencies.

Workers recruited through labour hire may also have high turnover rates, or be on site for short periods. Labour hire workers in roles such as haulage may also primarily operate offsite. This can limit scope for meaningful engagement with them about issues that can be red flags for modern slavery and other forms of labour exploitation. These red flags include excessive working hours and other poor working conditions, substandard accommodation, and issues around payment of wages and benefits, including overtime. Some infrastructure projects in Australia (including road construction and development of renewable energy projects) may also be undertaken in rural and remote areas, which can further reduce visibility of workers' wellbeing.

Use of vulnerable workers: Lower-skilled migrant workers (including international students) can be particularly vulnerable to modern slavery and other exploitation in the Australian labour hire context, which can have low barriers to entry for certain roles. These workers may: not fully understand their workplace rights and entitlements (including where they have been deceived about their conditions of employment or fear losing their job); be working in breach of visa conditions; and/or have paid recruitment fees or owe other 'debts' that are used to force them to remain in exploitive situations until the debt is repaid. Workers' personal identity documents may also be withheld as a tool to prevent the worker leaving or seeking assistance. Workers subjected to modern slavery or other exploitive practices may also not feel safe to seek help (including due to concerns around reprisals, such as denouncement to immigration authorities) or know which reporting channels to use to raise concerns.

What concrete steps can companies engaging labour hire providers take to manage modern slavery risks?

Companies engaging labour hire providers in the Australian infrastructure sector, or operating sites where labour hire workers engaged by other parties are present, can take practical steps to manage modern slavery risks. These include:

- **Identifying and mapping the types of labour hire roles and labour hire business models** involved in operations and/or projects that may involve higher modern slavery risks, due to factors such as the worker cohorts involved and the types of roles performed. Head contractors should also consider risks associated with labour hire workers engaged by other subcontractors on site. The results of this



assessment, along with any proposed additional controls (see steps below) should be communicated internally, including to executive leaders and relevant board committees. Companies covered by the Australian *Modern Slavery Act 2018* should also include information about their response in their modern slavery statements.

- **Screening labour hire providers for modern slavery risks** as part of engagement processes. This should include appropriate screening questions for labour hire providers, including around: how they recruit and pay workers; whether workers have access to their personal identity documents; whether workers hold appropriate cards (such as a white card) and licenses and have received other training relevant to their role as well as personal protective equipment; and confirming the providers' compliance with any applicable labour hire licensing laws (however, even licensed labour hire providers should undergo additional due diligence).³ Screening questions should also cover the quality of any accommodation (and related accommodation services and facilities such as catering, security and sanitation facilities) provided through a labour hire company and any associated costs for workers. Checks should also be undertaken to identify if the provider has been involved in illegal 'phoenixing'⁴ or any other allegations (this may require additional record checks). Post contracting, additional checks can be applied in a targeted way, such as randomised pay slip audits and/or direct engagement with labour hire workers.⁵
- **Setting clear expectations/requirements for labour hire providers around workers' recruitment and wellbeing** in contracts, supplier codes and other relevant policies. This could include prohibiting labour hire providers charging workers recruitment fees or subcontracting with additional labour hire agencies without consent. Labour hire providers could also be required to deliver training on modern slavery or broader workplace rights to workers, and to make available appropriate grievance mechanisms for their workers or promote existing site-wide mechanisms.⁶ Where relevant, clear standards should also be set for the quality of any worker accommodation provided through the labour hire provider in line with international standards. There may also be scope for host companies to work with labour hire providers to build their capacity to manage modern slavery risks, such as through a

³ There is no national labour hire licensing scheme in place in Australia as at the time of publication. Some states have established state-based labour hire licensing schemes, but the requirements under these laws may vary. While licensing laws are an important safeguard, they cannot guarantee a provider is carrying out its business responsibly, meaning additional due diligence checks are still required.

⁴ Where a company is dissolved to avoid legal obligations (such requirements to pay workers outstanding wages and entitlements) and a new company created to continue the same business. Engaging in illegal phoenixing may be a sign a company has engaged in exploitive workplace practices.

⁵ Care should be taken in any direct engagement with labour hire workers to protect their safety and minimise any risks of retaliation against the workers by the labour hire provider.

⁶ Where a site-wide mechanism does not exist, the host company should consider whether one can be established.



deep dive project with a particular labour hire provider to pilot capacity building approaches and better understand the risks and challenges faced by providers.

- **Identifying engagement points for higher risk labour hire workers** (such as induction, site sign in, toolbox talks, and provision of information in break rooms or other locations labour hire workers are likely to visit) where information can be provided to them about their workplace rights and how to safely seek assistance. Consider the best format and language/s to provide this information in, including for labour hire workers who may spend limited time on site and, where feasible, consult with these workers to inform the approach. For example, this could include use of posters in breakrooms advertising existing site grievance mechanisms and explicitly stating these are available to labour hire workers. It may also be appropriate to consider key offsite engagement points for workers and how these could be used to provide workers with access to information and resources. For example, labour hire workers at a site may regularly visit or engage with local churches or other religious organisations, community groups, particular restaurants, or the local medical practice or hospital. These engagement points can provide opportunities to connect with at risk workers who may not feel safe or comfortable engaging in on site contexts.⁷
- **Exploring opportunities to build internal expertise** around engaging labour hire providers, such as by designating a category manager or team as responsible for labour hire engagement. This should include upskilling team members about how to use contractual resources and apply other procurement controls (such as requirements to approve additional subcontracting) to help identify and address any modern slavery risks related to specific labour hire providers. Where appropriate, this could include engagement with labour hire workers to understand their experiences.⁸ Training should also be provided to teams responsible for triaging complaints made through grievance mechanisms to help ensure any concerns raised by labour hire workers are identified and escalated appropriately.
- **Ensure internal procurement processes for engaging labour hire providers are fit for purpose**, including addressing any potential gaps. For example, in situations where labour hire arrangements below a certain value or duration may not meet existing threshold triggers for additional due diligence, the procurement team should have discretion to consider whether further checks are needed. Another gap can occur where there may be existing exemptions for urgent or specific procurements that allow key controls (such as requirements to engage a supplier from a panel) to be avoided. Suppliers not classified as labour hire providers may also rely on labour hire agencies to provide workers to the project without going through the same due diligence as dedicated labour hire providers.

⁷ Host companies should consider whether they have the expertise and capacity to safely engage with at risk workers and seek expert external guidance and support where required.

⁸ See note 4 above.



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- Where a panel for labour hire providers is in place (which can enable a more consistent procurement approach), modern slavery considerations should form part of the criteria for providers to access the panel. For both panel and non-panel procurement, criteria around assessing 'value for money' should also take into account factors other than the financial competitiveness of the price to allow for consideration of providers' modern slavery risk management. This would recognise the financial, operational (i.e. if a site had to be temporarily shut down) and reputational costs that could be incurred by the business if an exploitive labour hire provider was engaged, which could negate the purported financial competitiveness of a labour hire arrangement.

***Note:** This guidance note is not intended as legal advice. It has been prepared by the IS Council's Modern Slavery Coalition with support from Pillar Two. It draws on elements of Pillar Two's existing intellectual property and should not be duplicated for commercial purposes.*