

Sham contracting: Compliance checklist

This checklist is provided to help principal contractors and subcontractors make a preliminary self-assessment of their compliance with various laws relating to visas and sham contracting. If the contractor is in doubt about its compliance with any Australian law, it should obtain independent legal advice.

It is best practice for principal contractors to provide this checklist to subcontractors as part of the engagement process each time a contractor is engaged.

Principal contractors should periodically use this checklist to ensure continuing compliance with legal obligations.

A. Sham contracting and visas	Yes	No
1) Does your organisation have policies, procedures, plans or systems in place to help you meet your legal obligations to ensure: <ul style="list-style-type: none"> ▪ workers have a legal right to work in Australia ▪ the avoidance of sham contracting 	<input type="checkbox"/>	<input type="checkbox"/>
<i>For principal contractors only:</i>		
2) Does your organisation: <ul style="list-style-type: none"> ▪ investigate substantial price differences identified in the tender phase, and commit to investigate all pricing to ensure employees and subcontractors are engaged legally ▪ have monitoring and auditing processes set out in management plans and company quality systems ▪ require a statutory declaration for progress payments that demonstrates compliance with relevant legal obligations 	<input type="checkbox"/>	<input type="checkbox"/>
B. Compliance with legal obligations	Yes	No
1) Does your organisation have policies, procedures, plans or systems to ensure compliance with the following legislation: <ul style="list-style-type: none"> ▪ Commonwealth workplace relations legislation (including the Building and Construction Industry (Improving Productivity) Act 2016 (Cth) and where applicable the Code for the Tendering and Performance of Building Work 2016 and the Fair Work Act 2009 (Cth)) 	<input type="checkbox"/>	<input type="checkbox"/>

B. Compliance with legal obligations (cont.)	Yes	No
▪ Long service leave (including the Construction Industry Long Service Leave Act 1997 (Vic) and Long Service Leave Act 2018 (Vic))	<input type="checkbox"/>	<input type="checkbox"/>
▪ Labour hire laws (including the Labour Hire Licensing Act 2018 (Vic))	<input type="checkbox"/>	<input type="checkbox"/>
▪ Occupational health and safety (including the Occupational Health and Safety Act 2004 (Vic))	<input type="checkbox"/>	<input type="checkbox"/>
▪ Workers compensation (including the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic))	<input type="checkbox"/>	<input type="checkbox"/>
▪ Superannuation law (including the Superannuation Guarantee Administration Act 1992 (Cth))	<input type="checkbox"/>	<input type="checkbox"/>
▪ Immigration law (including the Migration Act 1958 (Cth))	<input type="checkbox"/>	<input type="checkbox"/>

C. Managing employee entitlements	Yes	No
1) Does your organisation only employ employees in accordance with an enterprise agreement approved by the Fair Work Commission, modern award or employment contract?	<input type="checkbox"/>	<input type="checkbox"/>
2) Does your organisation have policies, procedures, plans or systems in place that allow employees to access information about the relevant enterprise agreement or modern award?	<input type="checkbox"/>	<input type="checkbox"/>
3) In the past 24 months, has your organisation made the following payments relating to minimum wages and employment conditions?		
▪ wages, including penalty rates, overtime and casual rates	<input type="checkbox"/>	<input type="checkbox"/>
▪ allowances	<input type="checkbox"/>	<input type="checkbox"/>
▪ annual leave	<input type="checkbox"/>	<input type="checkbox"/>
▪ long service leave	<input type="checkbox"/>	<input type="checkbox"/>
▪ superannuation	<input type="checkbox"/>	<input type="checkbox"/>
▪ workers compensation insurance	<input type="checkbox"/>	<input type="checkbox"/>
▪ other lawful payments that are specified in a modern award or enterprise agreement, for example, payments made to redundancy funds	<input type="checkbox"/>	<input type="checkbox"/>
4) In the past 24 months, has your organisation been subject to any proceeding or findings against it by a court or tribunal for sham contracting?	<input type="checkbox"/>	<input type="checkbox"/>

D. Visa compliance

Yes No

- 1) Does your organisation have policies, procedures, plans or systems in place to ensure compliance with legal obligations when engaging employees who have a working visa?
- 2) Does your organisation have the policies, procedures, plans or systems in place to ensure:
- Visa Entitlement Verification Online system (VEVO) checks are carried out by recruitment teams before the engagement and induction of all employees
 - commercial contracts contain measures to ensure the obligation for visa compliance is passed down the contractual chain
 - contractual measures are in place to oblige subcontractors to notify the principal contractor of visa non-compliance
 - appropriate compliance training is in place for recruitment teams and hiring managers
 - processes are in place to monitor and audit contractors' management of visa compliance
 - record-keeping and document management systems are in place to store employee visa details
- 3) In the past 24 months, has your organisation been subject to any proceedings or findings against it in respect of a breach of migration laws?
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E. Managing contractors

Yes No

- 1) If your organisation contracts part or all of its scope of work to a third party, does your organisation ensure that relevant contractual documentation, arrangements or agreements require that party to comply with their legal obligations?
- For principal contractors only:
- 2) Are your subcontractors required to notify you as the principal contractor of a dispute concerning allegations of sham contracting?

Statement of non-compliance

If you have answered 'No' to any of the above questions, provide a detailed explanation of the extent of non-compliance and remedial actions that will be taken.

Criteria

A

B

C

D

E

For subcontractors only:

Signed on behalf of _____

Date: