



Australian Government
**Department of Immigration
and Border Protection**

Temporary Work (Skilled) (subclass 457) visa

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About this booklet

This booklet is designed to assist you when completing an application for a Temporary Work (Skilled) (subclass 457) visa.

This booklet is intended as a guide only. You should visit the Department of Immigration and Border Protection (the department) website www.border.gov.au to obtain up-to-date information.

This booklet is one of a series of booklets about migration to Australia. The booklets are:

- 1 Partner Migration
- 2 Child Migration
- 5 Employer Sponsored Migration (Permanent)
- 6 Points Based Skilled Migration (subclasses 189, 190 and 489) visa
- 7 Business Skills Entry
- 9 Temporary Work (Skilled) (subclass 457) visa
- 10 Business Innovation and Investment
- 11 SkillSelect

For general information about migration to Australia, read information form 1126i *Migrating to Australia*, or visit the website www.border.gov.au

Using a migration agent

You do not need to use a migration agent to lodge a visa application. However, if you do not feel confident lodging an application, or if your case is complex and you choose to use a migration agent, you should use a registered migration agent – this protects you. Under Australian law, anyone who uses knowledge of migration procedures to offer immigration assistance to a person wishing to obtain a visa to enter or remain in Australia must be registered or exempt from registration (see Part 5).

All registered migration agents are bound by the Migration Agents Code of Conduct, which requires agents to act professionally in their clients' lawful best interests. You can find a registered migration agent by searching the register of agents on the Office of the Migration Agents Registration Authority (Office of the MARA) website www.mara.gov.au

The Office of the MARA is responsible for protecting consumers of immigration assistance and does this by: determining who can be registered as a migration agent; regulating and monitoring the conduct and professional development of registered migration agents; maintaining a publicly accessible register of migration agents; and investigating complaints against registered migration agents and may take disciplinary action against them. If you have a concern about a registered migration agent, you should contact the Office of the MARA. The Code of Conduct and complaint form are available from the Office of the MARA website.

You can contact the Office of the MARA by using the 'Contact Us' facility on their website or by calling:

Telephone: 1300 226 272 or +61 2 9078 3552

Office hours are 9am – 5pm Australian Eastern Standard Time (AEST)

The Office of the MARA investigates complaints against registered migration agents and may take disciplinary action against them. If you have a concern about a registered migration agent, you should contact the Office of the MARA. The Code of Conduct and complaint form are available from the Office of the MARA website.

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Part 1 – Introduction

The Temporary Work (Skilled) (subclass 457) visa is designed to enable employers to address labour shortages by bringing in genuinely skilled workers where they cannot find an appropriately skilled Australian.

You can find the list of occupations that are eligible under the subclass 457 visa programme on the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments

The subclass 457 visa is the most commonly used programme for employers to sponsor overseas workers to work in Australia on a temporary basis.

The subclass 457 visa allows businesses to employ overseas workers for up to 4 years in skilled occupations only.

Subclass 457 visa holders can:

- work in Australia for a period of between one day and 4 years
- bring any eligible dependants with them to Australia — dependants can work and study
- after entering Australia, have no limit on the number of times they can travel in and out of Australia.

Overview

Eligible sponsorship arrangements

Standard business sponsorship

Australian or overseas businesses that have been unable to meet their skill needs from the Australian labour market can sponsor skilled overseas employees under the subclass 457 visa programme under the standard business sponsorship arrangement.

The standard business sponsorship arrangement is the most common route to sponsoring a prospective subclass 457 visa applicant.

To become a standard business sponsor, a business must apply to the department. More information on applying to become a standard business sponsor under the subclass 457 visa programme is contained in Part 2 of this booklet.

Labour agreements

Labour agreements are formal agreements between the Australian Government and an employer allowing for the recruitment of overseas workers. Labour agreements are generally negotiated to meet special labour market circumstances that are not covered by standard business sponsor arrangements.

A labour agreement is the only temporary migration pathway available for some industries, for example meat processing and on-hire.

More information on labour agreements can be found in Part 2 of this booklet.

Application stages

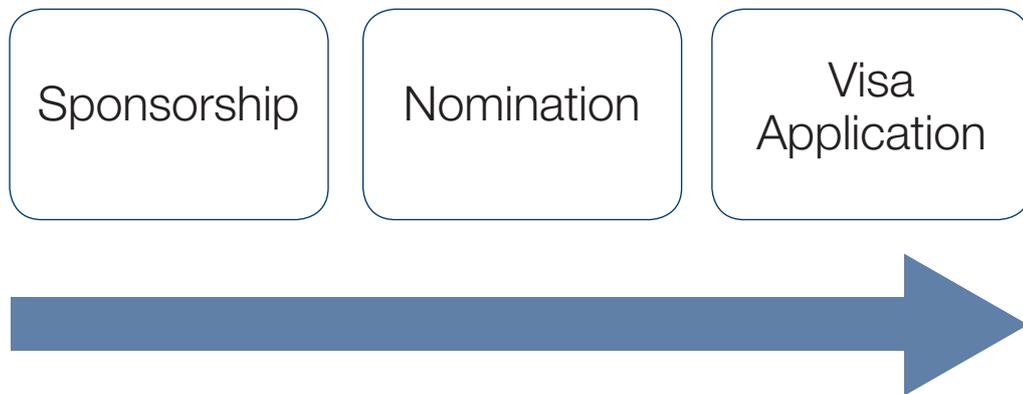
There are 3 processing stages in sponsoring an employee from overseas under the subclass 457 visa programme:

Sponsorship The employer applies for approval as a standard business sponsor. This is required to nominate an occupation for a subclass 457 visa. More information on the Sponsorship stage can be found in Part 2 of this booklet.

Nomination The employer nominates an occupation for a prospective or existing subclass 457 visa holder. More information on the Nomination stage can be found in Part 3 of this booklet.

Visa application The person nominated to work in the nominated occupation applies for the subclass 457 visa. This is the final step to obtaining a subclass 457 visa. More information on the visa application stage can be found in Part 4 of this booklet.

The following diagram illustrates the 3 processing stages and their order for subclass 457 visas.



What happens when?

Employer

If you are lawfully operating a business either in or outside of Australia, and you are seeking to sponsor an overseas skilled worker under the subclass 457 visa programme, you must lodge an application with the department to become an approved standard business sponsor. Then you must nominate a position to be filled.

You can lodge a nomination application indicating the nominated position within your business, and the proposed overseas skilled worker, when you lodge your application for standard business sponsorship approval.

Employee

If you are an overseas skilled worker, and have been nominated by a business that is an approved standard business sponsor that is lawfully operating either in or outside Australia, you can apply for a subclass 457 visa.

Terms you need to know

To understand the requirements for the subclass 457 visa you need to know these terms.

ANZSCO	Australian and New Zealand Standard Classification of Occupations
Australian	An Australian citizen or permanent resident.
Associated entity	An organisation that is either controlled by, or operates wholly or to a significant extent for the benefit of one or more other organisations.
Certified copy	<p>A original document that is signed and dated as a true copy by a:</p> <ul style="list-style-type: none">• magistrate• Justice of the Peace• Commissioner for Declarations• Commissioner for Affidavits• a person before whom a statutory declaration may be made under the law of the state in which the declaration is made• solicitor• registered medical practitioner• bank manager• postal manager• Australian Postal Corporation officer with 5 years service. <p>If an applicant is outside Australia, a notarised copy is acceptable.</p>
Child (other)	<p>Children who were assessed as a member of the family unit of the primary visa applicant for a previous subclass 457 visa, may be eligible for a further secondary subclass 457 visa if:</p> <ul style="list-style-type: none">• they have not married or entered a de facto relationship since the last subclass 457 visa was granted, and• they have not turned 21 years of age.
De facto partner	A person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.
De facto relationship	<p>For the purposes of a subclass 457 visa application, a person is in a de facto relationship with another person if:</p> <ul style="list-style-type: none">• they are not in a married relationship (for the purposes of the <i>Migration Act 1958</i>) with each other• they are not related by family• they have a mutual commitment to a shared life to the exclusion of all others• the relationship between them is genuine and continuing• they live together or do not live separately and apart on a permanent basis.
Department's offices	An office of the Department of Immigration and Border Protection (the department).

**Dependent child
(under 18 years of age)**

A dependent child is the child or step-child of the family head, their spouse or de facto partner where the family head, their spouse or de facto partner has legal responsibility for the child.

**Dependent child
(aged 18 years of age and
over) other relatives**

Dependent children (aged 18 years and over) and other dependent relatives of the family head or their spouse or de facto partner may be considered in the application if:

- they have never married or been in a de facto relationship, are widowed, divorced or separated
- they are usually resident in the primary person's household
- they rely on the primary person for financial support for their basic needs
- the primary person has supported them for a substantial period
- they rely on the primary person more than any other person or source.

Labour agreement

Labour agreements are formal agreements between the Australian Government and an employer.

Member of the family unit

For the purposes of a subclass 457 visa application, a person is a member of the family unit of the family head if the person is any of the following:

- a spouse or de facto partner of the family head
- a dependent child of the family head or of a spouse or de facto partner of the family head
- a dependent child of a dependent child of the family head or of a spouse or de facto partner of the family head
- a dependent relative of the family head or of a spouse or de facto partner of the family head
- a non-dependent child of the family head or of a spouse or de facto partner of the family head — see 'Child (other)'.

Including family members in your application

In your visa application you will be asked for information about each member of your family unit (such as your partner or children) even if they do not intend to migrate with you. Information about which family members are considered to be a 'member of your family unit' for migration purposes is available by referring to form 1496i *Including family members in your application*. Form 1496i is available from the department's website www.border.gov.au/allforms/ or offices of the department. You should ensure that you read and understand form 1496i before completing your application.

**Occurrence of a
sponsorship related event**

Administrative events or actions initiated by the sponsor (or prospective sponsor) during the 457 sponsorship, nomination or visa application process or throughout the duration of the visa including entering into or withdrawing from a sponsorship arrangement or a nomination, or employing or terminating the employment of a sponsored person.

Overseas business

A business not operating in Australia.

On-hire industry

Companies who seek to recruit overseas workers to hire out to unrelated businesses.

Primary sponsored person	The primary sponsored person is the overseas skilled worker who is being nominated to work temporarily in a nominated occupation in Australia.
Secondary sponsored person	A secondary sponsored person is someone who is included in the nomination by the sponsor for the primary sponsored person on the basis of being a member of the primary sponsored person's family unit. A secondary sponsored person is often also a secondary visa applicant.
Secondary visa applicant	A secondary visa applicant is a person who is seeking to meet the secondary requirements for the grant of a subclass 457 visa on the basis of being a member of the primary visa applicant's family unit.
Spouse	A person is the spouse of another person if they are in a married relationship.
Standard business sponsor	An Australian or overseas business that has been approved as a standard business sponsor.
Unlawful non-citizen	An unlawful non-citizen is a national from another country who does not have the right to be in Australia.

Abbreviations

ABN	Australian Business Number
ACN	Australian Company Number
ARBN	Australian Registered Body Number
ASX	Australian Stock Exchange
BAS	Business Activity statements
OSBS	Overseas standard business sponsor
SBS	Standard business sponsor

Part 2 – Sponsorship

Employers can sponsor subclass 457 visa holders to work in Australia either by a standard business sponsorship or through a labour agreement.

The purpose of the sponsorship stage is to:

- identify the details of the business applying for standard business sponsorship
- gain attestation from the employer, where the employer is operating a business in Australia, that the business has a strong record of, or a demonstrated commitment to, employing local labour
- assess the employers' training practices where they are an Australian based business to ensure the employer has a strong record of and commitment to training Australians.

The most common route to sponsoring subclass 457 visa holders is by becoming a standard business sponsor.

You will be required to enter into a labour agreement with the department if:

- you are intending to sponsor overseas workers to work in the meat industry
- you are intending to sponsor overseas workers to work in the on-hire industries
- your company has special requirements which will prevent you from sponsoring workers under standard business sponsorship arrangements.

Standard business sponsor

To nominate skilled overseas workers for a subclass 457 visa, you must become an approved standard business sponsor.

You can only have one standard business sponsorship approved at any given time (that is, one sponsorship approval per business) which is usually valid for 5 years. Businesses which have been trading in Australia for less than 12 months are limited to a sponsorship approval period of 18 months. You can apply to extend your sponsorship at any time during this 5 year period by lodging a variation application. For more information see the information on Variation later in this section.

Requirements for approval

To be approved as a standard business sponsor your business must meet the following requirements. These requirements apply to all applicants whether they are individuals, businesses, in or outside Australia with one exception. The exception is that overseas standard business sponsors are not subject to training requirements and attestation.

Requirements for approval as a standard business sponsor are as follows:

- you must have applied in the correct manner. This means you must have completed the correct form and paid the correct fee
- you must be lawfully operating a business in or outside Australia
- you must indicate the number of positions you wish to nominate over the term of your approved sponsorship
- if you are lawfully operating a business in Australia and you have traded for 12 months or more you must meet the prescribed training benchmark
- if you are lawfully operating a business in Australia and you have been trading for less than 12 months, you must have an auditable plan to meet the prescribed training benchmark

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- if you are lawfully operating a business in Australia, you must attest, in writing, that you have a strong record of, or a demonstrated commitment to, employing local labour and you must declare that you will not engage in discriminatory recruitment practices.
 - if you are lawfully operating a business overseas but not in Australia, you must be seeking to be approved as a standard business sponsor with the intention of sponsoring a person under the subclass 457 visa programme to either:
 - establish, or assist in establishing, on your behalf, a business operation in Australia with overseas connections, or
 - fulfil, or assist in fulfilling, a contractual obligation you have in Australia
 - there is no adverse information known to the department about you, or a person who is associated with you. The department may disregard any adverse information if it is satisfied that it is reasonable to do so
 - if you are lawfully operating a business in Australia, and have previously been approved as a standard business sponsor, that you have fulfilled any commitments you made in meeting the training requirements during the period of your most recent approval as a standard business sponsor
 - you must not have recovered, transferred or taken any action that would result in another person paying costs associated with you becoming a sponsor or recruiting a proposed visa holder.

Applying in the correct manner

Application form

To apply to be approved as a standard business sponsor you should lodge an application online using form 1196 (Internet) which can be accessed at www.border.gov.au

Fees

There is a fee for businesses applying for approval as a standard business sponsor. Payment of this fee must accompany your application. Payment does not guarantee approval of the application.

Fees may be subject to adjustment at any time. Application fees may be subject to adjustment on 1 July each year. This may increase the cost of an application. To check the current application fee, see the department's website www.border.gov.au/trav/visa/fees or check with the nearest office of the department.

Method of payment

To make a payment when lodging your application on form 1196 (Internet), please select the 'Pay via credit card' option on the 'Payment' page.

Lawfully operating a business

Applicants for sponsorship must be employers who are lawfully operating a business, regardless of whether that business is in or outside Australia. To demonstrate this you must provide details about the business.

If you are operating a business in Australia, you must demonstrate that:

- your business is legally established, and
- your business is actually operating.

Australian businesses should demonstrate that they are legally established by providing evidence of their business registration details, such as Australian Business Number (ABN), Australian Company Number (ACN), Australian Registered Body Number (ARBN) or Australian Stock Exchange (ASX) Code.

If you are operating a business outside Australia you must provide evidence that:

- the business is legally established under the laws of the country where the business operates, and
- the business is actively engaged in business activities.

A business that exists on paper only cannot satisfy this sponsorship requirement.

A new business may still satisfy this requirement if they can provide evidence that they are in fact operating, even if they have only been doing so for a short period of time.

Examples of acceptable evidence may include:

- a detailed business plan
- contract of sale relating to the purchase of the business
- lease agreement relating to business premises
- contracts to provide services
- evidence of employment of staff
- Business Activity Statements (BAS) for each complete quarter from commencement of operations to date of lodgement, and/or
- business bank statements covering the period of operation.

Training of Australians

If your business has been operating in Australia for 12 months or more, you must be able to demonstrate that you meet the prescribed benchmark for the training of Australian citizens or permanent residents. If your business has been operating for less than 12 months, you must be able to demonstrate that you have an auditable plan to meet this training benchmark.

Examples of ways to meet the training benchmark include, but are not limited to:

- paying for a formal course of study for the employees who are Australian citizens and Australian permanent residents or for TAFE or University students, as part of the organisational training strategy
- funding a scholarship in a formal course of study approved under the Australian Qualifications Framework for the business's employees who are Australian citizens and Australian permanent residents or, for TAFE or University students, as part of the organisational training strategy
- employment of apprentices, trainees or recent graduates on an ongoing basis in numbers proportionate to the size of the business
- employment of a person who trains the business's Australian employees who are Australian citizens and Australian permanent residents as a key part of their job.

Businesses which operate outside Australia but not in Australia, are not required to satisfy this requirement in relation to training of Australians.

More information on the prescribed training benchmark is available on the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments

Attestation/declaration

The attestation and declaration are part of the form 1196 (Internet) that you must complete to lodge an application for approval as a standard business sponsor. You are only required to make the attestation and declaration if you are a business which operates in Australia.

The attestation affirms that you either have a strong record of, or a demonstrated commitment to, the employment of local labour.

The declaration affirms that you will not engage in discriminatory recruitment practices.

Establishment of business or fulfilment of contractual obligations

If you are a business which is operating outside Australia, with no operations in Australia, you must be able to demonstrate that your application for approval as a standard business sponsor will enable you to:

- employ a subclass 457 holder who will establish, or assist in establishing, a business operation on your behalf in Australia with overseas connections, or
- fulfil, or assist in fulfilling, one of your contractual obligations in Australia.

Examples of types of evidence which may be considered include, but are not limited to:

- a company or business expansion plan
- an agreement to enter into a joint venture between you and a party in Australia
- a contract between you and a party in Australia.

No adverse information

There must be no adverse information known about the business or a person associated with the business. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

Any adverse information which is known to the department will be taken into account in deciding the applicant's sponsorship application, even if you have not declared it in your application.

Adverse information has a defined legislative meaning. It means any adverse information relevant to the applicant's suitability as a sponsor including information that the applicant, or a person associated with the applicant:

- has been found guilty by a court of an offence under a Commonwealth, state or territory law
- has, to the satisfaction of a competent authority, acted in contravention of a Commonwealth, state or territory law
- has been the subject of administrative action (including being issued with a warning), by a competent authority, for a possible contravention of a Commonwealth, state or territory law
- is under investigation, subject to disciplinary action or subject to legal proceedings in relation to an alleged contravention of a Commonwealth, state or territory law
- has become insolvent within the meaning of subsections 5(2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*.

The conviction, contravention, administrative action, investigation, disciplinary action, legal proceedings or insolvency constituting the adverse information must have occurred within 3 years before the sponsorship application. In addition, the laws that are referred to above must relate to one of more of the following matters:

- discrimination
- immigration
- industrial relations
- occupational health and safety
- people smuggling and related offences
- slavery, sexual servitude and deceptive recruiting
- taxation
- terrorism
- trafficking in persons and debt bondage.

Labour agreements

This section specifically relates to businesses seeking to sponsor overseas skilled workers in the following areas:

- meat or on-hire industries
- seeking to address special labour market circumstances.

If you are not seeking to sponsor an overseas skilled worker in one of these categories, please proceed to Part 3 – Nomination.

If you are seeking to employ subclass 457 visa holders in any occupation not included in the list of eligible occupations for subclass 457 visa holders, or in the meat or on-hire industries, then you will be required to enter into a labour agreement.

A labour agreement is a formal agreement negotiated between the department and an employer. Labour agreements enable Australian employers to recruit a specified number of workers from overseas in approved occupations in response to identified skill shortages in the Australian labour market.

Labour agreements are designed to ensure that overseas recruitment supports the longer term improvement of employment and training opportunities for Australians. Accordingly, employers are required to make commitments to the employment, education, training and career opportunities of Australians as part of the agreement. Employers must also demonstrate a direct employer-employee relationship as a pre-requisite to a labour agreement.

To find out more about the labour agreement process please contact the department by email to labour.agreement.section@border.gov.au

An employer with a labour agreement in place is an approved sponsor for the term of operation of the agreement. Therefore, they are not required to apply separately for sponsorship approval to nominate overseas workers under the subclass 457 visa programme.

Sponsorship obligations

Sponsorship obligations apply to all sponsors of subclass 457 visa holders. The sponsorship obligations are in place to ensure that overseas skilled workers are protected from exploitation. Sponsorship obligations also ensure that the programme is being used to meet genuine skills shortages, and is not being used to undercut local labour wages and conditions.

What are the obligations?

Obligation to cooperate with inspectors

All sponsors of subclass 457 visa holders must cooperate with inspectors who have been appointed under the *Migration Act 1958*. This includes inspectors from the Fair Work Ombudsman. The role of the inspector is to determine:

- whether a sponsorship obligation is being, or has been, complied with, and
- whether other circumstances exist, or have existed, for which the department may take administrative action.

An inspector is appointed under the Act and will carry appropriate identification.

Inspections can include:

- a desk audit or a visit in person, announced or unannounced, by departmental officers to your workplace, and
- officers performing a number of checks, such as examining financial and payroll records and interviewing sponsors, company directors and staff, including sponsored workers and Australian employees.

Cooperating with inspectors may include (but is not limited to):

- providing access to premises
- producing and providing documents within the requested timeframe
- providing officers with access to interview any person on sponsor's premises
- not preventing or attempting to prevent access to a person who has custody of, or access to, a record or documents.

Not cooperating may include (but is not limited to):

- hindering or obstructing an inspector
- concealing or attempting to conceal a person, information, document, or thing from an inspector
- preventing or attempting to prevent a person from assisting an inspector
- assaulting, intimidating or threatening an inspector or a person assisting the inspector.

How long does this obligation apply for?

For standard business sponsors, this obligation starts to apply as soon as the sponsorship is approved and ends 5 years after the day on which the person or business ceases to be an approved sponsor.

For parties to a labour agreement, this obligation starts to apply on the day on which the labour agreement commences, and ends 5 years after the day on which the labour agreement ceases.

Obligation to ensure equivalent terms and conditions of employment

This obligation applies to all sponsors of subclass 457 visa holders, although its application differs slightly depending on whether the sponsor is a standard business sponsor or a party to a labour agreement.

Standard business sponsors must show that they are providing no less favourable terms and conditions of employment to the nominee than they are providing or would provide to an Australian performing equivalent work in the sponsor's workplace at the same location.

This obligation does not apply to the sponsor if the annual earnings of their sponsored visa holder are equal to, or greater than, the exemption level. To check the current market salary rate exemption level see the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments

Sponsors who are parties to labour agreements must ensure that overseas workers receive remuneration as specified in the agreement.

How long does this obligation apply for?

This obligation starts to apply on the day the primary sponsored person is granted a subclass 457 visa, unless the primary sponsored person already holds a subclass 457 visa in which case the obligation starts to apply on the day the nomination for the primary sponsored person is approved.

This obligation ends on the day the primary sponsored person ceases employment with the sponsor or on the day the primary sponsored person is granted a further substantive visa (other than a subclass 457 visa). If the primary sponsored person is granted a further subclass 457 visa to continue to work for the sponsor, the obligation continues.

Obligation to pay travel costs to enable sponsored persons to leave Australia

Sponsors must pay reasonable and necessary travel costs to enable their sponsored workers and their family members to leave Australia. This is required providing the costs have been requested in writing by the sponsored worker, or their family member, or the department on their behalf, and the costs have not already been paid by the sponsor in accordance with this obligation.

The costs will be considered reasonable and necessary provided they:

- include travel from the sponsored persons' usual place of residence in Australia to the place of departure from Australia
- include travel from Australia to the country (for which the person holds a passport) specified in the request to pay travel costs, and
- are for economy class air travel or, where unavailable, a reasonable equivalent.

Travel costs must be paid within 30 days of receiving the request.

How long does this obligation apply for?

This obligation starts to apply on the day the primary sponsored person is granted a subclass 457 visa, unless he or she already holds a subclass 457 visa in which case the obligation starts to apply on the day the nomination for the primary sponsored person is approved.

This obligation ends on the earliest of the day:

- on which a nomination by another sponsor in relation to the primary sponsored person is approved
- on which the sponsored person is granted a further substantive visa (other than a subclass 457 visa). If the primary sponsored person is granted another subclass 457 visa to continue to work for the sponsor, the obligation continues, or
- the sponsored person has left Australia and no longer holds a visa.

This obligation applies to primary and secondary sponsored persons.

Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen

In the event the primary sponsored person or a secondary sponsored person becomes an unlawful non-citizen the sponsor must pay costs incurred by the Commonwealth in locating and/or removing the primary or secondary sponsored person from Australia.

The payment of costs will be required if the Minister for Immigration and Border Protection has requested the payment by written notice. The sponsor is liable to pay the Commonwealth the difference between the actual costs incurred by the Commonwealth, less any amount which may have already been paid under the obligation to pay travel costs to enable sponsored persons to leave Australia. The maximum amount payable is AUD10,000.

How long does this obligation apply for?

This obligation starts to apply on the day on which the primary sponsored person or secondary sponsored person becomes an unlawful non-citizen. This obligation ends 5 years after the sponsored person leaves Australia.

However, the sponsor is only liable for costs incurred from the day the sponsored person becomes an unlawful non-citizen up to the point when the sponsored person leaves Australia.

Obligation to keep records

Sponsors must keep records of their compliance with the obligations. All of the records must be kept in a reproducible format and must be capable of verification by an independent person.

Types of records which a sponsor must keep, in addition to records that must be kept under other Australian Government and state and territory laws, include:

- written requests for payment of outward travel costs for a sponsored visa holder or their family, including when the request was received
- how the outward travel costs were paid for a sponsored visa holder or their family, how much was paid, for whom they were paid, and when they were paid
- notifying us of an event required to be reported to us, including the date and method of notification and where the notification was provided
- tasks performed by the sponsored visa holder in relation to the nominated occupation and where the tasks were performed (unless the sponsored visa holder earns over AUD250,000)
- money paid to the sponsored visa holder (unless the sponsored visa holder earns over AUD250,000)
- money applied or dealt with in any way on behalf of the sponsored visa holder or as the sponsored visa holder directed (unless the sponsored visa holder earns over AUD250,000)
- non-monetary benefits provided to the sponsored visa holder, including the agreed value and the time at which, or the period over which, those benefits were provided (unless the sponsored visa holder earns over AUD250,000)
- if there is an equivalent worker in your workplace, the terms and conditions that apply to the equivalent worker, including the period over which the terms and conditions applied (unless the sponsored visa holder earns over AUD250,000)
- the written employment contract each sponsored visa holder is engaged under
- if the sponsor was lawfully operating a business in Australia at the time of their approval as a standard business sponsor how you are meeting the training obligation
- if you are a party to a labour agreement, the records required to be kept under the labour agreement.

How long does this obligation apply for?

For standard business sponsors, this obligation starts to apply on the day on which the sponsorship is approved.

For sponsors that are party to a labour agreement, this obligation starts to apply on the day the labour agreement commences.

This obligation ends 2 years after the following 2 events have occurred:

- the approved standard business sponsorship or the labour agreement ceases, and
- there are no primary or secondary sponsored persons in relation to the sponsor.

No record needs be kept for more than 5 years under this obligation.

Obligation to provide records and information to the Minister

The department may ask sponsors to provide records or information which relate to their sponsorship obligations, and any other matters that relate to their sponsorship of subclass 457 visa holders. The sponsor must provide records or information upon request and in the manner and timeframe requested by the department.

The records or information must be provided to the department if they are records or information that the sponsor is required to keep:

- under a law of the Commonwealth, state or territory
- under the obligation to keep records
- under the terms of the labour agreement (if the sponsor is a party to a labour agreement).

How long does this obligation apply for?

This obligation starts to apply on the day the standard business sponsorship is approved or the labour agreement commences.

This obligation ends 2 years after the following 2 events have occurred:

- the approved standard business sponsorship or the labour agreement ceases, and
- there are no primary or secondary sponsored persons in relation to the sponsor.

Obligation to provide information to the department when certain events occur

The sponsor must provide certain information to the department when certain events occur. This information must be provided by registered post or electronic mail, to a specified address and within certain timeframes of the event occurring.

You must notify us within 28 calendar days if:

- the sponsored visa holder's employment ends, or is expected to end (the sponsor must tell us if the end date changes)
- there are changes to the work duties carried out by the sponsored visa holder
- you are a standard business sponsor and there is a change to the information in the sponsorship application or the application to vary a term of sponsorship approval relating to the training requirement and the sponsor's address and contact details
- if you are a party to a labour agreement and there is a change to the address and contact details or the training information provided in the labour agreement
- you have paid the return travel costs of a skilled worker or any of their family members in accordance with the obligation to pay return travel costs

-
- you have become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*
 - the structure of your business has changed or ceased to exist as a legal entity.

For a complete list of events, refer to www.border.gov.au

You must send details of these events to sponsor.notifications@border.gov.au

How long does this obligation apply for?

This obligation starts to apply on the day the standard business sponsorship is approved or the labour agreement commences.

This obligation ends 2 years after the following 2 events have occurred:

- the approved standard business sponsorship or the labour agreement ceases, and
- there are no primary or secondary sponsored persons in relation to the sponsor.

Obligation to ensure primary sponsored person works or participates in nominated occupation, programme or activity

The sponsor must ensure that the primary sponsored person does not work in an occupation other than the occupation that was identified in the most recently approved nomination for that person.

If a sponsor wants to employ a primary sponsored person in a different occupation, the sponsor must have a new nomination approved specifying that occupation.

Sponsors must also ensure that the primary sponsored person is only engaged under a written contract of employment as an employee of the sponsor.

The sponsor must also ensure that they do not engage the primary sponsored person's services other than as a direct employee. There are 2 exceptions to this rule:

- a standard business sponsor operating in Australia, in which case the primary sponsored person may also be employed in an associated entity, or
- the primary sponsored person's occupation is an exempt occupation for the purposes of this obligation.

Please refer to the department's website

www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments for a list of the occupations which are exempt from this obligation.

How long does this obligation apply for?

This obligation starts to apply either:

- on the day the primary sponsored person is granted a subclass 457 visa, or
- if the primary sponsored person already holds a subclass 457 visa, the day the sponsor's nomination for the primary sponsored person is approved.

This obligation ends on the earliest of the following:

- the day on which a nomination by another sponsor in relation to the primary sponsored person is approved
- the day on which the person is granted a further substantive visa (other than a subclass 457 visa). If the primary sponsored person is granted another subclass 457 visa to continue to work for the sponsor, the obligation continues, or
- the day the person has left Australia and no longer holds a visa.

Obligation not to recover, transfer or take actions that would result in a primary sponsored person or secondary sponsored person paying certain costs

Sponsors must not recover, or seek to take any action that would result in primary or secondary sponsored person(s) paying all or part of the following costs:

- the costs (including migration agent costs) that relate specifically to the recruitment of the primary sponsored person
- the costs (including migration agent costs) associated with becoming or being an approved sponsor or being a former approved sponsor.

Sponsors are also required to pay certain costs associated with becoming a sponsor and not pass these costs, in any form, onto a sponsored person. These include:

- cost of sponsorship and nomination charges
- migration agent costs associated with the lodgement of sponsorship and nomination applications
- administrative costs and any sundry costs an employer incurs when they conduct recruitment exercises, including:
 - recruitment agent fees
 - migration agent fees
 - the cost of job advertising
 - screening of candidates, short listing, interviews and reference checks
 - salaries of recruitment or human resource staff
 - the cost of outsourcing background checks, police checks and psychological testing where they relate to an employer determining an applicant's suitability for the position
 - training of new staff
 - responding to queries for prospective candidates, and advising unsuccessful applicants
 - travel costs for the sponsor to interview and/or meet the applicant either overseas or in Australia.

How long does this obligation apply for?

This obligation starts to apply on the day the sponsor is approved as a standard business sponsor or the day the labour agreement commences.

This obligation ends 2 years after the following 2 events have occurred:

- the approved standard business sponsorship or the labour agreement ceases, and
- there are no primary or secondary sponsored persons in relation to the sponsor.

Obligation to provide training

Standard business sponsors who lawfully operated a business in Australia at the time they were approved as standard business sponsors (or at the time they had their terms of approval varied) must contribute to the training of Australians by:

- spending an equivalent of at least 2% of their payroll in payments to an industry training fund that operates in their industry, or
- spending an equivalent to at least 1% of their payroll in the provision of training to employees of their business who are Australian citizens or Australian permanent residents.

The obligation begins on the day sponsors are approved as standard business sponsors. Sponsors must meet this obligation in each 12 month period within which they employ a sponsored visa holder (including if the sponsored visa holder is not employed by them for a full 12 months). Where their approval as a standard business sponsor is varied, they must meet the training requirement if they employ one or more primary sponsored persons.

The obligation ends either:

- for accredited sponsors — 6 years after they are approved as a sponsor, or
- for sponsors who are not accredited — 3 years after they are approved as a sponsor.

Obligation not to engage in discriminatory recruitment practices

Standard business sponsors who lawfully operate a business in Australia must not engage in, or have not engaged in, discriminatory recruitment practices during their period of approval as a sponsor.

Monitoring of sponsors

If you are an approved sponsor, you must comply with the sponsorship obligations for the time specified under each obligation. It is important to note that the obligations apply beyond the term of your approval as a sponsor.

The department monitors compliance with the sponsorship obligations. The department will also monitor the subclass 457 visa holders you have sponsored, to ensure they are abiding by their visa conditions.

Routine monitoring is conducted on approved sponsors, and monitoring may also be initiated based on information, such as allegations, provided to the department. This may take place during the approved sponsorship period and for up to 5 years after the sponsorship approval ceases.

The department conducts monitoring in 3 main ways:

- by exchanging information with other Australian, state and territory government agencies
- through written requests to the sponsor to provide information in accordance with the sponsorship obligations
- by conducting site visits with or without notice.

Monitoring may include investigations conducted by inspectors. Inspectors, including Fair Work Inspectors, have certain investigative powers under the *Migration Act 1958*. Failure to cooperate with inspectors is a breach of the sponsorship obligations and the department may take action against the sponsor.

All written communication about the department's monitoring requirements will be sent directly to you. You may also authorise another person, including migration agents, to act and receive information on your behalf.

The responsibility for complying with sponsorship obligations will remain with you as the sponsor even if you have authorised another person to act and receive information on your behalf.

Sanctions for non-compliance

If the sponsor fails to comply with a sponsorship obligation, action may be taken against the sponsor. The type of actions that may be taken varies depending on whether the sponsor is a standard business sponsor or a party to a labour agreement.

If you are a standard business sponsor

If you are a standard business sponsor and you have failed to satisfy a sponsorship obligation, one or more of the following actions may be taken against you:

- you may be barred for a specified period from sponsoring more people under the terms of one or more existing approvals as a sponsor for different kinds of visas
- you may be barred for a specified period from making future applications for approval as a sponsor in relation to one or more classes of sponsor
- one or more of your existing approvals as a sponsor may be cancelled
- you may be invited to enter into an enforceable undertaking to rectify a serious breach of your sponsorship obligations
- an application may be made to a Court for a civil penalty order against you. Civil penalty orders are up to AUD54,000 if you are a body corporate and AUD10,800 if you are an individual for each failure
- you may be issued an infringement notice for each failure of up to AUD10,800 if you are a body corporate and AUD2,160 if you are an individual.

If you are a party to a labour agreement

If you are a party to a labour agreement and you have failed to satisfy a sponsorship obligation, the following actions may be taken against you:

- the labour agreement may be suspended preventing you from sponsoring any more overseas workers
- the labour agreement may be terminated
- an application may be made to a Court for a civil penalty order against you. Civil penalty orders are up to AUD54,000 if you are a body corporate and AUD10,800 if you are an individual for each failure
- you may be issued an infringement notice for each failure of up to AUD10,800 if you are a body corporate and AUD2,160 if you are an individual.

The labour agreement may contain clauses that provide for alternative methods of sanction for failure to satisfy a sponsorship obligation.

Other circumstances in which the Minister may take administrative action

There are a number of other circumstances in which the Minister may take the administrative actions of barring and/or cancelling the sponsor. Legislatively, the circumstances and the associated administrative actions are only applicable to sponsors who are standard business sponsors.

However, where these circumstances occur in relation to a labour agreement, the department may suspend or terminate the labour agreement in accordance with the clauses of the particular labour agreement.

The other circumstances in which administrative actions may be taken against a standard business sponsor are:

- the standard business sponsor has provided false or misleading information to the department or the Administrative Appeals Tribunal.
- the standard business sponsor no longer satisfies the requirements for approval as a standard business sponsor or for variation of that approval.
- the standard business sponsor has been found by a court or a competent authority to have contravened a Commonwealth, state or territory law.
- a primary sponsored person has been found by a court or a competent authority to have contravened a Commonwealth, state or territory law relating to licensing, registration or membership which the primary sponsored person is required to comply with to work in the nominated occupation.
- the sponsor has asked for, or received, payment or other benefits in return for the occurrence of a sponsorship-related event.

Variation

A business can apply to extend their standard business sponsorship by lodging a variation application. A variation application can be lodged at anytime, but should be lodged before your current approval ceases. To ensure sufficient time to process your variation application, please lodge this application well in advance of the ceasing of your current sponsorship. If your current approval does cease and you want to continue using the subclass 457 visa programme you must lodge a new sponsorship application.

Note: The process to apply for a variation to a standard business sponsorship is the same as applying to become a standard business sponsor. You must use the same form as you would if you were applying to become a standard business sponsor for the first time.

Accredited Status

A sponsor accreditation scheme exists for certain standard business sponsors.

Accreditation recognises that many Australian businesses have a long history of good dealings with the department including lodging a high volume of good quality, decision-ready applications and an excellent record of compliance with relevant laws.

Accredited Status can be applied for either with a new sponsorship application or by varying a sponsorship. You will be required to meet certain additional characteristics which will then qualify you for priority processing for all your subclass 457 nominations and applications.

If accredited, your sponsorship agreement will last for 6 years. You must use the same form as for applying to become a standard business sponsor. If you do not meet the characteristics for accredited status, your application for standard business sponsorship will still proceed and be assessed in the usual way.

To be eligible for Accredited Status you must meet the following characteristics:

- be an Australian Government agency or company with a minimum AUD 4 million turnover for each of the last 3 years
- have an excellent record of compliance with immigration and workplace law, including lodging a high level of decision-ready applications and a low refusal rate
- have a domestic workforce comprising at least 75% Australian citizens and permanent residents
- have sponsored at least 10 subclass 457 visa holders in the last 24 months
- have been an active subclass 457 visa sponsor for the past 3 years (with a break of no more than 6 months, not due to any sanction)
- have all 457 holders engaged as employees under a written contract of employment that includes at least the minimum employment entitlements as required under the National Employment Standards (unless their occupation is exempt from this requirement), and
 - a copy of a template contract used for this purpose must be attached to the application
- have all Australian employees paid in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rates for all occupations in your business, and
 - a copy of the Enterprise Agreement or internal salary table must be attached to the application in addition to evidence and a description of how the business used the evidence to determine that the salary rates contained in the document reflect the current market salary rates for occupations in your business (eg. Awards, remuneration surveys, job advertisements, the Australian Government's Job Outlook)
- have provided details of all business activities undertaken by your business to the department, and
 - evidence relating to the other business activities must be attached to the application (eg. profit/loss statements, Business Activity Statements, annual reports)
- have provided details of all Principals/Directors of your business to the department
 - if the business is a company, a current/historical extract from the Australian Securities and Investments Commission (ASIC) must be attached to the application.

Sponsors with Accredited Status approved after 1 July 2016 will also be eligible for streamlined processing of nominations where the nominated base salary is equal to or greater than:

- the Fair Work High Income Threshold (currently AUD138,900) and the occupation is classified as skill level 1 or 2 in the ANZSCO, or
- AUD75,000 and the occupation is classified as skill level 1 or 2 in the ANZSCO with the exception of the following occupations:
 - recruitment consultant
 - sales representative (industrial products)
 - customer service manager
 - corporate general manager
 - procurement manager
 - quality assurance manager
 - sales and marketing manager
 - specialist manager not elsewhere classified
 - hotel/motel manager
 - contract administrator
 - information and organisation professionals not elsewhere classified.

Sponsors with Accredited Status must still comply with all sponsorship obligations. Accredited Status may be revoked if you are found not to be maintaining the specified characteristics.

Nominating a position

Nomination is the process by which an approved sponsor identifies a position to be filled by an overseas skilled worker. The nomination process is required for both standard business sponsors and parties to a labour agreement.

The nominee can be:

- a holder of a subclass 457 visa
- an applicant for a subclass 457 visa, or
- a proposed applicant for a subclass 457 visa.

You must complete nomination form 1196 (Internet) for each occupation and each primary visa applicant.

The purpose of the nomination process is to identify the following information:

- the position to be filled
- the skills and experience required for the position (according to ANZSCO)
- the market salary rate for the position and the salary rate to be paid to the prospective overseas employee, and
- the name of the prospective overseas employee.

To lodge a valid nomination the employer must have either:

- already lodged a sponsorship application
- had a previous sponsorship approved, or
- applied for sponsorship at the same time as the nomination application.

You will be required to provide an identifier such as the sponsorship application ID or transaction reference number when lodging the nomination application.

Requirements for approval

Similar to the standard business sponsor application process, there are a defined set of requirements for approval of a nominated occupation.

Unless otherwise specified, the following requirements apply whether you are nominating an occupation as a standard business sponsor or as a party to a labour agreement.

To successfully nominate an occupation for a subclass 457 visa you must meet the following requirements:

Applying in the correct manner

For the nomination to be considered for approval you must apply on the correct form, pay the correct fee and provide certain information in the nomination application.

To nominate a position you should lodge an application online using form 1196 (Internet) which can be accessed at www.border.gov.au

Fees

There is a fee for businesses applying for approval of their nomination applications. Payment of this fee must accompany your application. Payment does not guarantee approval of the application.

If you made any nomination applications at the same time as an application for standard business sponsorship, and your sponsorship application is refused, any fees paid for these nominations will be repaid to you.

Fees may be subject to adjustment at any time. Application fees may be subject to adjustment on 1 July each year. This may increase the cost of an application. To check the current application fee, see the department's website www.border.gov.au/trav/visa/fees or check with the nearest office of the department.

Method of payment

To make a payment when lodging your application on form 1196 (Internet), please select the 'Pay via credit card' option on the 'Payment' page.

Provision of certain information

As part of the nomination process, the sponsor must provide the:

- identity of the person who will work in the nominated occupation (you must provide an identifier such as an application transaction reference number or ID if your nominee is in Australia or has ever applied for an Australian visa)
- ANZSCO code for the nominated occupation
- location or locations where the nominated occupation is to be carried out, and
- relevant certification (see next section).

This information cannot be changed after your application is lodged. If any of this information changes you will need to withdraw your application and lodge a new one.

Certification

The type of certification that you must make differs depending on whether you are an approved standard business sponsor, or a party to a labour agreement.

If you are a standard business sponsor you must certify in writing:

- that the tasks of the position include a significant majority of the tasks of the nominated occupation listed in the ANZSCO, or the nominated occupation specified in the gazetted list of eligible occupations, and
- if the sponsor is lawfully operating a business outside Australia but not in Australia, the nominated occupation is a position in the business of the sponsor (unless the nominated occupation is an exempted occupation), or
- if the sponsor is lawfully operating a business in Australia, the nominated occupation is a position within the business, or an associated entity, of the sponsor (unless the nominated occupation is an exempted occupation), and

-
- the qualifications and experience of the nominee identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the ANZSCO, or if there is no ANZSCO code, for the nominated occupation in the gazetted list of eligible occupations, and
 - whether or not the sponsor has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act.

If you are a party to a labour agreement you must certify in writing:

- that the tasks of the position include a significant majority of the tasks of the nominated occupation listed in the ANZSCO, or the nominated occupation specified in the labour agreement, and
- the qualifications and experience of the nominee identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the ANZSCO, or if there is no ANZSCO code, for the nominated occupation in the labour agreement, and
- any additional requirements specified in the labour agreement, and
- whether or not the sponsor has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act.

Note: See the Work visa scams page at www.border.gov.au/trav/work/work-1 for more information.

Labour market testing

The labour market testing (LMT) requirement applies to approved standard business sponsors and does not apply to nominations lodged by parties to a labour agreement.

Standard business sponsors are required to test the local labour market prior to lodging a nomination and must provide information with their nomination about their attempts to recruit Australian workers and how they have determined on the basis of these attempts that there is no suitably qualified and experienced Australian citizen, Australian permanent resident or eligible temporary visa holder available to fill the position.

Eligible temporary visa holders

A person is an eligible temporary visa holder in relation to a nomination if, at the time the nomination is made:

- the person is the holder of a Working Holiday Maker (subclass 417) visa or a Work and Holiday (subclass 462) visa, and
- the person is employed in the agricultural sector by the nominating employer (or an associated entity of that business), and
- the temporary visa does not prohibit the person from performing that employment.

International trade obligations

LMT will not need to occur where it would conflict with Australia's international trade obligations, in any of the following circumstances:

- The worker you nominate is a citizen/national of China, Japan or Thailand, or is a citizen/national/permanent resident of Chile, Korea or New Zealand.

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- The worker you nominate is a current employee of a business that is an associated entity of your business that is located in an Association of Southeast Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile, China, Japan, Korea or New Zealand.
 - The worker you nominate is a current employee of an associated entity of your business who operates in a country that is a member of the World Trade Organization, where the nominated occupation is listed on the department's website as an 'Executive or Senior Manager' and the nominee will be responsible for the entire or a substantial part of your company's operations in Australia.
 - Your business currently operates in a World Trade Organization member country and is seeking to establish a business in Australia, where the nominated occupation is listed on the department's website as an 'Executive or Senior Manager'.
 - The worker you nominate is a citizen of a World Trade Organization member country and has worked for you in Australia on a full-time basis for the last 2 years in the nominated position.

For further information on the occupations which are considered to be Executives or Senior Managers for the purposes of Australia's international trade obligations please refer to the department's website www.border.gov.au/trav/visa-1/457-

Countries which are members of the World Trade Organization are listed on the department's website www.border.gov.au/trav/visa-1/457-

Occupation based exemptions from LMT

If an international trade obligation does not apply to the nomination, there may still be an exemption from the requirement to provide evidence of labour market testing depending on the occupation that is being nominated. For a full list of occupations for which LMT is required, refer to the department's website www.border.gov.au/trav/visa-1/457-

Major disasters

If a major disaster has occurred in Australia an exemption from labour market testing may be provided in order to assist disaster relief or recovery. This exemption can only be granted, in writing, by the Minister for Immigration and Border Protection.

Period in which LMT must have been undertaken

Labour market testing must have been undertaken within the previous 12 months prior to lodging a nomination.

Evidence of LMT

If you are not exempt from the LMT requirement, you must provide evidence of having tested the Australian labour market within the 12 months prior to lodging the nomination. This evidence must be provided at the time you lodge the nomination. If you do not attach this evidence to your application it cannot be approved and will be refused.

Mandatory evidence

You must provide information with the nomination about your attempts to recruit Australians, including the details and expenses of any advertising you conducted.

You can complete the domestic recruitment table as evidence of your recruitment activities and attach it to your nomination. A copy of the table is available on the department's website www.border.gov.au/trav/visa-1/457-

If you choose to attach copies of any job advertisements you have placed, you must also attach evidence of any expenses incurred for this advertising.

Optional evidence

You may wish to provide other information and evidence about your attempts to recruit Australians, such as labour market research, expressions of support from government employment agencies or information about your participation in job and career expositions.

Redundancies or retrenchments

If an Australian citizen or permanent resident has been retrenched or made redundant in your business, or an associated entity of your business, within the 4 months prior to lodging a nomination, you must also provide information about those redundancies or retrenchments.

You must have undertaken LMT after those redundancies or retrenchments, and you must provide information and evidence of that labour market testing with your nomination.

Nominated occupation

Eligible occupations

An occupation which is nominated by an approved standard business sponsor must be eligible for the subclass 457 visa programme. See www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments

Sponsors who want to employ subclass 457 visa holders in an ineligible occupation must do so under a labour agreement.

A new nomination application is required for each occupation and position you seek to fill. You must provide information about the occupation and position including job title, duty statement and responsibilities. Other information which you may provide includes, but is not limited to:

- qualifications required
- essential skills
- employment experience
- relevant registration and/or licence required to perform the position in Australia.

If the nominee is already the holder of a subclass 457 visa, they may be asked to undertake a skills assessment to show that they have the required skills for the nominated occupation. They may also be asked to provide evidence of their English language skills.

Equivalent terms and conditions of employment (market salary rate)

Standard business sponsors must show that they will provide no less favourable terms and conditions of employment to the nominee than they would to an equivalent Australian at the same location. This is known as the 'market salary rate'.

This requirement is designed to protect overseas workers from exploitation. It is also designed to ensure that overseas workers are not used to 'undercut' local employment conditions and wages.

How do I determine the market salary rate for the nominated position as a standard business sponsor?

The way in which you demonstrate the market salary rate differs depending on whether there is an Australian performing equivalent work in the workplace.

There is an Australian performing equivalent work in the workplace

In this case you will demonstrate the market salary rate by referring to the terms and conditions that apply to that Australian worker.

If the terms and conditions of the Australian performing equivalent work are directly set by an industrial instrument (such as a modern award or enterprise agreement) then this may be used to demonstrate the market salary rate.

If the Australian worker is not covered by an industrial instrument because they are employed under a common law contract, then the terms and conditions in the common law contract may be used to demonstrate the market salary rate.

You must satisfy the department that the proposed terms and conditions of employment are appropriate for that location and industry.

There is no Australian performing equivalent work in the workplace

In this circumstance you may demonstrate the market salary rate by referring to an industrial instrument (such as a modern award or enterprise agreement) that directly sets the terms and conditions of Australians performing equivalent work.

Applicable industry awards may be used to demonstrate the market salary rate where the awards directly set the terms and conditions of Australians performing equivalent work. If you are referring to an award to demonstrate the market salary rate you must provide evidence that Australians performing equivalent work are being paid the award rate.

If there is no equivalent worker or relevant industrial instrument, the onus will be on you to provide a range of evidence to demonstrate the market salary rate. Some relevant evidence may include, but is not limited to:

- data from reputable remuneration surveys
- published earnings data (for example ABS data)
- evidence of what employees performing equivalent work are paid in similar workplaces in that location.

You must satisfy the department that the proposed terms and conditions of employment are appropriate for that location and industry.

Temporary skilled migration income threshold

The Temporary Skilled Migration Income Threshold (TSMIT) is a threshold which ensures that overseas workers will earn enough money to be self reliant while in Australia.

You must demonstrate that the market salary rate for the person you are seeking to sponsor is greater than the TSMIT. If the market salary rate for the position you wish to sponsor does not exceed the TSMIT, you will not be able to access the subclass 457 visa programme.

The TSMIT is indexed annually. You are advised to refer to the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments to check the current TSMIT level before lodging a nomination application.

If the market salary rate is below the TSMIT, you cannot inflate the proposed salary for your nominee. This means that if the market salary rate for the position you want to sponsor is below the TSMIT, you can not pay the overseas worker the TSMIT or more simply to access the programme. The TSMIT does not determine the salary you should pay your overseas worker.

Exemptions from demonstrating equivalent terms and conditions

A standard business sponsor is not required to demonstrate payment of market salary rate if the proposed annual earnings of the nominee are equal to, or greater than, the exemption rate. Please refer to the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments to check the current market salary rate exemption level.

Sponsors who are parties to labour agreements must demonstrate the payment of equivalent terms and conditions of employment as part of the nomination application if this a requirement of the labour agreement.

If the market salary rate is not a requirement of the labour agreement they must pay their overseas employees on subclass 457 visas terms and conditions of employment which are no less favourable than the terms and conditions of employment set out in the relevant labour agreement.

Genuine position

This requirement only applies to standard business sponsors.

The position associated with the nominated occupation must be genuine. It must:

- fit broadly within the scope of the activities and the nature and scale of your business
- have duties that are consistent with the skill level and tasks of the nominated occupation as listed in ANZSCO
- not have been created just to help your nominee get a subclass 457 visa (eg. if you have established a business in Australia the 457 programme cannot be used to sponsor yourself).

Nominated person

Direct employer of the overseas worker

Written contract of employment

Unless the nominated occupation is specified in an instrument in writing, the approved sponsor is required to engage the nominee as an employee under a written contract of employment. A copy of this contract, which has been signed by both sponsor and nominee, must be provided to the department.

Lawfully operating a business inside Australia

For an approved standard business sponsor who operates a business in Australia, it is not necessary for the sponsor to be the direct employer of the nominee. The nominee, once approved, may work for an associated entity of the sponsoring business.

Under this arrangement, it is important to note that the approved standard business sponsor retains ultimate responsibility for the nominees under its sponsorship obligations even if they are working for an associated entity.

If the sponsor fails to comply with applicable sponsorship obligations it may result in sanctions, barring or cancellation from the subclass 457 visa programme.

Lawfully operating a business outside Australia

Where the approved standard business sponsor does not operate a business in Australia, the nominee must only work for the sponsor as a direct employee. The primary sponsored person may not work for an Australian business that is an associated entity of the sponsoring business.

On-hire arrangements

Employers who propose to supply the services of subclass 457 visa holders to unrelated businesses cannot do so under standard business sponsorship. They can only do this through a labour agreement.

Identifying nominated persons in the nomination

It is a requirement at time of nomination lodgement that the sponsor identifies the visa holder, applicant or proposed applicant for the subclass 457 visa who will work in the nominated occupation.

If your nominee is in Australia or has ever applied for an Australian visa you must provide an identifier such as a visa application ID, a transaction reference number (TRN) or visa grant number with your application. You should obtain this information from your nominee prior to commencing your application.

The sponsor should also identify in the nomination all known secondary visa applicants (where applicable) who will accompany the nominee to Australia. These may include a spouse or a de facto partner, a dependent child or other dependent relatives.

No adverse information

There must be no adverse information known about the sponsor or a person associated with the sponsor. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

Any adverse information which is known to the department will be taken into account in deciding the nomination of the position, even if you have not declared it in your application.

For more information about what constitutes adverse information see 'No adverse information' in Part 2.

Labour agreement requirements are met

Sponsors who are parties to approved labour agreements must ensure that, in nominating an occupation, any applicable requirements specified in the labour agreement have also been met.

When a nomination ceases

An approval of a nomination ceases on the earliest of the following:

- the day on which the department receives notification in writing of the withdrawal of the nomination by the sponsor
- 12 months after the day on which the nomination is approved
- the day on which the applicant, or the proposed applicant, for the nominated occupation, is granted a subclass 457 visa
- if the approval of the nomination is given to a standard business sponsor — 3 months after the day on which their approval as a standard business sponsor ceases
- if the approval of the nomination is given to a standard business sponsor, and their approval as a standard business sponsor is cancelled — the day on which the approval as a standard business sponsor is cancelled
- if the approval of the nomination is given to a party to a labour agreement — the day on which the labour agreement ceases.

Refund of nomination fee

There are limited circumstances in which the nomination fee may be refunded. These circumstances are as follows:

- if the list of eligible occupations has changed and the occupation that you have nominated no longer meets the description of that occupation in the list. You must withdraw the nomination before a visa is decided for that nomination to gain the refund. This does not apply where the nominated occupation was not on the list to begin with.
- as a sponsor who is party to a labour agreement you may have your nomination fee refunded if you withdraw your nomination before a decision is made under the following circumstances:
 - you have nominated an occupation which is not permitted by the labour agreement, or
 - you make a nomination after you have already reached the number of approved nominations for that year.

Part 4 – Visa application

Visa application is the third stage of sponsoring an overseas skilled worker under the subclass 457 visa programme. The overseas skilled worker and any dependants must apply for and be granted a visa to travel to or remain in Australia.

The overseas skilled worker is known as the primary sponsored person. Any dependants that are applying with the primary sponsored person are known as secondary sponsored persons.

It is important to note that a subclass 457 visa application cannot be processed if your application is not supported by an approved sponsor and an approved nomination.

While you may be asked to complete a number of steps during the processing of your application, it does not mean your application will be successful. Do not anticipate a successful outcome and sell your house or other property, resign from current employment or make travel arrangements until you have been advised in writing that you have been granted a visa.

Important information about privacy

Your personal information is protected by law, including the *Privacy Act 1988*. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in form 1442i *Privacy notice*. Form 1442i is available from the department's website www.border.gov.au/allforms/ or offices of the department. You should ensure that you read and understand form 1442i before completing the application form.

Applying for a visa

Who can apply for a subclass 457 visa?

You can apply for a subclass 457 visa if you:

- have been nominated by an employer to work in Australia under standard business sponsorship and you have been advised by that employer to apply for your visa
- have been nominated by an employer to work in Australia under a labour agreement and you have been advised by that employer to apply for your visa
- have been nominated to work in Australia on the basis of a transfer within your company and have been advised by your employer to apply for your visa
- are a member of the family unit of a primary visa applicant who is seeking to be granted a subclass 457 visa on the basis that they meet the primary visa requirements.

Intra-company transfers

Streamlined processing arrangements are in place to help executives, managers and specialists on intra-company transfer (employees of an international business transferred to Australia to work in a branch or subsidiary of the business). These arrangements also assist intra-company transfers between Asia Pacific Economic Co-operation (APEC) economies.

APEC economies are:

- Australia
- Brunei Darussalam
- Canada
- Chile
- China
- Chinese Taipei
- Hong Kong (China)
- Indonesia
- Japan
- Korea
- Malaysia
- Mexico
- New Zealand
- Papua New Guinea
- Peru
- Philippines
- Russia
- Singapore
- Thailand
- United States of America
- Vietnam.

Application by family members

Members of a primary visa applicant's family unit who are applying for a subclass 457 visa at the same time as the primary visa applicant may make a combined application with the primary visa applicant. They can apply on the same form.

Members of a primary visa applicant's family unit applying for a subclass 457 visa who do not make a combined application with the primary visa applicant will be required to make a separate visa application.

How and where to lodge your application

To lodge your subclass 457 visa application, you should:

- complete the correct form in English (1066 (Internet))
- provide details of your residential address — this must be the address of where you intend to live while your visa application is being processed. A post office box is not acceptable and may result in your application being treated as an invalid application
- answer all questions which apply to you truthfully — your application may be refused if you provide incorrect information
- provide original or certified copies of any required documents unless the department advises otherwise
- pay the correct visa application fee. See www.border.gov.au/trav/visa/fees

Some of the documentation that you must provide may take you several weeks to obtain. Wherever possible these documents should be obtained before lodging your visa application in order to facilitate a timely decision on your visa application.

If you have been nominated by an Australian or overseas business (either under a standard business sponsorship or a labour agreement), all applications (primary and secondary visa applicants) must be made online at www.border.gov.au

There are other validity requirements which may apply to you as a primary visa applicant. See 'Requirements for visa grant — general' on page 46.

Standard business sponsor

If you are nominated to work in Australia under a standard business sponsorship arrangement by a business:

- your application must specify the business which has nominated you, and
- your application must be accompanied by evidence that the business:
 - has lodged a nomination that identifies you, or
 - has a current approved nomination that identifies you.

The business which has nominated you must also not be the subject of a bar which prohibits sponsoring further overseas workers.

Labour agreement

If you are nominated to work in Australia under a labour agreement:

- your application must specify the business which has nominated you, and
- your application must be accompanied by evidence that the business:
 - has lodged a nomination that identifies you, or
 - has a current approved nomination that identifies you.

Establishing your identity

You must be able to provide sufficient evidence to establish your identity. Evidence may include a:

- certified copy of your passport biodata page (the page with photo and personal details)
- passport size photograph
- certified copy of your birth certificate
- certified copy of your family register document if applicable
- certified copy of your identity card if applicable
- certified copy of any official document which details any name change (for example, a marriage certificate) if applicable.

Changing your details

Please contact the office of the department where you lodged your application if you want to change the details of any information you have provided.

Limitations on visa applications

If you are in Australia, you may be prevented from making an application if you do not hold a substantive visa (which is any visa other than a bridging visa, a criminal justice visa or an enforcement visa) and the last substantive visa held by you was a subclass 771 (Transit) visa or a special purpose visa.

In these cases the department can provide you with information about any visas you may apply for.

Contacting the department

If you need to contact us about your visa application, we prefer that you do this in writing. This helps us to continue processing all applications as quickly as we can. You should send an email to the address provided on the letter that acknowledges that we have received your application. We aim to respond to all email enquiries within 7 working days.

When communicating with the department about your visa application, you should correctly identify yourself in order to enable the department to quickly identify and locate your visa application. You should include:

- your name (as provided in your visa application)
- your date of birth
- Transaction Reference Number (TRN)
- the client number given to you by the department, or, if you do not have a client number, the department's file number or the application receipt number.

Changes to your circumstances

It is important that you tell the department about any changes to your circumstances including your name, passport, contact details, address or family members as soon as possible. You are required to do this in writing. To make it easy to advise us of your changes in circumstance, we have a number of forms which are available on our website or at any of our offices. If you do not advise the department of your change of address, any communication by the department about your visa application will be sent to the wrong address.

Please make sure when you write to us that you include:

- your name (as provided in your visa application)
- your date of birth
- Transaction Reference Number (TRN)
- the client number given to you by the department, or, if you do not have a client number, the department's file number or the application receipt number.

If you have provided the details of another person as your authorised recipient, then any communication by the department about your visa application will be sent to your authorised recipient, and you will be taken to have received that communication. You should also notify the department in writing of any change of address for your authorised recipient.

Withdrawal of applications

You may withdraw your visa application by advising the department in writing at any time before a decision is made. Any fees that you paid at time of application are usually not refunded.

It is important to note that it is not possible to re-open an application after it has been withdrawn. Should you want to re-apply for a subclass 457 visa, you must make a new visa application and meet the requirements which apply at that time and pay a new application fee.

Assessing your visa application

Requirements for visa grant — primary visa applicant

If you are a primary visa applicant, the specific requirements that you must meet will differ depending on which stream of subclass 457 visa you are applying for.

These specific requirements are in addition to the general requirements for visa grant, such as health and character requirements.

Standard business sponsor

To be granted a subclass 457 visa under the standard business sponsor stream you must demonstrate, among other things, that:

- both you and the occupation specified in your visa application are the subject of an approved nomination which has not ceased to be in effect
- you have a genuine intention to perform the occupation, and the position associated with your occupation is genuine
- you have the necessary skills and experience to perform the occupation
- you meet the English language proficiency requirement (unless you are exempt)
- if required to do so, that you have the relevant licensing and registration required to perform the duties of your nominated occupation in Australia.

There must be no adverse information known about your sponsor or a person associated with your sponsor. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

Labour agreement

The following are the key requirements you must meet, among other things, to be eligible for the grant of a subclass 457 visa under the labour agreement stream:

- the occupation specified in your visa application must be the subject of a labour agreement
- both you and the occupation specified in your visa application must be the subject of an approved nomination by the party to the labour agreement which has not ceased to be in effect
- you must, if required to do so, demonstrate that you have the necessary skills and experience to perform the occupation
- you must, if required to do so, demonstrate that you have the relevant licensing and registration required to perform the duties of your nominated occupation in Australia.

There must also be no adverse information known about the party to the labour agreement or a person associated with the party to the labour agreement. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

Genuine intention and skills

If you are a visa applicant under the standard business sponsor stream, you are required to demonstrate that you have:

- a genuine intention to perform the nomination occupation
- the skills and experience necessary to perform the occupation.

The evidence that you can provide to demonstrate you meet these requirements may include, but is not limited to:

- a successful 457 skills assessment conducted by Trades Recognition Australia (trade occupations only)
- a successful migration skills assessment, in your nominated occupation, from the relevant assessing authority
- a certified copy of relevant qualification certificates (professional and educational)
- a certified copy of any required registration/licensing
- previous employment references
- your curriculum vitae or resumé.

Skills assessment

If your nominated occupation is a trade occupation you may be required to undertake a skills assessment. To determine if you are required to do so, please refer to the Trades Recognition Australia website www.tradesrecognitionaustralia.gov.au/programs/457/pages/default.aspx

Trades Recognition Australia updates the skills assessment processes from time to time to provide for formal skills testing of trade occupations.

If your nominated occupation is in an occupation other than a trade occupation, you may be required to provide evidence of a suitable skills assessment from the relevant assessing authority for your nominated occupation. Your case officer will advise you if you are required to undertake a skills assessment.

Information on assessing authorities other than Trades Recognition Australia, can be found on the department's website www.border.gov.au

Registration/licensing

Where relevant, you must provide evidence from the relevant Australian registration or licensing authority that you hold or will be able to meet necessary registration or licensing requirements. The information relating to registration or licensing required must specify:

- the type of registration or licensing held
- the name and contact details for the registering or licensing authority.

Your approved sponsor should be able to provide you with the necessary licensing and registration information.

Employment references

Employment references must be on the letterhead of the employer and include the name, title and contact details of the referee. Employment details in the reference should include details of your position and dates of service. References should cover a period sufficient to demonstrate relevant skill level.

Curriculum vitae

Curriculum vitae or resumé must include full employment and educational history, including dates and positions held, for at least the last 5 years.

English language proficiency

It is important that you can speak, write and understand a sufficient level of English while you are in Australia. The department uses the following specified English language tests to determine your level of English language proficiency:

- International English Language Testing System (IELTS)
- Occupational English Test (OET)
- Test of English as a Foreign Language internet-Based Test (TOEFL iBT)
- Pearson Test of English Academic (PTE Academic)
- Cambridge English: Advanced (CAE) test

Further information on these English language tests is available. Information on the:

- IELTS test is available at www.ielts.org/
- OET is available at www.occupationalenglishtest.org/
- TOEFL iBT is available at www.ets.org/toefl
- PTE Academic test is available at www.pearsonpte.com/testme
- Cambridge English: Advanced (CAE) test is available at www.cambridgeenglish.org/exams/advanced/

Details of the scores required in these tests are available from the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments

Exemptions from English language proficiency

If you are a primary applicant under standard business sponsorship arrangements, you must meet the English language requirement for visa grant unless you fall into one of the following categories of exempted persons:

- you are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America, or
- you have completed at least 5 years of full time study in a secondary and/or higher education institution where instruction was conducted in English, or
- you are to be paid at least a salary that exceeds the English language requirement exempt amount and the grant of the visa is in the interests of Australia. This salary is the minimum required to be paid for the duration of the visa. Please check the department's website www.border.gov.au/trav/work/work/subclass-457-visa-legislative-instruments to check the current salary level that is English language exempt, or

-
- you are nominated for an occupation which will be performed at a diplomatic or consular mission of another country or an office of the authorities of Taiwan located in Australia, or
 - your occupation requires you to hold a licence, registration or membership and:
 - to be granted the licence, registration or membership you must demonstrate a level of English language proficiency that is equivalent to or better than the level described on the previous page (test/scores), and
 - you have been granted the licence, registration or membership.

If you are seeking an exemption from the English language requirement on the basis of completion of 5 years of study at a secondary and/or higher institution where the instruction was in English, you should also provide the following information with your visa application:

- name and location of the institution
- level of qualification
- official transcript from the secondary and/or tertiary institution
- number of contact hours of instruction per week delivered in English
- number of years of study.

No adverse information

For primary visa applicants seeking grant of a subclass 457 visa under the labour agreement or standard business sponsorship streams, it is a requirement that there is no adverse information which is known to the department about their sponsor or a person associated with their sponsor. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

For more information about what constitutes adverse information see 'No adverse information' in Part 2.

Health insurance

You must provide evidence that you have made adequate arrangements for health insurance during the period of your intended stay in Australia, before grant of the visa. Health insurance from either Australian or overseas insurance providers is acceptable and will be considered adequate as long as the policy provides at least the minimum cover required by the department.

Note: The department does not endorse health insurance products of any one particular insurance provider.

Reciprocal health care arrangements (RHCA)

If you are from a country with which Australia has reciprocal health care agreement and are eligible to access Medicare you may be able to meet the health insurance requirement if you can produce a Medicare card or receipt.

If you are outside Australia at the time of application and cannot produce a Medicare card or receipt, you should make arrangements for travel or health insurance and then enrol with Medicare after arrival in Australia.

Medical practitioners

If you are a primary visa applicant who has been nominated as a medical practitioner, you must provide written evidence that you are authorised to perform the occupation by the relevant authority in Australia. This evidence should state, at a minimum, that you have received no less than 'in principle' registration from the relevant registration authority.

This evidence must be provided with your visa application.

AusAID or Foreign Affairs recipients and student visa holders

There are some extra requirements which apply to primary visa applicants who are AusAID or Foreign Affairs recipients or fully funded student visa holders.

AusAID or Foreign Affairs recipients

If you are an AusAID or Foreign Affairs recipient, you must have the support of Foreign Affairs for the grant of the subclass 457 visa. This requirement may be waived due to the existence of compassionate or compelling circumstances.

Student visa holders

If you are a student visa holder and have received financial support from the government of a foreign country, you must have the support of the government of the foreign country that provided the financial support, for the grant of the subclass 457 visa. This requirement may be waived due to the existence of compassionate or compelling circumstances.

Requirements for visa grant — secondary visa applicant

If you are a member of the primary visa applicant's family unit, you may make a combined application for the subclass 457 visa with the primary visa applicant.

If you are a member of the family unit of a person who already holds a subclass 457 visa (the primary visa holder) and you are applying for grant of a subclass 457 visa to join the primary visa holder in Australia, you must complete a separate visa application.

In either case, you will be assessed for grant of a subclass 457 visa against the secondary requirements.

Additional charges may apply. Refer to www.border.gov.au/trav/visa/fees for further information.

Establishing your identity

Regardless of whether you are making a combined application with the primary visa applicant, or making a separate visa application after the primary visa applicant has already been granted their subclass 457 visa, you must be able to provide sufficient evidence to establish your identity.

Evidence may include, but is not limited to a:

- certified copy of your passport bio-data page (the page with photo and personal details)
- passport size photograph
- certified copy of your birth certificate
- certified copy of your family register document
- certified copy of your identity card
- certified copy of any official document which details any name change (for example, a marriage certificate).

Member of a family unit

If you are applying for a subclass 457 visa on the basis of being a member of the primary visa applicant's family unit, then you must be able to provide evidence that you are a member of the primary visa applicant's family unit.

Spouse or de facto partner

If you are a spouse of the primary visa applicant, you should provide a certified copy of your marriage certificate as evidence of this.

If you are a de facto partner of the primary visa applicant, you must provide evidence demonstrating that you are in a de facto relationship with the primary visa applicant.

Acceptable evidence may include, but is not limited to:

- evidence of co-habitation
- joint bank account statements
- joint ownership of property
- billing accounts in joint names
- other legal documents.

Dependants 18 years of age or over (other than spouse or de facto partner)

If you are claiming to be a dependant and you are over 18 years of age, you must provide evidence demonstrating that you are dependent on the primary visa applicant.

You must show that you are wholly or substantially reliant on the primary visa applicant for financial support to meet your basic need for food, clothing and shelter, or that you are wholly or substantially reliant on the primary visa applicant for financial support because you are incapacitated for work.

See www.border.gov.au

If you are an existing dependent 457 visa holder and are over 18 years of age, you may still be considered a member of the primary visa applicant's family unit for the purposes of a subsequent 457 visa application if you are:

- under 21 years of age, and
- not married or in a de facto relationship.

Note: If you are approved a visa under this regulation it will only be valid until your 21st birthday.

Dependants under the age of 18 where only one parent/guardian is included in the visa application

A parent or legal guardian not included in the subclass 457 visa application must complete and sign form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* available from www.border.gov.au/allforms/. Where custodial arrangements apply, relevant custody documents must be provided. Acceptable photographic identification, such as personal details page of passport, of the parent or guardian not included in the visa application must be provided.

Nomination

You should provide evidence that you are also included in the nomination if you are applying for a subclass 457 visa on the basis of being a member of the family unit of a primary visa applicant who has been nominated under:

- a standard business sponsorship arrangement, or
- a labour agreement.

If you are a secondary visa applicant and not included in the nomination, you should provide evidence that the standard business sponsor or the party to the labour agreement who had nominated the primary visa applicant has agreed in writing to be your sponsor.

No adverse information

If you are applying for a subclass 457 visa on the basis of being a member of the family unit of a primary visa applicant there must be no adverse information which is known to the department about the standard business sponsor or the party to the labour agreement, or a person associated with them. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

For more information about what constitutes adverse information see 'No adverse information' in Part 2.

Health insurance

You must provide evidence that you have made adequate arrangements for health insurance during the period of your intended stay in Australia, before grant of the visa. Health insurance from either Australian or overseas insurance providers is acceptable and will be considered adequate as long as the policy provides at least the minimum cover required by the department.

Note: The department does not endorse health insurance products of any one particular insurance provider.

Reciprocal health care arrangements (RHCA)

If you are from a country with which Australia has reciprocal health care agreement and are eligible to access Medicare you may be able to meet the health insurance requirement if you can produce a Medicare card or receipt.

If you are outside Australia at the time of application and cannot produce a Medicare card or receipt, you should make arrangements for travel or health insurance for your initial period in Australia and then enrol with Medicare after arrival in Australia.

AusAID or Foreign Affairs recipients

There are some extra requirements which apply to secondary visa applicants who are AusAID or Foreign Affairs recipients.

If you are an AusAID or Foreign Affairs recipient, you must have the support of Foreign Affairs for the grant of the subclass 457 visa. This requirement may be waived due to the existence of compassionate or compelling circumstances.

Requirements for visa grant – general

There are some general requirements for visa grant that apply in addition to the specific requirements described above. These apply regardless of whether you are a primary or a secondary visa applicant, and which stream of subclass 457 visa you are applying for.

Health requirements

You must be able to meet health requirements for the grant of your visa. This means that you may be asked to undergo a health examination.

Most applicants for permanent visas, and temporary or provisional visas that lead to the grant of a permanent visa, are required to undergo health examinations for permanent entry to Australia. A successful health examination result does not mean that a visa will be granted. Costs associated with health examinations are your responsibility.

Health examinations will depend on your circumstances, your intended activities in Australia, your intended period of stay and your country of origin or residence.

For more information see www.border.gov.au/trav/visa/health

Character requirements

To be granted a visa for entry to Australia, you must be of good character.

For the Australian Government to determine whether you are of good character, we may ask you to provide police certificates for each country that you have lived in for 12 months or more over the last 10 years since turning 16. This includes Australia if you have resided in Australia for a total of 12 months or more over the last 10 years. In some instances, applicants may also be required to provide personal details to enable additional character checks to be made.

You do not need to provide police certificates unless you are requested to do so by your case officer.

Payment for visa sponsorship

In the 3 years before you lodge your application, you must not have engaged in conduct which constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act.

This means that you, or a person on your behalf, must not have offered or paid your sponsor (in any form) for the occurrence of a sponsorship-related event including:

- for the business to become a sponsor, or
- for the sponsor to make a nomination, or not withdraw a nomination, in relation to you or anyone included in your application.

For more information see the Work visa scams page at www.border.gov.au/trav/work/work-1

Processing visa applications

A decision on your subclass 457 visa application is made based on all the information you provide to the department and in accordance with the relevant requirements for visa grant.

Extra information about your application

Extra information can be provided in writing to the department at any time, until a decision is made on your application. All relevant information will be taken into account.

Advise the department if your circumstances change

If there has been a change in your circumstances so that any of the information you have already provided to the department is no longer correct, you must inform the department of this change in writing as soon as practicable. Failure to do so may result in your visa being cancelled later on the basis of incorrect information.

If you are invited by the department to give extra information or to comment on certain information, you will be given a date by which to do so. After that date, the department may make a decision on your visa application based on information it already has. You cannot delay a decision by saying that you may or will give more information later.

Interviews

Similarly, if you are invited to attend an interview, you must attend on the date and time agreed with the department. If you do not, the department may make a decision on your visa application on the basis of the information it already has.

Visa decisions

You will be notified by the department when a decision has been made on your application. If you are refused a visa, you will be notified why you were refused and, if applicable, information on how and where you can apply for merits review of the decision.

When the department advises you or a person you have authorised to act and receive communication on your behalf, of the decision on your visa application, you will be taken to have received the notification:

- 7 working days after the date of the letter (if sent in Australia), or
- 21 days after the date of the letter (if sent outside Australia).

If the notification is handed to you, you will be taken to have been notified at that moment.

If the notification is faxed or emailed to you, you will be taken to have been notified at the end of that day.

Visa conditions

If you are granted a subclass 457 visa, there are certain conditions which apply to you depending on whether you satisfied the primary or the secondary requirements for the grant of the visa. You must comply with the visa condition or conditions which apply to you, as failure to do so may result in your visa being cancelled.

Visa condition	Primary visa holder	Secondary visa holder
8107	Applies to all primary visa holders	Does not apply
8501	Applies to all primary visa holders	Applies to all secondary visa holders, except those who were granted a subclass 457 visa on the basis of being a family member of the primary visa holder who met the requirements under 'service sellers' or 'privileges and immunities' stream

Condition 8107

Condition 8107 requires that as a primary holder of a subclass 457 visa you must:

- work in the occupation for which you were nominated
- commence that work within 90 days of arrival in Australia, or within 90 days after the visa was granted if you were in Australia when the visa was granted
- work for the sponsor, or an associated entity of the sponsor, who nominated the position you are working in
- not cease employment for a period of more than 60 consecutive days
- hold any mandatory licence, registration or membership while performing the occupation and comply with any provisions, and
- if your visa was granted on or after 1 December 2015 you must:
 - hold the licence, registration or membership within 90 days of arrival in Australia if the visa was granted while you were outside Australia, or within 90 days after the visa was granted if you were in Australia when the visa was granted
 - not engage in work that is inconsistent with the licence, registration or membership
 - notify the department in writing as soon as practicable if the application for the licence, registration or membership is refused, and
 - notify the department in writing as soon as practicable if the licence, registration or membership ceases to be in force or is revoked or cancelled.

You are considered to have ceased employment when either you or your employer gives notice of intention to cease employment and the date of the notice of intention to cease employment has passed. If more than 60 consecutive days have passed since the date in the notice of intention to cease employment, you may be in breach of Condition 8107 and may have your visa cancelled.

In the event that you abandon your employment, or are absent without leave, you may be considered to have ceased employment.

If your visa is about to cease, and you want to apply for another subclass 457 visa, you must lodge a new visa application.

If you want to change employers while you still hold a valid 457 visa you do not need to apply for a new subclass 457 visa, however a nomination must be lodged and approved by your new sponsor before you commence working for the new sponsor.

Condition 8501

Condition 8501 requires subclass 457 visa holders to maintain adequate arrangements for health insurance while in Australia.

Right of review

If your application for a subclass 457 visa is refused, you may be able to seek a merits review of the decision by the Administrative Appeals Tribunal. The department will advise you in writing and inform you of the process if merits review is available to you. More information about right of review is available at www.border.gov.au/about/access-accountability/plans-policies-charters/charters

After your arrival

Changing employer or occupation in Australia

If you have been granted a subclass 457 visa and you want to change your employer or occupation you are not required to apply for a new visa.

However, before you can start working for a new employer or in a new occupation, you must be nominated by your proposed new employer and have that nomination approved first.

If you start working for your proposed new employer or in your new occupation before the nomination is approved, you will be in breach of visa condition 8107 and your subclass 457 visa may be cancelled.

You should also note that the approval of a new nomination only allows you to change your employer or occupation. It does not extend the term of your subclass 457 visa nor change the conditions that are attached to your subclass 457 visa. It is your responsibility to ensure that you have a valid visa to remain in Australia at all times. To check the visa conditions and expiry date of your visa, please refer to the department's website www.border.gov.au

Note: Medical practitioners and general managers are not required to work only for the sponsor or an associated entity of the sponsor.

Your employment rights

All workers in Australia are entitled to basic rights and protections in the workplace.

If you are an independent contractor, you are also entitled to basic rights and protections in the workplace. For more information, phone the Fair Work Ombudsman on 131 394 or Unions Australia on 1300 486 466.

If you are an employer, it is important that you know your rights and obligations including how much superannuation you should be paying your employees and how much tax you should be taking out of your employees' pay. To find out more, phone the Fair Work Ombudsman on 131 394.

Fair work

All employees in Australia including overseas workers are covered by the *Fair Work Act 2009*.

What you are entitled to be paid depends on factors including which state or territory you work in, your age, what award you are covered by, and the details of your workplace agreement. Your employer must pay you regularly. Your employer must not make deductions from your salary (other than for tax purposes) without your permission.

If you have any questions about the level of remuneration you receive from your employer, you can visit the Fair Work Ombudsman website www.fairwork.gov.au

Conditions of employment

All workers in Australia have minimum conditions of employment. These standards cover things such as working hours, payment for overtime, rest breaks, sick leave and holidays.

Paying taxation in Australia

In Australia, tax is paid out of money you earn from a job, business or investment. The Australian Taxation Office (ATO) collects taxes from individuals and businesses to pay for important community services like hospitals, schools and roads.

If you are working, your employer automatically takes tax out of your pay.

Before you start work, you should apply for a Tax File Number (TFN) from the ATO. If you don't have a TFN, your employer must take the maximum amount of tax from your pay. Be sure to keep your TFN secure. Allowing someone else to use your TFN can cause serious problems.

If you have any questions about tax, visit the Australian Taxation Office website www.ato.gov.au

Rights to representation

All workers in Australia have the right to join and be represented by a trade union. Unions provide their members with advice on wages, employment conditions and workplace rights. They help with workplace problems, and bargain with employers about members' pay and employment conditions.

You do not have to tell your employer you are a union member. Your employer must not treat you unfavourably or dismiss you because you are a member of a union.

If you want to join a union but do not know which union to join, phone Unions Australia on 1300 486 466.

Unfair treatment at work

- You have the right not to be dismissed unfairly.
- You have the right not to be discriminated against for reasons of your race, religion, sex, pregnancy, sexual orientation, disability or for being a member of a trade union.

Other workplace rights

- You have the right to work in a safe and healthy workplace.
- If you have been injured at work, you may be entitled to workers' compensation.
- Your employer cannot treat you unfavourably or dismiss you because you make an inquiry or complaint about your employment (to your employer or to anyone else) or because you seek to enforce your rights.

Useful organisations

To check you are receiving the correct pay, conditions and workplace rights, or to make a complaint about your employer, you can phone the:

- Fair Work Ombudsman on 13 13 94
- Unions Australia Helpline on 1300 486 466.

If you feel your workplace is unsafe, you should contact your union or the relevant state authority below.

NSW	WorkCover NSW	13 10 50
Vic.	WorkSafe Victoria	1800 136 089
Qld	WorkCover Queensland	1300 362 128
WA	WorkCover Western Australia	1300 794 744
SA	SafeWork SA	1300 365 255
Tas.	Workplace Standards Tasmania	1300 366 322
ACT	WorkCover ACT	(02) 6205 0200
NT	NT WorkSafe	1800 019 115

Part 5 – Other important information

Processing times

The time taken for an application to progress and for the department to make a decision varies. As a guide, when all documents are supplied with an application, we aim to finalise most applications within 90 days. When applications are more complex, or documents are not provided quickly, or where it is unclear if some requirements have been met, applications may take longer to finalise.

Please do not make arrangements to move to Australia. Do not leave your employment, sell your home or book travel arrangements until you are advised in writing that you have been granted a visa.

Providing documents

Any application lodged with the department is given an application identifier description. This is a number that identifies your application to us.

Please make sure that you include your name, date of birth and application identifier description when you write to us. These help us to quickly locate your application.

We do not usually need original documents. Please do not send us original documents unless we ask you for them. When you send copies of your documents, please ensure that they are certified copies.

You may log into your account to attach additional documents to your application at any time. Doing this helps us to reduce delays in processing your application.

If you are unable to upload documents through our website, you can scan your documents and send them to your case officer by email. If you send us a scan of the original document, we prefer it to be in PDF format. Please note that you will be provided with the name and contact details of your allocated case officer once you have lodged your application.

Translating your documents

Original documents in languages other than English should be accompanied by an English translation. English translations must be official certified translations from a National Accreditation Authority for Translators and Interpreters (NAATI) accredited translator. Translations provided by non-accredited translators overseas should be endorsed by the translator with their full name, address, telephone number, and details of their qualifications and experience in the language being translated.

Privacy – disclosure of information to other parties

The department respects your privacy. We collect your personal information for the purposes of making decisions under the *Migration Act 1958* and the Migration Regulations 1994. We recognise that it is important that the information we hold about you is up-to-date, relevant, and is used only for the purposes it was collected.

Laws stop us from giving your personal information to others unless you agree to it or we are authorised or required by law. You need to be aware that the department may disclose your details to other Australian Government agencies such as the Department of Social Services and Medicare.

For more detailed information, you should read form 1442i *Privacy notice*, available on our website.

Options for receiving written communications

You may authorise another person to receive all communications, both written and electronic, about your application with the department. You will be taken to have received any documents sent to that person as if they had been sent to you.

To do this you must complete form 956A *Appointment or withdrawal of authorised recipient*.

To change or end the appointment of a authorised recipient, you must promptly advise the department in writing. You can do this by using form 956A *Appointment or withdrawal of authorised recipient*.

Authorised recipient information

An authorised recipient is someone you appoint to receive written communications about your application with the department. All written communication about your application will be sent to your authorised recipient, unless you indicate that you want to have health and/or character information sent directly to you. The department will communicate with the most recently appointed authorised recipient as you may only appoint one authorised recipient at any time for a particular application.

Migration agent information

A migration agent is someone who can:

- advise you on the visa that may best suit you
- tell you the documents you need to submit with your application
- help you fill in the application and submit it
- communicate with the department on your behalf.

If you appoint a migration agent, the department will need to have this information in writing. You can do this by completing form 956 *Advice by a migration agent/exempt person of providing immigration assistance*.

You are not required to use a migration agent. However, if you use a migration agent, the department encourages you to use a registered migration agent. Registered agents are bound by the Migration Agents Code of Conduct, which requires them to act professionally in their clients' lawful best interests.

Migration agents in Australia

Migration agents in Australia must be registered with the Office of the Migration Agents Registration Authority (Office of the MARA) unless they are exempt from registration.

Migration agents outside Australia

Migration agents who operate outside Australia do not have to be registered. The department may give some overseas agents an identification (ID) number. This number does not mean that they are registered.

Note: Some Australian registered migration agents operate overseas.

Exempt agents

The following people do not have to be a registered migration agent to provide immigration assistance, but they must not charge a fee for their service:

- a close family member (spouse, de facto partner, child, parent, brother or sister)
- a sponsor or nominator for this visa application
- a member of parliament or their staff
- an official whose duties include providing immigration assistance (for example a Legal Aid provider)
- a member of a diplomatic mission, consular post or international organisation.

Making a complaint about a migration agent

If you are not satisfied with the service provided by your migration agent, you should complain to the Office of the MARA www.mara.gov.au/consumer-information/making-a-complaint-about-a-rma/default.aspx

More information on migration agents

Information on migration agents, including a list of registered migration agents, is available on the Office of the MARA website www.mara.gov.au

You can also access information about migration agents on the department's website www.border.gov.au

Immigration assistance

A person gives immigration assistance to you if he or she uses, or claims to use, his or her knowledge or experience in migration procedure to help you with your visa application, request for ministerial intervention, cancellation, review application, sponsorship or nomination.

In Australia a person may only lawfully give immigration assistance if he or she is a registered migration agent or is exempt from being registered. Only registered migration agents may receive a fee or reward for providing immigration assistance.

If an unregistered person in Australia, who is not exempt from registration, gives you immigration assistance they are committing a criminal offence and may be prosecuted.

Service satisfaction

The department's Client Service Charter explains our service commitment to you. We are committed to service delivery that is timely, open and accountable, and responsive to your needs. The Charter explains how you can help us and how you can provide feedback or make a complaint. You can read our Client Service Charter on our website, or in a printed copy available from any of our offices.

To provide a compliment, complaint or suggestion you can:

- contact us — Australian offices www.border.gov.au/about/contact/offices-locations/australia
- contact us — overseas offices www.border.gov.au/about/contact/offices-locations
- complete the online feedback form available on the department's website www.border.gov.au

Pathways to permanent

The grant of a subclass 457 visa does not automatically guarantee the grant of a permanent residence visa. In order to be granted a visa, the applicant must meet all legislative criteria specified for the class or subclass.

