



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

Labour agreements

Information about requesting a labour agreement
May 2017

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Introduction

A labour agreement is a formal arrangement negotiated between an Australian employer and the Australian Government. Applying for a visa under a labour agreement is the only migration pathway for employers seeking to recruit overseas workers for semi-skilled positions, or skilled positions where concessions to mainstream visa requirements are sought.

Where standard immigration pathways are an option, they should be used in preference to a labour agreement – this includes the Temporary Work (Skilled) visa (subclass 457)*, the Employer Nomination Scheme, or the Regional Sponsored Migration Scheme.

***Note:** This will be replaced by the new Temporary Skill Shortage (TSS) visa in March 2018.

The programme includes requirements to ensure that Australian workers get priority:

- overseas workers must be provided with terms and conditions of employment that are no less favourable than an Australian citizen or permanent resident performing equivalent work at the same workplace and location;
- terms and conditions of employment are expected to be consistent with local remuneration practices for that occupation and must meet Australian workplace laws;
- the base rate of pay afforded to overseas workers must exceed the Temporary Skilled Migration Income Threshold (\$53,900 as at 5 April 2017), unless the Minister agrees to a concession.

With the exception of those seeking to request a Minister of Religion Labour Agreement, employers must also:

- demonstrate that they have made genuine efforts to recruit Australians in the occupations and at the locations covered by the proposed labour agreement during the previous twelve-month period. This includes explaining the reasons why any Australian applicants were unsuccessful; and
- identify and consult with relevant stakeholders on the proposed submission prior to requesting a labour agreement.

Labour agreements are carefully considered on a case-by-case basis to maintain the integrity of the programme. These arrangements are designed to help ensure that:

- Australian workers are provided with first opportunity through the provision of training and employment opportunities;
- employers seeking to utilise the labour agreement programme have a plan in place to reduce future reliance on temporary overseas workers and build capacity in the Australian labour market over time;
- skilled or semi-skilled overseas workers employed under a labour agreement are suitably qualified and experienced and able to transfer their skills to less experienced Australian colleagues;
- the number of skilled overseas workers requested under a labour agreement represents a minor proportion of the employer's workforce; and
- the programme remains in the national interest.

The Australian Government is under no obligation to enter into a labour agreement. Incomplete requests will not be considered.

Note: The changes to skilled visa programmes announced by the Australian Government on 18 April 2017 have no direct impact on the labour agreement programme. Any required adjustments will be considered prior to March 2018, with the introduction of the new TSS visa.



Information contained in this guide

This booklet provides information to assist employers seeking **to access industry and company specific labour agreements**.

Forms, to assist you in making a complete request for a labour agreement and to conduct meaningful and transparent stakeholder consultation, are included in this information pack.

The intended audience for this guide are employers interested in requesting a labour agreement.

- Part 1 explains the types of labour agreements that can be requested
- Part 2 provides information on preparing a labour agreement request
- Part 3 provides information on the labour agreement programme requirements
- Part 4 provides information on the labour agreement assessment process
- Part 5 provides information which is relevant to employers who have become approved sponsors

Note: a glossary of terms used in this document is also included at **Attachment A**.

Further information about labour agreements is also available on the Department's website at:

<https://www.border.gov.au/Trav/Work/Empl/Labour-agreements>

Part 1: Types of labour agreements

There are four types of labour agreements:

- Company specific labour agreements;
- Industry labour agreements;
- Designated area migration agreements; and
- Project agreements.

These are explained in more detail below.

Company Specific labour agreements

A company specific labour agreement is developed directly with an employer and will be considered only where a genuine skills or labour shortage for an occupation exists which is not already provided for in an industry, or relevant project or designated area migration agreement. The terms and conditions of the agreement are considered on a case-by-case basis.

Industry labour agreements

Template labour agreement arrangements are in place for particular industries. Such arrangements provide for fixed terms and conditions agreed to by the Minister in consultation with key industry stakeholders, specific to an industry sector.

Such arrangements may be considered if the Department receives a number of similar labour agreement requests from an industry and there is evidence of ongoing labour shortages within that industry. They help ensure a level playing field across an industry by cementing a set of unique terms, conditions, concessions for certain occupations which will apply to all future labour agreements in that industry sector.

When an industry labour agreement is in place, the agreed set of terms and conditions of the industry agreement are **non-negotiable**. No further concessions can be considered.

Industry labour agreements are currently available for the following industries:

- Dairy - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/dairy-industry>
- Fishing - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/fishing-industry>
- Meat - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/meat-industry>
- Minister of Religion - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/minister-of-religion>
- On-Hire - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/on-hire-industry>
- Pork - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/pork-industry>
- Restaurant (fine dining) - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/restaurant-fine-dining>
- Snow sports - <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/snow-sport-industry>

Designated area migration agreements

The designated area migration agreement (DAMA) programme has been developed to supplement the workforce strategies of states, territories and regions, to support economic performance and help them adjust to changing economic conditions.



The DAMA is a two-tier agreement: the first tier consists of an overarching three-year deed of agreement with a designated area representative setting out occupations, ceilings and concessions; and the second tier comprising individual labour agreements with direct employers. DAMAs establish collaborative arrangements, with shared roles and responsibilities, between the Australian Government and regional or state and territory authorities.

The overarching nature of a DAMA allows employers streamlined access to a broader range of overseas workers than available through the standard subclass 457 visa programme, without the need to individually negotiate terms and conditions. DAMAs are attractive to small businesses which may not have the resources to develop a labour agreement directly with the government.

These guidelines do not cover DAMAs. You can find information about DAMAs at:

<http://www.border.gov.au/Trav/Work/Empl/Labour-agreements>

Project agreements

A project agreement allows project companies experiencing genuine skills or labour shortages access to temporary skilled and semi-skilled overseas workers through the subclass 457 visa to meet peak workforce demands during the construction phase of resource or infrastructure projects.

Project agreements are a two-tiered agreement stream; the first tier consists of an overarching deed of agreement negotiated with a project company with the second tier comprising individual labour agreements with direct employers. They are available to project companies that own or manage the construction phase of large resources or infrastructure projects.

Once an overarching deed of agreement is in place, employers may seek to be endorsed by the project company for a labour agreement.

These guidelines do not cover project agreements. You can find information about project agreements at:

<http://www.border.gov.au/Trav/Work/Empl/Labour-agreements>

Part 2: Requesting a labour agreement

Preparing a request for a labour agreement

To request a labour agreement, you must complete the Business Case proforma. You can obtain this by emailing labour.agreement.section@border.gov.au

Requests which do not use the proforma or are incomplete may be returned.

The proforma will assist you in addressing all programme requirements and providing a well-ordered, properly evidenced request ready for assessment by the Department. Advice about these requirements is also provided in Part 3 of this document.

You must be able to provide a strong, evidence-based case to access overseas skilled workers outside of the standard immigration programmes and your case must be supported by concrete, relevant and current evidence.

If you have any questions about the labour agreement process or requirements please contact the labour agreements team at labour.agreement.section@border.gov.au

Note

- Evidence provided in support of your submission must relate specifically to the legal entity requesting a labour agreement. In most situations, the records associated entities cannot be used as evidence to support an employer's request.
- A labour agreement cannot be negotiated with a trust, but may be negotiated with a trustee, for example "ABC Pty Ltd" who are the trustee for the XYZ Unit Trust.
- It is important to ensure that your labour agreement proposal best represents your skilled labour needs and forecasts as, once a labour agreement is in place, a request for a variation can be time-consuming, particularly if substantial changes are required.

Use of a migration agent

While many employers ask a registered migration agent to compile their labour agreement submission, the submission process has been designed to enable completion by a company directly without major difficulties.

Please note that there are no priority processing arrangements for requests made using a registered migration agent. If you are considering using a migration agent, you are advised to ensure that the migration agent is registered with the Office of the Migration Agents Registration Authority (Office of the MARA). A list of registered agents is available on the Office of the MARA website at: www.mara.gov.au

Fees

The Department does not charge a fee for making a request for a labour agreement.

Making your request

You should email your completed labour agreement request with supporting documentation to: labour.agreement.section@border.gov.au

Part 3: Labour agreement programme requirements

The Department is under no obligation to enter into a labour agreement. A labour agreement request will not be approved unless the requirements below are met. As a result, if you are seeking a labour agreement you should ensure that you provide sufficient information and supporting evidence to demonstrate that these requirements are met. **Incomplete requests will not be considered.**

Labour market need

You **must** be able to demonstrate that you have tested the domestic labour market through recent, genuine efforts to recruit Australian workers in the occupations and locations covered by your proposed labour agreement before the Department will consider your request.

To this end, you are required to complete and submit a 'domestic recruitment table' for activities undertaken in the previous twelve months, including information on the period of job advertising, the number of applications received, the number of applicants who were hired and reasons why those unsuccessful were found to be unsuitable, supported by evidence of job advertising.

This table is available as a fillable PDF form on the website at:

<http://www.border.gov.au/Forms/Documents/domestic-recruitment-summary-template.pdf#search=domestic%20recruitment> and needs to be completed for **each occupation** requested.

You must also provide:

- advice explaining your company's participation in any Department of Employment job placement programmes and why this has not been successful in recruiting local workers; and
- supporting evidence in the form of copies of job advertisements must be provided.
 - Such advertisements should offer jobs on the same terms and conditions as would be offered to the proposed overseas workers (e.g. full time, guaranteed salary over TSMIT or consistent with existing salary concession available under the industry labour agreement).
 - Ideally such advertisements should be placed in both local and national publications and/or the internet. It is insufficient to have advertised only in one forum with limited readership (e.g. local newspaper or Gumtree only).

Additional supporting evidence of your labour market testing activities can also be provided to strengthen your case, this could include:

- information regarding your company's participation in job and career expos, including any associated fees, the dates and locations of these and whether any positions were filled as a result;
- written evidence from clients demonstrating demand for the nominated occupations – this may include service contracts, unfilled client orders or letters of support from client organisations;
- relevant industry (or other) research released in the last 12 months related to labour market trends;
- letters of support from state government authorities with the responsibility for employment; and
- strategies for retaining Australian workers.

Important:

- If you are requesting a labour agreement under the Minister of Religion template arrangements, you are exempt from the requirement to provide evidence of domestic recruitment efforts, you should, nevertheless, explain why, given the nature of the position/skills required it is unable to be filled by an Australian worker.

- If you are a large company with multiple business locations, please make sure you provide specific information regarding why particular positions in particular locations have been unable to be filled by the local labour market.
- **Throughout the term of an agreement, you must continue to seek to recruit domestic workers prior to nominating an overseas worker.**

Reliance on overseas workers

You must demonstrate that:

- the recruitment of overseas workers is only to supplement your Australian workforce;
- a labour agreement will not undermine employment or training opportunities for Australians; and
- your business does not have an over-reliance on overseas workers.

Training

Employers requesting a labour agreement, except for agreements requested under the Minister of Religion template arrangements, must demonstrate that they have a satisfactory record of, an on ongoing commitment to, the training of Australians. This requirement supports the Government's position that temporary migration arrangements should complement, not substitute, investment in training initiatives for Australians.

Throughout the term of operation of an agreement, you must maintain a good record of training Australians through the provision of employment, training and career progression.

Unless varied in your agreement, you must meet one of the 'training benchmarks' that sponsors who employ staff under the standard subclass 457 programme must meet.

These requirements are explained on the Department's website at <http://www.border.gov.au/Trav/Visa-1/457-> under the 'sponsors tab', but essentially, you must provide evidence of:

- *Training Benchmark A:* recent expenditure to the equivalent of **at least two per cent of the payroll** of the business, in payments allocated to an **industry training fund** that operates in the same industry at the business.
- *Training Benchmark B:* recent expenditure to the equivalent of **at least one per cent of the payroll** of the business, in the provision of **training to employees of the business who are Australian citizens or Australian permanent residents.**

Please note: Expenditure must have been incurred within the last 12 months prior to lodging your request.

For more information about training benchmarks, including examples of expenditure which can and cannot be included towards the training benchmark see the Department's website and the relevant legislative instrument available at <http://www.comlaw.gov.au/Details/F2013L01236>

In addition, you **must** provide a comprehensive **training plan** to the Department. Your training plan should include details of the training you intend to provide to your Australian workforce covering the period of the requested labour agreement. Importantly, you should indicate how the proposed overseas workers will be able to transfer their skills to Australian workers.

Good standing

You must demonstrate that your business has been lawfully and actively operating in Australia for the previous 12 months and is financially viable by providing key business details and a statement from a chartered or certified practicing accountant that you are actively operating and able to financially support the proposed number of overseas workers requested under the labour agreement.

The Department is progressively exchanging information with other regulatory agencies to obtain adverse information relating to businesses operating in Australis. You must advise the Department whether, in the last five (5) years your business, any associated (including previous) entities, or any person associated with your business has been:

- found guilty by a court of an offence under a Commonwealth, state or territory law (a law*);
- found by a competent authority to have acted in contravention of a law;
- the subject of administrative action (including being **warned** or **cautioned**) by a competent authority for possible contravention of a law;
- under investigation, subject to disciplinary proceedings or legal proceedings in relation to contravention of a law; and/or
- become insolvent.

Over the life of a labour agreement, there is an expectation that you will make ongoing efforts to reduce your reliance on overseas workers. The workforce profile included in the business case pro-forma, which provides the current and projected number of overseas workers as a proportion of your total workforce, must be completed.

** A law mentioned above refers to a law relating to the following only: discrimination, immigration, industrial relations, occupational health and safety, people smuggling and related offences, slavery, sexual servitude and deceptive recruitment, taxation, terrorism and trafficking in persons, and debt bondage*

Occupations and numbers

You must provide specific details for each of the occupations sought and the number of positions you are seeking for each location and year of the proposed labour agreement. The relevant ANZSCO six-digit code must be provided for each occupation.

You also need to provide a detailed description of the tasks the proposed overseas workers will undertake.

Note: If you are seeking a company specific agreement and the occupation(s) you are seeking is available under other standard visa options, such as the subclass 457 programme, you should only include them if you are seeking a concession to the standard visa requirements.

Salary

For a labour agreement to be executed, the Australian Government must be satisfied that overseas workers have sufficient income to support themselves and their dependent's as they do not have access to the same range of benefits and services as Australian citizens and permanent residents. Overseas workers who have reasonable means of support will also be less likely to breach visa conditions by working for employers other than their sponsor, and are less likely to be vulnerable to mistreatment or exploitation.

The terms and conditions of employment for overseas workers must be no less favourable than the terms and conditions of employment that is, or would be, provided to an Australian worker performing the same duties at the same location. These requirements also apply to the standard subclass 457 programme and are outlined on the Department's website at <http://www.border.gov.au/Trav/Visa-1/457-> under the "nominate" tab.

In addition, to meet the labour agreement programme requirements:

- you must provide evidence that the **base rate of pay** of overseas workers will be equal to or above the TSMIT - see www.comlaw.gov.au/Details/F2015L00569;
- any payments deducted from the overseas workers' salary may only be made with the written permission of the overseas worker; and

- you **must** demonstrate that any deductions are consistent with the Fair Work Act 2009 and/or local instruments - see <https://www.comlaw.gov.au/Details/C2014C00031>.

Concessions to the TSMIT requirements may be considered in limited circumstances where supported by a **strong business case** (company specific agreements only), or where previously agreed to by the Minister as part of an industry agreement.

Note: special arrangements exist under the Minister of Religion labour agreement template arrangements for organisations where a vow of poverty is required. The TSMIT can also be made up of non-monetary and monetary benefits. Please note that ideally monetary benefits will, however, account for at least 80% of the nominee's salary to ensure that they are not vulnerable to mistreatment or exploitation.

English Language

Overseas skilled workers are generally required to meet one of the following English language proficiency requirements, consistent with the standard subclass 457 programme. These requirements are outlined on the Department's website at <http://www.border.gov.au/Trav/Visa-1/457-> under the 'visa applicants' tab.

Concessions to the English Language requirements may be considered in limited circumstances where supported by a **strong business case** (company specific agreements only), or where previously agreed to by the Minister as part of an industry agreement.

If you are seeking to employ overseas workers with a lower English language competency, you **must** provide details of how you will:

- ensure that the proposed variation to the English competency requirement would not constitute a workplace health and safety risk;
- ensure that skilled overseas workers can access workplace relations projections;
- ensure that skilled overseas workers can participate in the community;
- ensure that skilled overseas workers are able to transfer skills to Australians; and
- ensure that the English language levels of skilled overseas workers will improve over the life of the agreement.

Skills, qualifications and experience

The labour agreement programme forms part of Australia's skilled visa programmes. It is not designed for non-skilled workers. As a result, labour agreements generally require that overseas workers have a qualification of at least equivalent to an AQF Certificate III (or higher where required by ANZSCO) as assessed by an appropriate registered training organisation, and three years of recent relevant experience.

In addition, overseas workers are expected to be able to meet all industry registration requirements to ensure they have skills to Australian standards. Where Australian licensing can only be obtained onshore, evidence that overseas candidates are eligible to obtain Australian licences will be required. Assessment of skills may also be required in certain circumstances.

Variations to the requirements for qualifications and experience may be considered in limited circumstances where supported by a **strong business case** (company specific agreements only), or where previously agreed to by the Minister as part of an industry agreement.

Note: specific skills requirements may be in place for employers seeking to employ staff under particular industry labour agreement template arrangements. For example, meat workers employed under a Meat Industry Labour Agreement have been assessed and verified by an MINTRAC registered assessor as having a minimum skill level of an Australian Qualification Framework (AQF) Certificate III in meat processing. For more information, see <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/meat-industry>

Consultation

Prior to requesting a labour agreement, unless you are seeking an agreement under the Minister of Religion template arrangements, you **must** consult with relevant industrial stakeholders. A template letter to assist you in this process can be requested by emailing labour.agreement.section@border.gov.au

The outcome of stakeholder consultations must be included with all requests for a labour agreement. It is your responsibility to ensure consultations have occurred prior to making your request. Your request will not be processed unless this has occurred.

Relevant stakeholders include:

- the industry body which best represents your interests;
- the union which best represents the interest of the employee, noting that the union must be consulted even if none of the current employees are union members; and
- any other agency or community group that may be impacted by the proposed labour agreement, for example schools or health services.

You must provide the following information about the proposed labour agreement to each stakeholder:

- the requested number of skilled overseas workers in each year of the proposed labour agreement;
- the requested occupations of the skilled overseas workers under the proposed labour agreement;
- the locations where you propose to place skilled overseas workers;
- details of any concessions to the standard programme sought by you—for example, concessions relating to English language or skill level;
- the proposed salary for the overseas workers, preferably including how the market salary rate has been determined and whether a specific award applies; and
- any other information deemed relevant by you.

To assist your stakeholders in making an informed comment on your labour agreement proposal, you may also choose to include:

- details of the qualifications and years of experience that will be expected of workers;
- how skills assessment will be conducted;
- the number of Australians currently employed in the occupations requested under the proposed labour agreement;
- if concessions are sought under a company specific labour agreement, your proposed strategies to ensure worker welfare;
- a basic workforce profile showing the current and project proportion of your workforce in Australia comprising overseas; and
- your training plan including details of training you intend to provide to your Australian workforce covering the period of the requested labour agreement and how you propose to meet the training requirement.

You must provide each stakeholder with an opportunity to respond to the labour agreement proposal.

Stakeholder responses should be provided back to you within 10 working days of the receipt of the request for comment on the labour agreement proposal. If no response is received, you must follow up and allow a further five (5) working days for response by the stakeholder.

All reasonable steps must be taken to provide stakeholders with additional information they consider necessary to make informed comment on your proposed labour agreement.



You should also take all reasonable steps to respond to questions or concerns raised by stakeholders.

Copies of all your written request(s) for comment on the proposed labour agreement and the response(s) should be sent to the Department. If there is no response from the stakeholder(s), you will need to provide the Department with a copy of the follow-up request. While the Department will consider all responses, a negative response will not in itself act as a veto to the labour agreement.

If the Department is unsatisfied with the level of engagement, your case officer may contact any of the parties involved in consultation to request further action.

You may choose to provide the stakeholder with a copy of the labour agreement submission. The Department recommends that the stakeholder is advised that the information contained in the submission is 'in-confidence' and should not be disclosed to any other party without your permission.

If you are uncertain about how to identify or contact relevant unions in relation to the occupations you are seeking to sponsor, the Australian Council of Trade Unions (ACTU) can assist you with contacts and/or coordination.

Additional requirements for particular industry agreements

Employers should be aware that if they are applying for a labour agreement under particular industry template labour agreement arrangements they may also need to meet additional requirements.

For example, employers seeking a Minister of Religion labour agreement need to demonstrate that they are a religious organisation – see <https://www.border.gov.au/Trav/Work/Empl/Labour-agreements/minister-of-religion>

Part 4: Assessing a labour agreement

The assessment process

Your submission will be allocated to a departmental officer from the 457 programme management section for assessment.

If your submission is incomplete, it will either be returned to you or further information will be requested. Where further information is requested, you will be expected to respond within 14 days. If the information is not provided, your request will be returned.

Consultation

The Department may consult with the Department of Employment and seek their views on your labour agreement as part of the assessment process.

Decision

In some circumstances, decisions on labour market requests can be made by authorised officers within the Department. In all other cases, your request will be referred to the Minister for Immigration and Border Protection for a decision.

Please note:

- the Minister and/or the Department are not obligated to enter into a labour agreement;
- not all labour agreement requests are approved; and
- the Australian Government makes the final decision on the number of positions approved under a labour agreement.

Timeframe

The Department aims to process requests within **six months from the date a complete request** is received. Assessment will not, however, commence, and you will not be allocated a case officer, until all information is provided.

Once you have received the labour agreement, the Department expects that you sign and return it within four weeks for execution, at which time you may commence nominating overseas workers.

Types of visas

Labour agreements generally provide access to temporary residence through the subclass 457 visa programme - that is, if your labour agreement has been approved, the actual visa granted to your employees will generally be a subclass 457 visa*.

* From March 2018, the temporary visa issued under an approved labour agreement will be the new Temporary Skill Shortage (TSS) visa.

A permanent Employer Nomination Scheme visa (subclass 186) may be available in certain circumstances.

Access to permanent residence is, however, only considered by the Minister in limited circumstances where supported by a strong business case or where previously agreed to as part of an industry agreement. Employers will also be expected to demonstrate an on-going long-term shortage of suitably skilled Australian workers in the occupations sought; and efforts to address any structural issues to avoid an over-reliance on overseas workers (for example competitiveness of salaries, training efforts etc).



Should the Minister agree to provide a pathway to permanent residence, overseas workers would normally only be eligible after they have held a subclass 457 visa in an approved occupation for at least three and a half years.

Note: you should avoid promising overseas workers that they will be sponsored for permanent residence under a labour agreement.

Part 5: Information for approved sponsors

Types of visas

If approved, the labour agreement will outline the number of nominations for temporary visas (subclass 457) and permanent residence (subclass 186) that can be made in each year of the agreement.

Nominating overseas workers

Once your company has a labour agreement approved, you will then be able to nominate the position the worker will occupy under the relevant visa programme (i.e. subclass 457* or subclass 186).

Employers should identify that they are nominating a position under the labour agreement stream.

As part of the visa nomination application, the approved sponsor will be required to demonstrate they meet the conditions set out in their labour agreement for nominating an overseas worker.

* From March 2018, the Temporary Skill Shortage (TSS) visa will be the relevant temporary visa under the labour agreement programme.

Applying for a visa

Once a nomination application has been lodged, overseas workers can then lodge their individual applications for a visa with the Department.

Visa applicants should identify that they are applying under the labour agreement stream.

Note: If applying for permanent residence, overseas workers will be required to meet any English language proficiency, age and other requirements of the subclass 186 programme or as outlined in the labour agreement.

Ceilings and reporting

Your agreement will also include 'a ceiling' – that is, a maximum number of temporary and/or permanent visa nominations that you can make in each year of your agreement.

This may be reviewed annually. Where this is the case, you must request any subsequent ceilings needed towards the end of the first and second years of your agreement. Your request for a ceiling must be supported by a report providing:

- an updated Workforce Plan;
- evidence that you have tested the domestic labour market through your domestic recruitment efforts in the previous six (6) month period - this should include a completed domestic recruitment table, supported by evidence of recruitment efforts;
- evidence of salary - at least two recent pay slips for an Australian employee, as well as for an overseas worker, in each of the approved occupations under the agreement;
- evidence of compliance with training obligations;
- details of any changes to your training plan;
- details of any breaches of immigration or other Australian Government or State laws; and
- the dates, numbers and occupations of any Australian workers who have been retrenched or made redundant in the past 12-month period.

The Department may also request a report at any other time.

Sponsorship obligations

If your labour agreement is approved, it is critical that you comply with any sponsorship obligations that apply. It is your responsibility to ensure you understand these obligations.

Where your labour agreement provides access to temporary workers under the subclass 457 programme, your sponsorship obligations will largely mirror those which apply under the standard business programme.

A full list of standard subclass 457 sponsorship obligations can be found at:

<http://www.border.gov.au/Trav/Visa-1/457> - under the 'sponsor' tab.

Additional obligations, or variations to existing subclass 457 obligations, may also apply. These will be specified in your agreement and could include requirements to ensure that:

- wages are paid directly by you, as the approved sponsor (on-hire of workers is not permitted unless the employer holds an on-hire industry labour agreement);
- overseas workers are employed on a full-time basis only;
- the base rate of pay is equal to or greater than TSMIT;
- any payments deducted from the overseas worker's salary may only be made with the written permission of the overseas worker; and
- employers must demonstrate that any deductions are consistent with the *Fair Work Act 2009* and/or local industrial instruments.

Monitoring

In line with the Department's legislative requirement to monitor labour agreements, the Department may monitor approved sponsors through both audits and site visits. Approved sponsors must agree to cooperate with the Department in relation to all monitoring and reporting requirements. Significant financial penalties can be applied to approved sponsors where they breach their sponsorship obligations.

Variations, suspending or terminating labour agreements

Over time, there may be a need to vary an approved labour agreement and this will be done in consultation with the company.

The Department takes failure to comply with the terms of a labour agreement very seriously. Consequences for breaching the terms and conditions of a labour agreement, including the sponsorship obligations, may include suspension or termination of the agreement or other sanctions under the *Migration Act 1958*, which can occur at any point during the term of the labour agreement.

Confidentiality and disclosure

Sponsors should be aware that the Department **may** be required to release limited information about labour agreements including the names of approved sponsors, the date an agreement was signed and what type of agreement it was (e.g. company specific or industry agreement). Instances where disclosure is required include:

- the Department's annual report;
- parliamentary committees;
- where required under legislation or Australian Government policy, including privacy and freedom of information legislation; and
- court cases.



The Australian Government does, however, appreciate that labour agreement requests and agreements may contain sensitive information.

As a result, more detailed information will only be released where it is required in line with the Australian Government's disclosure obligations, with confidentiality of information protected to the extent that the law allows.

Either party may request that the confidentiality of the information exchanged between the parties be formalised through a confidentiality deed. Any such arrangement should not limit the ability of stakeholders to provide genuine and frank advice on the matters proposed in the labour agreement.

Approved sponsors are advised to seek independent legal advice in relation to any confidentiality concerns and they should understand that, as part of the labour agreement consultation process, the labour agreement request provided to the Department will be shared with other government agencies.

Attachment A - Glossary

ANZSCO – the Australian and New Zealand Standard Classification of Occupations.

Approved Sponsor – an approved sponsor is a person who is a party to a labour agreement to sponsor overseas workers on a subclass 457 visa.

AQF – the Australian Qualifications Framework specifies the standards for educational qualifications in Australia.

Base rate of pay – means the rate of pay payable to an employee for full time ordinary hours of work, but not including any of the following:

- a. incentive-based payments and bonuses;
- b. loadings;
- c. monetary allowances;
- d. overtime or penalty rates;
- e. any other separately identifiable amounts.

Ordinary hours of work are determined under the relevant state/territory or federal award. Where there is no award, the full time ordinary hours are considered to be 38 hours per week.

Concession – means any variations to the requirements prescribed in migration legislation in relation to the age, skills, qualifications, employment background, level of English language proficiency or salary required for the nomination and grant of a skilled visa.

Ceiling – a ceiling is the maximum number of overseas workers which can be nominated in each year under a labour agreement.

Employer – an employer who is directly responsible for employing staff.

IELTS – the International English Language Testing System.

Labour agreement – a labour agreement is a formal arrangement negotiated between an Australian employer and the Australian Government as represented by the Department of Immigration and Border Protection.

Market salary rate – the terms and conditions of employment paid to Australian employees undertaking a given occupation at an approved sponsor's local workplace.

Migration Act – means the *Migration Act 1958*, as varied from time to time.

Migration legislation – means the Migration Act and/or the Migration Regulations.

Migration Regulations – means the Migration Regulations 1994 made under the Migration Act 1958, as varied from time to time.

Minister – means a reference to the Minister for Immigration and Border Protection and his or her authorised representative performing relevant functions as the Minister under the Migration Act or the Migration Regulations.

Registered training organisation – a registered training organisation is a training provider registered by the Australian Skills Quality Authority (or, in some cases, a state regulator) to deliver vocational education and training services.

Semi-skilled occupations – Semi-skilled occupations are those that are categorised as ANZSCO skill level 4 occupations.

Sponsorship obligations – are equivalent to the obligations required of all approved sponsors under the standard subclass 457 visa programme or as varied under a labour agreement. A full list of standard subclass 457 sponsorship obligations can be found at: <http://www.border.gov.au/Trav/Visa-1/457->



Standard Business Sponsor (SBS) – means a standard business sponsor within the standard business sponsor arrangements for subclass 457 visas.

Subclass 457 – means a Temporary Work (Skilled) visa (subclass 457). This visa allows overseas workers to engage in paid employment in Australia as prescribed under the Migration Regulations.

Temporary skilled migration income threshold (TSMIT) – is a minimum salary rate, defined in a legislative instrument, to ensure that temporary overseas workers sponsored under the subclass 457 programme have sufficient income to support themselves and their families in Australia. It is usually indexed annually in accordance with inflation or wage increases. Further information can be found at: <http://www.border.gov.au/Trav/Visa-1/457->

The Department – means the Department of Immigration and Border Protection (DIBP).