



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

Labour agreements

Information about requesting a labour agreement
July 2015

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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).

Introduction

A labour agreement is a formal arrangement negotiated between an Australian employer and the Australian Government. It provides a flexible, tailored skilled migration arrangement for employers and sectors with specific occupation needs that sit outside the mainstream skilled migration programme.

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.

A labour agreement defines employer obligations such as the terms and conditions of employment for the skilled overseas workers and training requirements for Australian employees. It also defines the required skill, qualification and English language levels that overseas workers under the agreement must meet.

No fees are required in order to request a labour agreement. Similarly, the department is under no obligation to enter into a labour agreement. Incomplete requests will not be considered.

Information contained in this guide

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

It includes forms to assist you in making a completed request for a labour agreement and to conduct meaningful and transparent stakeholder consultation.

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

- Part 1 provides information relating to the fundamentals underpinning the programme.
- Part 2 provides information on preparing a labour agreement submission.
- Part 3 provides information on the labour agreement assessment process.
- Part 4 provides information which is relevant to employers who have become approved sponsors under a company specific or industry labour agreement.

If you have any questions about a labour agreement, please contact the department.

Email: labour.agreement.section@border.gov.au

By post: The Director
Labour Agreement Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2616

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.

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 agreements¹

An industry labour agreement provides fixed terms and conditions agreed to by the Minister in consultation with key industry stakeholders, specific to an industry sector. An industry agreement may be considered if the department has received a number of similar submissions from an industry and there is evidence of ongoing labour shortages within that industry.

An industry agreement ensures 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 (other than the concessions written into the industry agreement) can be considered.

Information sheets on industry agreements is available by contacting:
labour.agreement.section@border.gov.au

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>

¹ Industry agreement submissions **must** be made using the Business Case proforma ensuring the relevant industry agreement parameters are addressed.

Project agreements

A project agreement allows project companies experiencing genuine skills or labour shortages access to temporary skilled and semi-skilled temporary 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>

Contact details

The department's preferred method for receiving complete labour agreement submissions, using the format provided with this guide, is electronically to: labour.agreement.section@border.gov.au

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

By post: The Director
 Labour Agreement Section
 Department of Immigration and Border Protection
 PO Box 25
 BELCONNEN ACT 2616

Part 1: Objectives and principles

Temporary skilled migrants are essential to meeting current and future skills shortages in Australia and make a significant contribution to the national economy. Labour agreements provide a targeted and flexible response to genuine skills and labour shortages in the Australian labour market where standard migration programmes and pathways are not available or appropriate.

The requirements and obligations of the labour agreements are underpinned by the following principles:

Opportunities for Australians first

Future reliance on temporary overseas workers should be reduced by building capacity in the Australian labour market over time. Australian workers are expected to be provided with first opportunity through the provision of training and employment opportunities. Where the Minister approves the use of skilled or semi-skilled overseas workers under a labour agreement, they are required to be suitably qualified and experienced and be able to transfer their skills to less experienced Australian colleagues.

The number of skilled overseas workers requested under a labour agreement is expected to represent a minor proportion of the employer's workforce—this proportion of overseas workers is expected to decrease over the life of the agreement.

Maintaining a fair work environment

Overseas workers must receive terms and conditions of employment no less favourable than an Australian worker. Terms and conditions of employment are expected to be consistent with local remuneration practices for that occupation and must meet Australian workplace laws.

Comprehensive consultation

The labour agreement programme is underpinned by comprehensive stakeholder consultation which ensures employment and training opportunities for Australians remain the first priority and the recruitment of overseas workers under a labour agreement is demonstrably in the national interest.

The nature of the consultation process may vary depending on a range of factors including the occupations sought and the intended location of the overseas workers. An employer requesting a labour agreement should therefore identify and consult with relevant stakeholders on the proposed submission prior to requesting a labour agreement.

Part 2: Requesting a labour agreement

Making a request

You must complete the **Business Case proforma at Attachment A** to make your submission to the department. Requests which do not use the proforma or which are incomplete may be returned. The proforma will assist you in addressing all requirements and providing a well-ordered, properly evidenced request ready for assessment by the department.

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.

Evidence provided in support of your submission must relate specifically to the legal entity requesting a labour agreement. In most situations, the records of associated entities cannot be used as evidence to support an employer's request.

Requirements

The following requirements must be met when making a request for a labour agreement:

Fees

There is no fee associated with making a request for a labour agreement.

Company structure

A labour agreement cannot be negotiated with a trust, but may be negotiated with a trustee, for example "ABC Pty Ltd as a trustee for the XYZ Unit Trust".

Labour market need

You must be able to demonstrate that you have made 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. You are required to complete the domestic recruitment table at **Attachment A** for activities undertaken in the previous six 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.

Additional evidence can include information such as:

- 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;
- participation in Department of Employment job placement programmes;
- strategies for retaining Australian workers.

Throughout the term of an agreement, you must continue to seek to recruit domestic workers prior to nominating an overseas worker.

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.

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

The ANZSCO six digit code must be provided for each occupation. If the occupation(s) you are seeking are available under other standard visa options, such as the subclass 457 programme, you should only include them if you are seeking a concession to standard visa requirements.

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:

- have achieved an overall test score of at least 5.0 in an International English Language Testing System (IELTS), with a score of at least 4.5 in each of the four test components; or
- have achieved an Occupational English Test (OET) score of at least 'B' in each of the four components; or
- have achieved a total score of at least 36 in a Test of English as a Foreign Language internet-based (TOEFL iBT), with a score of at least three (3) for each of the test components of listening and reading, and a score of at least 12 for each of the test components of writing and speaking; or
- have achieved an overall test score of at least 36 in a Pearson Test of English (PTE) Academic, with a score of at least 30 in each of the four test components; or
- have achieved an overall test score of 154 in a Cambridge English: Advanced (CAE) test conducted on or after 1 January 2015, with a score of at least 147 in each of the four test components; or
- be a current passport holder of a passport of any of the following countries:
 - Canada
 - New Zealand
 - The Republic of Ireland
 - The United Kingdom
 - The United States of America; or
- has completed at least five (5) cumulative years of full-time study in a secondary and/or higher education institution where instruction was conducted in English; or
- the visa holder will be paid a salary that is more than the English language requirement exempt amount (see <http://www.comlaw.gov.au/Details/F2015L00563> for more information on the English language requirement exempt amount).

A free IELTS results verification service which allows you to verify your nominees' results prior to lodging a nomination can be obtained – please see <https://ielts.uct.ac.za/ielts-trf/index.jsp>.

Concessions to the English language requirement 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 also 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 protections;
- 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.

Salary

The Australian Government must be satisfied that overseas workers have sufficient income to support themselves and their dependants 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 therefore 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.

In addition, the **base rate of pay** of overseas workers under a labour agreement must be equal to or above the TSMIT.

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.

See www.comlaw.gov.au/Details/F2015L00569 for more information about TSMIT.

Any payments deducted from the overseas workers salary may only be made with the written permission of the overseas worker.

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

Skills, qualifications and experience

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 licenses 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 only, 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.

Training

Employers requesting a labour agreement need to demonstrate that they have a satisfactory record of, and an 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, one of the following training benchmarks must be met:

- the equivalent of two per cent of gross wages (all employees – Australians and overseas workers) paid by the employer to an industry training fund; or
- the equivalent of one per cent of gross wages (all employees) spent on structured training for the Australian employees of the business.

Please note: Expenditure claimed must be actual, not imputed, costs. For more information about training benchmarks, including examples of expenditure which can and cannot be included towards the training benchmark see <http://www.comlaw.gov.au/Details/F2013L01236>.

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.

You must also advise the department whether your business, or any associated (including previous) entities, have been:

- investigated or audited in the last five years by the Office of the Fair Work Ombudsman, or former authority with this function, or relevant state or territory government authority, in relation to compliance with workplace relations provisions;
- investigated or audited by the relevant state or territory government authority in relation to compliance with workplace health and safety provisions in the last five years; and
- investigated or audited in the last five years in relation to its compliance with migration provisions.
- This information must be provided regardless of the outcome of any investigation or audit.

Reliance on overseas workers

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

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 pro-forma, which provides the current and projected number of overseas workers as a proportion of your total workforce, must be completed.

Consultation

Transparent and accountable consultation with stakeholders is a key part of the labour agreement programme to ensure that employment and training opportunities for Australians are not undermined and that the risk of exploitation of overseas workers is mitigated.

Recruitment of overseas workers under a labour agreement should also be demonstrably in the national interest. Prior to requesting a labour agreement, you must consult with relevant industrial stakeholders (please see **Attachment B**). The outcome of stakeholder consultations **must be included** with all requests for a labour agreement. It is your responsibility to manage the preparation of your submission and to ensure consultations have occurred prior to making your request.

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
 - 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.

Types of visas

Labour agreements generally provide access to temporary residence through the subclass 457 visa programme.

Access to permanent residence is 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. In addition to holding a subclass 457 visa under a labour agreement, overseas workers would be required to meet any English language proficiency, age and other requirements of the relevant permanent visa programme or as outlined in the labour agreement.

If approved, the labour agreement will outline the number of nominations for permanent residence that can be made in each year of the agreement. These may be determined on an annual basis and will be subject to ongoing labour market need. You should avoid promising overseas workers that they will be sponsored for permanent residence under a labour agreement.

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 without major difficulties.

Please note, 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). The Office of the MARA provides details of the average range of fees charged by registered migration agents on its website.

Further information on the use of registered migration agents is available at: <http://www.border.gov.au/Busi/Migr> and www.mara.gov.au

Part 3: Assessing a labour agreement

Your submission will be allocated to a departmental officer from Labour Agreement Section for assessment. Additional information may be requested until the department is satisfied it has sufficient information to make a full assessment.

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.

Timeframe

The department's service standard for assessing requests is three months from the date a **complete submission** is received until date of decision. If your submission is incomplete it will either be returned to you or further information will be requested. Assessment will not commence, and you will not be allocated a case officer, until all information is provided.

Where further information is requested, you will be expected to respond within 14 days. If the information is not provided your request may be refused.

You should allow two weeks from the date of approval for the labour agreement to be sent to you for signing. Once you have received the labour agreement, the department expects that you sign and return it within four (4) weeks for execution, at which time you may commence nominating overseas workers.

Please note:

- A decision to enter into a labour agreement is made at the absolute discretion of the Minister for Immigration and Border Protection. The Minister is not obligated to enter into a labour agreement.
- Not all labour agreement requests are approved.
- The Australian Government makes the final decision on the number of positions approved under a labour agreement.

Part 4: Using a labour agreement

Nominating overseas workers

An approved sponsor should genuinely seek to recruit domestic workers prior to recruiting an overseas worker.

Before an approved labour agreement sponsor can recruit an overseas worker, it should first nominate the position the worker will occupy. 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.

Applying for a visa

Following the successful nomination of a position, overseas workers should lodge applications for a visa with the department. Visa applicants should identify that they are applying under the labour agreement stream.

Ceilings and reporting

You will be provided a ceiling, or maximum number of 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 of 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 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

Your labour agreement will outline your obligations as an approved sponsor under the labour agreement. 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. Additional obligations, or variations to existing subclass 457 obligations, may also apply to your labour agreement. Examples of additional obligations include:

- payment of wages and salary must be made 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 must be employed on a full-time basis only and receive terms and conditions of employment which are no less favourable than the terms and conditions of employment that are, or would be, provided to an Australian performing equivalent work in the approved sponsor's workplace at the same location;

- the base rate of pay, under the terms and conditions of employment must be equal to or greater than TSMIT, unless varied under the labour agreement; and
- any payments (including, but not limited to, repayments of salary advances made to the overseas worker at the discretion of the employer) deducted from the overseas worker's salary may only be made with the written permission of the overseas worker.
- Employers must demonstrate that any deductions are consistent with the Fair Work Act 2009 and/or local industrial instruments.

It is your responsibility to ensure you understand your obligations 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->

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.

Terminating or suspending labour agreements

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 termination or suspension of the agreement or other sanctions under the *Migration Act 1958*.

Confidentiality and disclosure

The Australian Government appreciates that labour agreement requests may contain sensitive information. The Australian Government takes these matters seriously and will protect the confidentiality of such information to the extent the law allows and to the extent that it does not contradict the Australian Government's disclosure obligations.

The Australian Government expects the confidentiality of any information provided by the approved sponsor to an external stakeholder as part of any labour agreement consultation process will be respected.

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.

Labour agreements should also allow the release of information provided where it is required for Australian Government disclosure obligations. Instances where disclosure is required include:

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

Industry labour agreements

Industry labour agreements are currently available for the following industries:

- Dairy
- Fast food
- Fishing
- Meat
- Minister of religion
- On-Hire
- Pork
- Restaurant (fine dining)
- Snow sports

Please contact the department for information sheets specific to each of these industry labour agreements:

Email: labour.agreement.section@border.gov.au

By post: The Director
Labour Agreement Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2616



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

Labour Agreement Business Case Proforma

Please note the following **before** filling out this proforma:

You should carefully read the labour agreement guidelines.

If you are requesting a labour agreement through an existing industry labour agreement, you should:

- also read the information sheet specific to your industry;
- not complete PART C: Concessions; and
- contact Labour Agreement Section to discuss whether you need to complete PART D: Stakeholder consultation.

All attachments in support of your request must be clearly labelled.

PART A: INFORMATION ABOUT YOUR BUSINESS

1. Business Details (this business must be an Australian entity and be the direct employer of the workers proposed)

Registered name of business and state or territory where registered	
Any registered trading name/s	
ABN	
ACN/ARBN (if applicable)	
Business structure For example: sole trader, partnership, company or trustee (cannot be a trust)	
Name of trust and trustee (if the business entity is acting as a trust)	
Company Address (Australian head office)	
Address details of all operational locations where overseas workers will be placed (if different from above)	
Number of years of operation	
Name and full contact details for a Company Contact Officer	
Name and phone number of Migration Agent (including MARN – signed Form 956 must be attached)	
Industry as defined by ANZSIC	
Operational locations of business where workers will be placed if different from the head office	

address.	
Industry association memberships (if any)	
Name of each Director	
Attach evidence of: <ul style="list-style-type: none"> – financial viability * – relevant associated entities – relevant industrial arrangements – relevant industry association information – trust (Annotate attachments below)	
Attachments: <i>List all attachments (e.g. signed Form 956 and evidence of financial viability)</i>	

** You must provide a letter of support from a registered chartered accountant or a certified practising accountant confirming your business has been actively operating for at least 12 months and stating the business has financial capacity to meet their sponsorship obligations for the number of positions sought and for the period of the labour agreement.*

2. Background and summary of your reason for requesting access to a labour agreement

<p><i>Please provide a brief description of your business which includes the factors that underpin your decision to request access to a labour agreement such as:</i></p> <ul style="list-style-type: none"> – core business activities, clients, contracts; and – the impact on the business if a labour agreement is not approved. <p><i>Provide a concise overall rationale for your request, notably your reason for seeking any concessions as compared to the standard subclass 457 programme. Specific detail and evidence will be required further on in this form. Refer to the Labour Agreement Guidelines for more information.</i></p>
Attachments:

3. Workforce Profile and Projections

Year	Australians (citizens & permanent residents)	457 visa holders	Other temporary visa holders	Total workforce
Current				
End of Year 1				

Note: If you are requesting an on-hire industry labour agreement, you must only include current and future projections for your on-hired workforce. You should not include workers who are internal to your company.

4. Adverse findings

You must advise the department of any adverse findings your business has been subject to with regard to your workplace relations, workplace health and safety, or migration compliance record.

Attachments:

List any attachments which are relevant to adverse findings, if any, and related outcomes.

PART B: INFORMATION ABOUT YOUR REQUEST FOR A LABOUR AGREEMENT

5. Occupations you are seeking under a Labour Agreement

You must be able to demonstrate that the occupations sought are specialised and skilled. Please provide comprehensive information about the nature of the occupations sought.

(REPRODUCE TABLE FOR EACH OCCUPATION)

Occupation	ANZSCO code		
<i>Please provide the occupation description as provided by ANZSCO.</i>	<i>Please provide ANZSCO six digit code.</i>		
Position description:			
<i>Please provide details of the specific tasks which would be undertaken in the requested occupation.</i>			
Qualifications for this occupation:			
<i>Please specify the minimum qualifications required for the requested occupation</i>			
Minimum years of experience for this occupation:			
<i>Please specify the minimum experience required for the requested occupation</i>			
Position location(s)	Number of workers sought in each year of agreement		
	Year 1	Year 2	Year 3
Skills assessment process:			
<i>Please provide details of the independent skills assessment process to be undertaken to ensure primary sponsored persons will possess skills for the requested occupations to the Australian standard.</i>			
Any registration or licensing requirements:			

Salary:

Overseas workers must be employed on a full-time basis only and receive terms and conditions of employment which are no less favourable than the terms and conditions of employment that are, or would be, provided to an Australian performing equivalent work in the approved sponsor's workplace at the same location.

Please provide the following information:

- *salary arrangements for Australian workers in the same occupation, performing equivalent work at each location, based on ordinary hours (indicate number of ordinary hours per week);*
- *the amount and purpose of deductions (if any) to be made from the skilled overseas workers' and Australian workers' salaries;*
- *the amount and purpose of any allowances paid to skilled overseas workers and Australian workers;*
- *confirmation that the terms and conditions of employment will be no less favourable than the terms and conditions that are provided, or would be provided, to an Australian performing equivalent work in the sponsor's workplace at the same location (market salary rate);*
- *confirmation that the skilled overseas worker will be paid either the market salary rate or the temporary skilled migration income threshold, whichever is the greater;*
- *the relevant industrial instrument covering the skilled overseas worker's occupation; and*
- *the letter of offer or appointment that will be provided to overseas employees.*

Please attach clear evidence, and indicate below what each attachment contains.

Attachments:

List any attachments which are relevant to your request for this occupation.

6. Demonstrate your commitment to domestic training efforts against at least one of the specified benchmarks

Please clearly state which of the training benchmarks you are intending to meet and provide comprehensive information about the nature of your training efforts. This should include information about:

- *the employment of recent Australian graduates;*
- *evidence of internal and/or external training;*
- *participation in Australian Apprenticeships;*
- *employment of trainees;*
- *expenditure on formal courses of study for Australians at TAFE or university;*
- *expenditure on both internal and external training of Australians;*
- *contributions made to Industry Training Funds; and*
- *expenditure on scholarship programmes.*

Please attach clear evidence, and indicate below what each attachment contains.

Attachments:

List any attachments which are relevant to your training efforts.

7. Evidence of the labour market need underpinning your request

Please provide a comprehensive written summary of the labour market need for the occupations you are requesting. This could include information about:

- *your participation in job search programmes or other such programmes and activities;*
- *local unemployment data;*
- *competing industries in the Region/location; and*
- *relevant reports and research about the labour market.*

Please provide details on any redundancies or retrenchments that have occurred within the past twelve months.

Please fill out the summary of domestic recruitment table (below).

Attachments:

List any attachments which are relevant to labour market need.

8. Summary of domestic recruitment efforts by [*organisation name*]:

List <u>all</u> occupations sought under the labour agreement	ANZSCO code (order numerically from lowest to highest)	List <u>all</u> advertising or recruitment efforts <u>by your organisation</u> in the last six months for the occupation ²	Period/dates of advertising or recruitment	Geographical target audience	Number of applications received	Number of applicants that were hired	Reasons that candidates were not successful	How many Australians do you currently employ in this occupation?

I declare that the information I have provided in this document is, to the best of my knowledge, true and accurate and I am aware of the penalties for providing misleading or false information to the Australian Government.

Signature: _____

Name and position of authorised person: _____ Date: _____

² One method per table cell (e.g. Seek.com advertising). Please replicate the row if multiple methods have been used. You must attach examples of your efforts to recruit for each occupation.

PART C: CONCESSIONS

9. English language proficiency

Are you seeking a concession to the English language requirement of either an average IELTS score of at least 5.0 across each of the four test components (speaking, reading, writing and listening), with no test component below 4.5 or an OET score of B in each of the four test components (reading, writing, speaking and listening)?

If yes, please provide details of the concession you are seeking.

If yes, please provide specific information on how you will do the following:

- ensure that the proposed variation to the English competency requirement would not constitute an OH&S risk;*
- ensure that skilled overseas workers can access workplace relations protections;*
- 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.*

Please attach clear evidence, and indicate below what each attachment contains.

Attachments:

10. Salary

Are you seeking a concession to the Temporary Skilled Migration Income Threshold?

If yes, please provide details of the concession you are seeking.

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.

In some circumstances minor concessions to the TSMIT (up to 10 per cent) may be considered. Alternatively, guaranteed salary packaging arrangements, or other guaranteed arrangements in addition to the base rate of pay, may be considered when calculating salary for the purpose of meeting TSMIT.

Please provide evidence showing that overseas workers would have sufficient income to support themselves and their dependants as they do not have access to the same range of benefits and services as Australian citizens and permanent residents.

Attachments:

PART D: STAKEHOLDER CONSULTATION

11. Details of your stakeholder consultation

Please provide the following details regarding each of your stakeholders:

- *Name of the stakeholder;*
- *Stakeholder type (union, industry body etc);*
- *Date you provided information about your request for a labour agreement;*
- *Date(s) you responded to stakeholders or followed-up with them;*
- *Copies of your correspondence and replies from stakeholders.*

*(see template stakeholder letter at **Attachment B**)*

Attachments:

Template stakeholder letter

Dear

Stakeholder consultation for proposed Labour Agreement for [*Company name*]

Labour agreement type (*delete whichever not appropriate*): Fishing Template, Fast Food, Other Template, Non-Template (i.e. company specific)

The Department of Immigration and Border Protection requires all organisations seeking access to a labour agreement to consult with relevant industrial stakeholders which best represent employees in occupations proposed under the labour agreement; the industry bodies which best represent employers in the industry; and any other agency or community group that may be impacted by the proposed labour agreement.

This letter is to inform you about our intentions in requesting a labour agreement and to seek your feedback. The department will take your views into account in their negotiations with us.

We are seeking access to overseas workers through a labour agreement because ...

(briefly outline your reason for seeking a labour agreement.)

Attachment 1 provides the specific details we are required by the department to provide to you, including the numbers, location and occupations of workers sought, and information on concessions, salary, and other workforce information. Please see attached.

Please be advised that your organisation's written response (email is acceptable) is **requested within 10 working days of receipt of this correspondence** in order to be considered by the department as relevant to the labour agreement negotiation process. We are obliged to follow up with you **after a further five (5) working days** if we do not hear from you and **provide you with an additional five (5) working days** to respond.

I must advise that your response will not necessarily veto our labour agreement request but your input is valued and will be taken into consideration where evidence is provided that supports any objections. If we do not hear from you, the department will assume that you do not have a concrete objection to our proposal and the negotiation process will continue. If you voice significant concerns about our proposals, the department may contact you directly.

We would appreciate if you could treat this correspondence *in-confidence*. Copies of all correspondence between us will be provided to the department. Information provided in this process should not be disclosed to any other party.

I look forward to hearing from you.

Yours sincerely

Attachment 1

We are requesting the following occupations. The following table/s indicates the number of workers and locations of work proposed.

(reproduce table for each occupation)

Occupation		ANZSCO code		
<i>(a brief description of the qualifications and years of experience you expect workers to have will assist your stakeholders to make informed comment)</i>				
Position location/s (as specific as possible)	Number of workers sought in each year of agreement			
	Year 1	Year 2	Year 3	

We are seeking the following concessions in respect of skill level and/or English language proficiency etc:

(provide details – or N/A if none sought)

We confirm that all overseas workers will be provided with terms and conditions no less favourable than those that are, or would be, provided to Australian workers doing the same work.

The salary arrangements for the overseas workers will be:

(provide details including specific relevant award if relevant)

Below is additional information we believe is relevant to our labour agreement proposal:

Date: __/__/__