



Australian Government
Department of Home Affairs

Labour agreement program information guide

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Part 1 - Introduction

About this guide

This guide provides information to assist employers (and/or their representatives) considering requesting access to the labour agreement program in order to sponsor a skilled overseas worker.

What is a labour agreement?

Labour agreements are formal arrangements negotiated between Australian employers and the Australian Government under certain circumstances. A negotiated agreement typically allows overseas workers to be sponsored for a skilled visa which allows them to work in Australia for a specified period of time, in an approved occupation.

These arrangements are designed to assist employers in addressing immediate skills needs, whilst ensuring that opportunities for job-ready Australians are protected. Employers are expected to have plans in place to transfer skills to Australian workers and reduce their future reliance on overseas workers.

A visa granted under a labour agreement will be a Temporary Skill Shortage (TSS) visa (subclass 482) unless the agreement provides for a permanent residence pathway.

Overview of labour agreements

A labour agreement can be requested where:

- the employer can demonstrate that there is a genuine labour market need for an overseas skilled worker to fill a position in Australia
- there is no standard visa pathway available, and
- the proposed labour agreement is not inconsistent with Australia's national interest.

Labour agreement arrangements are administered outside Australia's standard skilled visa programs and may only be accessed in limited or exceptional circumstances, where the minimum requirements are met. These are explained in this guide.

The Department of Home Affairs (the Department) is under no obligation to enter into a labour agreement.

Requesting a labour agreement

To request a labour agreement, you must:

- read all the information in this guide, and
- complete a *Request for a Labour Agreement* for the type of agreement you require.

You may obtain this by emailing labour.agreement.section@homeaffairs.gov.au. The completed form, together with required supporting evidence should then be returned to the same email address.

Important:

- This guide and the request form will help you ensure that you submit a, properly evidenced, assessment-ready request to the Department. **Please note that requests which are incomplete may be returned without assessment.**
- The Department does not currently charge a fee for making a request for a labour agreement.
- While many employers seek the assistance of a registered migration agent, the labour agreement submission process is designed to enable completion by a company directly without substantial difficulties. There are no priority processing arrangements for requests made using an 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](#).

Where to find information in this guide

The types of labour agreements that can be requested are explained in **Part 2** of this guide.

Parts 3 to 6 explain these different labour agreements in more detail.

Part 7 outlines when and how decisions on labour agreement requests are made.

Part 8 provides additional information for employers who are successful in entering into a labour agreement, including the sponsorship obligations that they are required to comply with.

Part 2 – Types of labour agreements

There are four different categories of labour agreements as explained briefly below and in more detail at **Parts 3 – 6** of this guide.

Company specific labour agreements

A company specific labour agreement is developed directly with an employer. The terms and conditions of the agreement are considered on a case-by-case basis – see **Part 3 - requirements for a Company specific labour agreement** for more information.

This type of agreement will be considered only where:

- a genuine skills or labour shortage exists, for an occupation which is not already provided for in an industry agreement; and
- a designated area migration agreement or project agreement is **not** already in place.

Industry labour agreements

Template labour agreement arrangements are in place for the following industries – see **Part 4 - Requirements for an industry specific labour agreement** for more information.

These types of arrangements provide for **fixed** terms and conditions agreed to by the Minister of Citizenship and Multicultural Affairs (the Minister) in consultation with key industry stakeholders, specific to an industry sector. 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. **No further concessions can be considered under this arrangement which has fixed terms and conditions with in-built concessions.**

Labour agreements by industry type	
Dairy	On-Hire
Fishing	Pork
Meat	Restaurant (fine dining)
Minister of Religion	Snow Sports

New industry agreements will **only** be considered, following a large number of similar labour agreement requests from an industry, where:

- there is evidence of ongoing labour shortages within that industry; and
- significant negotiation and consultation with the relevant industry has occurred.

Designated area migration agreements (DAMA)

A DAMA is an overarching agreement recording the agreed number of overseas workers and the terms of engagement within a designated regional area. They are intended to help support economic performance in regional areas of Australia by providing flexibility for states and territories regions to respond to their unique economic and labour market conditions through an agreement-based framework under which employers in areas experiencing skills and labour shortages may seek to sponsor skilled and semi-skilled overseas workers. DAMAs are administered by the Australian Government and are managed by local state and territory governments.

The Department currently has only one DAMA in place with the Northern Territory (NT) Government under which labour agreements can be requested. The NT Government should be contacted for more information about these arrangements.

For advice about seeking to implement a new DAMA – see **Part 5 – Designated Area Migration Agreement (DAMA) requirements** for more information.

Project agreements (PA)

Project companies with projects endorsed by the *Department of Foreign Affairs and Trade* under the China-Australia Investment Facilitation Arrangement (IFA) can request a project agreement – see **Part 6 – Project Agreement (PA) requirements** for more information.

A project agreement may also be considered for a large scale activity where there are multiple sub-contractors with a labour agreement need.

Part 3 - Company specific labour agreement requirements

Requesting a company specific labour agreement

Employers requesting a company specific labour agreement must provide an evidence-based case to demonstrate that they have a genuine labour market need to utilise the labour agreement program. For a request to be considered, employers must:

- make a compelling business case for the employment of an overseas worker based on the exceptional or niche skills of the applicant, or evidence of a labour market shortage; and
- ensure the minimum requirements outlined below for a company specific labour agreement are met*.

Note:

- *If these requirements cannot be met, a labour agreement can only be executed with the approval of the Minister. The Minister's approval will only be sought by the Department where standard visa program options are not available and it is considered to be in the national interest.
- Generally supporting evidence provided 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.

Must be an Australian registered business with 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.

For a labour agreement to be executed, there must be no 'adverse information' available about your business, unless the Department considers it reasonable to disregard. Adverse information is information that is relevant to your suitability as an approved sponsor. This includes information that you have:

- contravened a law of the Commonwealth, a State or a Territory;
- are under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law;
- have been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law;
- have become insolvent (within the meaning of section 95A of the Corporations Act 2001);
- have given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.

If this applies to you, you should ensure that you declare any adverse information in your request form and then explain why you believe the Department should disregard this information.

Must be seeking to fill skilled occupations that are not available

The labour agreement program forms part of Australia's skilled visa programs. It is not designed for non-skilled workers. As a result, a company specific labour agreement will generally only be executed where you are seeking to fill positions where the relevant occupation is a skill level 1 to 4 ANZSCO occupation and it is currently not an eligible occupation for the TSS program – see: [Lists of eligible skilled occupations](#).

You will need to provide the relevant ANZSCO six-digit code or other industry agreement specific code for each occupation in your request form, as well as a detailed description of the tasks the proposed overseas workers will undertake.

Note:

- If the occupation(s) you are seeking are available under the TSS visa program, you should only include in your request if you are seeking a concession to the standard visa requirements.
- Requests for labour agreements which include occupations lower than ANZSCO skill level 4 cannot be executed without the approval of the Minister. The Minister's approval will only be sought by the Department where a strong business case has been provided and it is considered in the national interest.

Salary and employment conditions

You will need to demonstrate that you will be able to meet the salary and employment condition requirements as outlined on the Department's [website](#).

Labour market need

Labour agreements are not designed or intended to gain a migration outcome for a particular person. As such, you must demonstrate that there is a genuine labour market need to utilise the labour agreement program, evidencing that the relevant position/s are unable to be filled through the local labour market.

You must have made recent, genuine efforts to recruit, employ or engage Australian citizens or permanent residents before seeking to fill a position/s through the labour agreement program.

Evidence of such recruitment efforts must be provided with your labour agreement request (for example, copies of job advertisements). Where a request is submitted without such evidence, it will be returned without any further assessment. Such evidence should at a minimum reflect that labour market testing equivalent of that required for the TSS visa program has been undertaken. These requirements are outlined on the Department's [website](#).

Additional supporting evidence of your labour market testing activities can also be provided to strengthen your request, 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;
- relevant industry (or other) research released in the last 12 months related to labour market trends; or
- letters of support from state government authorities with the responsibility for employment.

Important: 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.

Reliance on overseas workers

A company specific labour agreement is generally expected to be a temporary solution to addressing current skills shortage only. As a result, it is expected that overseas workers will not exceed a third of your workforce while your agreement is in place. You must also 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;
- your business does not have an over-reliance on overseas workers; and
- you have a commitment to training Australians and have a plan in place to train Australians to avoid the need for a further labour agreement.

English proficiency

For a temporary visa to be granted under a labour agreement, overseas skilled workers are generally required to meet the English language requirements in place for the short-term stream of the TSS visa program. These requirements are outlined on the Department's [website](#).

Requests for labour agreements which are seeking a lower standard of English competency cannot be executed without the approval of the Minister. The Minister's approval will only be sought by the Department where a strong business case has been provided and you can demonstrate how you will ensure that:

- lowering the English competency requirement for your particular labour agreement would not constitute a workplace health and safety risk;
- skilled overseas workers can still participate in the community and transfer their skills to Australians; and
- the English language levels of skilled overseas workers will improve over the life of the agreement.

Skills, qualifications and experience

For a visa to be granted under a labour agreement, overseas skilled workers are generally required to:

- have two (2) years' work experience in the relevant skilled occupation or a related field;
- meet the skills requirements outlined in ANZSCO for the relevant skilled occupation; and
- meet any industry registration and/or licensing requirements.

Skills assessments are also required to be completed where they would be mandatory under the standard TSS visa program as outlined on the Department's [website](#).

Requests for labour agreements which are seeking concessions in terms of required skills, qualification and experience cannot be executed without the approval of the Minister. The Minister's approval will only be sought by the Department where:

- a strong business case has been provided;

- the overseas worker(s) will have a qualification of at least an Australian Qualification Framework (AQF) Certificate III; and
- the overseas worker(s) will have at least three years' recent relevant experience.

Consultation with industry stakeholders

Prior to requesting a company specific labour agreement, you must consult with relevant industry stakeholders.

A template letter to assist you in this process will be provided to you along with the labour agreement request form.

Relevant stakeholders include:

- the industry body which best represents your interests;
- the union relevant to the occupation requests; 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 occupations and number of skilled overseas workers in each individual year of the agreement;
- the locations where you propose to place skilled overseas workers;
- details of any concessions to the standard program sought by you—for example, concessions relating to English language or skill level; and
- the proposed salary for the overseas workers including how the annual market salary rate has been determined and whether a specific award applies.

You may also wish to provide them with:

- the details of the qualifications and years of experience that the overseas workers will be expected to hold;
- the number of Australians currently employed in the occupations requested;
- if concessions are sought, your proposed strategies to ensure worker welfare;
- a workforce profile showing the current and projected numbers of overseas workers; and
- details of training you intend to provide to your Australian workforce and/or any other plans to reduce your reliance on overseas workers in future.

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 5 working days for response by the stakeholder.

All reasonable steps must be taken to provide stakeholders with any 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 any stakeholders.

The outcome of stakeholder consultations **must** be provided with all requests for a company specific labour agreement, including copies of all your written request(s) for comment on the proposed labour agreement and the response(s).

Failing to do so will result in your request being returned to you without any further assessment.

Note:

- 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 result in an adverse outcome. If the Department is unsatisfied with the level of engagement, we may, however, contact any of the parties involved in consultation to request further action.

- You may choose to provide the stakeholder with a copy of your labour agreement request. In this case, we recommend 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.

Part 4 – Industry labour agreement requirements

This part explains where to find information about specific industry labour agreements, the requirements that relate to these agreements and how they differ from the company specific requirements outlined in **Part 3 – requirements for a company specific labour agreement**.

Dairy Industry Labour Agreements

The requirements that dairy industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Fishing Industry Labour Agreements

The requirements that fishing industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

On-hire Labour Agreements

The requirements that on-hire industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Meat Industry Labour Agreements

The requirements that meat industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Minister of Religion Labour Agreements

The requirements that religious institutions must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Pork Industry Labour Agreements

The requirements that dairy industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Restaurant (Fine Dining) Labour Agreements

The requirements that fine dining restaurants must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Snow Sport Labour Agreements

The requirements that snow sport industry employers must meet are outlined on the Department's [website](#) as is a copy of the industry template that will be used if your agreement request is approved.

Part 5 – Designated Area Migration Agreements (DAMA)

This information is intended for state or territory governments or statutory authorities (planning commissions); regional authorities (for example, regional or local councils) who are considering requesting a DAMA to cover their local area.

A request for a DAMA must contain, as a minimum, the following:

- a letter of endorsement from the relevant state/territory government;
- a *Designated Area Representative (DAR)* endorsed by the state/territory government who can manage the request to establish an agreement;
- a business case if any additional concessions are being requested (for example, English, skills, salary) to the minimum requirements outlined for a company specific labour agreement at **Part 3** of this guide;
- an explanation of how the DAR proposes to support employers and facilitate the integration of overseas workers in their local communities (for example, provision of information on workplace rights and sponsorship obligations; basic services in the local area such as health; emergency and educational services; community activities such as sporting groups and religious services);
- supporting documentation, which may include:
 - Profit and loss statements;
 - Other financial statements;
 - Other relevant supporting information.

Before lodging a request for a new DAMA, the DAR and/or the relevant state or territory government should consult with:

- key union, local/state government and business stakeholders;
- other agencies or community groups that may be impacted by the proposed agreement;
- the relevant state work safety authority where additional English language concessions are sought (see below).

Part 6 – Project labour agreements

A project agreement allows project companies experiencing genuine skills or labour shortages access to temporary skilled overseas workers through the TSS 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
- 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 7 – Decisions on labour agreement requests

The assessment process

The Department will aim to assess your labour agreement request within six (6) months. Incomplete requests will be returned without assessment.

If further information is required, you will be generally be expected to respond within 7 or 14 calendar days of the Department's request, depending on the nature of the information requested. If the information is not provided within the required timeframe, your request will be returned without assessment.

Note: The Department may consult with the *Department of Jobs and Small Business* and seek their views on your labour agreement as part of the assessment process.

Decision

Some decisions on labour agreement requests can be made by authorised officers within the Department. In all other cases, your request will be referred to the Minister.

Important:

- The Department is **not** obligated to enter into a labour agreement.
- The Australian Government makes the final decision on the number of positions approved under a labour agreement.

Execution of the agreement

If your labour agreement request is approved, the Department expects that you sign and return it within four weeks for execution, at which time you may commence nominating overseas workers. Your agreement will then remain in effect for **five (5) years**.

Confidentiality and disclosure

If a labour agreement is approved, limited information about this agreement will be published on the Department's [website](#).

More detailed information about your request or any future agreement will generally only be released where required to meet disclosure obligations under law (as will be outlined in the terms of any future labour agreement).

Part 8 – Being a labour agreement sponsor

Nominating overseas workers

If approved, the labour agreement will outline the number of nominations for a TSS visa and/or the Employer Nomination Scheme (ENS) visa (subclass 186) that can be made in each of the first three (3) years of your agreement. These are known as 'ceilings'.

You should read your labour agreement carefully and make sure you meet any nominated related requirements, including caveats on skilled occupations, provision of labour market testing evidence where required. This will help you lodge decision-ready nomination applications.

Applying for a visa

Once a nomination application has been lodged online with the Department, skilled overseas workers can in turn lodge their individual applications for a visa online. Relevant visa criteria must be met in order for a visa to be granted.

Requesting a variation

If you wish to obtain ceilings for year four or five of your agreement, or seek additional ceilings for a particular year of your agreement, you must request this in writing from the Department. 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 month period (unless you have lodged a nomination for the relevant occupation within the last six months and have already provided this information to the Department);
- 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;
- 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.

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 TSS visa program, your sponsorship obligations will largely mirror those which apply under the standard business program. A full list of standard TSS visa program sponsorship obligations can be found on the Department's [website](#).

Additional obligations or variations to existing TSS visa program obligations, may also apply. These will be specified in your agreement.

Monitoring

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