

Temporary Work (Skilled) visa (subclass 457)

What are the changes?

On **19 April 2017** the federal government made substantial changes to the 457 visa programme.

The occupation list (the Consolidated Sponsored Occupation List – CSOL) which underpinned the programme as used by the farming industry was renamed the Short-Term Skilled Occupations List (STSOL).

The maximum duration of 457 visas issued for occupations which are on the STSOL was reduced from 4 years to 2 years with potential for onshore renewal once only post March 2018.

From **December 2017** the Department of Immigration and Border Protection will commence collection of tax file numbers of 457 visa holders to enable data matching with the ATO to ensure that 457 visa holders are paid the nominated salary.

From **March 2018** the pathway to permanent residency for these visa holders will no longer apply.

From **March 2018** the English language requirement will require a score of 5 with a minimum of 4.5 in each test component.

From **March 2018** the visa will be renamed the Temporary Skills Shortage visa (TSS Visa).

From **March 2018** the **training requirements** (see below) will change. From that date employers nominating a worker with a TSS visa will be required to pay a contribution to a “Skilling Australians Fund”. The amount will be \$1,200 per year for small businesses with a turnover of less than \$10m and \$1,800 for other businesses payable in full when the worker is nominated.

NOTE:

Current 457 Visas will continue until their expiry unless the visa holder changes employer or seeks to apply for a further 457 visa.

TEMPORARY WORK (SKILLED) VISA (SUBCLASS 457)

This visa allows the visa holder to:

- work in Australia for up to two years;
- bring their family to work or study in Australia;
- travel in and out of Australia as often as they want to.

Key points

- In the dairy industry is limited to high skill level Dairy Farmer – essentially requires the farm owner to step back from management of the farm;
- Two step process – approval as a sponsor and nomination of visa applicant.

Eligibility Requirements for the applicant:

The Applicant can be in or outside Australia when they lodge their application. The Applicant must:

- hold a valid passport;
- be a **skilled worker** (see below);
- meet the **skill requirements** (see below) for the nominated occupation;
- meet registration and licensing obligations;
- meet the **English language requirements** (see below);
- have been **nominated** by an approved business (see below);
- meet the **health requirements** (see below);
- meet the **character requirements** (see below);

What is a skilled worker?

A **skilled worker** is defined to mean a worker who is working in an occupation which is an approved occupation on the Short Term Skilled Occupation List

For the dairy industry the only occupation on this list is that of **dairy cattle farmer**. The Department of Immigration and Border Protection have previously advised the industry that this occupation will not be approved unless the applicant will be taking over the running of the farm completely.

NOTE:

The Department of Immigration and Border protection does not have the separate Short Term Skilled Occupation List on its website. Rather it is combined with the Medium and Long Term Strategic Skills Lists. For a complete copy of these lists go to Border.com.au and search for Skilled Occupation Lists.

Skill requirements

The Applicant must be able to show that they have the skills and experience necessary to work in the nominated occupation. This may involve undergoing a skills assessment.

What are the English language requirements?

Applicants need to prove that they can speak, write and understand a sufficient level of English while they are in Australia. The International English Language Testing System (IELTS) and the Occupational English Test (OET) are used to determine English language proficiency.

For standard business sponsorships the Applicant must have English language proficiency that is equivalent to:

- an International English Language Testing System (IELTS) test score of at least 5 in each of the four test components of speaking, reading, writing and listening, or
- a score of at least 'B' in each of the four components of an Occupational English Test (OET).

For further information, visit [www.border.gov.au/Trav/Visa-1/457-/Document-checklists-Temporary-Work-\(Skilled\)-visa-\(subclass-457\)](http://www.border.gov.au/Trav/Visa-1/457-/Document-checklists-Temporary-Work-(Skilled)-visa-(subclass-457))

What are the Health requirements?

Applicants and dependent family members must meet certain health requirements. The health examinations required depend on personal circumstances, including the period of stay, country of citizenship, time spent in another country during the last five years and intended activities in Australia. The results of health examinations are generally valid for 12 months. This process can be undertaken before lodgement of the visa application.

For further information on health requirements, visit www.border.gov.au/Trav/Visa/Heal/meeting-the-health-requirement

What are the Character requirements?

Applicants must meet certain character requirements and provide a police certificate from each country they have lived in for 12 months or more during the past 10 years after they turned 16 years of age. This also applies to all dependent family members in the application who are older than 18 years of age.

For further information about character requirements, visit www.border.gov.au/Trav/Visa/Char

What are the Employment conditions?

Visa holders are required to:

- work in the occupation for which they were nominated;
- work for the sponsor who nominated the position, or an associated entity of the sponsor;
- not cease employment for more than 90 consecutive days.

Changing employers

If the visa holder stops working for their sponsor, they must do one of the following within 90 days:

- find another employer to sponsor them (the sponsor needs to lodge a nomination);
- apply for a different visa;
- make arrangements to leave Australia.

Health care costs

Visa holders are responsible for all of their health costs while they are in Australia. They will not be covered by Australia's national health scheme (Medicare) unless their country has a **reciprocal health care agreement** (see below) with Australia.

Reciprocal health care agreements

The Australian Government has agreements with New Zealand, the United Kingdom, the Republic of Ireland, Sweden, the Netherlands, Finland, Italy, Belgium, Malta, Slovenia and Norway.

All applicants must have adequate health insurance unless they are covered by Medicare and this insurance must also cover family members.

SPONSORSHIP

This is a sponsored visa. Before the applicant can apply for the visa, the prospective employer must do the following:

- become an approved sponsor (see below);
- nominate the applicant for a position (see below)

Becoming a sponsor

To become a sponsor, you must be able to show that your business:

- is a lawfully operating business;
- meets **training requirements** (See below);
- agrees to the number of subclass 457 workers to be nominated;
- have no relevant **adverse information** (See below) against your business;
- Australian businesses must also demonstrate their commitment to employing local labour as well as non-discriminatory recruitment practices.

What are the training requirements?

If your business has been trading in Australia for more than 12 months, you must show you have contributed to the training of Australians. You show this by meeting one of two benchmarks. This can be either:

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 as the business. You can request more information via www.thepeopleindairy.org.au/contact.htm

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.

You must provide evidence of expenditure relating to the training benchmarks when you submit your sponsorship application.

NOTE: The training requirements will change as of March 2018 – (See above)

What is adverse information?

Adverse information is information that reveals that a business, or a person associated with the business:

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

- is under investigation, subject to disciplinary action or subject to legal proceedings. The Commonwealth, state or territory law must be about:
- discrimination;
- immigration;
- industrial relations;
- occupational health and safety;
- people smuggling and related offences;
- slavery, sexual servitude and deceptive recruiting;
- taxation;
- terrorism;
- trafficking in persons and debt bondage.

When is adverse information relevant to an application?

Adverse information is relevant if it:

- raises doubts about a person's suitability as an approved sponsor;
- is about something that happened in the previous three years;
- is known to the Department.

Sponsorship Obligations

Approved sponsors are required to meet certain sponsorship obligations. Some obligations apply beyond the term of sponsorship approval.

These obligations help protect overseas skilled workers from exploitation. The obligations also ensure the program is being used to meet genuine skills shortages, and not to undercut local labour wages and conditions.

Sponsors must:

- cooperate with inspectors;
- **ensure equivalent terms and conditions of employment** (see below);
- keep records;
- provide records and information to the Minister;
- tell the Department when certain events occur;
- **ensure the visa holder participates in the nominated occupation, program or activity** (see below)
- not recover from, transfer or charge certain costs to another person;
- **pay travel costs** to enable sponsored people to leave Australia (see below);
- **pay costs to remove unlawful non-citizens** (see below);
- provide training to Australians and permanent residents.

Ensure equivalent terms and conditions of employment

If you are a standard business sponsor, the terms and conditions of employment for the person you have sponsored must be no less favourable than those you provide, or would provide to an Australian performing equivalent work in the same location.

This obligation does not apply to a sponsor if the annual earnings of their sponsored visa holder are equal to, or greater than AUD\$250,000.00.

Ensure that the visa holder participates in the nominated occupation, program or activity

You must ensure that the person you have sponsored participates only in the occupation, program or activity for which you nominated them.

If you are a standard business sponsor, you must employ the person you have sponsored under a written contract of employment. They cannot work for another business, and you cannot supply them to another business. If you were lawfully operating a business in Australia at the time you were approved as a standard business sponsor, the person may work for an associated entity.

Pay travel costs

Pay travel costs means that you must pay reasonable and necessary travel costs to enable the sponsored person and their sponsored family members to leave Australia. They must ask in writing for you to pay the costs.

The costs will be considered reasonable and necessary if they include all of the following:

- travel from the sponsored person's usual place of residence in Australia to their place of departure from Australia;
- travel from Australia to the country for which the sponsored visa holder holds a passport and intends to travel to;
- economy class air travel or, where that is not available, a reasonable equivalent.

Travel costs must be paid within 30 days of receiving the request. You will only be required to pay return travel costs once.

If a sponsored person returns to Australia (whilst holding the visa for which you sponsored them) after you have paid their return travel costs, you will not be required to pay their return travel costs again.

Pay costs to locate and remove an unlawful non-citizen

In the event a primary sponsored person (or any of their sponsored family members) becomes an unlawful non-citizen, you may be required to pay the costs incurred by the Commonwealth in locating and/or removing the primary or secondary sponsored persons from Australia.

Application for Standard Business Sponsor

You can apply to become a standard business sponsor online at www.border.gov.au/Trav/Visa-1/457-#tab-content-3

You must provide all relevant documents and pay the visa application charge by credit card when you apply.

Fees

There is a fee for businesses applying to become an approved sponsor. Payment of this fee must accompany your application. Payment does not guarantee approval of the application.

To check the current application fee, visit www.border.gov.au/Trav/Visa/Fees

NOMINATION OF THE VISA APPLICANT

Nomination is the process whereby an approved sponsor identifies a position to be filled by an overseas skilled worker.

To nominate an **eligible occupation** (see below), you must:

- name the skilled worker to be employed and state where they will work in Australia
- meet **direct employer requirements**;
- provide **employment terms and conditions that meet certain requirements**;
- meet the **genuineness criterion**;
- meet the **Temporary Skilled Migration Income Threshold**;
- not be subject to **adverse information**;
- **conduct and provide evidence of labour market testing**

Eligible occupations

For the dairy industry the only occupation on this list is that of **dairy cattle farmer**. The Department of Immigration and Border Protection have previously advised the industry that this occupation will not be approved unless the applicant will be taking over the running of the farm completely.

The worker you are nominating can be one of the following:

- a holder of a subclass 457 visa;
- an applicant for a subclass 457 visa;
- a proposed applicant for a subclass 457 visa. (See above for eligibility requirements for 457 visas)

What are Direct Employer Requirements?

If you are an approved standard business sponsor who operates a business in Australia, the worker you nominate must work directly for your business or for an associated entity of your business.

Employment terms and conditions

The obligation to ensure equivalent terms and conditions of employment means that you must pay your workers the **market salary rate** (see below).

This requirement is designed to ensure that skilled overseas workers have sufficient income to be self-reliant while they are in Australia. It is also designed to ensure that skilled overseas workers are not used to undercut local employment conditions and wages.

What is the market salary rate?

You can demonstrate the market salary rate by referring to the terms and conditions that apply to an Australian worker.

Applicable industry awards may be used to demonstrate the market salary rate where the awards directly set the terms and conditions of Australians performing equivalent work.

If there is no equivalent worker or relevant industrial instrument, you must demonstrate the market salary rate.

Relevant evidence could include, but is not limited to:

- data from reputable remuneration surveys;
- published earnings data (for example data from the Australian Bureau of Statistics at www.abs.gov.au);
- evidence of what employees performing equivalent work are paid in similar workplaces in that location.

The Temporary Skilled Migration Income Threshold (TSMIT)

The Temporary Skilled Migration Income Threshold (TSMIT) ensures that your workers will have enough money to be self-reliant while they are in Australia.

You must demonstrate that the **market salary rate** (see above) for the position you are seeking to fill is greater than the TSMIT.

If the **market salary rate** for the position you want to fill does not exceed the TSMIT, you will not be able to access the subclass 457 visa program.

From 1 July 2013, the TSMIT is set at AUD \$53,900. In the past the TSMIT has been indexed annually on 1 July. It has not been increased as of July 2017 but employers should confirm currency by checking the Department of Immigration and Border Protection website.

Genuineness

A standard business sponsor is required to certify that the tasks of the position correspond to the tasks of an occupation eligible under the subclass 457 visa program. (See above)

Adverse Information

See above for information about adverse information.

Labour market testing requirement

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

What is an eligible temporary visa holder?

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

- the person is the holder of a Subclass 417 (Working Holiday Maker) visa or a Subclass 462 (Work and Holiday) visa; and

- the person is employed in the agricultural sector by the nominating employer (or an associated entity of that business); and
- the temporary visa does not prohibit the person from performing that employment.

Evidence of labour market testing

You must provide evidence of having tested the Australian labour market within the twelve months prior to lodging the nomination.

To comply with this requirement you must provide information with the nomination about your attempts to recruit Australians, including the details and expense of any advertising you conducted.

Lodgement of Applications

You can lodge your application online at www.border.gov.au/Trav/Visa-1/457-

You must provide all relevant documents and pay the visa application charge by credit card when you apply.

Fees

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

To check the current application fee, visit www.border.gov.au/Trav/Visa/Fees