



Australian Government
Department of Immigration
and Citizenship

Labour Agreements

Information for employers about
labour agreement submissions

October 2012



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Introduction

This booklet is a comprehensive suite of information about the labour agreement program and a step-by-step guide to presenting a business case to the Department of Immigration and Citizenship for access to skilled overseas workers through a labour agreement.

The information in this document does not represent any additional requirements being added to the labour agreement program.

It contains many elements of policy clarification based on client and stakeholder feedback and provides forms to assist you in making a complete and thorough proposal for a labour agreement and conducting meaningful and transparent stakeholder consultation.

There are separate information packs for employers seeking access to template labour agreements for the meat and on-hire industries.

Contact details for labour agreement submissions

Complete submissions can be sent to the department.

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

By post: The Director
Labour Agreements Policy Section
Department of Immigration and Citizenship
PO Box 25
Belconnen ACT 2616

If you are an employer in the resources sector, some program requirements vary. For more information please email mmc.labour.agreement@immi.gov.au

What is a labour agreement?

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

A labour agreement:

- will only be considered where a genuine skills shortage exists and there are no suitably qualified or experienced Australians readily available
- allows an employer to recruit skilled overseas workers for occupations approved under the agreement
- requires overseas workers under the agreement to be paid the market salary rate—above the temporary skilled migration income threshold (TSMIT).

The labour agreement program is designed to address a genuine labour market need rather than to accommodate an employer's preference to employ a particular overseas worker. It is targeted at skilled or specialised semi-skilled occupations. Where the necessary skill for an occupation can be developed in a short time-frame, it is expected that workers can and should be sourced from the Australian labour market.

Businesses seeking access to a labour agreement will need to demonstrate there is genuine and significant demand for the nominated occupations and that this demand cannot be met from within the Australian labour market. The number of skilled overseas workers requested under the labour agreement is expected to represent a minority proportion of the employer's workforce—this proportion of overseas workers should decrease over the life of the agreement. Compelling and concrete evidence is essential.

The input of stakeholders in your industry is of key importance. Stakeholder consultation is a mandatory part of the labour agreement negotiation process and the department recommends this is initiated as early as possible in the process of seeking access to overseas skilled workers.

Where standard immigration pathways are an option, they should be used in preference to a labour agreement—this includes the Temporary Business (Long Stay) (subclass 457) visa, the Employer Nomination Scheme, or the Regional Sponsored Migration Scheme. A labour agreement negotiation may be a lengthy process and places onerous obligations on the employer.

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 and English language levels that overseas workers under the agreement must meet.

Employers requesting a labour agreement should provide a comprehensive submission to the Australian Government, represented by the Department of Immigration and Citizenship. The information provided in this pack is to help you prepare a quality submission. The department will not consider that negotiations have begun until a substantially complete submission of assessable material has been provided.

Please note that while many businesses ask a registered migration agent to compile their labour agreement submission, the submission process has been designed to enable completion without major difficulties and as such you do not necessarily have to employ a migration agent. In addition, there are no priority processing or decision-ready arrangements in place for submissions made using a registered migration agent.

Businesses who are considering the use of migration agent services are advised to ensure that the migration agent is registered with the Office of the MARA and to carefully consider the basis of any up-front fees that may be requested by the migration agent in preparing a submission and the agent's policies in relation to these fees should your submission not be successful. The fees charged by registered migration agents are expected to be reasonable and while fees are not set, the Office of the Migration Agents Registration Authority (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 www.immi.gov.au/visas/migration-agents/ and www.mara.gov.au

The submission will be assessed by departmental negotiators and additional information may be requested. There is no limit to the number of times a departmental officer may ask for additional information until they are satisfied they have sufficient information on which to make a recommendation to the minister or authorised officer. Not all labour agreement requests are approved.

All detailed information from the employer is treated as commercial-in-confidence. However, this information may be shared between relevant Commonwealth and state/territory government agencies including but not limited to the Department of Education, Employment, and Workplace Relations (DEEWR), the Office of the Fair Work Ombudsman, Fair Work Australia, the Australian Taxation Office and the Australian Federal Police. The department may also notify any stakeholders consulted during the consultation phase as to whether or not a labour agreement was approved. The employer's request to access a labour agreement is taken as being consent for this to occur.

Assessment of labour agreements

The department assesses labour agreement submissions as quickly as possible upon receipt of the documents and will generally provide the employer an opportunity to submit additional material in support of their submission.

Labour agreements take considerable time to negotiate due to the rigorous assessment of large amounts of information.

The labour agreement replaces the standard business sponsorship. If a labour agreement is approved, the next step is to nominate overseas workers who meet the requirements agreed to in the labour agreement. In certain circumstances, it may be possible for workers onshore to lodge visa applications before the labour agreement is approved. Please contact the departmental officer assigned to your case to discuss after you have made your submission.

The negotiation period for a labour agreement is generally four to six months. However, if the employer has not provided a complete submission, including evidence of consultation with industry bodies and unions, the negotiation period will likely be longer. If an employer is requesting concessions regarding English levels, salary or skills, this may also increase the time taken for a labour agreement to be negotiated.

It is important to ensure that your labour agreement proposal best represents your skilled labour needs and forecasts—once a labour agreement is in place, a request for a variation can be time consuming, particularly if there is a request for substantial changes to parameters.

The department will only consider requests for expedited assessment of a labour agreement request if the company can demonstrate a significant benefit to the wider Australian community in addition to the employment of Australians. The decision to prioritise a request is made at the absolute discretion of the department.

Industry template labour agreements

An industry template labour agreement is a set of standards agreed to by the Minister, in consultation with key industry stakeholders, which governs labour agreements in a particular industry. A template agreement may be considered if the department receives a number of similar submissions from an industry with evidence of labour shortages within the Australian labour market.

A template ensures a level playing field across an industry by cementing the terms, conditions, concessions and occupations which will apply to all future labour agreements in that industry. There are currently six industry template labour agreements.

On-hire

The on-hire template provides a pathway for the temporary entry of primary sponsored persons to work in Australia where the on-hire firm can demonstrate that there is no appropriately qualified Australian worker readily available. The on-hire labour agreement sets requirements for the training of Australian workers and the skill level and salary for primary sponsored persons.

The business seeking access to an on-hire labour agreement may only recruit overseas workers for occupations that are currently listed on the [Consolidated Sponsored Occupations List](#). There are unique requirements for training under the on-hire industry template labour agreement.

Email on-hire.industry@immi.gov.au for further enquiries regarding the on-hire template.

Meat

The meat industry template provides a pathway for the temporary and permanent entry of 'skilled meat workers' to work in Australian meat processing establishments. To be approved for a labour agreement, the sponsoring meat processing company must demonstrate that there are no appropriately qualified Australian workers readily available. Please note that there are unique requirements for training and demonstrating labour market shortage under the meat industry template labour agreement.

Email meat.industry@immi.gov.au for further queries regarding the meat template.

Snowsports

The snowsports industry template provides an opportunity for snowsports operators in Australia to access foreign labour to fill specialised snow-related positions in this seasonal industry. Visas granted under this template are restricted to a maximum length of six months.

Tour guides

The tour guide template was designed to assist the tourism industry meet its labour needs for bilingual tour guides.

Fishing industry

The fishing template assists fishing operators meet labour market need for deck and fishing hands.

Fast food Industry

The fast food industry template allows employers to sponsor diploma-qualified retail managers with three years' experience, or with five years' relevant experience in a fast food environment instead of a formal qualification, and retail supervisors with Certificate IV qualifications and three years' experience, or at least four years' relevant experience in a fast food environment instead of the formal qualification, provided they can demonstrate that they have been unable to recruit Australians to these jobs. This in turn supports entry-level job opportunities for Australians, particularly youth.

Email labour.agreement.section@immi.gov.au for more information regarding these templates.

Start-up companies

Labour agreements with start-up companies are unlikely to be approved until the company can demonstrate 12 months of operation with supporting financial documentation. The department must be satisfied that the company is financially viable, has a good history of employing and training Australians, and is not overly dependent on overseas workers.

Visa options

The vast majority of labour agreements are for temporary skilled workers who enter under the subclass 457 visa. This is because labour agreements are intended to provide specialised skilled workers to fill immediate gaps in the labour market while the employer commits to training Australian workers in these skills. The proportion of overseas workers in the business' workforce is expected to decrease over the life of the agreement.

Where an employer can demonstrate a substantial and demonstrated ongoing need for specialised semi-skilled workers, it may be possible to negotiate an agreement that allows for permanent entry of these workers. Evidence is required of strong labour market need, ongoing commitment to the employment and training of Australians, and thorough stakeholder consultation.

Workers would usually need to have been employed with the sponsor on a subclass 457 visa for two in the last three years and have been offered a contract with the same employer for a further two years. Workers would need to have a minimum IELTS 5 English language proficiency to ensure their longer term ability to participate in Australian society and ensure they have sufficient workforce mobility if and when their employment with their sponsor ceases. They would need to have had a formal skills assessment (if they have already had one at the time of their subclass 457 visa application, they would not need to be tested again), and they would usually need to be under 50 years of age, although exceptional cases could be considered.

Submission requirements

Please use the attached *Business Case proforma* to make your submission to the department. The proforma will assist you in addressing all requirements and providing a well-ordered, properly evidenced submission ready for assessment by the department.

You must be able to provide a compelling, evidence-based case to access overseas skilled workers outside of the standard immigration programs and your case must be supported by concrete, relevant and current evidence. An important, mandatory part of the process is that you consult with relevant industry stakeholders. Evidence must specifically relate to the legal entity that is requesting a labour agreement. In most situations, the records of associated entities cannot be used as evidence to support an employer's request.

The following information is a guide to providing a thorough and appropriate submission to the department.

About your business

Refer to the business case proforma (item 1) to provide the following details:

Registration details

- legal registered name of business
- Australian Business Number (ABN)
- Australian Company Number (ACN) (if applicable)
- Australian Registered Body Number (ARBN) (if applicable)
- Australian Stock Exchange Code (if applicable)
- state or territory in which the legal name is registered
- registered trading name/s
- business structure (sole trader, partnership, company, trust, or other entity)
- number of years of operation
- name of each director.

Head office

- street address
- suburb/town
- state
- postcode
- postal address, if different from above
- your industry as defined by the Australian and New Zealand Standard Industrial Classification ([ANZSIC](#)).

Employer contact details

- name
- position
- phone
- email
- street address
- suburb
- state
- postcode
- postal address if different from above.

If using the services of a migration agent or other third party representing your company, please provide contact details and complete and attach [Form 956](#)

Operational locations of business

Please provide the address details for all operational locations of the employer where skilled overseas workers are expected to be placed. If different from the head office location, please provide address/postal details.

Financial viability

The employer must provide a letter of support from a registered chartered accountant or a certified practising accountant stating the business has financial capacity to meet the migration obligations for the number of positions sought and for the period of the labour agreement.

Related entities (if applicable)

Please provide the following details of any related entities to the business:

- legal registered name of business
- ABN
- relationship to employer (parent, subsidiary, trust, other)
- street address
- suburb/town
- postcode.

A labour agreement cannot be negotiated with a trust, but may be negotiated with a trustee.

Industry association membership

If you are a member of an industry association please identify the association, and whether this association has a code of conduct/ethics or other membership conditions which:

- provides protection for employees in the industry in the form of guidelines for terms and conditions of employment or other form

and/or

- outlines responsibilities for the development and implementation of quality national training strategies for members of the association.

Relevant industrial arrangements

The Fair Work Act 2009 and information on the National Employment Standards are available from the [Fair Work Australia](#) website. These conditions apply to all employees in Australia covered by the national workplace system, including skilled overseas workers.

Background to your labour agreement request

See business case proforma (item 2)

Provide a brief description of your business including:

- core business activities
- clients
- contracts
- structure
- reasons for seeking access to a labour agreement
- how your proposed labour agreement would be in the national interest
- the impact on the business if a labour agreement is not approved.

Occupations, qualifications and experience

Labour agreements are intended to meet labour needs for skilled and specialised occupations. Low skilled and unskilled jobs—those which would take a reasonably short time and no prior knowledge or qualifications to train a local worker to perform—cannot be considered.

You will need to provide specific details for each of the occupations sought and of the estimated number of positions in each location you are seeking for each year of the labour agreement. You should also provide a detailed description of the tasks the proposed workers would undertake.

The Australian and New Zealand Standard Classification of Occupation ([ANZSCO](#)) six digit code must be provided for each occupation. If the occupation(s) you are seeking is available under other standard visa options, such as the subclass 457 program, you will need to provide strong justification for seeking them under a labour agreement.

Labour agreements generally require that overseas workers have a qualification of at least equivalent to an AQF Certificate III and three years of recent relevant experience. Overseas workers are expected to be experienced and 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.

As part of the labour agreement, an independent skills assessment will usually need to be provided by an Australian assessment authority or a qualified workplace assessor engaged by an Australian registered training organisation acceptable to the Commonwealth.

See business case proforma for format (item 3). You must provide information on:

- minimum qualifications for the nominated occupation(s)
- minimum experience required for the nomination occupation(s)
- registration or licensing requirements for the nominated occupation(s)
- the independent skills assessment process undertaken to ensure primary sponsored persons possess skills for the nominated occupations to the Australian standard
- a list of tasks that will be performed by an employee working in this occupation.

The Australian Government retains the right to make the final decision on the occupations and the number of positions approved under a labour agreement.

Labour market need

The employer must be able to demonstrate a significant labour market need for the requested occupation and that there are no appropriately qualified Australian workers readily available. See business case proforma (item 4).

You will need to provide evidence of demand (that cannot be met from the local labour market) for the occupations that have been nominated under the proposed labour agreement. Evidence may include but is not limited to:

- recent efforts to recruit from the Australian labour market for each occupation sought including copies of advertisement(s) placed within the last six months, the medium used, and the dates and length of time each advertisement ran
- the number of responses to the advertisement(s), the number of positions filled by Australians and general reasons for non-suitability of Australian applicants
- the location of the unfilled positions advertised
- evidence of 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
- strategies for retaining Australian workers.

If the employer has consulted with DEEWR, please provide evidence of strategies to fill vacant positions, including copies of emails or agreed minutes of telephone conversations or meetings with Job Services Australia providers, about options to fill the vacant positions.

Please include the number of positions filled as a result of these consultations. Details of Job Services Australia providers can be found on the DEEWR website at www.deewr.gov.au

It is a key requirement of the labour agreement negotiation process that the employer must submit sufficient evidence for the minister, or the minister's representative, to be satisfied that the employer has made genuine attempts to recruit workers from the Australian labour market.

Training Commitment

Businesses 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 for, investment in training initiatives for Australians.

During the term of the agreement, the employer must maintain a good record of training Australians through the provision of employment, training and career progression.

One of the following benchmarks must be met:

- the equivalent of two per cent of gross wages (all employees – Australians and overseas workers) paid by the business 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.

See business case proforma (item 5). You must clearly state which of the above benchmarks you are intending to meet and provide further evidence of a commitment to the training of Australians. This may include:

- 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
- expenditure on scholarship programs
- participation in indigenous recruitment or training programs.

Please note that the requirements for training can vary across certain industry template labour agreements, for example in the meat and on-hire industries. Expenditure claimed must be actual, not imputed, costs.

Market Salary Rate

Salary requirements for labour agreements generally mirror those of the subclass 457 program. The market salary rate must be paid to any worker under a labour agreement and the terms and conditions of employment must be no less favourable than the terms and conditions of employment that would be provided to an Australian worker performing the same duties at the same location. The market salary should usually be above the [Temporary Skilled Migration Income Threshold](#) (TSMIT), set at \$51 400 from 1 July 2012. TSMIT is indexed yearly in line with the Australia-wide increase in average weekly earnings.

Some salary packaging arrangements are allowable.

It is unlikely that concessions to the market salary or TSMIT requirements can be approved under a labour agreement. 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.

See business case proforma (item 6). The following information should be provided:

- salary arrangements for the skilled overseas workers in each occupation requested under the labour agreement
- salary arrangements for Australian workers in the same occupation(s), performing equivalent work at the same location
- how the market salary rate has been determined
- 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 the skilled overseas worker
- any salary packaging arrangements
- 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
- 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
- the letter of offer or appointment that will be provided to overseas employees.

English Language Proficiency

Overseas skilled workers are usually required to have English language competency of five in each of the four test components (reading, writing, speaking and listening) of the International English Language Testing System (IELTS). This requirement is consistent with the standard subclass 457 program.

See business case proforma (item 7).

Concessions to the English language requirement under a labour agreement will only be considered in very exceptional circumstances. An employer seeking to employ overseas workers with an English competency of less than IELTS 5, should confirm how they will:

- ensure that the proposed variation to the English competency requirement would not constitute a Work Healthy 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
- ensure that the English language levels of skilled overseas workers will improve over the life of the agreement.

Adverse Information

Workplace relations compliance record

You are required to provide a statement advising the department of whether your business or any related entities have been investigated in the last three years by the Office of the Fair Work Ombudsman (OFWO), or former authority with this function, or relevant state government authority, in relation to compliance with workplace relations provisions. If so, please provide details of the outcome of these investigations.

Occupational health and safety compliance record

Your business must provide a statement advising whether the business or any related entities have been investigated or audited by the relevant state government authority in relation to its compliance with occupational health and safety provisions in the last three years. If so, please provide details of the outcome of these investigations.

Migration compliance record

Advise whether the business or any related entities are currently or have previously been an approved sponsor and/or a party to a labour agreement. If so, the following details must be provided:

- date of approval
- approval or agreement number
- associated business name.

A statement must also be provided confirming whether the business or any related entity has been investigated or audited in the last five years by the relevant Australian or state/territory government authority in relation to its compliance with migration provisions. If so, please provide evidence of the outcome of these investigations.

See business case proforma (item 8).

Workforce profile and projections

Employers seeking access to a labour agreement must demonstrate that the recruitment of overseas workers is only to supplement the Australian workforce and that a labour agreement will not undermine employment or training opportunities for Australians. Generally, a labour agreement is unlikely to be approved where more than one third of the employers' workforce in Australia is comprised of overseas workers.

Over the life of a labour agreement, there is an expectation that the employer will make ongoing efforts to reduce its reliance on overseas workers. A current workforce profile must be provided with projections (full time equivalents) for the next three years. See business case proforma for format (item 9).

Mandatory stakeholder consultation

Transparent and accountable consultation with stakeholders is a key part of the labour agreement program 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. Therefore, as part of the labour agreement negotiations, the employer is required to consult with relevant industrial stakeholders. The department expects that these consultations will be genuine and meaningful. As part of the business case proforma, the department provides a template letter you may use for the consultation process.

Relevant industrial stakeholders include:

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

You must include all of the following information:

- 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 program sought by the business—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
- any other information deemed relevant by the employer.

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, your proposed strategies to ensure worker welfare
- a basic workforce profile showing the proportion of your workforce in Australia which would be overseas workers if a labour agreement were approved
- how you propose to meet the training requirement.

These requirements may vary—the department will advise and update materials if this occurs.

See business case proforma (item 10).

You must provide each stakeholder with two opportunities to respond to the labour agreement proposal. Stakeholders should be advised on each occasion that their views will not provide a veto to the progress of a labour agreement and if a response is not received, the labour agreement negotiation process will continue. Stakeholder responses should be provided back to the employer within 21 days of the receipt of the request for comment on the labour agreement proposal. If no response is received, the employer must follow up and allow a further 14 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. The department is unlikely to proceed with negotiations unless all such matters are addressed satisfactorily.

Copies of all of the employer's 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), the employer will need to provide the department with a copy of the follow-up request. 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.

The employer 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 the employer's 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 with contacts and/or coordination.

When negotiations for your labour agreement conclude, regardless of the outcome, the department may notify the stakeholders you consulted of the outcome.

Contact us

If you have any questions about the labour agreement process or requirements please contact the labour agreements team.

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

Useful website links

Department of Immigration and Citizenship

www.immi.gov.au

www.immi.gov.au/skilled/skilled-workers/la

Market salary rates requirements

www.immi.gov.au/skills/skillselect/index/visas/subclass-457/

www.comlaw.gov.au/Details/F2012L01294 (TSMIT)

Skills assessment

www.immi.gov.au/asri/a-z.htm

www.deewr.gov.au/TRA

www.training.gov.au

www.vetassess.com.au

English language proficiency

www.ielts.org

Health insurance

www.immi.gov.au/skills/skillselect/index/visas/subclass-457/

The Australian Council of Trade Unions (ACTU)

www.actu.org.au

Department of Education, Employment and Workplace Relations

<http://www.deewr.gov.au>

Fair Work Australia

www.fwa.gov.au

Safe Work Australia

www.safeworkaustralia.gov.au

Department Migration Blog

migrationblog.immi.gov.au/