



Sponsoring a Temporary Overseas Employee

Australia offers a Temporary Residence Program (TRP) which enables overseas persons with employment opportunities, business interests, and/or an involvement in social and cultural activities in Australia, to come to Australia for that specific purpose. The program is designed to benefit Australia in the areas of employment, and social/cultural and international relations.

There are a variety of temporary Australian visas available. These visas include:

- Working Holiday-Makers (See separate tab on 'Working Holiday Visas')
- Work and Holiday (See separate tab on 'Working Holiday Visas')
- Electronic Travel Authority (ETA) for Business Entrants
- Business (Short Stay)
- Sponsored Business Visitor (Short Stay)
- Business (Long Stay)
- Exchange Special Program
- Medical Practitioners
- Educational
- Visiting Academic
- Foreign Government Agency Staff
- Occupational Trainee
- Entertainers
- Sports
- Media and Film Staff
- Public Lecturer
- Religious Worker
- Domestic Workers
- Professional Development

The Business (Long Stay) visa – Subclass 457 is the most commonly used program for employers to sponsor overseas workers to work in Australia on a temporary basis. This article therefore focuses primarily on the Subclass 457 visa.

If you are interested in obtaining any of the other temporary visas listed above, please contact us for advice.

The Standard Business Sponsorship (SBS) for the Business (Long Stay) visa – Subclass 457 allows both Australian businesses and overseas businesses to sponsor overseas workers to come to Australia for the purpose of filling nominated skilled positions. This visa permits an eligible business to employ workers from overseas for a period of between one day and four years.

Overseas workers who are employed under a Business (Long Stay) visa – Subclass 457 can travel in and out of Australia an unlimited amount of times from the date of first entry. Furthermore, eligible secondary applicants, for example, immediate family members of the overseas worker, are also entitled to live and work in Australia under this visa.

The key objectives of the Business (Long Stay) visa – Subclass 457 program are to:

- cure national and regional skill shortages in the Australian labour market;
- maximise employment and training opportunities for Australian workers;
- benefit the Australian workforce by promoting skill sharing amongst workers;
- make Australia more competitive in the global economy; and
- support economic growth.

The first step in the Subclass 457 visa application process involves the employer becoming approved as a Standard Business Sponsor. This step requires that the applicant employer show, firstly, that they lawfully operate a business either inside or outside Australia. Note that additional requirements apply if the business is outside Australia. The employer applicant must also provide evidence of current training being provided to employees who are Australian citizens and permanent residents, and which is related to the purpose of the business. Furthermore, there must be no 'adverse information' known about the employer applicant or persons associated with the employer applicant.

It is essential to ensure the integrity of the Subclass 457 visa program. This includes safeguarding against the program being used as a mechanism to recruit cheap overseas labour, thereby diminishing employment and training opportunities for Australians, and against the exploitation of overseas workers.

Accordingly, if the employer applicant operates an Australian business, they must attest to the fact that they have a strong record of, or a demonstrated commitment to, employing local labour, and non-discriminatory employment practises.

In addition, as of 14 September 2009, all employer applicants are now required to comply with a number of new sponsorship obligations in order to sponsor a visa holder under the program. The Department of Immigration publishes a list of all the new sponsorship obligations. The obligation to ensure equivalent terms and conditions of employment requires a sponsor to pay a Subclass 457 visa holder what are known as 'Market Salary' rates. This effectively means that a sponsor must provide their overseas workers with terms and condition of employment which are no less favourable than those provided to an Australian citizen or resident, undertaking equivalent work in the sponsor's workplace at the same location.

Once an employer is approved as a Standard Business Sponsor, they must make an application to nominate a position in either their business or related business, or in relation to an approved occupation. The Department of Immigration publishes a list of all occupations approved for the purposes of the Subclass 457 visa program. It will be necessary to refer to this list, prior to making an application, to ensure that a nominated position relates to an occupation on this list.

An employee must apply for the visa either together with or after the lodging of the business sponsorship and nomination applications. As part of this process, the employee must show that they are sponsored by an employer to a fill a nominated position and that they possess the necessary skills to carry out that position.

The employee must also have what is referred to as 'vocational English' which entails a score of at least 5 for each of the four test components (speaking, reading, writing and listening) of the International English Language Testing System (IELTS). Note that the English language requirement does not apply to employee applicants who hold a current passport from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America.

In addition, the employee is required to meet a number of health requirements which include undergoing a medical examination and making arrangements for health insurance for the period of the employee's intended stay in Australia. Furthermore, like all Australian visa applicants, the employee must satisfy the public interest criteria.

Subclass 457 visa applications can be made either inside or outside Australia. Note however that if the employee is inside Australia at the time of application, they must check to see that their current visa does not preclude them from applying for this visa. For example, employee applicants inside Australia who hold a Transit visa (Subclass 771) or a Special Purpose visa are not eligible to make an onshore application for this visa.

This document has been prepared by Nevett Ford Lawyers, a full service law firm which includes Immigration Law amongst its specialised areas of practice.

Please feel free to contact David Stratton, Ryan Curtis-Griffiths or Helen Zheng, Lawyers in our Migration Law Work Group, if you require further information in relation to this issue, or if you require legal advice regarding any other migration law matter.

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