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QUICK GUIDE

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The subclass 457 visa: a quick guide

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The [Temporary Work \(Skilled\) visa](#), or 'subclass 457 visa', allows skilled persons to come to Australia to work for an approved employer, accompanied by their immediate families, for a period of between one day and four years.

The uncapped program is driven by employer demand, and built on the premise that it does not undermine job opportunities for Australians. It allows employers to access overseas workers where a genuine [skill shortage](#) exists or, in effect, where a suitably qualified Australian worker is not available.

The program involves a three-stage process whereby an employer applies to become an approved sponsor and then nominates a skilled overseas worker to fill a specific position. The skilled overseas worker completes the process by lodging a linked temporary work skilled visa application.

The subclass 457 is the most commonly used program to sponsor overseas workers on a temporary basis.

This guide provides an overview of the program to assist enquiries into the role of employers and visa holders, and some of the broader considerations in the program. Links to information sources are provided throughout the quick guide and in the final section 'Need to know more?'

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Employers

Which employers can use the program?

Employers lawfully operating a business inside or outside of Australia can use the program once they have been approved by the Department of Immigration and Border Protection (DIBP) as a 'Standard Business Sponsor'.

To [qualify](#), businesses in Australia provide an application and [fee](#) (the amount is revised on 1 July each year) and demonstrate they are operating as a lawful business. The firm is required to demonstrate or meet minimum training benchmarks based on the length of time that the firm has traded (under or over 12 months). Firms must also attest in writing to a record or commitment to the employment of local labour and a commitment to non-discriminatory recruitment practices.

A standard business sponsorship is valid for three years. Employers can be accredited for up to six years before needing to re-apply as a sponsor.

Overseas employers can also use the program if they are operating legally and actively seeking to establish a business operation on Australia. Whilst overseas firms would not need to demonstrate the same training commitments, their initial sponsorship term is limited to 12 months in which time they would be expected to make headway towards Australian operations.

If DIBP knows of adverse information about the business sponsor, or those associated with the business, then the Department has discretionary power to refuse sponsorship arrangements.

What are employers obliged to do under the scheme?

Businesses must make a commitment to meet the prescribed training benchmarks for the program, which require an ongoing commitment to training activities for Australian citizens and permanent residents, and that at least [75 per cent](#) of their workforce are Australian residents or citizens. Employers must attest to having a strong record of, or commitment to, employing local labour and non-discriminatory employment practices. Employers must pay employees a rate equivalent to comparable local wages, and must not underpay their employees or deduct money without the employee's consent for such purposes as rent or board. Employers must also [provide](#) a clear understanding of the skills and experience required for the position, and identify where the employee will be working.

How is the rate of pay determined?

As at 1 July 2013, the lowest wage acceptable under the scheme, known as the [Temporary Skilled Migration Income Threshold](#) (TSMIT) is \$53,900, in order to best ensure that all subclass 457 visa holders have sufficient income to independently provide for themselves in Australia. TSMIT is [indexed](#) in line with the Australian Bureau of Statistics (ABS) report on average weekly earnings. For each occupation, employers are required to show that they are providing equal pay and conditions of employment as for Australian workers performing equivalent work in the same location, known as the market salary rate. This process may involve employers identifying relevant collective agreements, awards and award conditions, common law contracts, remuneration surveys or earnings data.

Employers are not allowed to make [deductions](#) from workers' pay (other than for tax and superannuation) without the worker's permission.

Employers remunerating positions in excess of \$250,000 are [exempt](#) from market salary testing.

Why is the training of Australians an important consideration?

DIBP [emphasises](#) that 'the Temporary Work Visa is designed to enable employers to address labour shortages by bringing in genuinely skilled workers where they cannot find an appropriately skilled Australian worker'. To reduce the longer term dependence on overseas workers, employers must show a willingness to train Australians in accordance with [legislation](#).

Training of Australians is not always possible in regional, remote or low population growth areas, simply because the local residents are either not interested or not available. Over recent years, the number of [Regional Skilled Migration Scheme \(RSMS\) places](#) in the skilled permanent program has increased to provide a more permanent solution in areas outside major metropolitan centres facing this dilemma.

Who monitors potential exploitation of workers?

In response to a number of concerns regarding potential exploitation, Fair Work Australia is now empowered to monitor compliance with the sponsorship obligations to ensure workers are in their nominated occupation and being paid market salary rates. Any suspicious activity is referred to DIBP for investigation.

Possible courses of action for an employer's failure to comply with sponsorship obligations include: being barred from future sponsorship arrangements; cancellation of sponsor approvals; civil penalties up to \$51,000; and infringement notices for each failure, attracting penalties of up to \$10,200.

The Government may reward good behaviour of sponsors with [accredited status](#), under which sponsorship arrangements can be extended to the maximum duration of six years.

What obligations do employers have when subclass 457 visa holders leave Australia?

Subclass 457 visa holders are entitled to receive from their sponsor reasonable and necessary [travel costs](#) to enable them and their family members to leave Australia, providing it is requested in writing by the sponsored

worker, their family or DIBP. This may be negated if the visa holder changes employers or is granted a further visa.

Sponsors must provide DIBP with information regarding subclass 457 visa holders' stays, and are liable to pay costs associated with [locating and/or removal](#) from Australia if sponsored visa holders become unlawful.

Can employers seek workers in occupations which are not listed on the Skilled Occupations Lists?

Yes. [Labour agreements](#) allow for the recruitment of an agreed number of temporary business and other skilled visa holders. They are commonly used for occupations that are not on the list of approved occupations for the subclass 457 visa where a '[genuine skills shortage exists](#)'. Labour agreement templates exist for the labour-hire, meat processing, tourism and hospitality (including fast food) sectors, where a complexity of occupations, conditions and safety concerns may be addressed in detail. About three per cent of all subclass 457 visas are granted under [labour agreements](#). As at June 2013, there were 162 labour agreements in effect and a further 71 under negotiation.

Enterprise Migration Agreements (EMAs)

[EMAs](#) take a project-wide approach to meeting the skill needs of the resources sector and allow certain [concessions](#) to English-language proficiency and skill level requirements. EMAs are only available to resource projects with capital expenditure in excess of \$2 billion and a peak workforce of more than 1,500 workers. The [first](#) EMA centred on Roy Hill—a project in the Pilbara region of Western Australia (WA).

Visa holders

Which overseas workers can use the program?

Only workers who have been nominated by a business that has been approved as a Standard Business Sponsor can apply for a subclass 457 visa. Subclass 457 workers, known as 'primary applicants' must also apply for each of the family members (known as secondary applicants) they wish to bring to Australia for the duration of their employment.

In general, the primary applicant must have a genuine intention to perform in the nominated occupation, have the necessary skills and experience, meet [English language requirements](#) (unless exempt) and have relevant licencing and registration to perform work duties. All applicants must meet identity, health and character requirements.

How many actually use the program?

The number of subclass 457 visa holders in Australia on 30 September 2013 totalled [196,450](#). Of these, primary subclass 457 visa holders totalled [110,280](#). Primary 457 visa holders equate to almost [one per cent](#) of the total Australian labour force.

Australia does not cap the number of applicants from any one country.

Can temporary workers move freely between employers and locations?

As with Australians and permanent residents, subclass 457 visa holders and their families are free to move between employers, states and regional or non-regional locations. This is, however, on the proviso that their new employer is approved to sponsor and nominate under the program. Under recent [migration amendments](#), subclass 457 visa holders now have 90 consecutive days once employment has ended with one employer to seek sponsorship with a new employer, rather than the prior arrangement of 28 consecutive days.

Can workers take up a second job?

Subclass 457 visa holders may not take up a second job even if this job is similar to the nominated role.

What are the work entitlements for immediate (accompanying) family members?

Whilst subclass 457 primary visa holders are approved to meet specific skill needs, their [spouses](#) and other working age dependents may work across industries in skilled or unskilled occupations during their stay in Australia.

Do temporary work visa holders pay regular taxes?

Yes. Employers withhold taxes from the pay of temporary workers and send it to the [Australian Taxation Office](#) during the income year. Employers also contribute towards superannuation in the same way as they do for

Australian workers. On departure from Australia, temporary workers have the option to access their superannuation.

Do temporary work visa holders receive the same benefits as Australians?

No. Temporary workers do not have access to a range of government support available to Australian citizens and permanent residents, such as [Centrelink](#) payments and [Medicare](#) (unless [reciprocal health agreements](#) exist).

In addition, states and territories may charge fees for the children of workers on subclass 457 visas to attend public schools. [New South Wales](#) (NSW) charges \$4,500 for kindergarten, \$4,500 for junior high schooling and \$5,500 for senior high schooling of subclass 457 visa holders. The [Australian Capital Territory](#) charges \$9,320, \$12,500 and \$13,900 respectively, although subclass 457 visa holders can apply for an education fee waiver if they are involved in a job that appears on the [Skilled Occupation Lists](#). In 2013, Western Australia [announced](#) a \$4,000 per year public school tuition fee for children of subclass 457 visa holders but [reports suggest](#) this has been revised down to \$2,000 for each additional child from the same family, with implementation postponed until 2015.

Subclass 457 visa holders in other states and the Northern Territory are exempt from international student fees, but may contribute minor administrative fees as do domestic students.

What happens if temporary work visa holders become sick or injured?

Subclass 457 visa holders are required to maintain [private health cover](#) for the duration of their stay in Australia. At a minimum, this cover must be at least comprehensive for themselves and accompanying family members. As mentioned previously, the only potential exemptions are those who are enrolled with Medicare under [reciprocal health care arrangements](#). Employers may choose to cover this cost, but are not required to do so.

Can temporary workers vote?

No, subclass 457 visa holders and their families are unable to vote in federal, state or territory elections.

Work rights

Workers under the subclass 457 scheme are governed by the same minimum conditions of employment as Australian workers. These conditions include working hours, overtime payments, rest breaks, sick leave and holidays.

All temporary workers have the right to join and be represented by a [trade union](#). In addition, workers have the right to be treated [fairly](#) which includes not being dismissed unfairly or discriminated against for reasons of race, religion, sex, pregnancy, sexual orientation, disability or for trade union membership.

Are subclass 457 visa holders required to have English language competency?

Temporary workers are required to demonstrate a level of English language proficiency unless their income is in excess of [\\$96,400](#).

Although many primary visa applicants are required to have basic English, there are no requirements for dependents. Unlike some other temporary visa programs, school-aged dependents of temporary business visa holders are unable to access funding for intensive language assistance (ESL-NA) in language centres or units or in schools.

Access to settlement services

[Settlement services](#) focus on 'building self-reliance, developing English language skills and fostering connections with mainstream services as soon as possible after arrival in Australia'. To access settlement services, entrants need to be permanent residents who arrived within the last five years. As it is common for workers to extend temporary work arrangements before applying for and attaining a permanent visa, many 457 families will not qualify for settlement services during their stay in Australia, even if they later take up permanent residence.

The [Adult Migrant English Program](#) is the Australian Government's largest settlement program and works on the premise that 'gaining English language proficiency is key to successfully settling in Australia'. Although some temporary programs include eligibility for this scheme, this does not extend to subclass 457 primary visa holders or their families.

Where do subclass 457 visa holders come from?

Subclass 457 visa holders are sourced from all over the globe, however, most subclass 457 visa holders [originate](#) from India (21 per cent), United Kingdom (19 per cent), Ireland (10 per cent), the Philippines (6 per cent) and the United States of America (6 per cent).

Broader considerations

Where are subclass 457 visa holders employed and in what industries?

Predicting where temporary residents settle is an important consideration for policy decisions and future planning at all levels of government. Particularly strong growth in demand in WA means that it now ranks second to NSW for subclass 457 visa holders (almost 33,000 as at 30 June 2012). In WA, construction and mining are the largest sponsor industries, involving many fly-in-fly-out arrangements.

The [industries](#) employing most subclass 457 visa holders are 'other services' (comprising personal services, religious, civic, professional and other interest group services, selected maintenance repair activities; and private households employing staff (12 per cent)), health care and social assistance (10 per cent), accommodation and food services (10 per cent), information media and telecommunications (10 per cent), professional, scientific and technical accounted (8 per cent), mining (7 per cent), and manufacturing (5.5 per cent). Strongest growth in demand by industry was recorded in accommodation and food services (125 per cent), retail trade (83.5 per cent) and agriculture, forestry and fishing (63 per cent).

Subclass 457 visa holders are also sponsored by [governments](#). In the period 2013–14 (to September 2013), 40 primary visas were granted to employees of the Australian Government, 840 across state and territory Governments and 10 across local governments.

Is there a link between the temporary and permanent migration programs?

Many subclass 457 visa holders go on to settle permanently in Australia, and in [2012–13](#) they accounted for 69 per cent of the (permanent) [Employer Nominated Scheme](#) and 31 per cent of [Regional Skilled Migration Scheme](#) applicants. The Department has been creating more efficient avenues to permanent residence for temporary skilled visa holders with 'streamlined', 'simplified' and 'fast-tracked' options now available.

Even before becoming permanent, subclass 457 visa holders are often counted towards Australia's population gain, with [net overseas migration](#) (NOM) calculated by the ABS to include people who have stayed in Australia 12 months out of a 16-month period. NOM accounts for [60 per cent](#) of population growth. Over recent years, the largest contribution to NOM has been from people on [temporary visas](#).

How much revenue does the subclass 457 scheme generate?

The scheme generates revenue through [visa application charges](#), additional fees, taxes and consumer spending. In terms of fees, a typical family of four would pay in the vicinity of \$2,250 for visas under the scheme, with employers contributing around \$750 in sponsorship and nomination charges.

In 2008, the Access Economics [Migrant Fiscal Impact Model](#) reported that for every 1,000 subclass 457 arrivals, \$25 million would be generated by this cohort to the Australia's economy in the first two years after arrival, and between \$5 million and \$8 million generated each year after that. Recent increases to the visa application fee were expected to add around \$198 million to government revenues over four years.

What are the recent changes to subclass 457 visa legislation and policy?

The [Migration Amendment \(Temporary Sponsored Visas\) Act 2013](#) which came into effect on 1 July 2013 prioritises the employment and training of local workers, legislates sponsor obligations, empowers Fair Work Australia to investigate breaches and strengthens DIBP's ability to prosecute against wrongdoing. Legislative instruments also contain provisions regarding [training benchmarks](#), [income thresholds](#), [market rates exemption levels](#) and [exemption from the requirement to work directly for the sponsor](#).

There are regular updates to the Skilled Occupations Lists which target high-value skills over the next three to five years. There are currently [188 occupations](#) on the Skilled Occupations List including occupations as diverse as forester, motor and lift mechanic, locksmith, software engineer, solicitor and neurosurgeon.

Recent reviews include a [KPMG Skilled Migration Survey](#) of employers (2012), a report by the Visa Subclass 457 External Reference Group (2008), and a [Visa Subclass 457 Integrity Review](#) (2008).

Need to know more?

G Larsen, [Temporary Skilled Migration](#), Parliamentary Library Briefing Book: Issues for the 44th Parliament, Parliamentary Library, Canberra, 2013, accessed 11 November 2013.

G Larsen, '[Measuring success in skilled migration policy: the subclass 457 visa program](#)', FlagPost weblog, 11 September 2013, accessed 11 November 2013.

I McCluskey and D Spooner, [Migration Amendment \(Temporary Sponsored Visas\) Bill 2013](#), Bills digest, 8, 2013–14, Parliamentary Library, Canberra, 2013, accessed 11 November 2013.

J Phillips and H Spinks, [Skilled migration: temporary and permanent flows to Australia](#), Background note, Parliamentary Library, Canberra, 6 December 2012, accessed 11 November 2013.

J Phillips and M Klapdor, [Migration to Australia since Federation: a guide to the statistics](#), Background note, Parliamentary Library, Canberra, 29 October 2010, accessed 11 November 2013.

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