



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-006347

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Labour agreement program settings

Timing 28 September 2018

Recommendations

That you:

- 1. agree to the Labour agreement (LA) decision-making framework as outlined at **Attachment B;** agreed / not agreed/
please discuss
- 2. agree to the LA monthly reporting format at **Attachment C;** agreed / not agreed/
please discuss
- 3. agree to cease the requirement for organisations to consult with stakeholders (including unions) prior to lodging an LA request under an industry template arrangement; agreed/not agreed/
please discuss
- 4. note the steps taken to streamline processing of LA requests as set out in paragraph 15; and noted / please discuss
- 5. note that the Department of Home Affairs will brief you further on the results of current LA processing initiatives in December 2018. noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date:...../...../2018

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. Employer sponsored visa programs allow Australian businesses to sponsor foreign workers to fill skills gaps. Visa requirements seek to ensure those workers meet genuine skills needs and do not displace job opportunities for Australians.
2. Most employer sponsored visas are granted under standard skilled visa requirements set out in the Migration Regulations. A small percentage of visas are, however, granted under negotiated arrangements, known as labour agreements (LAs). This includes approximately:
 - 4.5% of the total number of Temporary Skill Shortage (TSS) (Subclass 482) visas granted; and
 - 2.8% of the total number of permanent Employer Nomination Scheme (ENS) (Subclass 186) visas granted.
3. LAs are negotiated between the Australian Government and employers. They are generally accessible only when standard program requirements cannot be met. As at 1 July 2018, there were 325 agreements currently in effect.
4. LAs provide an important element of flexibility within the skill visa program that allows the Government to respond to niche circumstances in a way that balances support for Australian business with any risks associated with a particular circumstance.
5. LAs are executed under Ministerial executive power under the Constitution. This power may be exercised by Departmental officers on your behalf, subject to your authorisation and any conditions or parameters that you may wish to set.
6. LAs are generally in effect for five years with visa ceilings imposed for each year of the agreement. They fall into one of the following categories explained in more detail at **Attachment A**:
 - company specific agreements (negotiated with an individual company)
 - industry template LAs (seven industry templates currently in effect)
 - Designated Area Migration Agreements (DAMA) (one in effect for Northern Territory)
 - Global Talent Scheme (GTS) agreements (new pilot program)
 - project agreements (none currently in effect)

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7. We will provide further briefings to you shortly regarding GTS and DAMAs.

Decision-making framework

8. A decision-making framework sets out circumstances under which a Minister authorises departmental officers to execute an LA on the Minister's behalf. Settings under the former Minister required a Ministerial decision where concessions to standard skilled visa requirements were requested (e.g. English language requirements, skills and qualifications and salary levels) and in sensitive cases.
9. A revised framework is at **Attachment B** for your approval.
- There are no substantive changes to the previous framework approved by the former Minister.
 - Minor changes have been made to reflect new branch names in the Department and to include Directors, as well as Assistant Directors, as authorised officers.

Regular labour agreement reports

10. A **draft** report format is provided at **Attachment C**. Subject to your agreement, this report will be data cleared and provided to your office by email each month.

Amendments to consultation requirements

11. The former Minister for Citizenship and Multicultural Affairs asked for advice on removing the requirement for requesting organisations to consult unions in developing LAs (MS18-001528 – see **Attachment D**).
12. The Department recommends retaining some level of consultation as these processes help ensure that businesses are testing the local labour market and employing Australians ahead of utilising overseas workers, and hence maintain public confidence in the LA program.
13. Instead of removing the requirement for all businesses immediately, we, therefore, recommend it be removed for requests made under industry template agreements, but retained at this time for company specific agreements.

Streamlining labour agreement processing

14. LA requests take up to six months to process. The Department aims to reduce this to three months by the end of 2018 and ensure that lower risk requests receive faster processing.
15. To ensure that the LA program continues to be flexible and responsive to business needs:
- LA requests are now being processed based on a priority matrix, with additional priority given to requests lodged by regional employers;
 - a new risk matrix approach to assessing LAs has been introduced which facilitates faster processing of lower risk agreements;
 - the Department has introduced streamlined consultation arrangements with the Department of Jobs and Small Business (DJSB), with their views only sort in relation to sensitive LA cases or where their advice on technical employment related matters is required; and
 - new guidelines and training for LA assessing officers has been introduced to facilitate faster and more consistent request processing.

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Background

- 16. LAs provide a broad power to vary requirements for a visa (such as occupation, salary, age and English), but regulations require the Minister be satisfied genuine efforts have been made to recruit Australians before an agreement is signed.
- 17. Employers and visa holders still have to meet core criteria such as employer obligations, bona fides and health, character, licensing and security requirements.
- 18. A list of current LAs is available on the Department’s website and is updated quarterly (see: <https://www.homeaffairs.gov.au/WorkinginAustralia/Pages/list-of-all-labour-agreements.aspx>).

Consultation – internal/external

- 19. Consultation has occurred internally with Global Mobility Branch and externally with DJSB.

Consultation – Secretary

- 20. The Secretary was not consulted on the approach in the submission.

Sensitivities

- 21. As noted above, if you agree to remove the consultation requirement this may attract attention from the media and/or union groups.

Financial/systems/legislation/deregulation/media implications

- 22. N/A

Attachments

- Attachment A** Types of labour agreements
- Attachment B** Labour agreement decision-making framework
- Attachment C** Draft monthly labour agreement report
- Attachment D** MS18-001528

Authorising Officer
Cleared by: s. 22(1)(a)(ii) A/g Assistant Secretary Skilled and Family Visa Program Branch Date: 7/9/2018 Ph: s. 22(1)(a)(ii)

Contact Officer s. 22(1)(a)(ii) , A/g Assistant Secretary, Skilled and Family Visa Program Branch, Ph: s. 22(1)(a)(ii) .

- CC** Minister for Home Affairs
- Assistant Minister for Home Affairs
- Secretary
- Deputy Secretary, Immigration and Citizenship Services Group
- First Assistant Secretary, Immigration and Visa Services Division
- First Assistant Secretary, Immigration, Citizenship and Multicultural Policy

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Types of labour agreements (LAs)

1) Company Specific labour agreements

A company specific LA is negotiated directly with an employer. It will only be considered where a genuine skills or labour shortage for an occupation exists which is not already provided for in an industry, or relevant project agreement or Designated Area Migration Agreement (DAMA).

The terms and conditions of the agreement are considered on a case-by-case basis.

2) Global Talent Scheme (GTS) agreements

GTS agreements are for employers seeking to fill a small number of niche highly-skilled roles, where their needs cannot be met under existing skilled entry programs. The GTS provides fast processing and flexible concessions for approved participants via one of the two streams available: the *Established Business* stream or the *Start-up* stream. GTS is currently operating on a pilot basis as of 1 July 2018. Global Mobility Branch will brief you separately on progress with this pilot shortly.

3) Industry labour agreements

Template LA arrangements are in place for particular industries. LAs executed with employers in these industries contain the same terms and conditions, which have already been agreed to 'up front' by the Minister in consultation with key industry stakeholders.

Such streamlined arrangements may be considered if the Department receives a number of similar LA requests from within a given industry, and there is evidence of ongoing labour shortages within that specific industry. They help ensure a level playing field across a specific industry by cementing a set of unique terms, conditions and concessions for certain occupations which will apply to all future LAs in that industry sector.

When an industry LA template is in place, the agreed set of terms and conditions of the industry agreement are *non-negotiable* and no further concessions (i.e. exemptions from standard skilled visa requirements) can be considered.

Industry LAs are currently available for the following industries: Minister of Religion, Dairy, Fishing, On-Hire, Meat, Pork, Restaurant (Fine Dining).

4) DAMAs

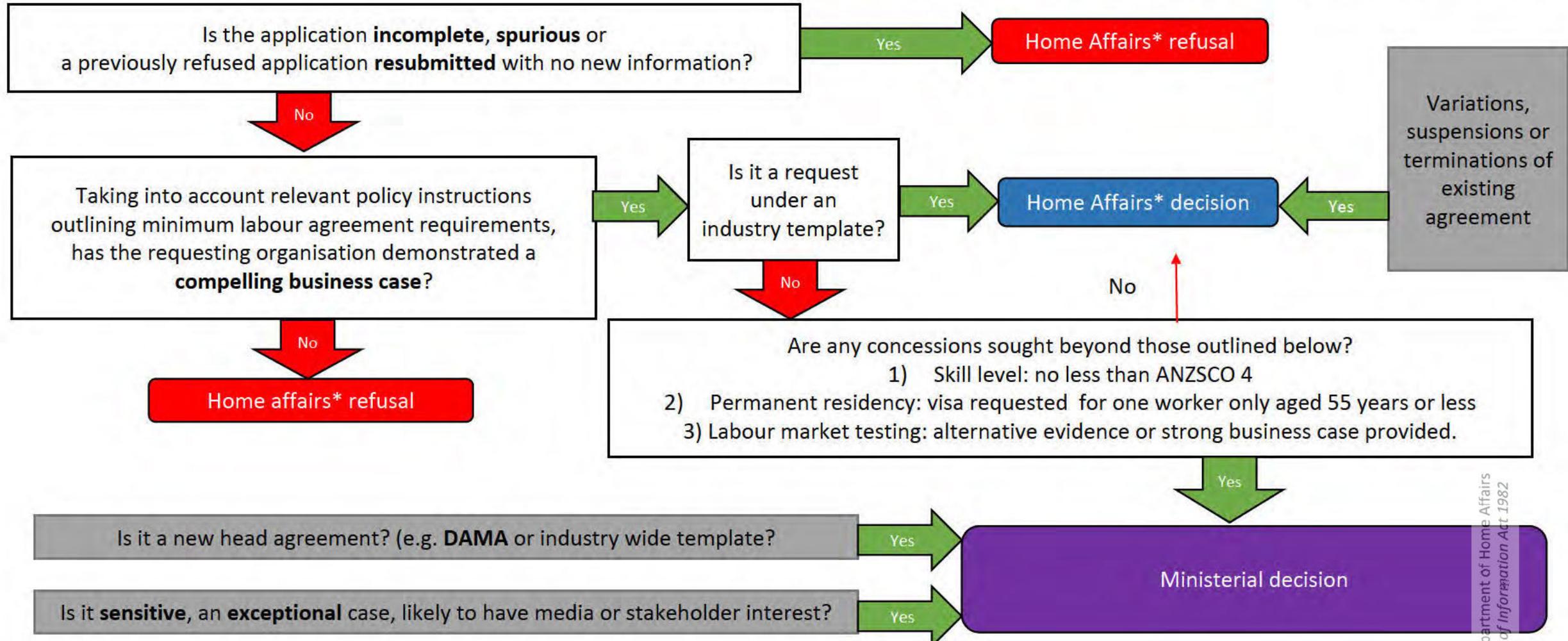
A DAMA provides flexibility for states, territories or regions to respond to their unique economic and labour market conditions through an agreement-based framework administered by those state and territory governments. Currently, there is only one DAMA in place with the Northern Territory (NT) Government. The Department is working to renegotiate this, as the current agreement expires in October 2018.

The former Minister of Citizenship and Multicultural Affairs indicated his support for DAMAs being utilised more expansively to address skills needs throughout regional Australia. To date, the following regions have been in contact with the Department to begin negotiations for a DAMA. These negotiations are at a very early stage: Far North Queensland, WA Goldfields (Kalgoorlie-Boulder), Warrnambool, ^{s. 47C(1)} [REDACTED]. Global Mobility Branch will brief you separately on progress with these negotiations shortly.

5) Project agreements

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. No project agreements, however, have been executed to date.

Attachment B - Labour agreement decision framework Document #1



***Departmental authorised officers:**

- Officers in the SES positions of **First Assistant Secretary, Assistant Secretary or Senior Director** within Immigration and Visa Services Division
- **Director or Assistant Director** within Skilled and Family Visa Program Branch.



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Labour Agreements - summary report

31 July 2018

1 Labour Agreements program usage

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1.01 Labour Agreements lodged	21	14	-33.3%	21	14	-33.3%
1.02 Labour Agreements approved	0	13	100.0%	0	13	100.0%
1.03 Labour Agreements refused (declined) *	< 5	7	600.0%	< 5	7	600.0%
1.04 Labour Agreements refused (returned) **	0	6	100.0%	0	6	100.0%

* Declined - requests that were refused after a full assessment process.

** Returned - requests that did not meet the minimum requirements for processing and were 'returned' without assessment.

2 Labour Agreements in effect

	Number of Agreements			Percentage of Total		
	at 31/07/17	at 31/07/18	% Change from 31/07/17	at 31/07/17	at 31/07/18	% Change from 31/07/17
Total	304	332	9.2%	100.0%	100.0%	0.0%
Company Specific	50	63	26.0%	16.4%	19.0%	15.9%
Industry - Dairy	14	16	14.3%	4.6%	4.8%	4.3%
Industry - Fast Food	13	10	-23.1%	4.3%	3.0%	-30.2%
Industry - Fine Dining	< 5	< 5	33.3%	1.0%	1.2%	20.0%
Industry - Fishing	17	23	35.3%	5.6%	6.9%	23.2%
Industry - Meat	28	33	17.9%	9.2%	9.9%	7.6%
Industry - Minister of Religion	60	72	20.0%	19.7%	21.7%	10.2%
Industry - On-Hire	53	33	-37.7%	17.4%	9.9%	-43.1%
Industry - Pork	7	10	42.9%	2.3%	3.0%	30.4%
Industry - Snow Sport	8	8	0.0%	2.6%	2.4%	-7.7%
Designated Area Migration Agreement	51	60	17.6%	16.8%	18.1%	7.7%

3 Labour Agreement requests lodged

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	21	14	-33.3%	21	14	-33.3%
Company Specific	< 5	6	100.0%	< 5	6	100.0%
Industry - Fine Dining	< 5	0	-100.0%	< 5	0	-100.0%
Industry - Fishing	0	< 5	100.0%	0	< 5	100.0%
Industry - Meat	< 5	0	-100.0%	< 5	0	-100.0%
Industry - Minister of Religion	8	< 5	-50.0%	8	< 5	-50.0%
Industry - On-Hire	< 5	< 5	0.0%	< 5	< 5	0.0%
Industry - Pork	< 5	0	-100.0%	< 5	0	-100.0%
Designated Area Migration Agreement	< 5	0	-100.0%	< 5	0	-100.0%

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4 Labour Agreement requests finalised - processing time (commenced to finalised)

Document #1

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1 month or less	0.0%	11.1%	100.0%	0.0%	11.1%	100.0%
2 months or less	0.0%	2.2%	100.0%	0.0%	2.2%	100.0%
3 months or less	0.0%	4.4%	100.0%	0.0%	4.4%	100.0%
4 months or less	0.0%	4.4%	100.0%	0.0%	4.4%	100.0%
5 months or less	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
6 months or less	0.0%	2.2%	100.0%	0.0%	2.2%	100.0%
more than 6 months	100.0%	75.6%	-24.5%	100.0%	75.6%	-24.5%

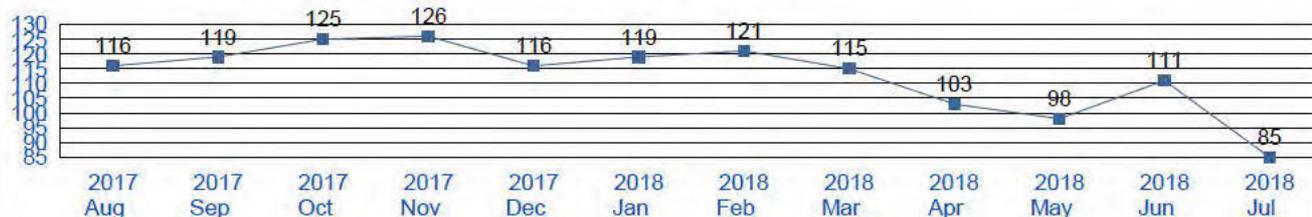
5 Labour Agreement requests on-hand, age since lodgement

	at 31/07/17		at 31/07/18		Change from 31/07/17	
	Count	% of total	Count	% of total	Count	% of total
Total on-hand	130	100.0%	85	100.0%	-34.6%	
1 month or less	26	20.0%	12	14.1%	-29.5%	
2 months or less	28	21.5%	17	20.0%	-7.0%	
3 months or less	17	13.1%	12	14.1%	7.6%	
4 months or less	15	11.5%	10	11.8%	2.6%	
5 months or less	12	9.2%	5	5.9%	-35.9%	
6 months or less	11	8.5%	7	8.2%	-3.5%	
more than 6 months	21	16.2%	22	25.9%	59.9%	

6 Labour Agreement requests on-hand, rolling 12 months

Labour Agreement requests on-hand

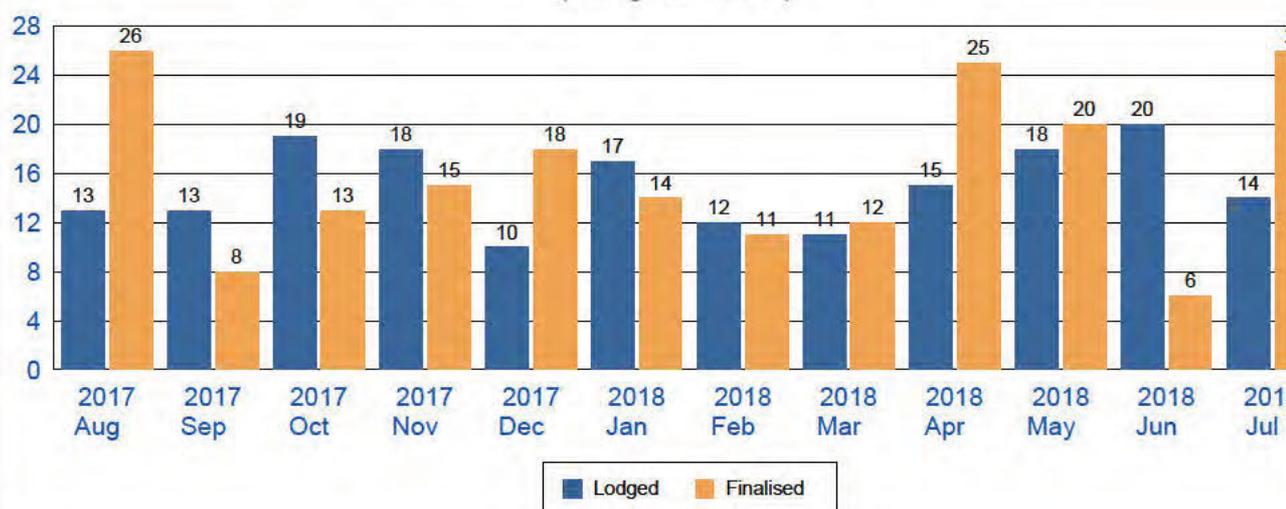
(rolling 12 months)



7 Labour Agreement requests lodged or finalised, rolling 12 months

Labour Agreement requests lodged/finalised*

(rolling 12 months)



* 'Finalised' is made up of 'Approved', 'Refused (declined)' and 'Refused (returned)'.

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Labour Agreement Nominations - Temporary Skill Shortage (TSS) & 457 Document #457

8 Labour Agreement Nominations approved - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	119	209	75.6%	119	209	75.6%
Company Specific	22	33	50.0%	22	33	50.0%
Industry - Fine Dining	< 5	< 5	100.0%	< 5	< 5	100.0%
Industry - Fishing	7	10	42.9%	7	10	42.9%
Industry - Meat	42	83	97.6%	42	83	97.6%
Industry - Minister of Religion	< 5	< 5	50.0%	< 5	< 5	50.0%
Industry - On-Hire	42	70	66.7%	42	70	66.7%
Industry - Pork	< 5	6	200.0%	< 5	6	200.0%
Designated Area Migration Agreement	< 5	< 5	100.0%	< 5	< 5	100.0%

9 Labour Agreement Nominations approved, average total remuneration - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	\$72,078	\$69,882	-3.0%	\$72,078	\$69,882	-3.0%
Company Specific	\$55,100	\$73,304	33.0%	\$55,100	\$73,304	33.0%
Industry - Fine Dining	< 5	< 5	8.8%	< 5	< 5	8.8%
Industry - Fishing	\$60,829	\$55,030	-9.5%	\$60,829	\$55,030	-9.5%
Industry - Meat	\$54,813	\$54,088	-1.3%	\$54,813	\$54,088	-1.3%
Industry - Minister of Religion	< 5	< 5	151.6%	< 5	< 5	151.6%
Industry - On-Hire	\$98,321	\$87,692	-10.8%	\$98,321	\$87,692	-10.8%
Industry - Pork	< 5	\$60,219	9.5%	< 5	\$60,219	9.5%
Designated Area Migration Agreement	< 5	< 5	9.3%	< 5	< 5	9.3%

10 Labour Agreement Nominations finalised - processing time (commenced to finalised) - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1 month or less	80.5%	47.1%	-41.5%	80.5%	47.1%	-41.5%
2 months or less	13.0%	12.1%	-6.9%	13.0%	12.1%	-6.9%
3 months or less	4.1%	1.3%	-67.5%	4.1%	1.3%	-67.5%
4 months or less	0.8%	3.1%	287.5%	0.8%	3.1%	287.5%
5 months or less	0.0%	7.2%	100.0%	0.0%	7.2%	100.0%
6 months or less	0.0%	4.9%	100.0%	0.0%	4.9%	100.0%
more than 6 months	1.6%	24.2%	1412.5%	1.6%	24.2%	1412.5%

11 Labour Agreement Nominations on-hand, age since lodgement - TSS/457

	at 31/07/17		at 31/07/18		Change from 31/07/17	
	Count	% of total	Count	% of total	Count	% of total
Total on-hand	104	100.0%	146	100.0%	40.4%	
1 month or less	29	27.9%	64	43.8%	35.0%	57.0%
2 months or less	17	16.3%	17	11.6%	0.0%	-28.8%
3 months or less	21	20.2%	18	12.3%	-3.0%	-39.1%
4 months or less	26	25.0%	< 5	0.7%	-21.0%	-97.2%
5 months or less	8	7.7%	12	8.2%	4.0%	6.5%
6 months or less	0	0.0%	9	6.2%	9.0%	100.0%
more than 6 months	< 5	2.9%	25	17.1%	20.0%	489.7%

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Labour Agreement Visas - Temporary Skill Shortage (TSS) & 457 Document #1

12 Primary visa applications granted under Labour Agreements - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	119	7	-94.1%	119	7	-94.1%
Company Specific	20	< 5	-95.0%	20	< 5	-95.0%
Industry - Fast Food	< 5	< 5	0.0%	< 5	< 5	0.0%
Industry - Fine Dining	< 5	0	-100.0%	< 5	0	-100.0%
Industry - Fishing	5	< 5	-80.0%	5	< 5	-80.0%
Industry - Meat	55	< 5	-98.2%	55	< 5	-98.2%
Industry - Minister of Religion	< 5	< 5	-66.7%	< 5	< 5	-66.7%
Industry - On-Hire	30	< 5	-93.3%	30	< 5	-93.3%
Industry - Pork	< 5	0	-100.0%	< 5	0	-100.0%
Designated Area Migration Agreement	< 5	0	-100.0%	< 5	0	-100.0%

13 Primary visa applications granted under Labour Agreements as percentage of all Primary visa applications granted - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Primary visas granted under Labour Agreements as percentage of total	4.6%	2.3%	-51.1%	4.6%	2.3%	-51.1%

14 Primary Visa applications finalised under Labour Agreements - processing time (commenced to finalised) - TSS/457

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1 month or less	51.7%	11.8%	-77.3%	51.7%	11.8%	-77.3%
2 months or less	31.7%	17.6%	-44.3%	31.7%	17.6%	-44.3%
3 months or less	6.7%	5.9%	-12.1%	6.7%	5.9%	-12.1%
4 months or less	3.3%	17.6%	433.3%	3.3%	17.6%	433.3%
5 months or less	4.2%	17.6%	329.3%	4.2%	17.6%	329.3%
6 months or less	1.7%	5.9%	262.5%	1.7%	5.9%	262.5%
more than 6 months	0.8%	23.5%	2837.5%	0.8%	23.5%	2837.5%

15 Labour Agreement Primary Visa applications on-hand, age since lodgement - TSS/457

	at 31/07/17		at 31/07/18		Change from 31/07/17	
	Count	% of total	Count	% of total	Count	% of total
Total on-hand	224	100.0%	227	100.0%	1.3%	
1 month or less	52	23.2%	43	18.9%	-9	-18.5%
2 months or less	38	17.0%	36	15.9%	-2	-6.5%
3 months or less	46	20.5%	24	10.6%	-22	-48.3%
4 months or less	36	16.1%	< 5	0.9%	-31	-94.4%
5 months or less	23	10.3%	40	17.6%	17	70.9%
6 months or less	12	5.4%	21	9.3%	9	72.2%
more than 6 months	17	7.6%	61	26.9%	44	253.9%

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Labour Agreement Nominations - Employer Nomination Scheme (ENS) Document 4

16 Labour Agreement Nominations approved - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	27	10	-63.0%	27	10	-63.0%
Company Specific	22	< 5	-86.4%	22	< 5	-86.4%
Industry - Meat	< 5	< 5	0.0%	< 5	< 5	0.0%
Industry - Minister of Religion	< 5	< 5	-25.0%	< 5	< 5	-25.0%
Industry - Pork	0	< 5	100.0%	0	< 5	100.0%

17 Labour Agreement Nominations approved, average total remuneration - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	\$77,937	\$70,015	-10.2%	\$77,937	\$70,015	-10.2%
Company Specific	\$76,294	< 5	-5.1%	\$76,294	< 5	-5.1%
Industry - Meat	< 5	< 5	-18.0%	< 5	< 5	-18.0%
Industry - Minister of Religion	< 5	< 5	-3.2%	< 5	< 5	-3.2%
Industry - Pork	na	< 5	na	na	< 5	na

18 Labour Agreement Nominations finalised - processing time (commenced to finalised) - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1 month or less	57.1%	20.0%	-65.0%	57.1%	20.0%	-65.0%
2 months or less	17.9%	40.0%	124.7%	17.9%	40.0%	124.7%
3 months or less	17.9%	10.0%	-43.8%	17.9%	10.0%	-43.8%
4 months or less	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
5 months or less	3.6%	0.0%	-100.0%	3.6%	0.0%	-100.0%
6 months or less	0.0%	10.0%	100.0%	0.0%	10.0%	100.0%
more than 6 months	3.6%	20.0%	471.4%	3.6%	20.0%	471.4%

19 Labour Agreement Nominations on-hand, age since lodgement - ENS

	at 31/07/17		at 31/07/18		Change from 31/07/17	
	Count	% of total	Count	% of total	Count	% of total
Total on-hand	141	100.0%	136	100.0%	-3.5%	
1 month or less	24	17.0%	12	8.8%	-12	-48.2%
2 months or less	37	26.2%	26	19.1%	-11	-27.1%
3 months or less	40	28.4%	< 5	2.9%	-35	-89.8%
4 months or less	16	11.3%	13	9.6%	-3	-15.0%
5 months or less	< 5	2.8%	< 5	2.2%	-1	-21.4%
6 months or less	< 5	0.7%	12	8.8%	7	1157.1%
more than 6 months	19	13.5%	66	48.5%	47	259.3%

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Labour Agreement Visas - Employer Nomination Scheme (ENS) Document #1

20 Primary visa applications granted under Labour Agreements - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Total	19	8	-57.9%	19	8	-57.9%
Company Specific	9	< 5	-88.9%	9	< 5	-88.9%
Industry - Meat	7	5	-28.6%	7	5	-28.6%
Industry - Minister of Religion	< 5	0	-100.0%	< 5	0	-100.0%
Industry - Pork	0	< 5	100.0%	0	< 5	100.0%

21 Primary visa applications granted under Labour Agreements as percentage of all Primary visa applications granted - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
Primary visas granted under Labour Agreements as percentage of total	2.0%	2.6%	29.7%	2.0%	2.6%	29.7%

22 Primary Visa applications finalised under Labour Agreements - processing time (commenced to finalised) - ENS

	July 2017	July 2018	% Change from Jul 2017	2017-18 to 31/07/17	2018-19 to 31/07/18	% Change from 2017-18
1 month or less	5.3%	0.0%	-100.0%	5.3%	0.0%	-100.0%
2 months or less	21.1%	0.0%	-100.0%	21.1%	0.0%	-100.0%
3 months or less	0.0%	12.5%	100.0%	0.0%	12.5%	100.0%
4 months or less	5.3%	0.0%	-100.0%	5.3%	0.0%	-100.0%
5 months or less	10.5%	12.5%	19.0%	10.5%	12.5%	19.0%
6 months or less	0.0%	25.0%	100.0%	0.0%	25.0%	100.0%
more than 6 months	57.9%	50.0%	-13.5%	57.9%	50.0%	-13.5%

23 Labour Agreement Primary Visa applications on-hand, age since lodgement - ENS

	at 31/07/17		at 31/07/18		Change from 31/07/17	
	Count	% of total	Count	% of total	Count	% of total
Total on-hand	176	100.0%	167	100.0%	-5.1%	
1 month or less	24	13.6%	16	9.6%	-29.4%	
2 months or less	49	27.8%	26	15.6%	-43.9%	
3 months or less	38	21.6%	7	4.2%	-80.6%	
4 months or less	18	10.2%	13	7.8%	-23.5%	
5 months or less	10	5.7%	6	3.6%	-36.8%	
6 months or less	< 5	1.7%	16	9.6%	464.7%	
more than 6 months	34	19.3%	83	49.7%	157.5%	

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS18-001528

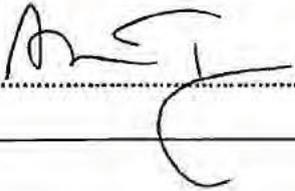
To Minister for Citizenship and Multicultural Affairs
Subject Amendments to the Labour Agreement decision-making process and template agreements
Timing By 22 June 2018 as discussed with Advisor s. 22(1)(a)(ii)

Recommendations

That you:

- 1. note that to give effect to the Skilling Australians Fund (SAF) levy exemption for Bishops, the occupation of Bishop needs to be included in the Minister of Religion labour agreement industry template; noted / please discuss
- 2. agree to the Department including the occupation of Bishop within the occupation of Minister of Religion for the purposes of labour agreements, and clarifying expected worker roles (see paragraph 6); agreed / not agreed
- 3. agree in order to streamline labour agreements, to confer additional decision making authority to the department, including to amend existing head agreements and industry templates; and agreed / not agreed
- 4. agree to cease the Snow Sport labour agreement template (see paragraph 8). agreed / not agreed

Minister for Citizenship and Multicultural Affairs

Signature..... 

Date.....25/6/2018

yes in decision that industry has been consulted broadly

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Minister's Comments				
<p>Please baseline LA processing arrangements and report monthly to my office on realization times. Review revised processing arrangements and recommend further changes to improve processing outcomes in Nov/Dec 18. Please also come back quickly with advice on removing the need for employers to consult unions in developing LA's.</p>				
<p>Rejected Yes/No</p>	<p>Timely Yes/No</p>	<p>Relevance <input checked="" type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant</p>	<p>Length <input type="checkbox"/> Too long <input checked="" type="checkbox"/> Right length <input type="checkbox"/> Too brief</p>	<p>Quality Poor 1.....2.....3.....4.....5 Excellent Comments: particularly when there are no or few union members in the business.</p>

Key Issues

1. This submission seeks your authority for the Department to:

- enter into labour agreements on your behalf, in accordance with the criteria and framework at Attachment A. This would supersede the previous authority provided by the Minister for Home Affairs and Immigration and Border Protection in October 2017 (Attachment B). The proposed criteria and framework are broadly consistent with previous authority, however the Department recommends additional decision making-authority be given to the Department, which will streamline processing and reduce referrals to your office of low-risk cases;
- Amend the existing Minister of Religion industry labour agreement template to respond to industry feedback, and to simplify implementing a Skilling Australians Fund (SAF) levy exemption for religious workers; and
- Cease the Snow sports industry labour agreement.

Streamlining labour agreements

2. To streamline labour agreement processing, the proposed decision making criteria and framework would additionally authorise the Department to:

- approve labour agreement requests which seek access to permanent residency for nominees aged 55 or less, where there are compelling reasons to do so;

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- more flexibly manage the seniority of Departmental decision makers who decide labour agreement requests. The majority of low-risk decisions would be made at non-SES officer level, with more complex, sensitive or exceptional requests being escalated to SES officers, or to you, for decision where necessary; and
 - approve amendments to existing head agreements and industry templates, noting that the Department would seek your approval prior to entering into any new head agreements and industry templates.
3. The Department will also implement additional measures to streamline processing by:
- significantly reducing the length and complexity of the application form; ✓
 - upgrading from paper to an online form by the end of 2018 (subject to IT resources); ✓
 - triaging applications more effectively according to risk; and ✓
 - providing accredited sponsors and regional sponsors with priority processing. ✓
4. Currently the process of requesting and approving labour agreements takes six or more months. With these recommended changes, the Department expects to be able to process low-risk requests from accredited sponsors within one to three months, and the majority of all requests within three to six months, depending on risk and complexity. ✓

Amendments to existing head agreements

5. The Department currently requires your authorisation to amend existing industry labour agreement templates, and recommends you agree to the changes detailed below (noting that this submission seeks your authority for the Department to amend these in future). These changes have been informed by consultations with the Catholic Church, the snow sports industry, and other relevant stakeholders.

Minister of Religion template

6. For the purposes of labour agreements, and related nominations, the Department would include the occupation of Bishop (a specialisation of ANZSCO 139999 Specialist Managers nec) within the definition of Minister of Religion (ANZSCO 272211). This would:
- Remove the need for some religious organisations to obtain two separate labour agreements unnecessarily; and
 - Simplify providing an exemption to the SAF levy for religious workers nominated by religious organisations, by linking this exemption to a particular ANZSCO code (MS18-001099 refers).
7. The Department would also amend the template to clarify the management and leadership responsibilities expected in this occupation (MS17-003679 refers). This aims to reduce spurious requests from 'new churches' often operating from university campuses or residential premises with limited membership.

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Snow sports template

8. Following consultation with industry and the Department of Jobs and Small Business, the Department recommends ceasing this template as the existing Temporary Work (Short Stay Specialist) visa (subclass 400) will better meet industry needs than the Temporary Skill Shortage (TSS) visa. Using the subclass 400 visa will also address industry concerns regarding increases in TSS visa application charges, and future SAF levies, in the context of sponsoring short-term seasonal workers.

Other head agreements

9. The Department will provide specific briefing to you in the future on recommended amendments to other industry labour agreement templates, in particular:
- Meat industry template – as advised (MS18-00492) and discussed with industry, the Department proposes to review this agreement during 2018-2019 due to integrity concerns. Details of the review will be finalised in consultation with your office;
 - Restaurant template (fine dining) – as previously advised and discussed with industry, the Department proposes to review this template in consultation with industry to ensure it remains effective and to manage integrity concerns; and
 - Northern Territory Designated Area Migration Agreement (NT DAMA) - the Department is in the early stages of negotiating a new NT DAMA with the NT Government to replace the current agreement which expires 7 August 2018.

Global Talent Scheme

10. The Department will separately brief you on implementation of the Global Talent Scheme (GTS) through the labour agreement visa pathway. Compared with the mainstream labour agreement program, GTS agreements will be highly streamlined, and subsequent sponsor nomination and visa processing will be prioritised.

Background

11. As Minister, you have the power to enter into labour agreements, which is derived from the general executive power under s61 of the Constitution. This power may be exercised by Departmental officers on your behalf, subject to your authorisation and any conditions or parameters that you may wish to set.
- While there is no legislative framework governing labour agreements, after an agreement has been entered, any visa grants pursuant to it are subject to the framework of the Migration Act.

Consultation

12. Internal: Global Mobility Branch, Immigration, Citizenship and Multiculturalism Division, Immigration and Visa Services Branch, Immigration and Visa Services Division.
13. External: Relevant stakeholders in the Catholic Church, snow sports, meat and fine dining industries. The Department is currently consulting with industry on policy settings for the Global Talent Scheme. Discussions with the NT Government on the operation and review of the NT DAMA are ongoing.

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Consultation – Secretary

14. The Secretary was not directly consulted on the submission.

Client service implications

15. There are no significant client service impacts. Arrangements to streamline processing of low-risk labour agreements will positively affect a small number of business clients.

Sensitivities

16. Labour agreements are a well-established program, but can attract public criticism for enabling access to foreign workers outside the parameters of the mainstream visa program. Union groups, in particular, raise concerns about the impact on jobs for Australian workers.
17. Some businesses who have used, or considered using, the labour agreement program have criticised it for being difficult to apply and slow to reach a decision. Measures outlined in this submission are expected to largely address these concerns for low-risk clients.
18. Stakeholders involved in the meat industry and the fine-dining restaurant industry will be keenly interested in the proposed reviews of the existing templates, and business owners may react negatively to additional integrity measures. Both sectors have issues with worker exploitation and illegal or undesirable workforce practices.

Financial/systems/legislation/deregulation/media implications

19. There are no expected financial, legal or deregulation impacts. Implementation of online labour agreement applications by the end of 2018 is dependent on prioritisation of this work in the November 2018 systems release.

Attachments

Attachment A: Labour agreement decision-making criteria and Labour agreement decision framework

Attachment B: MS17-003181 Amendments to the Labour Agreements decision-making framework

Authorising Officer

Cleared by:
Richard Johnson
First Assistant Secretary
Immigration, Citizenship and Multiculturalism Policy Division

Date: 19/06/2018

Ph: s. 22(1)(a)(ii)

Contact Officer Michael Willard, Assistant Secretary, Global Mobility Branch, Ph: s. 22(1)(a)(ii)

CC Assistant Minister
 Secretary
 Commissioner
 A/g Deputy Secretary Policy Group
 Deputy Secretary Visa & Citizenship Services Group
 First Assistant Secretary Visa & Citizenship Management Division
 Assistant Secretary Skilled & Family Visa Program Branch

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Labour Agreements

Procedural Instruction

This procedural instruction provides guidance on how to process requests for a labour agreement, with employers who have an approved labour agreement in place able to nominate overseas workers under the Temporary Skill Shortage (TSS) (Subclass 482) and/or or the Employer Sponsored Nomination (ENS) (Subclass 186) visa programs.

Approval Date	X/9/2018
Date of Review	X/9/2019
Contact	Employer Sponsored Program Management s. 47E(d)
Document ID (PPN)	[If unknown, PPCF Team to advise]
TRIM Reference	[Insert TRIM ID – link to finalised version]

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1. Introduction

1.1. The Labour Agreement Program

This Procedural Instruction (PI) is:

- a companion to the *Migration Act 1958* (“the Act”) and *Migration Regulations 1994* (“the Regulations”) and associated administrative processes;
- designed to annotate migration legislation by providing policy and PI relevant to the legislation;
- written to be read with the legislation;
- a departmental instruction, with status as:
 - an official departmental instructions within the department’s centralised departmental instructions system (CDIS); and
 - operational information as defined in the *Freedom Of Information Act 1982*.

PIs are statements of departmental policy and procedure and must be considered and given due weight by ministerial delegates in deciding applications and exercising associated decision-making powers. Policy must not, however, be regarded as inflexible and decision makers must not give it the same force as law.

2. Scope

2.1. In Scope

This PI provides guidance on how to process requests received for a labour agreement, with approved labour agreement sponsors able to sponsor overseas workers under the:

- Temporary Skill Shortage (TSS) (Subclass 482) visa program (referred to as the ‘TSS visa’ in this instruction); and/or
- Employer Nomination Scheme (ENS) (Subclass 186) visa program (referred to as the ‘ENS visa’ in this instruction).

This PI is addressed to officers who provide recommendations on such requests or are authorised by the Minister of Citizenship and Multicultural Affairs to make decisions on labour agreements. Other persons reading this PI should keep in mind that they are not the primary audience. External stakeholders reading this PI should not utilise contact channels specified for departmental staff only.

2.2. Out of Scope

For advice on processing TSS or ENS nomination and visa, please see the relevant PIs listed in [Section 7 Related Framework Documents](#).

A separate PI will be prepared to cover Global Talent Scheme (GTS) arrangements given they are significantly different to standard labour agreement arrangements and are in a pilot period until July 2019.

3. Glossary

Table 1 – Glossary of Terms

Term	Acronym (if applicable)	Definition
Australian and New Zealand Standard Classification of Occupations	ANZSCO	a skills based classification system developed by the Australian Bureau of Statistics
Australian Qualifications Framework	AQF	a framework that specifies the standards for educational qualifications in Australia
Company specific labour agreement	Co-spec	labour agreement negotiated individually with an employer
Dairy Industry Labour Agreement	DILA	industry labour agreement template in place for the dairy industry
Designated Area Migration Agreement	DAMA	an overarching labour agreement in place for a particular region of Australia
Designated Area Representative	DAR	regional body responsible for vetting labour agreements under DAMA arrangements
Employer Nomination Scheme visa	ENS	the Employer Nomination Scheme (ENS) (Subclass 186) visa
Fishing Industry Labour Agreement	FILA	industry labour agreement template in place for the fishing industry
Global Talent Scheme	GTS	a pilot program currently in place to facilitate the recruitment of global talent by Australian businesses
International English Language Testing System	IELTS	a standardised test of English language proficiency
Labour Agreement	LA	a formal agreement between an Australian employer and the Government to facilitate nomination of overseas workers
Meat Industry Labour Agreement	MILA	industry labour agreement template in place for the meat industry
Minister of Religion Labour Agreement	MORLA	industry labour agreement template in place for religious organisations

Term	Acronym (if applicable)	Definition
National Meat Industry Training Advisory Council Limited	MINTRAC	a company which represents the meat industry on training matters
On Hire Industry Labour Agreement	OHLA	industry labour agreement template in place for the on-hire industry
Pork Industry Labour Agreement	PILA	industry labour agreement template in place for pork industry
Registered Training Organisation	RTO	training providers registered by the Australian Skills Quality Authority
Restaurant (Fine Dining) Industry Labour Agreement	RILA	industry labour agreement template in place for restaurant industry
Temporary Skilled Migration Income Threshold	TSMIT	salary threshold designed to ensure overseas workers have reasonable means of support while in Australia
Temporary Skill Shortage visa	TSS	the Temporary Skilled Shortage (TSS) (Subclass 482) visa

4. Procedural Instruction

4.1. Overview

4.1.1. What is a labour agreement

A labour agreement is a formal agreement between an Australian employer and the Australian Government, represented by the Department of Home Affairs (the 'Department'). It allows the employer to recruit overseas workers on a permanent or temporary basis, under the TSS and/or ENS visa programs.

The LA program is designed to provide a flexible solution to support Australian business where standard temporary or permanent skilled visa programs are not available, and the employer's recruitment needs cannot be met through the Australian labour market.

LAs are generally in effect for five years and often include additional terms and conditions, with agreements negotiated to ensure that where standard requirements are waived, additional requirements are implemented where practicable to manage risk effectively.

4.1.2. Legislative framework

The LA request process largely sits outside of the migration law framework, with most requirements outlined under policy only.

A LA is, however, a type of 'work agreement' as defined in subsection 5(1) of the *Migration Act*.

As per regulation 2.76 of the *Migration Regulations 1994*, a work agreement must:

- be between:
 - the Commonwealth, as represented by the Minister, or by the Minister and one or more other Ministers, and

- a person*, an unincorporated association or a partnership; and
- authorise the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a TSS visa; and
- be in effect (i.e. signed by all parties).

Regulation 2.76A also includes specific labour market testing requirements for work agreements – see: [section 4.4 Labour Market Need](#).

*This could include an individual, a body politic or a body corporate. **Note:** under policy, LA sponsors are, however, generally expected to be a company that has been operating in Australia for at least 12 months – see: [section 4.3 Australian registered business with good standing](#).

Note: The Migration Regulations also set out the requirements that are required to be met where TSS or ENS nomination or visa applications are lodged under a labour agreement. Advice on these criteria are, however, outlined in the relevant ENS or TSS PI. See [Section 7 Related Framework Documents](#).

4.1.3. When is a labour agreement available

LAs are considered on a case-by-case basis when a request is received, subject to any existing industry template arrangements in place (see [Section 4.1.3 Types of labour agreements](#) below).

For a request to be considered, organisations must demonstrate a compelling case supported by strong, relevant and current evidence for the employment of an overseas worker based on:

- exceptional or niche skills of the applicant; or
- evidence of a labour market shortage (demonstrated by the LA request applicant) and/or confirmed by the *Department of Jobs and Small Business (DJSB)*.

LAs can only be accessed where it is evidenced that:

- there is a genuine labour market need for an overseas skilled worker to fill a position in Australia;
- there is no standard skilled visa pathway available, unless exceptional circumstances exist; and
- the request is consistent with Australia's national interest.

Important:

- The LA program is designed to be flexible, however, the Department is under no obligation to enter into a LA.
- LA decisions are not appealable or reviewable via the Administrative Appeals Tribunal.
- LAs should generally not be approved, unless:
 - the minimum requirements outlined in these guidelines are met; and/or
 - approved by the *Minister for Immigration, Citizenship and Multicultural Affairs* (The 'Minister') personally.

4.1.4. Types of labour agreements

There are currently five types of LAs explained briefly below. More detailed information on these is provided later in this instruction.

1) Company Specific labour agreements

A company specific LA is negotiated directly with an employer. It will only be considered where a genuine skills or labour shortage for an occupation exists which is not already provided for in an industry, or relevant project agreement or DAMA. The terms and conditions of the agreement are considered on a case-by-case basis.

2) Global Talent Scheme (GTS) agreements

GTS agreements are for employers seeking to fill a small number of niche highly-skilled roles, where their needs cannot be met under existing skilled entry programs. The GTS provides fast processing and flexible concessions for approved participants via one of the two streams available: the *Established Business* stream or the *Start-up* stream. GTS is currently operating on a pilot basis as of 1 July 2018.

3) Industry labour agreements

Template LA arrangements are in place for particular industries. LAs executed with employers in these industries contain the same terms and conditions, which have already been agreed to 'up front' by the Minister in consultation with key industry stakeholders.

Such streamlined arrangements may be considered if the Department receives a number of similar LA requests from within a given industry, and there is evidence of ongoing labour shortages within that specific industry. They help ensure a level playing field across a specific industry by cementing a set of unique terms, conditions and concessions for certain occupations which will apply to all future LAs in that industry sector.

When an industry LA template is in place, the agreed set of terms and conditions of the industry agreement are *non-negotiable* and no further concessions (i.e. exemptions from standard skilled visa requirements) can be considered.

Industry LAs are currently available for the following industries:

- Minister of Religion – see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)
- Dairy – see: [section 4.14 The Dairy Industry Labour Agreement arrangements](#)
- Fishing – see: [section 4.15 The Fishing Industry Labour Agreement arrangements](#)
- On-Hire – see: [section 4.16 The On-Hire Labour Agreement arrangements](#)
- Meat – see: [section 4.17 The Meat Industry Labour Agreement arrangements](#)
- Pork – see: [section 4.18 The Pork Industry Labour Agreement arrangements](#)
- Restaurant (Fine Dining) – see: [section 4.19 Restaurant \(Fine Dining\) Labour Agreement arrangements](#)

A copy of the template agreements used for these industries is available on the Department's [website](#).

Note:

- Under policy, other types of labour agreements (e.g. company specific) are generally **not** available to employers in an industry where an industry labour agreement template is in place. Such requests, where warranted, would need to go to the Minister for a decision.
- There were previously industry LAs in place for the:
 - fast food industry, these arrangements were, however, ceased on 2 March 2017; and the
 - snow sport industry, these arrangements were, however, ceased on 31 August 2018.

4) Designated area migration agreements (DAMA)

A DAMA provides flexibility for states, territories or regions to respond to their unique economic and labour market conditions through an agreement-based framework administered by those regional areas.

For more information see: [Designated area migration agreements](#)

5) Project agreements

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. Making and assessing a labour agreement request

4.1.5. How to request a labour agreement

An online request form is available via *ImmiAccount*.

4.1.6. Fees

Nil.

4.1.7. Lodging a complete request

Requests that do not meet the minimum requirements for processing, as outlined in the table below, will be returned to the requesting organisation without assessment.

Note: These requests are recorded in ICSE as 'Agreement-Refused' but will also have an event *LA Assessment Type* with the qualifier 'Declined-Returned' - so that they can be identified separately for reporting purposes.

Characteristics of requests that do not meet minimum processing requirements
<p><u>Spurious or vexatious requests</u></p> <ul style="list-style-type: none"> - has used the LA request to ask for assistance with another visa matter - has no merit and has been lodged for the purposes of lodging a visa application only - repeat request with no additional evidence
<p><u>Incomplete, unclear or limited evidence provided</u></p> <ul style="list-style-type: none"> - has completed form, but very limited supporting documentation provided, or none at all - supporting documentation is unreadable or unlabeled
<p><u>Another pathway available</u></p> <ul style="list-style-type: none"> - the occupation is currently eligible for the standard visa program and no additional compelling business case has been provided - an industry template labour agreement exists and a company specific agreement is being requested and no additional compelling business case has been provided

4.1.8. Assessing a complete labour agreement request

Officers should assess such requests taking into account the advice provided in these guidelines regarding the:

- minimum requirements that should generally be met in order for a company specific LA to be executed see:
 - [section 4.3 Australian registered business with good standing](#)
 - [section 4.4 Labour Market Need](#)
 - [section 4.5 Reliance on overseas workers](#)

- [section 4.6 Occupation requirements](#)
- [section 4.7 Salary and employment conditions](#)
- [section 4.8 Skills, qualifications and experience](#)
- [section 4.9 English proficiency](#)
- [section 4.10 Permanent residence pathways](#)
- [section 4.11 Age](#)
- [section 4.12 Industry stakeholder consultation](#)

Important: The LA program is designed to be a flexible solution. As such, LAs can include additional concessions from standard skilled visa requirements, with these arrangements not set out under law only policy. For this to occur, the employer should provide a strong business case and documentary evidence to support their claims.

Generally, the personal approval of the Minister will be required in order for an agreement to be executed. Officers are reminded that the LA program operates outside the standard visa program requirements, so the onus is on the employer to demonstrate why special arrangements are justified in their particular situation.

- specific requirements that must be met under applicable industry template agreements, including any additional criteria that must be met due to concessions available:
 - Minister of Religion – see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)
 - Dairy – see: [section 4.14 The Dairy Industry Labour Agreement arrangements](#)
 - Fishing – see: [section 4.15 The Fishing Industry Labour Agreement arrangements](#)
 - On-Hire – see: [section 4.16 The On-Hire Labour Agreement arrangements](#)
 - Meat – see: [section 4.17 The Meat Industry Labour Agreement arrangements](#)
 - Pork – see: [section 4.18 The Pork Industry Labour Agreement arrangements](#)
 - Restaurant (Fine Dining) – see: [section 4.19 Restaurant \(Fine Dining\) Labour Agreement arrangements](#)
- specific requirements that must be met where a LA is requested under existing DAMA arrangements – [Section 4.20 Designed Area Migration Agreements](#).

4.1.9. Requests for further information

LA requests must meet minimum standards for processing. Where this is met, but further information or clarification is required, the requesting organisation should be sent a request for further information and be given 14 days to respond. Where this does not occur, and an extension has not been negotiated, LA negotiations will be ceased and the request returned without further assessment.

4.1.10. Consultation

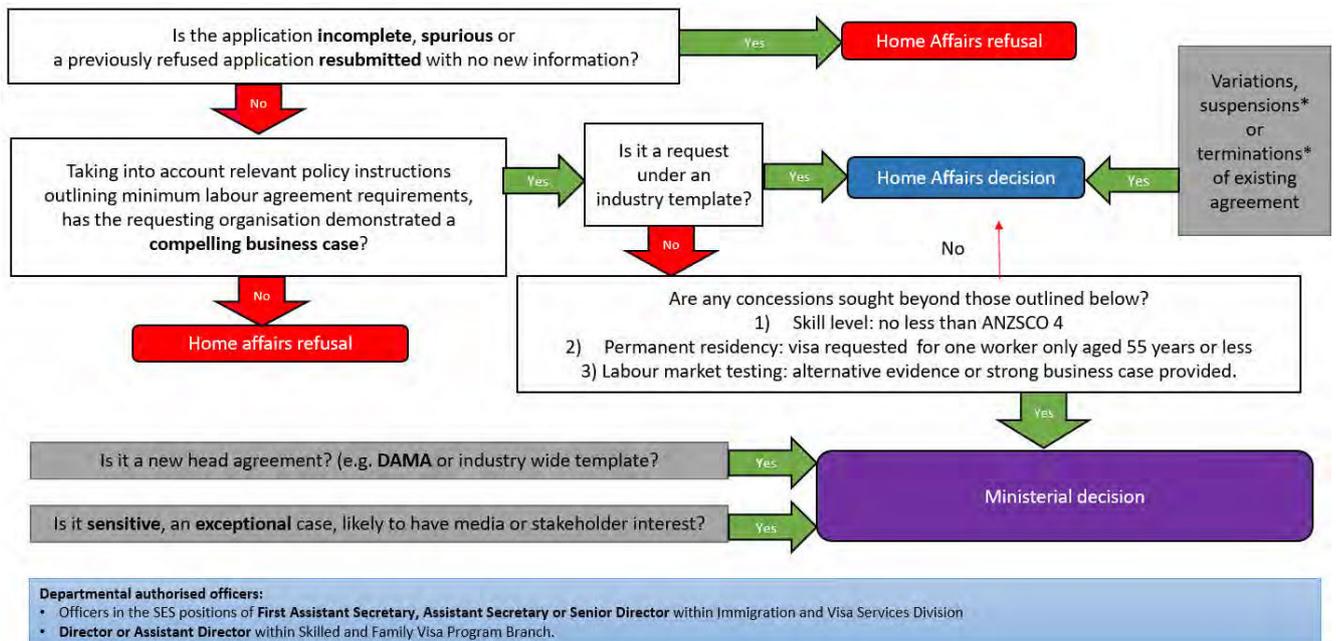
The Department may consult with DJSB and seek their views on the LA request as part of the assessment process. This generally includes any requests:

- for a company specific agreement or

where there is adverse information available regarding employment related issues. Officers should consult the current agreed DJSB referral matrix to determine if consultation is required in a particular case.

4.1.11. Decision

Some decisions on LA requests can be made by authorised officers within the Department. In all other cases, requests will be referred to the Minister for a decision. This includes requests where additional concessions are requested (e.g. English, skills or salary concessions). Officers should consult the current LA decision-making framework below to determine whether referral is required.



4.1.12. Agreement length

Where approved, LAs are generally in effect for five years.

4.2. Australian registered business with good standing

4.2.1. Lawfully and actively operating in Australia for the previous 12 months

LAs will generally only be executed where the requesting organisation can demonstrate that their business has been lawfully and actively operating in Australia for the previous 12 months.

To demonstrate this, requesting organisations are expected to provide their key business details and a statement from a chartered or certified practicing accountant that they are actively operating and able to financially support the proposed number of overseas workers requested under the LA.

If the information provided is not from a certified practitioner, assessing officers should seek additional information in order to be satisfied that the business has been actively operating for the last 12 months in Australia. This could include:

- Business Activity Statements (BAS)
- Company Annual Report
- Financial reports prepared by an Accountant (not in-house MYOB)

- Bank Statements – look for recent payments/expenditure.
- Business Tax Returns
- Detailed Business Plan
- Contract of sale relating to the purchase of the business
- Leases/ownership – reflects type of premise and business usage
- Evidence of Bank Loans/overdrafts
- Correspondence with suppliers/industry bodies/advertisers
- Asset purchases – recent purchases by the business reflects business activity
- Contracts/Work orders – reflects ongoing business activity
- Evidence of employment of staff
- Apprenticeship/training agreements – reflects ongoing employment of staff
- Letter of support from a Qualified Accountant (CPA, CA, NIA registered)
- Advertisements/promotional information
- Registration with Industry Associations

Officers should assess this requirement in a consistent manner to the similar requirement that exists for approval as a standard business sponsor – see: *section 4.5.2 Lawfully operating a business* in *Procedural Instruction: Standard Business Sponsorship Applications*.

Note:

- When assessing this requirement, officers should ensure that the requesting organisation is correctly recorded in Departmental systems, including any trust related information – with the request to be processed in the name of the trustee only (i.e. ABC Pty Ltd), not in the name of the trust (i.e. ABC Pty Ltd as trustee for Margaret Jones).
- Organisational identifiers should be checked against open source data – for example, the name of the entity and their Australian Business Number (ABN) should be checked by looking up the organisation in the Australian Business Register (ABR) – see: <http://www.abr.business.gov.au/>.
 - **Note:** All businesses that are required to register for GST need to obtain an ABN. An ABN is mandatory for entities that fall into the following categories:
 - businesses with an annual turnover of \$75,000 or more;
 - non-profit organisations with an annual turnover of \$150,000 or more;
 - entities that need to be endorsed as gift deductible recipients;
 - entities that are tax exempt charities
- If the business indicates that it is an Australian Public Company, they should also be registered with ASIC and have an Australian Company Number (ACN). The requesting organisation should have provided a copy

of their details in the ASIC register together with their request. Alternatively, this can be checked via the ASIC website and recorded in the assessment template.

- Where duplicate client records are identified, they should be merged before proceeding to ensure that all relevant information is considered – particularly in the context of the good standing requirement below.

4.2.2. The requirement to be of good standing

LAs should only be executed with organisations considered to be of 'good standing'. In practice this means that, officers should consider whether there is any adverse information known about the requesting organisation or a person or entity that they are associated with. Requesting organisations are expected to declare any adverse information about their organisation and provide evidence of any arrangements that they have been put in place to address previous behaviour of concern.

Assessing officers should not generally recommend that a LA be approved if there is adverse information known about the requesting organisation, applicant or a person associated with the requesting organisation, given that there is no legal obligation on the Department to enter into a LA, **unless** circumstances exist that demonstrate that it is reasonable to disregard the adverse information.

Officers should assess this requirement in a consistent manner to the similar 'adverse information' requirements that exist in the standard skilled visa program – see: *Procedural Instruction: Adverse information and skilled visas (regulation 1.13A and 1.13B)* which provides guidance to officers in determining whether there is any adverse information available about the requesting organisation, and whether any such information should be disregarded or should prevent their request being approved.

Note:

- In assessing good standing, officers are expected to complete a comprehensive search of departmental systems for any relevant information, as well as open source searches.
- If you have identified a number of allegations recorded about the organisation and/or related organisations where no further action was taken by the Department, please refer to the Labour Agreement Integrity Officer for consideration as to whether a referral to the Australian Border Force or other integrity partners should be made.

4.2.3. Exemptions and industry specific requirements

There are no exemptions available to the 'good standing' requirement. Flexibility may, however, be exercised under policy in relation to the lawfully and actively operating requirement where there are compelling and compassionate circumstances impacting an Australian citizen. Such cases are to be escalated to a manager.

Note: If the organisation is requesting a Minister of Religion LA, they must also provide evidence of their charitable status – for more information, see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)

4.3. Labour Market Need

4.3.1. Overview

When assessing a LA request, a key requirement that officers must assess is whether there is a genuine labour market need for the employer to utilise the LA program to meet their recruitment needs. This generally includes demonstrating that:

- an Australian worker is not available to fill the proposed position;
- the employer has made recent and genuine efforts to recruit Australians (i.e. conducted Labour Market Testing (LMT) recently); and
- overseas workers are not available via standard skilled visa pathways.

This is consistent with regulation 2.76A which requires that the Commonwealth must not enter a work agreement unless the Minister is satisfied that the requesting organisation has made recent and genuine efforts to recruit, employ or engage Australian citizens or Australian permanent residents to meet those requirements.

Note:

- In the case of most LAs, this will then be complemented by a nomination requirement to provide LMT evidence for specific nominated positions. This evidence will generally need to meet the specific requirements required for the standard TSS visa program unless otherwise specified in the executed agreement.
- There are certain exemptions to these arrangements in place as outlined below at section 4.4.4 below.

4.3.2. What evidence is required

As a general rule, officers should not recommend that a LA (with a temporary or permanent visa pathway) be executed unless the requesting organisation provides evidence that they have advertised the relevant positions for a reasonable period and this advertising meets the minimum requirements in place for LMT under the TSS visa program as outlined on the Department's [website](#) and in the *Procedural Instruction: Temporary Skill Shortage (TSS) visa (subclass 482) – nominations*.

Evidence of very comprehensive and longer term advertising for the relevant positions, including alternative evidence of LMT as outlined below will, however, add weight to a decision to approve a LA – noting that these arrangements sit outside standard skilled visa program arrangements.

A company specific LA is also more likely to be approved where the organisation has tried a number of alternative avenues to address their staffing needs. As a result, the request form asks requesting organisation to provide:

- advice as to whether they have advertised on the Jobactive website; and
- advice explaining their participation in any DJSB job placement program and why this has not been successful in recruiting local workers.

Evidence of domestic recruitment could also include:

- information regarding their 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; or
- letters of support from state government authorities with the responsibility for employment.

Note: If the requesting organisation is a large company with multiple business locations, they must provide location specific information regarding why particular positions in particular locations have been unable to be filled by the respective local labour market.

4.3.3. Assessment considerations

In considering whether a genuine labour market need exists, officers should consider whether standard skilled visa pathways are available and the requestor has made genuine efforts to recruit Australian workers.

In addition to meeting minimum evidentiary requirements outlined below, under policy, the following factors would add weight to an assessment that such efforts have been made:

- significant evidence of domestic recruitment activities has been provided which demonstrates that the organisation has advertised for a long period with significant coverage;
- the organisation has used Jobactive and or participated in DJSB programs;
- the organisation has provided evidence of staff development and/or retention strategies, and explained issues with staff turnover;
- there is detailed information available regarding the reasons why any applications received from Australian workers were rejected/not suitable.

Under policy, the following factors would add weight to an assessment that such efforts has not been made:

- limited evidence of domestic recruitment activities has been provided (including advertising for a short period only);
- the request suggests that any advertising has been a 'token effort' as the requesting organisation wishes to retain existing overseas workers or prefers to recruit overseas workers instead of employing or retaining Australian workers.

In assessing whether there is a demonstrated labour market need, officers should also consider any available information that counters the claims of the business regarding the shortage of skilled workers in the relevant area including:

- information available via the Labour Market Information Portal;
- any competing businesses in the region and whether or not they have made use of overseas workers;
- any additional objective evidence that has been presented by the requesting organisation such as:
 - advice provided by DJSB and/or any other relevant government agencies, including local unemployment rates; and
 - any response by industry stakeholders that strongly supports or opposes the organisation's request.

4.3.4. Exemptions and summary of industry specific requirements

4.3.4.1. Exceptional circumstances – company specific agreements

In exceptional circumstances, when processing a company specific LA request, the Department may accept alternative evidence of why, given the nature of the position/skills required it is unable to be filled by an Australian worker. This is, however, likely to only occur where one or more of the following characteristics are relevant:

- the positions are required to complete a short-term project or phase of a project and:
 - only a small number of positions are requested;
 - the organisation has demonstrated that these positions need to be filled by individuals who have existing, specialist knowledge of a particular machine or technology;
 - the project will bring substantial economic benefits to Australia; and
 - the project overall will be staffed by 80%+ of Australian workers.
- the positions are required on a temporary basis for a substantial project of significant benefit to Australia or for the 'set up' phase of a new global enterprise - hence, a small number of existing staff familiar with the brand/particular machinery or processes is only available offshore AND there is a plan in place for skills to be transferred to Australian workers over the longer term.

This would also require approval from the Minister personally.

4.3.4.2. Ministers of Religion

LAs under the Minister of Religion template arrangements are exempt from the requirement to provide evidence of LMT. This is consistent with the exemption provided for Minister of Religion at regulation 2.76A.

Requesting organisation should still, however, explain why, given the nature of the position/skills required, the relevant position is unable to be filled by an Australian worker – for more information, see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)

4.3.4.3. On-Hire

OHLAs are expected to have tested the local labour market before requesting a LA. The evidentiary requirements for this industry template are, however, different due to fact that employers can only utilise occupations already available on the [list of skilled eligible occupations](#) for which there is a recognised need and their agreement does not specify the use of particular occupations.

As a result, at the labour market request stage, organisations are only required to provide an explanation of why they are requesting a LA and provide additional higher level evidence that there is a skill shortage in the groups of occupations that their organisation will be targeting.

Standard TSS LMT requirements then apply at nomination stage – see: [section 4.16 The On-Hire Labour Agreement arrangements](#).

4.3.4.4. Other industry template agreements

Organisations applying for LAs under other existing industry template arrangements need to provide evidence of LMT. However, officers are able to take a 'light touch' when assessing these requirements noting that it has already been agreed at an industry level that there is a need for labour agreement to be available and LMT requirements will be required to be met at nomination stage – see:

- Dairy – see: [section 4.14 The Dairy Industry Labour Agreement arrangements](#)
- Fishing – see: [section 4.15 The Fishing Industry Labour Agreement arrangements](#)
- Meat – see: [section 4.17 The Meat Industry Labour Agreement arrangements](#)
- Pork – see: [section 4.18 The Pork Industry Labour Agreement arrangements](#)
- Restaurant (Fine Dining) – see: [section 4.19 Restaurant \(Fine Dining\) Labour Agreement arrangements](#)

4.4. Reliance on overseas workers

4.4.1. Overview

When considering a LA request, officers are also required to consider whether the requesting organisation has an over-reliance on overseas workers, and/or has demonstrated that they will make ongoing efforts to reduce reliance on overseas workers during the life of their proposed agreement. This is an important consideration in terms of ensuring that a LA will not undermine employment (or training opportunities) for Australians.

Note: this requirement is also reflected in the text of executed company specific LAs which include a clause noting that the sponsor will aim to ensure that:

- in any one year period, overseas workers do not comprise more than a third of their workforce: and
- their reliance on overseas workers decreases during the life of their LA.

4.4.2. What evidence is required

Requesting organisations are required to provide a breakdown of their current workforce profile and the number of overseas workers that they are requesting.

4.4.3. Assessment considerations

Officers should check the data provided against information already available in Departmental systems regarding overseas workers employed by the requesting organisation, and consider the percentage of overseas workers in terms of their current and projected workforce.

Officers should be aware that this is closely related to the labour market need requirement, however, the focus is more forward-looking. If a LA is executed, officers are asked to consider whether this would reflect an over-reliance by the organisation on overseas workers and particularly whether this would continue. That is:

- would a LA undermine future training opportunities for Australians, or is the proposed LA a temporary 'stop-gap' to ensure skills can be transferred to Australians, ultimately benefiting the Australian community and economy? or
- does the organisation clearly plan to rely on a LA on an ongoing basis to meet their needs, with no clear plans in place to train Australians in future?

Under policy, the following factors would add weight to an assessment that there will be **no** longer term over-reliance on overseas workers:

- the number of nomination ceilings requested is small (less than 20% of workforce is overseas workers and less than 20 nominations);
- the workplace profile indicates a declining percentage of overseas workers during the life of the LA;
- the organisation has put forward clear plans for transferring skills to Australian workers and recruiting more local workers in future;
- the organisation has demonstrated that a LA will allow them to expand their operations and expand their Australian workforce;
- if a repeat LA, the nomination ceilings being sought have already reduced;
- the organisation has indicated it will not seek a further LA.

Under policy, the following factors would add weight to an assessment that there is an over-reliance on overseas workers:

- the number of nomination ceilings requested is large (more than 30% of workforce is overseas workers and more than 20 requested nominations);
- the workplace profile indicates a continued increase of overseas workers during the life of the LA;
- the request claims the number of Australian workers will increase in future but this seems contradictory to the request details and no plans have been provided to achieve this;
- the organisation's story changed when additional information was requested about their workforce profile;
- the organisation has indicated it will need to utilise the LA program on a long term basis, particularly because, for example, overseas workers are more reliable.

Where the requesting organisations percentage of overseas workers continues to increase into the future, officers should carefully consider whether:

- the entity is or is developing an over-reliance on overseas workers through its use of the standard TSS and/or LA programs;
- entering into a LA could undermine employment opportunities for Australians; and

- entering into a LA is consistent with the Government's objectives (i.e.: Australians considered first, as a priority).

Officers should also check previous LA requests for information provided and claims made about decreasing reliance on overseas workers in future.

Note: It would generally not be appropriate to recommend a LA where the percentage of overseas workforce will be 30% or more or where the reliance on overseas workers will not decline over the life of the proposed LA. Officers should, however, take into account other factors including:

- evidence presented by the requesting organisation that they have a satisfactory record of, and on ongoing commitment to, the training of Australians;
- whether it is a template agreement where there are known shortages in the Australian workforce in terms of recruitment and/or retention of workers;
- plans provided by the requesting organisation to increase their percentage of Australian workers;
- whether any increase in overseas workers is temporary in nature (e.g. for a particular project);
- evidence presented that indicates over the longer term the LA will benefit the Australian community; and
- other independently verifiable evidence presented which supports the requesting organisation's claims regarding their commitment to growing their Australian workforce.

4.4.4. Exemptions and summary of industry specific requirements

4.4.4.1. Exceptional circumstances – company specific agreements

In exceptional circumstances, when processing a company specific LA request, the Department may accept a short-term situation where the company appears to demonstrate an 'over-reliance' on overseas workers. This is, however, likely to only occur where one or more of the following characteristics are relevant:

- the positions are required to complete a short-term project or phase of a project and:
 - the organisation has demonstrated that these positions need to be filled by individuals who have existing, specialist knowledge of a particular machine or technology; and
 - the project will bring substantial economic benefits to Australia.
- the positions are required on a temporary basis for a substantial project of significant benefit to Australia or for the 'set up' phase of a new global enterprise - hence, a small number of existing staff familiar with the brand/particular machinery or processes is only available offshore AND there is a plan in place for skills to be transferred to Australian workers over the longer term.

This would also require approval from the Minister personally.

4.4.4.2. Industry templates

Most industry agreements when signed also require the sponsor to ensure that in any one year period, overseas workers do not comprise more than a third of their workforce, and that their reliance on overseas workers decreases during the life of their LA. However, this 'goal' is interpreted with more flexibility for certain industries, including Dairy and Pork, for more information regarding the:

- Minister of Religion – see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)
- Dairy – see: [section 4.14 The Dairy Industry Labour Agreement arrangements](#)
- Fishing – see: [section 4.15 The Fishing Industry Labour Agreement arrangements](#)
- On Hire – see: [section 4.16 The On-Hire Labour Agreement arrangements](#)

- Meat – see: [section 4.17 The Meat Industry Labour Agreement arrangements](#)
- Pork – see: [section 4.18 The Pork Industry Labour Agreement arrangements](#)
- Restaurant (Fine Dining) – see: [section 4.19 Restaurant \(Fine Dining\) Labour Agreement arrangements](#)

4.5. Occupation requirements

4.5.1. Overview

As the LA program is part of the skilled visa program, a company specific LA will generally only be executed where the occupation is a skill level 1-4 occupation under ANZSCO.

When assessing a LA request, officers should confirm that the nominated position aligns with ANZSCO for the relevant occupation and check that the proposed overseas workers will not be undertaking duties at a skill level lower than the skill level of the nominated occupation.

4.5.2. What evidence is required

Requesting organisations must provide specific details for each of the occupations sought, including the number of positions sought for each location and year of the proposed LA. The relevant ANZSCO six-digit code must be provided for each occupation.

Organisations must also provide a detailed description of the tasks the proposed overseas workers will undertake in the nominated position. This should not be a copy of the ANZSCO tasks for the occupation, but a statement that reflects the way the tasks, as set out by ANZSCO fit in to the role within the business context of their organisation.

4.5.3. Assessment

Officers should take into account that:

- positions are unlikely to match an ANZSCO description exactly;
- a job may include duties an employee would be reasonably expected to perform even if they fall outside the ANZSCO definition, but they cannot comprise a significant percentage of the work;
- they should consider not only the 'list of duties' provided in the application, but other supporting evidence provided by the applicant – that is, the 'business context' in which the nominated position will be operating.

For further advice regarding assessment of the alignment between tasks and ANZSCO occupations – see: [section 4.5.65. Tasks of the position do not align with the nominated occupation in Procedural Instructions: Temporary Skill Shortage \(Subclass 482\) visa - nominations](#)

4.5.4. Exemptions and summary of industry specific requirements

4.5.4.1. Company specific agreements – no exemptions without Ministerial approval

Company specific LAs cannot be approved for non-skill level 1-4 occupations without the personal decision of the Minister.

Where lower skilled occupations are requested, DJSB must be consulted and a very strong business case will need to be provided. Such requests are very unlikely to be approved, particularly if there are other visa programs available (e.g. the Seasonal Worker Program stream of the Temporary Work (International Relations) visa (subclass 403)), with the LA program not considered appropriate to cover overseas workers undertaking work in lower or non-skilled occupations.

4.5.4.2. On hire labour agreements

There are no specific occupations specified in these agreements, with OHLA sponsors able to nominate overseas workers for an occupation as long as it remains on the combined list of eligible occupations for the standard TSS program at the time of LA decision. For more information – see: [section 4.16 The On-Hire Labour Agreement arrangements](#).

4.5.4.3. Other industry templates

Organisations requesting a LA under industry template arrangements have access to the occupations specified in the template LA:

- Minister of Religion – see: [section 4.13 The Minister of Religion Labour Agreement arrangements](#)
- Dairy – see: [section 4.14 The Dairy Industry Labour Agreement arrangements](#)
- Fishing – see: [section 4.15 The Fishing Industry Labour Agreement arrangements](#)
- Meat – see: [section 4.17 The Meat Industry Labour Agreement arrangements](#)
- Pork – see: [section 4.18 The Pork Industry Labour Agreement arrangements](#)
- Restaurant (Fine Dining) – see: [section 4.19 Restaurant \(Fine Dining\) Labour Agreement arrangements](#)

4.6. Salary requirements and employment conditions

4.6.1. Overview

LAs will generally only be executed where the requesting organisation demonstrates that they can meet standard skilled visa requirements in terms of:

- paying the market salary rate and
- ensuring that overseas workers are offered equivalent employment conditions to those that would be offered to an Australian worker.

4.6.2. What evidence is required

Requesting organisations are expected to provide advice and evidence to demonstrate what they intend to pay their proposed overseas workers and why this is equivalent to what an Australian worker would be paid.

4.6.3. Assessment considerations

Officers should assess this requirement taking into account the policy guidelines in relation to standard temporary skilled visa requirements regarding salary and conditions of employment – see: [section 4.6.3 Salary related requirements in Procedural Instruction: Temporary Skill Shortage \(subclass 482\) – nomination applications](#).

Officers should also confirm whether the organisation has sufficient turnover to financially support the proposed number of overseas workers proposed, on top of the existing employee numbers.

Note: this is particularly important where a permanent pathway has been requested, as the standard company specific templates requires that the sponsor can only lodge an ENS nomination for a position which will be full time, ongoing and available for at least two years.

4.6.4. Exemptions and summary of industry specific requirements

4.6.4.1. Company specific agreements – no exemptions without Ministerial approval

Company specific LAs cannot be approved where standard skilled visa program salary requirements are not met without the personal decision of the Minister. This is still very unlikely to be approved by the Minister,

with very limited additional concessions awarded in this space outside of existing industry template arrangements.

4.6.4.2. Industry agreements – limited concessions available

Organisations requesting a LA under certain industry template arrangements have access to specified concessions in terms of salary arrangements as summarised in the table below:

Agreement	Concession	Additional requirement
Dairy	Nil	Nil
Fishing	Nil	<p>If an equivalent Australian is paid more than an overseas worker in any 12 month period:</p> <ul style="list-style-type: none"> the employer must pay the overseas worker an additional amount this amount should equal the difference between the amount paid to the equivalent Australian and the amount paid to the overseas worker for the 12 month period this amount is to be paid to the overseas workers in the month following the 12 month period <p>See: section 4.15 The Fishing Industry Labour Agreement arrangements</p>
Meat	Nil	<p>If the overseas worker is paid via an annualised salary, they must receive a Top-Up, if over an annual period, an Australian worker receives a higher amount for performing equivalent work.</p> <p>See: section 4.17 The Meat Industry Labour Agreement arrangements</p>
Minister of Religion	<p>Non-monetary benefits can be considered in the calculation of TSMIT.</p> <p>If a vow of poverty has been taken, a full exemption is available if the nominee will be provided with all their living needs.</p> <p>See: section 4.13 The Minister of Religion Labour Agreement arrangements</p>	Nil
On-hire	Nil	<ul style="list-style-type: none"> The monetary benefits of the nominee's annual earnings for a 38 hour week must not be less than AU\$65,000 Overseas workers must be engaged full time and paid by the on-hire company and not by a third party <p>See: section 4.16 The On-Hire Labour Agreement arrangements</p>
Pork	Nil	Nil
Restaurant	<p>10% TSMIT concession</p> <p>See: section 4.19 Restaurant (Fine Dining) Labour Agreement arrangements</p>	Nil

4.6.4.3. DAMAs – limited concessions available

TSMIT concessions apply to a limited number occupations – see [Section 4.20 Designed Area Migration Agreements](#).

4.7. Skills, qualifications and experience

4.7.1. Overview

The LA program forms part of Australia's skilled visa programs. It is not designed for non- skilled workers. As a result, LAs generally require that overseas workers have a qualification of at least equivalent to an AQF

Certificate III (or higher where required by ANZSCO) as assessed by an appropriate registered training organisation, and three years of recent relevant experience.

4.7.2. What evidence is required

Organisations requesting a company specific LA will be asked to confirm that the skills required of their overseas workers are consistent with those outlined in ANZSCO for the nominated occupation or provide a business case requesting concessions.

4.7.3. Assessment considerations

Where the organisation indicates that ANZSCO requirements will be met, officers assessing a company specific LA request do not need to assess this requirement further. Visa decision-makers will assess whether the overseas worker has the necessary skills, qualification and experience at visa stage.

Where a concession has been requested, officers should consider whether a strong business case has been provided that is sufficient to warrant seeking the Minister's views on executing the LA with a skills concession. As above, officers are reminded that the LA is generally not considered appropriate where the position does not require a qualification of at least equivalent to an AQF Certificate III (or higher where required by ANZSCO) as assessed by an appropriate registered training organisation, and three years of recent relevant experience.

4.7.4. Exemptions and summary of industry specific requirements

4.7.4.1. Company specific agreements – no exemptions without Ministerial approval

A company specific LA cannot be executed if the ANZSCO requirements are not met for the occupation without the approval of the Minister personally.

4.7.4.2. Industry agreements – limited concessions available

Organisations requesting a LA under certain industry template arrangements have access to specified concessions in terms of salary arrangements as summarised in the table below:

Agreement	Skills
Dairy	Overseas workers must have at least: <ul style="list-style-type: none"> • an <i>AQF Certificate III</i>, or equivalent qualifications as assessed by a registered training organisation, and demonstrate at least three years of recent and relevant work experience, or • five years recent and relevant work experience See: section 4.14 The Dairy Industry Labour Agreement arrangements
Fishing	Nil concessions for: <ul style="list-style-type: none"> • Master Fisher (ANZSCO 231211); • Ship's Engineer (Fishing Industry) (Code 070499)*; • Ship's Master (ANZSCO 231213); • Ship's Officer (ANZSCO 231214). *The skills, qualifications and employment background required are the same as for a Ship's Engineer (ANZSCO 231212). Overseas workers recruited to Deck or Fishing hand must have: <ul style="list-style-type: none"> • at least three years recent relevant experience (evidenced by a signed sea-time or log book); • hold safety and rescue certificates compliant with the International Convention on Standards, Training, Certification and Watchkeeping for Seafarers 1978, as amended; • hold a first aid certificate which was awarded in the 12 months prior the nomination. Where the first aid certificate was awarded more than 12 months prior to the nomination, the employer must ensure that the overseas worker attains an Australian first aid certificate within one year of commencing work with the employer. See: section 4.15 The Fishing Industry Labour Agreement arrangements

Meat	<p>Overseas workers must:</p> <ul style="list-style-type: none"> • have been assessed and verified by a <u>National Meat Industry Training Advisory Council (MINTRAC)</u> registered assessor, or an assessor approved by the Commonwealth, with a <i>Certificate IV in Training and Assessment</i> experienced in meat processing, to be skilled meat workers with a minimum skill level commensurate with the <u>MINTRAC</u> referenced AQF Certificate III in meat processing <p>and:</p> <ul style="list-style-type: none"> • demonstrate a minimum of three years skilled work experience obtained at a meat processing establishment acceptable to the Parties or • have been working in Australia on a subclass 457 or TSS visa at an Australian meat processing establishment acceptable to the parties for at least nine months prior to being nominated. <p>See: <u>section 4.17 The Meat Industry Labour Agreement arrangements</u></p>
Minister of Religion	<p>Ministers of religion must have:</p> <ul style="list-style-type: none"> • been 'ordained' or have 'professed to a religious life' as a minister of religion (or equivalent accreditation process within the faith tradition) and • minimum qualifications equivalent to a relevant <i>Australian Qualification Framework (AQF)</i> bachelor degree or • undertaken at least five years of relevant structured training or instruction. Experience does not substitute for this criterion. <p>See: <u>section 4.13 The Minister of Religion Labour Agreement arrangements</u></p>
On-hire	Nil
Pork	<p>Overseas workers must have at least:</p> <ul style="list-style-type: none"> • an <i>AQF Certificate III in Agriculture (Pig Production)</i>, or equivalent qualifications as assessed by a registered training organisation; and demonstrate at least three years of recent and relevant work experience in a medium to large size commercial piggery or • five years' recent and relevant work experience. <p>See: <u>section 4.18 The Pork Industry Labour Agreement arrangements</u></p>
Restaurant	<p>Nil concessions for Chefs or Cooks.</p> <p>Overseas Trade Waiter must have :</p> <ul style="list-style-type: none"> • an AQF certificate III in Hospitality (Restaurant Front of House), or equivalent qualification as assessed by a Registered Training Organisation (RTO) and • at least three years' experience. <p>See: <u>section 4.19 Restaurant (Fine Dining) Labour Agreement arrangements</u></p>

4.7.4.3. DAMAs – limited concessions available

Skills concessions apply to a limited number occupations – see Section 4.20 Designed Area Migration Agreements.

4.8. English Language

4.8.1. Overview

Nominees under a LA are generally required to meet standard temporary skilled visa English requirements.

4.8.2. What evidence is required

Organisations requesting a company specific LA will be asked to confirm that proposed overseas workers will meet the English requirements under the standard skilled visa program (i.e. short-term stream for the TSS program and TRT stream requirements for ENS) or provide a business case requesting concessions.

4.8.3. Assessment considerations

Where the organisation indicates that standard English requirements will be met, officers assessing a company specific LA request do not need to assess this requirement further. Visa decision-makers will assess whether the overseas worker has the necessary English proficiency at visa stage.

Where a concession has been requested, officers should consider whether a strong business case has been provided that is sufficient to warrant seeking the Minister's views on executing the LA with an English concession.

Note: It is very unlikely that such a concession would be approved unless the overseas workers can demonstrate that they can meet at least IELTS 4 and the organisation has demonstrated that they have put in place additional arrangements to ensure that there are no work, health or safety risks associated with a lower English standard being accepted.

4.8.4. Exemptions and summary of industry specific requirements

4.8.4.1. Company specific agreements – no exemptions without Ministerial approval

A company specific LAs cannot be executed if standard English requirements are not met without the approval of the Minister personally.

4.8.4.2. Industry agreements – limited concessions available

Organisations requesting a LA under certain industry template arrangements have access to specified concessions or additional requirements in terms of English as outlined in the table below.

Agreement	English
Dairy	Nil concessions
Fishing	<p>Nil concessions for:</p> <ul style="list-style-type: none"> • Master Fisher (ANZSCO 231211); • Ship's Engineer (Fishing Industry) (Code 070499)*; • Ship's Master (ANZSCO 231213); • Ship's Officer (ANZSCO 231214). <p>For Deck or Fishing Hands the following is sufficient English:</p> <ul style="list-style-type: none"> • an average test score of at least 4.5 in an International English Language Testing System (IELTS); <p>As long as the employer also:</p> <ul style="list-style-type: none"> • provides overseas workers with initial access to an interpreter during induction training, and flexible English language instruction options such as DVDs and phrasebooks; • installs signage and providing training booklets for the overseas workers in both English and their native language; • ensures that every overseas worker has sufficient English language proficiency to both: <ul style="list-style-type: none"> ○ enable them to take reasonable care of his or her own health and safety in the workplace and that of the people they work with; ○ understand his or her workplace and employment conditions. <p>See: section 4.15 The Fishing Industry Labour Agreement arrangements</p>
Meat	<p>Overseas workers nominated under this agreement, who are unable to meet standard skilled visa program requirements, can be considered to have sufficient English to perform the nominated occupation if they:</p> <ul style="list-style-type: none"> • demonstrate an IELTS overall test score of at least 5.0 with no minimum test score; or • are a current subclass 457 visa holder who was not required to provide evidence of English language proficiency at the time of grant of their subclass 457 visa and provides evidence as prescribed in the Migration Regulations for meeting functional English. <p>See: section 4.17 The Meat Industry Labour Agreement arrangements</p>
Minister of Religion	<p>Overseas skilled workers nominated for:</p> <ul style="list-style-type: none"> • a TSS visa must meet English language requirements in place for the Short-term stream of the TSS visa unless they are awarded a concession on the basis that they are working in a cloistered or monastic environment; • an ENS visa can be considered to have sufficient English to perform the nominated occupation if they demonstrate an IELTS overall test score of at least 5.0 with a score of at least 4.5 in each of the four test components, or equivalent. <p>See: section 4.13 The Minister of Religion Labour Agreement arrangements</p>
On-hire	Nil
Pork	Nil

Restaurant	Nil
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4.8.4.3. DAMAs – limited concessions available

English concessions apply to a limited number occupations – see [Section 4.20 Designed Area Migration Agreements](#).

4.9. Permanent residence pathways

4.9.1. Overview

LAs can only be executed with a permanent visa pathway where this is agreed to by the Minister or provided for under existing LA template arrangements.

4.9.2. What evidence is required

A submission outlining the business case for permanent residence is required.

4.9.3. Assessment Considerations

If a permanent residence pathway has been requested, officers need to consider whether a sufficiently strong business case has been provided to demonstrate this.

4.9.4. Exemptions and summary of industry specific requirements

4.9.4.1. Company specific agreements

Company specific LAs can only cover temporary residence in Australia **unless**:

- a permanent residence pathway is being requested for a single nominee aged under 55; or
- the Minister agrees to a permanent residence pathway being made available in exceptional circumstances.

If a permanent residence pathway has been requested, officers need to consider whether a sufficiently strong business case has been provided to demonstrate this.

4.9.4.2. Industry agreements – limited concessions available

The following industry agreements already provide for a permanent visa pathway as outlined in the table below with additional Ministerial approval not required.

Agreement	Permanent pathway available...	For further information
Meat	after 3 years on TSS/457 visa	See: section 4.17 The Meat Industry Labour Agreement arrangements
Minister of Religion		See: section 4.13 The Minister of Religion Labour Agreement arrangements
Pork		See: section 4.18 The Pork Industry Labour Agreement arrangements
Restaurant	after 2 years on TSS/457 visa if Cook or Chef OR 3.5 years if Overseas Trade Waiter	See: section 4.19 Restaurant (Fine Dining) Labour Agreement arrangements

4.10. Age

4.10.1. Overview

Nominees under a LA are generally required to meet standard skilled visa age requirements where applicable.

While there are no such requirements in order to access temporary skilled visas, age requirements do, however, apply to permanent skilled visas – with ENS visa applicants generally required to be under 45 years of age at time of application, subject to any available exemptions.

4.10.2. What evidence is required

Requesting organisations who are seeking a permanent visa pathway need to acknowledge that their nominees need to meet such age requirements or seek a concession and provide a supporting business case.

4.10.3. Assessment considerations

Age concessions would generally only be approved where the organisation can demonstrate a very strong business case and explain why the seniority of the nominee is in fact critical in their specific context.

4.10.4. Exemptions

4.10.4.1. Company specific agreements – no exemptions without Ministerial approval

Company specific LAs can only include an age exemption where:

- the only concession requested is for the nominee to be up to 55 years of age; or
- the Minister personally agrees to a greater concession (e.g. for more individuals or above the age of 55 for a single nominee).

4.10.4.2. Industry agreements – limited concessions available

There is already an age concession in place for the industry template agreements outlined below.

Agreement	Concession	For further information
Meat	Permanent visa applicants can be up to 50 years of age	See: section 4.17 The Meat Industry Labour Agreement arrangements
Minister of Religion	Permanent visa applicants can be up to 60 years of age	See: section 4.13 The Minister of Religion Labour Agreement arrangements

4.11. Industry Stakeholder Consultation

4.11.1. Overview

If industry stakeholder consultation is required for a particular LA, then the requesting organisation **must** consult with relevant industry stakeholders before lodging their request, otherwise their request will be returned and not assessed.

Template text is available on the Department's website that can be used by organisations when writing to relevant stakeholders.

4.11.2. What evidence is required

The outcome of stakeholder consultations must be included with the request where required as per the table below.

Agreement	Consultation required
Industry	No – industry stakeholders will be consulted annually via template review process.
Company specific	Yes - unless the requesting organisation is seeking no more than two workers in skill level 1 or 2 occupations and will be paid at least the Fair Work High Income Threshold (currently \$145 400).
DAMA	No

4.11.3. Assessment

Where consultation is required, officers should not recommend a LA for execution unless the requesting organisation has consulted with relevant industry stakeholders.

Relevant stakeholders include:

- the industry body which best represents the businesses' interests;
- the union which best represents the interest of the employee, noting that the union must be consulted even if none of the current employees are union members; and
- any other agency or community group that may be impacted by the proposed LA (for example schools or health services).

If the requesting organisations are uncertain about how to identify or contact relevant unions in relation to the occupations they are seeking to sponsor, the Australian Council of Trade Unions (ACTU) may be able to assist with contacts and/or coordination.

The fact that an industry stakeholder does not support a particular LA does not mean that the request should necessarily be declined. Officers should consider the views provided and any supporting information, and whether any additional risk mitigations could be added to the LA to address their concerns where valid. Officers should also consider the strength of the evidence provided by the requesting organisation and/or other stakeholders that demonstrate an opposing view.

Officers should also consider whether the stakeholder supports one, but not another similar request for an LA without appropriate reasoning. Where this occurs, and not enough reasoning is provided, such views may be disregarded.

4.12. Minister of Religion Labour Agreements

4.12.1. Overview

The table below summarises the different visa arrangements that are in place under the MORLA (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 1 July 2015 (first on a pilot basis for six months and now on an ongoing basis). They were implemented due to integrity concerns regarding the use of the Minister of Religion (ANZSCO 272211) occupation in standard skilled visa programs

Both a temporary and permanent visa (after a transitional period of three years) pathway is provided for under these arrangements.

Note:

- MORLA arrangements are quite different to other industry template arrangements, with nominees required to be identified and as a result, certain visa and nomination related requirements assessed 'up front' at the LA stage.
- Organisations with a LA are exempt from paying a contribution to the Skilling Australians Fund (SAF) levy at nomination stage where the occupation is a Minister of Religion (ANZSCO 272211). This also applies where a company specific LA has been signed for this occupation and/or a Religious Assistant (ANZSCO 451816). Note: the SAF levy, which is normally automatically charged at the time of nomination application lodgement online, will not be applied in such cases.

4.12.2. Minister of Religion labour agreements – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
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<u>Australian registered business</u>	Must be a religious institution under the Migration Regulations – see section 4.13.3 What is a religious institution below, and must provide evidence of charitable status.	LA request
<u>Good standing</u>	Normal requirements apply, plus organisations must also provide specific advice regarding any royal commission involvement to mitigate the risks of any child protection issues arising	LA request
<u>Labour market Need</u>	Exempt from labour market testing but must still explain why, given the nature of the position/skills required, it is unable to be filled by an Australian worker	LA request
<u>Reliance on overseas workers</u>	This requirement will not generally be assessed unless there are significant concerns, given low numbers of overseas workers usually requested under this industry template	LA request
<u>Occupation</u>	Occupation must be Minister of Religion (ANZSCO 272211) as specifically defined for the purposes of the labour agreement program – see section 4.13.4 Minister of Religion (ANZSCO 272211) below.	LA request
<u>Salary</u>	<ul style="list-style-type: none"> Standard requirements apply unless a concession is awarded on the grounds that a vow of poverty has been declared In addition, unlike in the standard skilled visa programs, non-monetary benefits can be counted when assessing whether the annual earnings for the equivalent Australian worker and the nominee are at least at the level of TSMIT. <p>See section 4.13.5 Minister of Religion salary requirements below</p>	LA request
<u>Skills</u>	<p>Nominee must:</p> <ul style="list-style-type: none"> have been 'ordained' or have 'professed to a religious life' as a Minister of Religion (or under an equivalent accreditation process within a religion); and possess the minimum qualifications equivalent to a relevant Australian Qualification Framework (AQF) bachelor degree, or have undertaken at least five years of relevant structured training or instruction. Experience does not substitute for this requirement <p>Additional skills requirements are in place where the nominee will be undertaking the role of a Bishop.</p> <p>See section 4.13.4 Minister of Religion (ANZSCO 272211) below</p>	LA request
<u>English</u>	<ul style="list-style-type: none"> Standard Short term stream TSS visa requirements apply unless concession awarded on the grounds that the nominee will be operating in a monastic or other cloistered environment – see section 4.13.5 Monastic or cloistered environment below ENS visa applicants must demonstrate English proficiency to the level of IELTS 5 with a score of at least 4.5 in each of the four test components or equivalent unless they meet standard English exemptions available under the ENS program. 	LA request
<u>Permanent residence</u>	ENS visa available after three year transitional period where a strong business cases provided	LA request
<u>Age</u>	<ul style="list-style-type: none"> No age requirements for TSS visa ENS visa nominees can be up to 60 years old – i.e. there is an age concession. 	Visa application stage
<u>Other</u>	<ul style="list-style-type: none"> Employers must identify nominees at the time of the request The Department will not consider a MORLA while any immigration matter for a nominee is awaiting an outcome. Salaries must be paid from the organisation's Australian bank account 	LA request

4.12.3. What is a religious institution?

Organisations seeking approval under a MORLA must meet the definition of a *religious institution* under the Migration Regulations. Consequently, to recommend that a LA be executed, officers must be satisfied that the requesting organisation is a *religious institution*.

Religious institution is defined in regulation 1.03 as a body:

- a) the activities of which reflect that it is a body instituted for the promotion of a religious object; and
- b) the beliefs and practices of the members of which constitute a religion due to those members:
 - believing in a supernatural being, thing or principle and
 - accepting the canons of conduct that give effect to that belief, but that do not offend against the ordinary laws; and
- c) that meets the requirements of s50-50 of the *Income Tax Assessment Act 1997*; and
- d) the income of which is exempt from income tax under s50-1 of that Act.

Evidencing religious status

In terms of regulation 1.03(a) and (b), organisations seeking a MORLA should provide evidence which demonstrates that their activities promote or advance a religious purpose. This could include written governing laws and principles that are fundamental to the belief in and the belonging to that religion, such as those contained in memoranda, articles of association, constitutions rules or charter, tenets or ecclesiastical canons, and/or copies of annual reports and financial statements.

Evidence of Notification of Endorsement for Charity Tax Concessions is sufficient to satisfy the requirements of regulation 1.03 (c) and (d).

- An organisation may apply to the ATO for a Private binding ruling (PBR) as to their status as a 'religious institution'. A PBR may be useful if delegates are not satisfied that a group is a religious institution, in which case the organisation can be given the opportunity to obtain a PBR.

Officers should consider the evidence provided and also check that the organisation is listed on the Australian Charities and Not for Profits Commission register before progressing with their assessment of the request in accordance with the guidelines below.

Assessment – religious status

'Religious institutions' are not confined to major religions, however, the activities, size, permanence and recognition of the institution will be taken into account when considering a LA request.

Officers should be aware that the term 'religious institution' is not, however, confined to major religions such as Judaism, Hinduism, Buddhism, Christianity and Islam. A body is a religious institution if, amongst other things, the activities of it reflect that it is a body instituted for the promotion of a religious object.

Religious institutions will have activities in place that reflect the religious objectives of the organisation. Such activities are usually scheduled and advertised, and can include:

- conducting religious services and celebration of, for example, weddings, births and holy days;
- regular meetings for fellowship, communion, study and/or prayer;
- the existence of counselling and pastoral services; and
- involvement in social services/social action.

Examples of religious institutions could include:

- churches and other religious congregations;
- missionary institutions, seminaries, convents and/or bible colleges.

The Department generally would **not** consider the following to be a religious institution:

- a fund – for example, a trust merely to manage or hold trust property to make distributions to other entities or people, even if they publicly proclaim a religious message or belief;
- a structure with a small and exclusive membership that is controlled and operated by family members and friends and carries out limited activities such as giving religious address including evangelising, or delivering sermons.

4.12.4. Minister of Religion (ANZSCO 272211)

4.12.4.1. Role in religious organisation

An important part of assessing a request for a MORLA is to ensure that the proposed overseas worker will in fact be working in an appropriate position – with this industry template arrangements designed to cater only for highly skilled overseas workers who will be hired by religious organisations.

To achieve this policy aim and support the SAF levy related exemptions for religious organisations mentioned above, the ANZSCO occupation of Minister of Religion has been varied for the purposes of the LA template to:

- clarify that the nominee is required to have a **leadership role** within the organisation; and
- accommodate the occupation of Bishop.

If being employed as a Minister of Religion, officers should assess whether the proposed tasks to be completed align with those outlined in ANZSCO for standard Minister of Religion positions.

If the individual is employed in the specific role of the Bishop, it is expected that some of the tasks listed would be replaced by higher level managerial tasks, with the nominee responsible for planning, organising, directing and controlling processes within their religious institution.

Important:

- A MORLA should **not** be recommended for approval if the nominee is undertaking a more junior role and/or is a religious worker. The Temporary Activity (Subclass 408) visa is the appropriate visa for such lesser skilled religious workers.
- It would generally be expected that an organisation would have only one Minister of Religion per location / building (e.g. church in town x). The Department will, however, consider the size of the organisation (and related congregation) and its workforce composition on a case by case basis - if more than one overseas nominee is proposed by the Australian employer for that specific location / building.

4.12.4.2. Skills, qualifications and experience

Ministers of Religion must:

- be 'ordained' or have taken a 'profession to religious life' as a minister of religion;
and
- have minimum qualifications equivalent to an appropriate Australian Qualification Framework (AQF) bachelor degree;

OR

- have undertaken at least five years of relevant structured training or instruction*.

If employed in the role of a Bishop, the nominee must also have been ordained for at least five years and have a post-graduate degree.

***Note:** In most cases, nominees should be ordained and have an appropriate bachelor degree. Five years of structured training or instruction can, however, be accepted as an alternative to a bachelor degree. This is only appropriate where the nominee has done five years full-time formal training and the relevant religion does not

have an equivalent AQF bachelor degree available. Experience, lesser AQF qualifications, and volunteering in a lay position do **not** substitute for this criterion.

Officers must check that proposed nominees have these skills/qualifications at the LA request stage. If not, they should recommend the request be declined. These requirements are **not** negotiable under the existing industry template arrangements. In these cases, a company specific LA will also not meet the requirements.

4.12.5. Minister of Religion salary arrangements

It is a common theme in religious life to live in a vow of poverty, living simply and sharing personal gifts, time and resources with the community and those whom are ministered to. Where an organisation is able to demonstrate that a vow of poverty is required by their organisation, a concession to standard skilled visa salary requirements is available under the MORLA, without separate Ministerial approval being required.

For this concession to be approved, the organisation should, however, demonstrate that they can provide all living needs, including board and lodging, health, education, welfare and any other costs incurred by the Minister of Religion. This is critical in terms of ensuring that the nominee will not need to draw on Australian social services or charity institutions for basic living needs, and will not be at risk of worker exploitation.

Where the vow of poverty concession does not apply, standard skilled visa program salary requirements must be met with the exception that **non-monetary benefits** can be counted when assessing whether the annual earnings for the equivalent Australian worker and the nominee are at least at the level of TSMIT.

Requesting officers should, however, carefully assess agreement requests where the nominee will **not** be paid at least \$48,510 (i.e. 90% of the TSMIT) in monetary benefits to ensure that market salary rates are being met, and that the nominee will not need to draw on Australian social services or charity institutions for basic living needs, and will not be at risk of worker exploitation.

4.12.6. English requirements

Standard short term stream TSS requirements apply unless a concession is awarded because the nominee will be working in a monastic or cloistered environment and hence will have minimal contact with the community outside of their religious organisation.

ENS visa applicants must demonstrate English proficiency to the level of IELTS 5 with a score of at least 4.5 in each of the four test components or equivalent.

Additional English concessions may be available where the nominee is working in the role of a Bishop.

Officers must check that proposed nominees have the required level of English at the LA request stage. If not, they should recommend the request be declined. These requirements are not negotiable under the existing industry template arrangements.

4.13. Dairy Industry Labour Agreements

4.13.1. Overview

The table below summarises the different visa arrangements that are in place under the DILA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 29 April 2015 following consultations with industry regarding claimed shortages of skilled labour in the Australian domestic labour market that would limit industry growth. Only a temporary visa pathway is currently provided for.

4.13.2. Dairy Industry – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply, including labour market testing	LA request LMT also required at nomination stage
<u>Reliance on overseas workers</u>	This requirement will not generally be assessed unless there are significant concerns, given low numbers of overseas workers usually requested under this industry template	LA request
<u>Occupation</u>	Occupation must be Senior Dairy Cattle Farm Worker – see <i>section 4.14.3 Senior Dairy Cattle Farm Worker (Code 070499)</i> below	LA request – declarations only Nomination stage
<u>Salary</u>	Standard requirements apply	LA request – declarations only Nomination stage
<u>Skills</u>	Nominee must have at least: <ul style="list-style-type: none"> an AQF Certificate III, or equivalent qualifications as assessed by a registered training organisation, and demonstrate at least three years of recent and relevant work experience, or five years recent and relevant work experience. 	Visa application stage
<u>English</u>	Standard requirements apply	Visa application stage
<u>Permanent residence</u>	No permanent residence pathway included in template	N/A
<u>Age</u>	No age requirements for TSS visa	N/A

4.13.3. Senior Dairy Cattle Farm Worker (code 070499)

Overseas workers nominated under a DILA must be working in the occupation of Senior Dairy Cattle Farm Worker. A full assessment of tasks to be performed is not required at LA stage, with this to be assessed as part of any subsequent nomination application.

The tasks of a Senior Dairy Cattle Farm Worker under DILA are as follows:

- Plan all aspects of milk production processes including management and coordination of milking shed routines.
- Coordinate and implement reproductive programs, including artificial insemination and herd fertility management, detection of oestrous and pregnancy.
- Assist in controlled breeding experiments to develop improved livestock strains.
- Implement calving procedures, including the ability to physically conduct unsupervised internal assessments to minimise the incidence of still births or injuries to cow or calf.
- Plan and manage pastures and crops for livestock production and develop livestock feeding plans.
- Analyse produce to set and maintain standards of quality.
- Supervise animal health programs, handle sick or injured animals and maintain an optimal environment for the wellbeing of livestock consistent with the Australian Animal Welfare Standards and Guidelines – Cattle.
- Supervise work routines and staff performance of less experienced employees such as an assistant farmhand.
- Implement and monitor quality assurance procedures, ensuring compliance and that all relevant documentation is kept current.

- Operate milking plant and equipment in a safe manner, undertake multiple functions including reading and recording instrument information e.g. milk vat temperatures and cow numbers and matching cow ID to calves to produce a quality milk outcome.
- Operate a dairy recycling system.
- Calf feeding, including tubing colostrum.
- Assist with and/or performing irrigation works.
- Inspect livestock to gauge the effectiveness of feed formulae.
- Transport, handle and store chemicals; prepare and apply chemicals.
- Operate farm and dairy shed-related vehicles, plant and equipment.
- Identify and report equipment not operating normally; maintenance of plant and machinery.
- Where appropriately qualified, perform maintenance works on sheds, fixtures and fittings, fences and surrounds and install new or replacement equipment or fittings.
- Transport stock, feed and equipment, if appropriately licensed.
- Maintain records to ensure accurate information for stock and inventory control.
- Ensure food safety regulatory requirements are met.
- Contribute to and implement OHS requirements.
- Operate computer equipment and software packages requiring set-up and basic function operation.
- Coordinate the response to emergencies for both occupational health and safety emergencies and animal welfare emergencies.
- Participate in enterprise/industry training sessions and workshops as required.

4.14. Fishing Industry Labour Agreements

4.14.1. Overview

The table below summarises the different visa arrangements that are in place under the FILA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 21 July 2011 for the occupations of Deck Hand and Fishing Hand following the removal of these occupations for use under the then Temporary Work (Skilled) (Subclass 457) visa program. This followed several requests for LAs from individual fishing operators and advice industry groups that operators were unable to send out the full complement of vessels due to under staffing.

A further four occupations, outlined below, were added to the template following the approval of the then Minister for Immigration and Border Protection on 5 November 2017.

Only a temporary visa pathway is currently provided for under a DILA.

4.14.2. Fishing Industry – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply Evidence of labour market testing must accompany nominations lodged in accordance with this agreement. This evidence should meet TSS visa program requirements. In addition, where a nomination is lodged for a Ship's Engineer (Fishing Industry), a copy of relevant job advertisements must have been provided to the <i>Australian Institute of Marine Engineers (AIMPE)</i> . A signed copy of the contract with the nominee must be provided.	LA request LMT at nomination stage
<u>Reliance on overseas workers</u>	This requirement will not generally be assessed unless there are significant concerns, given the low numbers of overseas workers usually requested under this industry template	LA request
<u>Occupation</u>	Employers can only nominate overseas workers in the following occupations: <ul style="list-style-type: none"> • Deck hand (ANZSCO 899211); • Fishing hand (ANZSCO 899212); • Master Fisher (ANZSCO 231211); • Ship's Engineer (Fishing Industry) (Code 070499); • Ship's Master (ANZSCO 231213); • Ship's Officer (ANZSCO 231214). See more information regarding fishing industry occupations below at <i>section 4.15.13 Fishing industry occupations</i> .	LA request
<u>Salary</u>	Standard requirements apply but there are additional obligations on FILA sponsors as outlined below – see <i>section 4.15.13 Fishing industry salary requirements</i> .	LA request
<u>Skills</u>	Overseas workers in the following occupations are expected to meet the qualifications and experience requirements outlined in ANZSCO for these occupations: <ul style="list-style-type: none"> • Master Fisher (ANZSCO 231211); • Ship's Engineer (Fishing Industry) (Code 070499)*; • Ship's Master (ANZSCO 231213); • Ship's Officer (ANZSCO 231214). <p>*The skills, qualifications and employment background necessary for a Ships' Engineer (Fishing Industry) under this agreement, are the same as outlined in ANZSCO for the occupation of Ship's Engineer (ANZSCO 231212).</p> <p>Overseas workers recruited to deck hand and/or fishing hand positions are not required to have an AQF qualification, but should have all of the following:</p> <ul style="list-style-type: none"> • at least three years' recent relevant experience (evidenced by a signed sea-time or log book); • hold safety and rescue certificates compliant with the International Convention on Standards, Training, Certification and Watchkeeping for Seafarers 1978, as amended; • hold a first aid certificate which was awarded in the 12 months prior to the nomination. Where the first aid certificate was awarded more than 12 months prior to the nomination, the employer must ensure that the overseas worker attains an Australian first aid certificate within one year of commencing work with the employer. 	LA request – declarations only Visa application stage

<u>English</u>	Overseas skilled workers must meet English language requirements in place for the Short-term stream of the TSS visa unless they are nominated as Deck Hands or Fishing Hands. Concessions are available for these occupations as outlined below at section 4.15.5 English concessions for Deck Hands and Fishing Hands	Visa application stage
<u>Permanent residence</u>	No permanent residence pathway included in template	N/A
<u>Age</u>	No age requirements for TSS visa	N/A

4.14.3. Fishing industry occupations

Overseas workers nominated under a FILA must be working in one of the occupations listed above. A full assessment of tasks to be performed is not required at LA stage, with this to be assessed as part of any subsequent nomination application.

Overseas workers in the following occupations are expected to undertake the tasks outlined in ANZSCO for these occupations:

- Master Fisher (ANZSCO 231211);
- Ship's Engineer (Fishing Industry) (Code 070499)*;
- Ship's Master (ANZSCO 231213);
- Ship's Officer (ANZSCO 231214).

*The tasks expected to be undertaken by Ships' Engineer under this agreement, are the same as the tasks outlined in ANZSCO for the occupation of Ship's Engineer (ANZSCO 231212), however, the relevant tasks must be carried out on a vessel involved in fishing operations.

The tasks to be undertaken by **Deck and Fishing Hands** are as follows:

- Handling ropes and wires, and operating mooring equipment when berthing and unberthing.
- Standing lookout watches at sea and adjusting the ship's course as directed.
- Assisting with cargo operations using on-board equipment and stowing and securing cargo.
- Patrolling ships to ensure safety of the vessel, cargo and passengers.
- Performing routine maintenance and checks on deck equipment, cargo gear, rigging, and lifesaving and firefighting appliances.
- Attaching gear and fastening towing cables to nets.
- Casting and lowering nets, pots, lines and traps into water.
- Preparing lines, attaching running gear and bait, and setting lines into position.
- Hauling in fishing gear and removing fish and other marine life.
- Sorting, cleaning, preserving, stowing and refrigerating catch.

4.14.4. Fishing industry salary requirements

When requesting a FILA, organisations will need to declare that they will meet all relevant salary requirements, with:

- All overseas workers to be employed on a full-time basis.
- The monetary benefits of a nominee's annual earnings must **not** be less than:
 - the TSMIT, or
 - a percentage of catch – as would be paid to an Australian performing equivalent work in the approved sponsor's workplace at the same location, whichever is the higher amount.

A full assessment of these salary requirements will then be undertaken at nomination stage.

Note: A number of additional salary related sponsorship obligations also apply to FILA sponsors – these include:

- If an equivalent Australian is paid more than an overseas worker in any **12 month period** the employer must ensure all of the following occurs:
 - the employer must pay the overseas worker an additional amount;
 - this amount should equal the difference between the amount paid to the equivalent Australian and the amount paid to the overseas worker for the **12 month period**;
 - this amount is to be paid to the overseas workers in the month following the 12 month period.
- Any payments deducted from the overseas worker's salary can only be made with the written permission of the overseas worker.
- Employers **must** demonstrate that any deductions are consistent with the *Fair Work Act 2009* and/or local industrial instruments.

4.14.5. English concessions for deck and fishing hands

An English concession is available for these occupations **only**, with provision of one of the following test results acceptable to demonstrate sufficient English to perform the nominated occupations:

- an average test score of at least 4.5 in an IELTS;
- a total score of at least 32 in a TOEFL iBT;
- an overall test score of at least 30 in a PTE Academic;
- an overall test score of 147 in a CAE.

This is as long as the employer also:

- provides overseas workers with initial access to an interpreter during induction training, and flexible English language instruction options such as DVDs and phrasebooks;
- installs signage and providing training booklets for the overseas workers in both English and their native language;
- ensures that every overseas worker has sufficient English language proficiency to both:
 - enable them to take reasonable care of his or her own health and safety in the workplace and that of the people they work with;
 - understand his or her workplace and employment conditions

Organisations requesting a FILA will need to declare that the above requirements will be met as part of their request. A full assessment of whether English requirements are met for a particular nominee will then be undertaken at the visa application stage.

4.15. On-hire Industry Labour Agreements

4.15.1. Overview

The table below summarises the different visa arrangements that are in place under the OHLA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below in relation to particular requirements – where required.

These arrangements have been in place as of 1 October 2007, from which point onwards on-hire firms have been prevented from becoming a standard business sponsor and using the standard temporary skilled visa programs.

Additional changes were made to the OHLA template on 19 December 2017 to improve the integrity of these arrangements*.

Only a temporary visa pathway is currently provided for under an OHLA.

***Note:** As a further integrity measure and to ensure Australian workers are given priority, requesting organisations are now given standard nomination ceilings of either 20 per year (in their first agreement) or 50 per year (subsequent agreements and/or strong business case for first agreement). Approval of more than 50 per year will require a decision by the Minister personally.

4.15.2. On-hire – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply	LA request LMT at nomination stage
<u>Reliance on overseas workers</u>	The approved sponsor will aim to ensure that in any one year period overseas workers do not comprise more than a third of their workforce.	LA request
<u>Occupation</u>	On-hire employers can only nominate occupations that are listed on the List of eligible skilled occupations for the TSS visa program, for up to four years depending on the occupation.	Nomination stage
<u>Salary</u>	Standard temporary skilled visa requirements apply. In addition, overseas workers must be: <ul style="list-style-type: none"> engaged full time; paid by the on-hire company and not by a third party and the monetary benefits of the nominee's annual earnings for a 38 hour week must not be less than AU\$65,000. 	Nomination stage Declarations only at LA requested stage
<u>Skills</u>	Standard requirements apply	Visa application stage
<u>English</u>	Standard requirements apply	Visa application stage
<u>Permanent residence</u>	No permanent residence pathway included in template	N/A
<u>Age</u>	No age requirements for TSS visa	N/A

4.16. Meat Industry Labour Agreements

4.16.1. Overview

The table below summarises the different visa arrangements that are in place under the MILA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 2007, with substantial changes made to template following a review in 2014 and further changes made in 2018 to reflect the introduction of the TSS visa.

Both a temporary and permanent visa (after a transitional period of three years) pathway is provided for under a MILA.

4.16.2. Meat Industry – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply	LA request
<u>Reliance on overseas workers</u>	The Approved Sponsor will aim to ensure that in any one Year period overseas workers do not comprise more than a third of their Workforce.	LA request
<u>Occupation</u>	Employers can only nominate the occupation of 'skilled meat worker' – see <i>section 4.17.3 Skilled meat worker (code 070499)</i> below	LA request
<u>Salary</u>	Standard requirements apply. In addition, the sponsor must: <ul style="list-style-type: none"> employ overseas workers in full-time positions only and ensure that if the overseas worker is paid via an annualised salary that they receive a Top-Up, if over an annual period, an Australian worker receives a higher amount for performing equivalent work. 	LA request Nomination stage
<u>Skills</u>	Specific skills requirements apply under this agreement – see <i>section 4.17.4 Skills, qualification and experience</i> below.	LA request – declarations only Visa application stage
<u>English</u>	Overseas workers nominated under this agreement, who are unable to meet standard skilled visa program requirements, can be considered to have sufficient English to perform the nominated occupation if they: <ul style="list-style-type: none"> demonstrate an IELTS overall test score of at least 5.0 with no minimum test score or are a current subclass 457 visa holder who was not required to provide evidence of English language proficiency at the time of grant of their subclass 457 visa and provides evidence as prescribed in the Migration Regulations for meeting functional English. 	Visa application stage
<u>Permanent residence</u>	Permanent residence is available under the ENS visa program after a three year transition period	Visa application stage
<u>Age</u>	<ul style="list-style-type: none"> No age requirements for TSS ENS visa nominees can be up to 50 years old – i.e. there is an age concession. 	Visa application stage
<u>Other</u>	Any TSS nomination must be accompanied by a statement indicating that within a period of three months prior to the date of application they have not: <ul style="list-style-type: none"> permanently terminated the employment of more than five percent of their Australian workforce (except in circumstances of demonstrated misconduct or unlawful conduct); stood down their Australian workforce for more than seven consecutive days at any single given time; or reduced the shifts of their Australian workforce to less than 50 per cent of the regular shift quota and/or to part-time hours unless requested by the Australian employees. 	Nomination stage

4.16.3. Skilled Meat Worker (code 070499)

Overseas workers nominated under a MILA must be working in the occupation of a Skilled Meat Worker. A full assessment of tasks to be performed is not required at LA stage, with this to be assessed as part of any subsequent nomination application.

The tasks of a Skilled Meat Worker, which include the duties of ANZSCO occupations Slaughterer and Meat Boner and Slicer are as follows:

- Stuns and kills livestock, and prepares carcasses for further processing by removing internal organs and hides.
- Operating switching controls to direct and drop carcasses and meat cuts from supply rails to boning tables.
- Cutting meat to separate meat, fat and tissue from around bones.
- Washing, scraping and trimming foreign material and blood from meat.
- Cutting sides and quarters of meat into standard meat cuts, such as rumps, flanks and shoulders, and removing internal fat, blood clots, bruises and other matter to prepare them for packing and marketing.
- Operating restrainer and stunning equipment.
- Severing jugular veins of stunned animals to drain blood and facilitate dressing.
- Trimming and removing head meat and severing animal heads.
- Slitting open, eviscerating and trimming animal carcasses.
- Slaughter livestock according to procedures required by religious customs.

4.16.4. Skills, qualifications and experience

To be granted a visa under MILA arrangements, overseas workers **must**:

- have been assessed and verified by a *National Meat Industry Training Advisory Council (MINTRAC)* registered assessor, or an assessor approved by the Commonwealth, with a *Certificate IV in Training and Assessment* experienced in meat processing, to be skilled meat workers with a minimum skill level commensurate with the MINTRAC referenced AQF Certificate III in meat processing

and:

- demonstrate a minimum of three years skilled work experience obtained at a meat processing establishment acceptable to both the Department and requesting organisation **or**
- have been working in Australia on a subclass 457 or TSS visa at an Australian meat processing establishment acceptable to the Department and requesting organisation for at least nine months prior to being nominated.

Organisations requesting a MILA need to declare that they understand the above requirements to be met, as it is their responsibility to ensure that overseas workers nominated under their agreement have the required skills and qualifications. A full assessment of whether skills requirements are met for a particular nominee will then be undertaken at the visa application stage.

MILA sponsors are also expected to ensure that:

- their MINTRAC registered assessor(s) is assessing overseas workers as per MINTRAC guidelines and that there are transparent and audited processes in place;
- MINTRAC assessments are undertaken utilising the most recent training package available from MINTRAC;
- the skills assessment documentation provided to the Department clearly demonstrates that the overseas worker has been successfully assessed to have a minimum skill level commensurate with a AQF Certificate III in Meat Processing, and includes:
 - a skills assessment certificate signed by a MINTRAC registered overseas skilled meat worker assessor
 - a record of completed assessment of each of the core units and relevant elective units of the required qualification [**note**: that the current AQF Certificate III has seven core competencies and at least five elective units to a total value of 54 points].

4.17. Pork Industry Labour Agreements

4.17.1. Overview

The table below summarises the different visa arrangements that are in place under the PILA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 2014, with changes made to the template in 2018 to accommodate the introduction of the TSS visa.

Both a temporary and permanent visa (after a transitional period of three years) pathway is provided for under a PILA.

4.17.2. Pork Industry – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply	LA request
<u>Reliance on overseas workers</u>	This requirement will not generally be assessed unless there are significant concerns, given low numbers of overseas workers usually requested under this industry template	LA request
<u>Occupation</u>	Employers can only nominate the occupation of 'skilled meat worker' – see section 4.18.3 Senior stockperson (piggery) (code 070499) below	LA request
<u>Salary</u>	Standard requirements apply	LA request
<u>Skills</u>	Specific skills requirements apply under this agreement – see section 4.18.4 Skills, qualification and experience below.	Visa application stage
<u>English</u>	Standard requirements apply	Visa application stage
<u>Permanent residence</u>	Permanent residence available after a transition period of three years	N/A
<u>Age</u>	Standard requirements apply	N/A

4.17.3. Senior Stockperson (Piggery) (code 070499)

Overseas workers nominated under a PILA must be working in the occupation of a Senior Stockperson (Piggery). A full assessment of tasks to be performed is not required at LA stage, with this to be assessed as part of a subsequent nomination application.

The tasks of a Senior Stockperson (Piggery) are as follows:

- Supervise the site and facilities in terms of the required human resources, physical resources, safety requirements, consumables, documentation and measurement devices.
- Provide overall maintenance and compliance of the *Company Quality Assurance* program for the site ensuring that all relevant documentation is kept current.
- Supervise data collection and recording so information is accurate to aid stock and inventory control.
- Undertake specific tasks assigned by management to ensure that environmental, quality and safety goals are met.
- Implement preventable maintenance programs to reduce planned and unplanned down time.
- Supervise trial sheds, collect and record data in accordance with trial protocols.
- Selection of breeding stock and/or pigs for sale.

- Supervision and participation of daily inspection of livestock, such that the animals are appropriately fed, watered, environmental parameters are fulfilled. The senior stockperson (piggery) in this case would work with and supervise a less experienced stockperson.
- Supervision and participation of daily inspection of livestock, ensuring compromised animals are individually assessed, identified, treated and record in accordance with the *Company Herd Health Plan* and the industry's *Model Code of Practice*.
- Euthanise sick or injured stock in a humane manner and in accordance with the Model Code of Practice for Animal Welfare – Pigs 3rd edition.
- Conduct post mortem examinations of deceased stock and report findings.
- Collect boar semen at an artificial insemination laboratory.
- Undertake processing duties within the artificial insemination laboratory.
- Supervision and participation in the mating of animals via individually supervised mating or through Artificial Insemination.
- Supervision of the birthing process, including the ability to physically conduct unsupervised internal assessments of females during parturition to minimise this incidence of still births.
- Participate in company/industry training sessions and workshops as required.
- Perform any other duty as required by the Unit Manager.

4.17.4. Skills, qualifications and experience

Overseas workers nominated under the PILA **must** have at least:

- an *AQF Certificate III in Agriculture (Pig Production)*, or equivalent qualifications as assessed by a registered training organisation; and demonstrate at least three years of recent and relevant work experience in a medium to large size commercial piggery; or
- five years' recent and relevant work experience.

Organisations requesting a PILA will need to declare that the above requirements will be met as part of the LA request. A full assessment of whether skills requirements are met for a particular nominee will then be undertaken at the visa application stage.

4.18. Restaurant (Fine Dining) Industry Labour Agreements

4.18.1. Overview

The table below summarises the different visa arrangements that are in place under the RILA template (i.e. how they differ to standard skilled visa program arrangements). Additional advice is also provided below where required in relation to particular requirements.

These arrangements have been in place since 2015 for the occupations of Cook and Chef, with the occupation of Trade Waiter made available from November 2016 onwards. They were designed to assist the fine dining industry to retain staff for longer periods and attract skilled staff who see the industry as a career – with a high turnover of local staff experienced.

Both a temporary and permanent visa (after a transitional period – see below) pathway is provided for under a RILA.

4.18.2. Restaurant Industry – different requirements

Standard requirement	Varied/additional requirements	Assessed at which stage
<u>Australian registered business</u>	Normal requirements apply and in addition the requesting organisation must be a Fine Dining restaurant – see <i>section 4.19.2 Definition of fine dining</i> below.	LA request
<u>Good standing</u>	Normal requirements apply	LA request
<u>Labour market Need</u>	Normal requirements apply	LA request
<u>Reliance on overseas workers</u>	To be assessed	LA request
<u>Occupation</u>	<p>Overseas workers nominated as Chefs or Cooks are expected to perform the tasks outlined in ANZSCO for these occupations.</p> <p>Tasks of a Trade Waiter, which include the duties of the ANZSCO occupation of Waiter, along with certain duties as outlined under the Restaurant Industry Award 2010, are:</p> <ul style="list-style-type: none"> • setting and arranging tables • taking reservations, greeting customers and presenting them with menus and beverage lists • recommending dishes and wines to complement food (particularly in fine-dining establishments) • taking orders and relaying them to kitchen and bar staff • serving food and beverages • opening bottles and pouring beverages including mixing liquor and assisting in the cellar • clearing tables and returning dishes and cutlery to the kitchen • removing empty bottles and used glasses from tables, and refilling and replacing glasses • collecting payments for sales and operating point of sales machines and cash registers. 	LA request
<u>Salary</u>	Salary requirements in place for the TSS and ENS visa programs must be met, subject to the concession that the earnings of the overseas worker and the equivalent Australian worker must only be equal to, or greater than, 90% of <i>TSMIT</i>	LA request
<u>Skills</u>	<p>Standard TSS visa requirements apply in terms of skills, qualifications and experience where the overseas worker is nominated as a Chef or a Cook.</p> <p>Overseas workers nominated as a Trade Waiter must have :</p> <ul style="list-style-type: none"> • an AQF certificate III in Hospitality (Restaurant Front of House), or equivalent qualification as assessed by a Registered Training Organisation (RTO) and • at least three years' experience. 	Visa application stage
<u>English</u>	<p>Standard requirements apply. Overseas skilled workers nominated for:</p> <ul style="list-style-type: none"> • a TSS visa, must meet English language proficiency in place for the Short-term stream of the TSS visa 	Visa application stage

	<ul style="list-style-type: none"> an ENS visa, must meet standard ENS visa English language requirements. 	
<u>Permanent residence</u>	Permanent residence available under the ENS visa program after a transitional period of two years for Chefs or Cooks, and three years for Trade Waiters.	N/A
<u>Age</u>	Standard requirements apply	N/A

4.18.3. Definition of a fine dining restaurant

For a RILA request to be approved, the employer must be a Fine Dining Restaurant. This is defined as an establishment that offers a premium quality dining experience, and has most of the following attributes:

- silver service;
- employing a maître d';
- uniformed, highly trained staff;
- industry recognition (for example recent awards);
- visually appealing quality food at premium prices;
- dress code;
- quality websites;
- reservation requirements.

Officers should confirm that the restaurant meets these requirements before proceeding to assess the request.

4.19. Designated Area Migration Agreements

4.19.1. Overview

A DAMA is an overarching 'head' agreement signed with a State or Territory Government and/or regional authority (i.e. a Designated Area Representative (DAR)) that is in operation for a particular region of Australia. Individual LAs can then be executed under the DAMA with particular employers in that region.

DAMAs are intended to help support economic performance in regional areas of Australia by providing flexibility for states, territories and 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.

The requirements and obligations of a DAMA are underpinned by the same principles underpinning the LA program. That is, Australian workers are expected to be provided with the first opportunities through the provision of training and employment opportunities, thereby reducing future reliance on temporary overseas workers through building capacity in the Australian labour market.

4.19.2. Process for establishing a new DAMA

New DAMAs would be negotiated between the Department and the relevant state or territory governments or statutory authorities, regional or local council, with the approval of the Minister required before a head agreement is executed.

Under current policy, any requests to establish a new DAMA must be endorsed by the relevant state/territory government prior to submitting to the Department. This is, however, under review.

Regardless, the area must be able to appoint a DAR who will have responsibility for oversight of the head agreement for the relevant location and 'vet' individual agreement requests under the head agreement before they are sent through the Department for processing.

The DAR:

- must be an incorporated entity which has the capability and capacity to undertake its duties and responsibilities;
- should have appropriate governance arrangements in place; and
- can be impartial to all employers within the designated area.

In considering whether a new DAMA is appropriate, the Department will consider, alongside the broader objectives of the LA program whether:

- local employers have genuinely sought to fill the positions from the local labour market;
- the requested occupations and number of overseas workers is reasonable in the context of local labour market conditions;
- any concessions requested are supported and any risks can be appropriately managed;
- the designated area is experiencing skills and labour shortages in the proposed occupations;
- the number of overseas workers requested is consistent with these shortages;
- the recruitment of overseas workers is only intended to supplement the Australian workforce within the designated area and that the proposed DAMA will not undermine employment and training opportunities for Australians;
- relevant Commonwealth or state/territory government strategies to assist unemployed, retrenched and disadvantaged Australian have been considered;
- there will be sufficient infrastructure and community services in the designated area to support the proposed overseas workers.

Note: before a new DAMA will be considered, it is expected that the DAR will have consulted with all of the below stakeholders, however, this is currently under review:

- key union, local/state government and business stakeholders;
- other agencies or community groups that may be impacted by the proposed agreement (**Note:** this may be important where overseas workers and their families are located in a regional or remote part of Australia and there may be community concerns about possible impacts on infrastructure, for example schools and housing, or additional burden on local health services);
- the relevant state work safety authority where additional English language concessions are sought (see English language).

4.19.3. DAMA requirements and concessions

4.19.3.1. Mobility of overseas workers

Approved sponsors under a DAMA are not able to transfer workers outside the designated regional area.

Sponsored overseas workers may be able to travel outside the designated area for work related reasons for short periods of time, where their work is consistent with the declared duties of their position. Employers should seek the agreement of the DAR if an overseas worker will be working outside the designated area for more than three months in a twelve month period.

4.19.3.2. Concessions

Where concessions are requested, evidence must be provided that any risks can be appropriately managed. Evidence which must be provided may include, but is not limited to, consultation with relevant state/territory workplace safety authorities.

4.19.3.3. Occupations and ceilings

Occupations must be at ANZSCO Skill Levels 1 – 4.

4.19.3.4. Employer and overseas worker support

Where a new DAMA head agreement is requested, details should be provided of how the DAR proposes to support employers and facilitate the integration of overseas workers in their local communities. This could include the provision of information on workplace rights; basic services in the local area such as health; emergency and educational services; community activities such as sporting groups and religious services; the promotion of departmental information to employers regarding their sponsorship obligations; and services which may assist in managing any identified risks.

4.19.3.5. Salary

The salary offered to overseas workers under a DAMA must meet TSMIT unless a concession is sought.

Concessions up to 10% below TSMIT may be considered, provided risks associated with hardship can be managed given the additional financial burden on overseas workers. For example, a TSMIT concession could be sought where the cost of living in the designated area is commensurately lower than the national average. A concession could apply to certain localities within the designated area only.

Regardless of any TSMIT concession, the program requirements for employers to pay at least market rates, and to provide foreign workers with at least the same terms and conditions will apply.

4.19.3.6. Skills

While concessions will be considered, overseas workers will be expected to meet or exceed ANZSCO requirements and be able to transfer skills to Australian workers. Registration and licensing requirements will continue to apply.

4.19.4. Processing individual DAMA requests

The Department assesses individual requests for a LA under a DAMA in a streamlined manner, with the onus on the DAR to ensure that requirements are met. Departmental checks will focus on any adverse information available on Departmental systems regarding the requesting organisation – information that the DAR may not be aware of.

4.20. Approved sponsors – next steps

4.13.1. Types of visas

If approved, the LA will outline the type of visas (i.e. TSS and/or ENS visas) that can be granted under the agreement.

4.13.2. Ceilings and reporting

An LA will also include a 'nomination ceiling' – that is, a maximum number of TSS and/or ENS nominations that can be approved in each year of an agreement.

4.13.3. Nominating overseas workers

An organisation can generally not lodge a nomination application until there is an executed LA in place. This may, however, be facilitated where LA negotiations are underway and the nominee is already in Australia and their visa is about to expire.

As part of the nomination application, the approved sponsor will be required to demonstrate they meet the conditions set out in their LA for nominating an overseas worker.

4.13.4. Applying for a visa

Once a nomination application has been lodged, the overseas worker can lodge their individual visa application with the Department, or at the same time.

4.20.1. Requests for variation

In most cases, LA sponsors will request a variation because they are seeking to increase the nomination ceilings for a particular year – particularly where ceiling numbers were only agreed to ‘up front’ for a limited number of years. These requests are registered in ICSE under the LA Assessment Type event.

Where a variation to ceiling numbers is needed, the sponsor is required to provide the following documentation to the Department so that they consider whether it is appropriate for a Deed of Variation to be prepared and executed:

- updated workforce plans;
- evidence of labour market testing that has been undertaken during the last 12 months;
- evidence of salary arrangements for, and amounts paid to, Primary Sponsored Persons;
- details of any breaches of immigration or other Commonwealth or State/Territory laws;
- the dates, numbers and occupations of any and all Australian workers who have been retrenched or made redundant in the past 12 month period; and
- any additional information requested by the Minister.

Variations to an LA cannot commence until a new written document is executed by or on behalf of all parties.

Note:

- The Department is currently reviewing these variations processes to streamline them where possible.
- Different arrangements are currently in place for MILA sponsors in terms of requesting ceilings for ENS visas – see [section 4.17 The Meat Industry Labour Agreement arrangements](#).

4.13.5. Sponsorship obligations

If a LA is approved, the organisation must comply with their sponsorship obligations as outlined in their agreement. These will largely mirror those which apply under the standard business program. Additional obligations may also apply.

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.

4.13.6. Suspending or terminating labour agreements

The Department takes failure to comply with the terms of a LA very seriously. Consequences for breaching the terms and conditions of a LA, including the sponsorship obligations, may include suspension or termination of the agreement or other sanctions under the Migration Act 1958, which can occur at any point during the term of the LA.

5. Accountability and responsibilities

Skilled and Family Visa Program Branch is responsible for monitoring, reviewing and updating this PI in line with legislative and regulatory changes.

6. Statement of Expectation

This PI under the PPCF sets out guidance and directions to workers on how to implement the Department's policy.

It is expected that all workers who are subject to this PI will have due regard to it and will only depart from it if:

- a) the departure is reasonable and justified in the circumstances;
- b) all risks have been considered; and
- c) approval has been sought and responsibility accepted for documenting the justification for the decision.

Workers are required to comply with all reasonable and lawful directions contained in this PI. Failure to comply with a direction may be considered a breach of the Australian Public Service Code of Conduct (for APS employees) or the *Professional Standards Secretary's Direction* under section 55 of the *Australian Border Force Act 2015* (for non-APS employees).

All records created as a result of this procedure must be managed in accordance with the Records Management Policy Statement. Records created as a result of this policy/procedure must be saved in TRIM RM8 or an approved business system.

7. Related Framework documents

- [Standard business sponsorship applications](#)
- [Temporary Skill Shortage visa \(subclass 482\) – nominations](#)
- [Temporary Skill Shortage visa \(subclass 482\) – visa applications](#)
- [Regulation 5.19 - Approval of nominated positions \(employer nomination\)](#)
- [Employer Nomination Scheme \(subclass 186 visa\) – visa applications](#)
- [Regional Sponsored Migration Scheme \(subclass 187 visa\) – visa applications](#)
- [Adverse information – Division 1.2, Regulation 1.13A and B](#)
- [Sponsorship compliance framework – Sponsorship obligations](#)

8. References and legislation

XXX

9. Consultation

1.1. Internal consultation

The following internal stakeholders were consulted during the development of this PI:

- Economic Policy Branch
- National Compliance Program
- Legal Opinions
- The skilled visa processing network
- Sponsor Monitoring Unit
- Records Management
- Professional Standard and Integrity Branch

1.2. External consultation

N/A

10. Document details

BCS Category/Function	Strategic Management and Governance -> Policy Framework.
BCS Sub-Category/Sub-Function	N/A
Period of Effect	Three years from date of original approval

1.3. Document change control

Version number	Date of issue	Author(s)	Brief description of change
0.1	1/8/2018	Cathy Milfull	New Procedural Instruction

1.4. Approval

Approved by:	Cathy Milfull, A/g Assistant Secretary, Skilled and Family Visa Program Branch
Approved on (date):	X/9/2018