



## Appendix E: 457 eligibility requirements and sponsorship undertakings<sup>1</sup>

### 457 visa: key eligibility requirements

#### Step 1: Sponsorship

There are two types of sponsorship:

- Standard Business Sponsorship (SBS)
- Overseas Business Sponsorship (OBS)

**Standard Business Sponsorship (SBS):** Allows Australian businesses to meet their immediate skill needs through sponsorship of overseas skilled workers to work in nominated positions in their business.

A Standard Business Sponsorship is assessed as to whether the employment a 457 visa entrant will be of **benefit to Australia** by:

- creating or maintaining employment opportunities for Australians,  
**or**

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<sup>1</sup> Attachment F, 'Subclass 457 key eligibility requirements' and Attachment G, 'Sponsorship undertakings', Commonwealth Government, *Submission No. 33*, pp. 67-69 and pp. 70-71.

- expanding Australian trade, **or**
- improving Australian business links to international markets, **or**
- contributing to the competitiveness of sectors within the Australian economy.

The employer must also show that their business operations will:

- introduce or use a new technology/business skill; **or**
- have a record of, or commitment to training Australians in its operations.

The sponsoring business must also be:

- lawfully and actively operating in Australia,
- the direct employer or a company related to the direct employer,
- not known to have an adverse business background (including the individuals in the company),
- complying with Australian immigration laws, **and**
- able to comply with the Sponsor's undertakings.

**Overseas Business Sponsorship (OBS):** OBS is for businesses that have no formal operating base or representation in Australia, under this sponsorship they may apply to bring employees to Australia to do one of the following:

- establish a branch or other business activity such as joint ventures, agency distributorships or subsidiary branches in Australia
- fulfil obligations for a contract or other business activity in Australia.

An Overseas Business Sponsorship (OBS) is assessed as to whether the sponsor is actively and lawfully operating a business outside Australia, and will be the direct employer.

In addition they must demonstrate that the employment in Australia of the visa holder would contribute to:

- the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
- expansion of Australian trade in goods or services; or
- the improvement of Australian business links with international markets; or

- competitiveness within sectors of the Australian economy.

## Step 2: Nominations

The employer must nominate the position to be filled. The nomination process is to identify the position the employer is seeking and to assess whether it meets the minimum skill and salary requirements.

Additional factors are considered for regionally certified positions. See 'Regional 457 visa'.

Approved nominations for positions the employer wishes to fill are valid for 12 months or until the position is filled, whichever is earlier. Preferably the nominations should be lodged with the sponsorship application.

## Step 3: Visa application

The visa process is to:

- determine if the applicant has the personal attributes and relevant experience to undertake the nominated position
- ensure the applicant meets health and character requirements
- ensure employee is aware of the salary they are to be paid.

Visa applicants linked to Australian sponsors can lodge online through eVisa system.

Visa applicants linked to offshore sponsors must lodge at their nearest Australian mission.

Primary applicants have mandatory condition 8107 imposed in their visa. This restricts them to work in the position they were nominated for and to remain with the sponsoring employer.

Visa validity is for up to 4 years and is linked to the period of vacancy. Where an employee seeks to work for another employer, they must first apply for a new visa (associated with a sponsorship and nomination). The visa application can (in the case of a standard business sponsorship) be made using an application form or online. The visa applicant is assessed against the duties and the requirements for the position. The principal visa applicant is issued with a visa condition 8107 restricting their work to the sponsor.

Secondary applicants have unlimited work and study rights. Eligible family members of the employee may apply with the employee or separately. If they

apply separately, they must complete a separate application form and pay a separate application charge.

## **Regional 457 visa**

Recognising the special skill needs of regional Australia, the government has arrangements in place to allow regionally based employers to access reduced skill and salary requirements where the business has sought certification by a local Regional Certifying Body (RCB). RCBs are bodies based in regional Australia that have been recommended for approval by State and Territory Governments to certify regional nominations. They include State, Territory and local government authorities and a range of other bodies.

RCBs certify that:

- the tasks of the nominated position correspond to the tasks of an occupation in the Australian Standard Classification of Occupations (ASCO) major groups 1-7, as Gazetted
- the position is a genuine, full-time position that is necessary to the operation of the business
- the position cannot reasonably be filled locally
- the wages or salary for the position will be at least the minimum level required under the relevant Australian laws and awards and at least the minimum salary level that applies to the position (whichever is higher)
- the working conditions will meet the requirements under relevant Australian laws and awards.

Which areas are eligible?

All areas of Australia are eligible for regional arrangements except for Brisbane, the Gold Coast, Newcastle, Sydney, Wollongong, Melbourne and Perth. If the employee sponsored to work in a regional area, is found to be living or working in a nonregional location then their visa may be cancelled.

## **Sponsorship undertakings**

(1) For subsection 140H(1) of the Act, an applicant for approval as a standard business sponsor must make the following undertakings:

- a) to ensure that the cost of return travel by a sponsored person is met;
- b) not to employ a person who would be in breach of the immigration laws of Australia as a result of being employed;
- c) to comply with its responsibilities under the immigration laws of Australia;
- d) to notify Immigration of:
  - (i) any change in circumstances that may affect the business's capacity to honour its sponsorship undertakings; or
  - (ii) any change to the information that contributed to the applicant's being approved as a sponsor, or the approval of a nomination;
- e) to cooperate with the Department's monitoring of the applicant and the sponsored person;
- f) to notify Immigration, within 5 working days after a sponsored person ceases to be in the applicant's employment;
- g) to comply with:
  - (i) laws relating to workplace relations that are applicable to the applicant; and
  - (ii) any workplace agreement that the applicant may enter into with a sponsored person, to the extent that the agreement is consistent with the undertaking required by paragraph (i);
- h) to ensure that a sponsored person holds any licence, registration or membership that is mandatory for the performance of work by the person;
- i) to ensure that, if there is a gazetted minimum salary in force in relation to the nominated position occupied by a sponsored person, the person will be paid at least that salary;
- j) to ensure that, if it is a term of the approval of the nomination of a position that a sponsored person must be employed in a particular location, the applicant will notify Immigration of any change in the location which would affect the nomination approval;
- k) either:
  - (i) for an application made before 1 November 2005 – to pay all medical or hospital expenses for a sponsored person (other than costs that are met by health insurance arrangements); or
  - (ii) for an application made on or after 1 November 2005 – to pay all medical or hospital expenses for a sponsored person arising from treatment administered in a public hospital (other than expenses that are met by health insurance or reciprocal health care arrangements);
- l) to make any superannuation contributions required for a sponsored person while the sponsored person is in the applicant's employment;

- m) to deduct tax instalments, and make payments of tax, while the sponsored person is in the applicant's employment;
- n) to pay to the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to a sponsored person.