

TEMPORARY SKILL SHORTAGE VISA

SUBCLASS VISA 482 (PREVIOUSLY SUBCLASS 457 VISA)

What are the changes?

On **11 March 2019** the federal government made substantial changes to the 482 visa programme.

The changes mean that the occupation of Dairy Cattle Farmer is now on the Regional Occupation List rather than the Short-Term Skilled Occupations List (STSOL). This list gives access to 482 visas (TSS visas) with up to a 4-year term and possibility of renewal for up to a further four years.

This is a skilled visa for high level managers with a bachelor degree qualification or a minimum of at least 5 years' experience in the industry. See below for further information about what is meant by "skilled worker" for the purposes of this visa.

From **27 April 2021**, the English language requirement for the 482 visa requires a score of at least 5 overall with a minimum of four in each test component.

There is a two-step process – approval of the employer as a sponsor and nomination of the visa applicant.

Note: Current 457 Visas will continue until their expiry unless the visa holder changes employer or seeks to apply for a further 457 visa.

From **December 2017**, the Department of Home Affairs commenced collection of tax file numbers of TSS subclass 482 visa holders to enable data matching with the ATO to ensure that TSS visa holders are paid the nominated salary.

There is a pathway to permanent residency under the standard Skilled Employer Sponsored Regional (SESR) Visa, subclass 494 visa if the employee has worked for the employer in regional Australia for at least three years. Note that this visa requires an IELTS (International English Language Testing System) score of at least 5 overall and at least 4.5 in each test component.

Training requirements

The **training requirements** changed as of 12 August 2018.

From that date employers nominating a worker with a TSS visa will be required to pay a contribution to a "Skilling Australians Fund" (SAF).

The amount is \$1,200 per year for small businesses with a turnover of less than \$10m and \$1,800 for other businesses payable in full when the worker is nominated and for each year of the visa.

If the sponsored employee leaves the employment within the first 12 months of employment where the visa period was for more than 12 months the sponsoring employer will be eligible for a refund of the SAF levy for the unused full years.

The new sponsoring employer will be required to pay the levy for the intended period of the employment of the overseas worker at the time of lodging the nomination. If the sponsored worker leaves after the first 12 months of employment the employer may be eligible for a refund depending on the circumstances.

Temporary Skill Shortage Visa (TSS visa subclass 482)

This visa allows the visa holder to:

- work in Australia for up to four years;
- bring their family to work or study in Australia;
- travel in and out of Australia as often as they want to.

Key points

Eligibility Requirements for the applicant:

The Applicant can be in or outside Australia when they lodge their application. The Applicant must:

- hold a valid passport;
- be a skilled worker (see below);
- meet the skill requirements (see below) for the nominated occupation;
- meet registration and licensing obligations;
- meet the English language requirements (see below);
- have been nominated by an approved business (see below);
- meet the health requirements (see below);
- meet the character requirements (see below);

What is a skilled worker?

A skilled worker is defined to mean a worker who is working in an occupation which is an approved occupation on the Short Term Skilled Occupation List

For the dairy industry the only occupation on this list is that of dairy cattle farmer.

This is a skilled visa for high level managers with a bachelor degree qualification or a minimum of at least five years' experience in the industry.

Practically speaking, these are the high level managers who have responsibility for directing and overseeing farm activities and organising and conducting farming operations such as Dairy Farm Business Managers, Dairy Farm Herd Managers, Pasture Managers and Dairy Farm Production Managers.

Note: The Department of Home Affairs does not have the separate Short Term Skilled Occupation List on its website. Rather it is combined with the Medium and Long Term Strategic Skills Lists. For a complete copy of these lists go to immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list

Skill requirements

The Applicant must be able to show that they have the skills and experience necessary to work in the nominated occupation. This may involve undergoing a skills assessment.

What are the English language requirements?

Applicants need to prove that they can speak, write and understand a sufficient level of English while they are in Australia. The International English Language Testing System (IELTS) and the Occupational English Test (OET) are used to determine English language proficiency.

The Applicant must have English language proficiency that is equivalent to:

- an International English Language Testing System (IELTS) test score of at least five with a score of at least 4 in each of the four test components of speaking, reading, writing and listening, or
- a score of at least 'B' in each of the four components of an Occupational English Test (OET).

For further information,

immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions#

What are the Health requirements?

Applicants and dependent family members must meet certain health requirements. The health examinations required depend on personal circumstances, including the period of stay, country of citizenship, time spent in another country during the last five years and intended activities in Australia. The results of health examinations are generally valid for 12 months. This process can be undertaken before lodgment of the visa application.

For further information on health requirements, visit (select 482 from the dropdown menu) immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions#

What are the Character requirements?

Applicants must meet certain character requirements and provide a police certificate from each country they have lived in for 12 months or more during the past 10 years after they turned 16 years of age. This also applies to all dependent family members in the application who are older than 18 years of age.

For further information about character requirements, visit immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/see-your-visa-conditions#

What are the employment conditions?

Visa holders are required to:

- work in the occupation for which they were nominated;
- work for the sponsor who nominated the position, or an associated entity of the sponsor;
- not cease employment for more than 90 consecutive days.

Changing employers

If the visa holder stops working for their sponsor, they must do one of the following within 90 days:

- find another employer to sponsor them (the sponsor needs to lodge a nomination);
- apply for a different visa;
- make arrangements to leave Australia.

Health care costs

Visa holders are responsible for all of their health costs while they are in Australia. They will not be covered by Australia's national health scheme (Medicare) unless their country has a reciprocal health care agreement (see below) with Australia.

Reciprocal health care agreements

The Australian Government has agreements with New Zealand, the United Kingdom, the Republic of Ireland, Sweden, the Netherlands, Finland, Italy, Belgium, Malta, Slovenia and Norway.

All applicants must have adequate health insurance unless they are covered by Medicare and this insurance must also cover family members.

Sponsorship

This is a sponsored visa. Before the applicant can apply for the visa, the prospective employer must do the following:

- become an approved sponsor (see below);
- nominate the applicant for a position (see below)

Becoming a sponsor

To become a sponsor, you must be able to show that your business:

- is a lawfully operating business;
- meets training requirements (See above);
- agrees to the number of subclass 482 workers to be nominated;
- have no relevant adverse information (See below) against your business;
- Australian businesses must also demonstrate a strong record of or commitment to employing local labour as well as non-discriminatory recruitment practices.

What is adverse information?

Adverse information is information that reveals that a business, or a person associated with the business:

- has become insolvent within the meaning of subsections 5(2) and (3) of the Bankruptcy Act 1966 and section 95A of the Corporations Act 2001;
- in relation to a Commonwealth, state or territory law:
- has been found guilty by a court of an offence;
- has been found to have acted in contravention of the law by a competent authority;
- has been the subject of administrative action (including being issued with a warning) by a competent authority;
- is under investigation, subject to disciplinary action or subject to legal proceedings.
- have given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular

The Commonwealth, state or territory law must be about:

- discrimination;
- immigration;
- industrial relations;
- occupational health and safety;
- people smuggling and related offences;
- slavery, sexual servitude and deceptive recruiting;
- taxation;
- terrorism;
- trafficking in persons and debt bondage.

When is adverse information relevant to an application?

Adverse information is relevant if it:

- raises doubts about a person's suitability as an approved sponsor;
- is about something that happened in the previous three years;
- is known to the Department.

Sponsorship Obligations

Approved sponsors are required to meet certain sponsorship obligations. Some obligations apply beyond the term of sponsorship approval.

These obligations help protect overseas skilled workers from exploitation. The obligations also ensure the program is being used to meet genuine skills shortages, and not to undercut local labour wages and conditions.

Sponsors must:

- cooperate with inspectors;
- ensure equivalent terms and conditions of employment (see below);
- keep records;
- provide records and information to the Minister;
- tell the Department when certain events occur;
- ensure the visa holder participates in the nominated occupation, program or activity (see below)
- not recover from, transfer or charge certain costs to another person;
- pay travel costs to enable sponsored people to leave Australia (see below);
- pay costs to remove unlawful non-citizens (see below);
- provide training to Australians and permanent residents (see above).

Ensure equivalent terms and conditions of employment

If you are a standard business sponsor, the terms and conditions of employment for the person you have sponsored must be no less favourable than those you provide, or would provide to an Australian performing equivalent work in the same location.

This obligation does not apply to a sponsor if the annual earnings of their sponsored visa holder are equal to, or greater than AUD\$250,000.

Ensure that the visa holder participates in the nominated occupation, program or activity

You must ensure that the person you have sponsored participates only in the occupation, program or activity for which you nominated them.

If you are a standard business sponsor, you must employ the person you have sponsored under a written contract of employment. They cannot work for another business, and you cannot supply them to another business. If you were lawfully operating a business in Australia at the time you were approved as a standard business sponsor, the person may work for an associated entity.

Pay travel costs

Pay travel costs means that you must pay reasonable and necessary travel costs to enable the sponsored person and their sponsored family members to leave Australia. They must ask in writing for you to pay the costs.

The costs will be considered reasonable and necessary if they include all of the following:

- travel from the sponsored person's usual place of residence in Australia to their place of departure from Australia;
- travel from Australia to the country for which the sponsored visa holder holds a passport and intends to travel to;
- economy class air travel or, where that is not available, a reasonable equivalent.
- Travel costs must be paid within 30 days of receiving the request. You will only be required to pay return travel costs once.

If a sponsored person returns to Australia (whilst holding the visa for which you sponsored them) after you have paid their return travel costs, you will not be required to pay their return travel costs again.

Pay costs to locate and remove an unlawful non-citizen

In the event a primary sponsored person (or any of their sponsored family members) becomes an unlawful non-citizen, you may be required to pay the costs incurred by the Commonwealth in locating and/or removing the primary or secondary sponsored persons from Australia.

Application for Standard Business Sponsor

You can apply to become a standard business sponsor online at immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/becoming-a-sponsor

You must provide all relevant documents and pay the visa application charge by credit card when you apply.

Fees

There is a fee for businesses applying to become an approved sponsor. Payment of this fee must accompany your application. Payment does not guarantee approval of the application.

To check the current application fee, visit immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/medium-term-stream

Nomination of the visa applicant

Nomination is the process whereby an approved sponsor identifies a position to be filled by an overseas skilled worker.

To nominate an eligible occupation (see below), you must:

- name the skilled worker to be employed and state where they will work in Australia
- meet direct employer requirements;
- provide employment terms and conditions that meet certain requirements;
- meet the genuineness criterion;
- meet the Temporary Skilled Migration Income Threshold;

- not be subject to adverse information;
- conduct and provide evidence of labour market testing

Eligible occupations

For the dairy industry the only occupation on this list is that of dairy cattle farmer. See above.

The worker you are nominating can be one of the following:

- a holder of a subclass 482 visa;
- an applicant for a subclass 482 visa;
- a proposed applicant for a subclass 482 visa. (See above for eligibility requirements for 482 visas)

What are Direct Employer Requirements?

If you are an approved standard business sponsor who operates a business in Australia, the worker you nominate must work directly for your business or for an associated entity of your business.

Employment terms and conditions

The obligation to ensure equivalent terms and conditions of employment means that you must pay your workers the **market salary rate** (see below).

This requirement is designed to ensure that skilled overseas workers have sufficient income to be self-reliant while they are in Australia. It is also designed to ensure that skilled overseas workers are not used to undercut local employment conditions and wages.

What is the market salary rate?

You can demonstrate the market salary rate by referring to the terms and conditions that apply to an Australian worker.

Applicable industry awards may be used to demonstrate the market salary rate where the awards directly set the terms and conditions of Australians performing equivalent work.

If there is no equivalent worker or relevant industrial instrument, you must demonstrate the market salary rate. Relevant evidence could include, but is not limited to:

- data from reputable remuneration surveys;
- published earnings data (for example data from the Australian Bureau of Statistics: abs.gov.au);
- evidence of what employees performing equivalent work are paid in similar workplaces in that location.

The Temporary Skilled Migration Income Threshold (TSMIT)

The Temporary Skilled Migration Income Threshold (TSMIT) ensures that your workers will have enough money to be self-reliant while they are in Australia.

You must demonstrate that the market salary rate (see above) for the position you are seeking to fill is greater than the TSMIT.

If the market salary rate for the position you want to fill does not exceed the TSMIT, you will not be able to access the subclass 482 visa program.

From 1 July 2013, the TSMIT is set at AUD \$53,900. In the past the TSMIT has been indexed annually on 1 July. It has not been increased as of July 2017 but employers should confirm currency by checking the Department of Home Affairs website.

Genuineness

A standard business sponsor is required to certify that the tasks of the position correspond to the tasks of an occupation eligible under the subclass 482 visa program. (See above)

Adverse Information

See above for information about adverse information.

Labour market testing requirement

Standard business sponsors are required to test the local labour market and provide evidence of this testing prior to lodging a nomination. They must also provide information with their nomination about their attempts to recruit Australian workers and how they have determined on the basis of these attempts that there is no suitably qualified and experienced Australian citizen, Australian permanent resident or eligible temporary visa holder available to fill the position.

What is an eligible temporary visa holder?

A person is an eligible temporary visa holder in relation to a nomination if, at the time the nomination is made:

- the person is the holder of a Subclass 417 (Working Holiday Maker) visa or a Subclass 462 (Work and Holiday) visa; and
- the person is employed in the agricultural sector by the nominating employer (or an associated entity of that business); and
- the temporary visa does not prohibit the person from performing that employment.

Evidence of labour market testing

Before your application will be accepted you have to show that you have genuinely tried to fill the position with Australian workers in the occupations and locations covered by your proposed labour agreement and you must attach evidence of this testing with the application. This is called labour market testing (LMT).

The Department of Home Affairs will provide you with a template which you can complete. Labour market testing must have taken place within the past four months.

Advertising

New Labour market testing requirements as of 1 October 2020

All nominations lodged on or after 1 October 2020 must comply with new rules regarding about labour market testing.

The new rules apply to 482 and 494 visas in the Employer sponsored stream and the 482 and 494 visas in the Dairy Industry Labour Agreement stream.

Read the rules at the **Department of Home Affairs website**.

Essentially in addition to previous requirements for labour market testing, you must also do the following:

- Advertise the nominated position on the Government's Jobactive website
- The Jobactive advertisement must have included all of the information required to be included previously (see below) which is also detailed via the link listed above
- Jobactive advertisements are expected to have run for at least four weeks
- Applications or expressions of interest for the advertised position must have been accepted for at least four weeks
- Evidence of a total of three advertisements, including an advertisement published on the Government's Jobactive website, must be provided at the time the nomination is lodged

Visit the **Jobactive website registration page for advertisements**

Advertising of the nominated position must meet all of the below:

- the advertisement must be in Australia, in English and included the following information:
- the title, or a description, of the position Note: multiple positions in one advertisement are acceptable
- the skills or experience required for the position
- the name of the approved sponsor or the name of the recruitment agency being used by the sponsor, and
- the salary for the position - if the annual earnings for the position are lower than AUD96,400.

Note: it is acceptable to publish a salary range – for example AUD80,000 to AUD90,000.

- at least two advertisements must be published in any of the below:
- on a prominent or professional recruitment website with national reach (for example **jobactive.gov.au**) that publishes advertisements for positions throughout Australia.

Note: industry specific recruitment websites relevant to the occupation that are in significant use by the industry are an acceptable method of LMT advertising.

Note: a general classifieds website or an advertisement solely through social media notification (such as Twitter or Instagram) are not acceptable methods. LinkedIn's online recruitment platform is acceptable for LMT purposes.

Note: Job vacancies restricted to LinkedIn profile members only are NOT acceptable for LMT purposes.

- in national print media – that is, newspapers or magazines with national reach that are published at least monthly and marketed throughout Australia;
- on national radio – that is, radio programs that are broadcast or syndicated nationally, or
- on the business' website if the sponsor is an accredited sponsor.
- Advertisements including on websites, are expected to have run for at least four weeks.
- Applications or expressions of interest for the advertised position must have been accepted for at least four weeks.

Note: the nominated position may be advertised in the same medium (such as newspaper advertisements – on two separate occasions) or in any two different mediums simultaneously, or on two separate occasions.

- advertising may have been undertaken by a third party if authorised to do so by the sponsor (for example, an associated entity or a contracted party, such as a recruitment agency) – there is no requirement that the sponsor placed the advertisement themselves.

You will need to complete the template for activities undertaken in the previous four months, including information on the period of job advertising, the number of applications received, the number of applicants who were hired and reasons why those unsuccessful were found to be unsuitable, supported by evidence of job advertising.

Additional supporting evidence of your labour market testing activities can also be provided to strengthen your case, this could include:

- information regarding your company's participation in job and career expos, including any associated fees, the dates and locations of these and whether any positions were filled as a result;
- written evidence from clients demonstrating demand for the nominated occupations – this may include service contracts, unfilled client orders or letters of support from client organisations;
- relevant industry (or other) research released in the last 12 months related to labour market trends;
- letters of support from state government authorities with the responsibility for employment; and
- strategies for retaining Australian workers

Labour market testing is not required if the worker is a citizen/national/permanent resident of Chile, South Korea, New Zealand or Singapore as this would be in conflict with Australia's international trade obligations.

To comply with this requirement, you must provide information with the nomination about your attempts to recruit Australians, including the details and expense of any advertising you conducted.

Lodgment of Applications

You can lodge your application online at immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/becoming-a-sponsor

You must provide all relevant documents and pay the visa application charge by credit card when you apply.

Fees

There is a fee for businesses nominating a worker. Payment of this fee must accompany your application. Payment does not guarantee approval of the nomination.

To check the current application fee, visit immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/medium-term-stream