

The Temporary Work (Skilled) (subclass 457) visa: a quick guide

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One of the most significant changes to Australia's immigration flows over the last two decades has been the growth of long-term (12 months or more) [temporary migration](#). While some of this growth can be attributed to increases in arrivals of [overseas students](#) and [working holiday makers](#), a large proportion of it is also due to increases in the number of temporary skilled migrants. The [Temporary Work \(Skilled\) \(subclass 457\)](#) visa is the most common pathway that employers use to sponsor skilled workers on a temporary basis. Migrants who have entered under this category visa are increasingly transitioning to permanent residency (commonly referred to as two-step migration).

The [Temporary Work \(Skilled\) \(subclass 457\)](#) visa, [introduced](#) by the Howard Government in 1996, is an uncapped, demand-driven program designed to enable approved employers to address short-term [skill shortages](#). As a result, applications and grants often fluctuate according to the state of the economy and the labour market.

This guide updates an earlier Parliamentary Library publication—[The subclass 457 visa: a quick guide](#), published in 2013. It includes a brief overview of the 457 visa program and provides the following statistics on visa grants:

[Table 1: Temporary Work \(Skilled\) \(subclass 457\) visa grants, 1996–97 to 2014–15](#)

[Table 2: Primary and secondary \(subclass 457\) visa grants, 2005–06 to 2014–15](#)

Overview of the 457 visa program

Visa holders

The [subclass 457 visa](#) is an employer-sponsored visa, meaning that visa applicants must be nominated by a business which has been approved as a sponsor by the Department of Immigration and Border Protection (DIBP). Subclass 457 workers, known as 'primary applicants' must also apply for each of the [family members](#) (known as secondary applicants) they wish to bring to Australia for the duration of their employment.

To be eligible for a subclass 457 visa via standard business sponsorship, a worker must have an occupation on the [Consolidated Sponsored Occupations List](#) (CSOL). Eligible occupations listed on the CSOL are classified according to the [Australian and New Zealand Standard Classification of Occupations \(ANZSCO\)](#), and occupations must be classified at an ANZSCO skill level of 1–3 (out of 5 skill levels). The primary applicant must have a genuine intention to perform in the nominated occupation, have the necessary skills and experience, meet English language requirements (unless [exempt](#)) and have relevant licencing and registration to perform work duties. All applicants must meet [health](#) and [character](#) requirements.

A 457 visa worker (known as the primary visa holder) may be accompanied by a partner, children and other dependent relatives who are issued with secondary subclass 457 visas. Family members (known as secondary

visa holders) are authorised to work or study in Australia for the duration of their stay. There are no restrictions on the hours they may work or the kind of work they may do.

A subclass 457 visa [entitles](#) the holder to live and work in Australia for up to four years. Subclass 457 visa holders and their families are free to move between employers, states and regional or non-regional locations. However, this is on the proviso that any new employer is approved to sponsor and nominate under the program. Subclass 457 visa holders now have 90 consecutive days once employment has ended with one employer to seek sponsorship with a new employer, or their visas may be cancelled.

Workers under the subclass 457 scheme are governed by the [same minimum conditions of employment](#) as Australian workers. These conditions include working hours, overtime payments, rest breaks, sick leave and holidays. All temporary workers have the right to join and be represented by a trade union and the right to be treated fairly, which includes not being dismissed unfairly or discriminated against for reasons of race, religion, sex, pregnancy, sexual orientation, disability or for trade union membership.

As at [31 March 2016](#) there were 177,390 subclass 457 visa holders in Australia. Of these, 97,766 were primary visa holders and 79,624 were secondary visa holders (that is, dependents of the primary visa holder). Of the [primary visa holders in Australia on 31 March 2016](#) the largest numbers were employed in New South Wales (40,430) followed by Victoria (23,310) and Western Australia (14,790). The top industries of employment for primary visa holders were accommodation and food services (15,260), other services (13,890) and information, media and telecommunications (10,030). The main countries of citizenship for primary visa holders in Australia were India (19,360), the United Kingdom (18,270), China (6,950) and Ireland (6,780).

Employers

Employers wishing to sponsor workers to come to Australia on subclass 457 visas may do so in one of two ways: by applying to be a Standard Business Sponsor or by entering into a Labour Agreement with DIBP.

Standard Business Sponsorship

To [qualify](#) as a standard business sponsor, employers in Australia must demonstrate they are operating as a lawful business. Businesses are required to meet minimum training benchmarks which require an ongoing commitment to training activities for Australian citizens and permanent residents. Firms must also attest in writing to a record or commitment to the employment of local labour and a commitment to non-discriminatory recruitment practices. Overseas employers can also use the program if they are operating legally and can demonstrate that they require a skilled worker to establish (or help establish) a business operation in Australia, or fulfil contractual obligations in Australia. Overseas businesses are exempt from the training requirements which apply to Australian businesses.

A labour market testing requirement was [introduced](#) to the 457 visa program in November 2013 as a response to ongoing concerns that overseas workers were displacing Australian workers. Under this requirement, standard business sponsors must provide information with their 457 sponsorship 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. However, there are exemptions to the labour market testing requirement. Labour market testing is not required where it would conflict with [Australia's international trade obligations](#), for example, under the movement of persons provisions of a Free Trade Agreement (such as the [China-Australia Free Trade Agreement](#)), or where the position being filled falls within an [exempt occupation](#) as determined by the skill level of the position. Currently, all occupations classified at ANZSCO skill levels 1 and 2 are exempt from the labour market testing requirement.

For each sponsored worker, employers are required to show that they are providing equal pay and conditions of employment as for Australian workers performing equivalent work in the same location—known as the market salary rate. This process may involve employers identifying relevant collective agreements, awards and award conditions, common law contracts, remuneration surveys or earnings data. Employers remunerating positions in excess of \$250,000 are [exempt](#) from the requirement to test for market salary rate.

As at July 2016, the lowest salary acceptable under the scheme, known as the [Temporary Skilled Migration Income Threshold](#) (TSMIT) is [\\$53,900](#). This is to ensure that all subclass 457 visa holders have sufficient income to independently provide for themselves in Australia. A recent [independent review](#) of the TSMIT was established to consider factors such as the appropriate base level of TSMIT, whether it should be indexed and whether

concessions should be available. The review was due to report to Government in April 2016. At the time of writing, the report of the review had not been publically released.

Labour Agreements and Project Agreements

[Labour agreements](#) allow for the recruitment of an agreed number of temporary business and other skilled visa holders where employers can demonstrate a need for specific labour that cannot be met in the Australian labour market or through standard temporary or permanent migration arrangements. Labour Agreements are the only way in which employers may sponsor semi-skilled workers, as workers sponsored under Labour Agreements need not necessarily have an occupation on the CSOL. Labour agreements are negotiated between the employer and DIBP and are generally valid for three years.

Industry-wide labour agreements exist for certain industries which have demonstrated a need for workers. These agreements allow businesses in the relevant industry to sponsor workers without having to negotiate an individual agreement. The terms of the industry agreement cannot be renegotiated or amended by an individual employer. Currently, agreements are in place for employers in the [fast food](#), [restaurant \(fine dining\)](#), [fishing](#), [meat](#), [on-hire](#), [dairy](#), [pork](#) and [snow sport](#) industries and for [ministers of religion](#).

[Project Agreements](#) allow for temporary overseas workers to be recruited to work on specific infrastructure and resource development projects which can demonstrate a genuine labour market shortage. [Designated Area Migration Agreements](#) (DAMAs) are agreements negotiated between the Commonwealth (represented by DIBP) and designated areas, and are designed to allow specific areas to respond to their specific labour market needs. Eligible designated area representatives (that can enter into a DAMA) may be state/territory governments, regional authorities or local councils. DAMAs must be endorsed by the relevant state/territory government. DAMAs allow employers in the designated area to hire skilled and semi-skilled overseas workers. Individual employers in the area must enter into a labour agreement which reflects the terms and conditions agreed upon in the DAMA.

Key issues

2014 Independent Review

In 2013 the Abbott Government [announced](#) the establishment of [an independent review](#) into the 457 visa program. The review was charged with investigating ways of improving the integrity of the program while minimising the 'red-tape' and compliance burden on businesses wishing to use the program. The report of the review, [Robust New Foundations: a streamlined, transparent and responsive system for the 457 visa program](#), was published in September 2014. The report made 22 recommendations concerning the operation of the 457 visa program. The recommendations focused on streamlining and increasing flexibility in the sponsorship and visa application processes and on improving compliance by sponsors.

The Government provided its [response](#) to the report in March 2015, stating its support, or in-principle support, for all but two of the recommendations (the two unsupported recommendations concerned the abolition of labour market testing and an expansion of the list of nationalities that are exempt from English language testing). Several reforms to the program have been implemented since then, with key measures including [amendments](#) to English language requirements to offer greater flexibility in meeting the requirement and [making it an offence](#) to ask for, receive, offer, provide payment or other benefits in return for visa sponsorship.

Exploitation concerns

Since it was introduced, one of the primary areas of concern with the subclass 457 visa has been the vulnerability of overseas workers to exploitation and abuse. Many cases of exploitation have been reported by the unions and the media over the years, but the full extent of the problem is difficult to determine. The comprehensive [Visa Subclass 457 Integrity Review](#) (Deegan Review) conducted in 2008 noted that the very nature of their vulnerability (because their right to remain in Australia depends on their continued employment with the sponsor) makes subclass 457 visa workers less likely to report cases of exploitation, meaning much abuse and exploitation is likely to remain hidden. The report of a recent Senate Standing Committee inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, [A National Disgrace: The Exploitation of Temporary Work Visa Holders](#), found that exploitation was a serious problem for temporary migrants. The Senate inquiry made several recommendations aimed at improving the protection of temporary migrants in the workplace.

In response to a number of concerns regarding potential exploitation, Fair Work Australia is now empowered to [monitor compliance](#) with sponsorship obligations to ensure workers are in their nominated occupation and

being paid market salary rates. Any suspicious activity is referred to DIBP for investigation. Possible sanctions for failure to comply with sponsorship obligations include being barred from future sponsorship arrangements, cancellation of sponsor approvals, civil penalties up to \$51,000 and infringement notices for each failure attracting penalties of up to \$10,200.

Transition to permanent residency

A significant trend in migration to Australia over the last two decades has been the growth in what is often termed ‘two-step’ migration. This is a process by which migrants come to Australia initially on a temporary visa and then transition to permanent residency at some point—often several years later. Many subclass 457 visa holders follow this pattern and go on to settle permanently in Australia. In [2014–15](#), 50,020 permanent or provisional visas were granted to people who held a subclass 457 visa. Of these, 48,300 were granted a permanent or provisional skilled visa and 1,730 were granted a permanent or provisional family stream visa (such as a partner visa).

Even before becoming permanent residents, subclass 457 visa holders are often counted towards Australia’s population gain, with [net overseas migration](#) (NOM) calculated by the Australian Bureau of Statistics (ABS) to include people who have stayed in Australia 12 months out of a 16-month period. Over recent years, the largest contribution to NOM has been from people on temporary visas. In 2015 NOM accounted for around [55 per cent](#) of population growth.

Statistics

Table 1: Temporary Work (Skilled) (subclass 457) visa grants, 1996–97 to 2014–15

Year	Subclass 457 visa grants
1996–97	25 786
1997–98	30 880
1998–99	29 320
1999–00	31 070
2000–01	36 900
2001–02	33 510
2002–03	36 800
2003–04	39 500
2004–05	48 590
2005–06	71 149
2006–07	87 313
2007–08	110 567
2008–09	101 284
2009–10	67 979
2010–11	90 119
2011–12	125 070
2012–13	126 348
2013–14	98 571
2014–15	96 084

Sources: J Phillips and J Simon-Davies, [Migration to Australia: a quick guide to the statistics](#), Parliamentary Library, June 2016 and Department of Immigration and Border Protection (DIBP), [Subclass 457 annual reports and pivot tables](#), various years.

Table 2: Primary and secondary (subclass 457) visa grants, 2005–06 to 2014–15

Year	Primary	Secondary	Total
2005–06	39 527	31 622	71 149
2006–07	46 675	40 638	87 313
2007–08	58 052	52 515	110 567
2008–09	50 661	50 623	101 284
2009–10	34 788	33 191	67 979
2010–11	48 075	42 044	90 119
2011–12	68 313	56 757	125 070
2012–13	68 481	57 867	126 348
2013–14	51 939	46 632	98 571
2014–15	51 125	44 959	96 084

Source: DIBP, [Subclass 457 visas granted pivot table](#), Temporary work skilled [data sets](#), data.gov.au webpage, 5 May 2016.

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