

Hammond Taylor

The Future of Employer Sponsored Visas

Breakfast Briefing

May 2018

New Temporary Skill Shortage 482 Visa

- Framework introduced in April 2018
- Intended to refocus temporary work program:
 - Protect local employment
 - Identify 'best' migrants for medium & long term needs of Australia
- Most aspects of the program remain the same, but:
 - Creation of STSOL stream with no access to PR is fundamental change
 - Likely change to Training arrangements will result in winners & losers

Business Sponsorship – What's new?

- Valid for 5 years for all business types (onshore / offshore / start-up)
- Auto-approval unless integrity concerns or status change
- Training benchmarks currently apply but likely to be reformed post SAF

Business Sponsorship – Requirements

- Onshore / offshore
- Lawful & active operations
- Training Benchmarks
 - Under Training Obligations currently
- Commitment to employment of local labour, non-discriminatory recruitment
- No adverse information

Focus on: Adverse information

- Defined broadly
- No time limit
- Includes:
 - contravened Australian law
 - under investigation, subject to disciplinary action or subject to legal proceedings in relation to contravention
 - Has been the subject of administrative action for possible contravention of the law by a Department
 - Has become insolvent
 - Has given false or misleading information to an officer, the Minister or the Tribunal

Business Sponsorship – Requirements

- Accredited status
 - Auto-nomination approvals in some circumstances
 - Priority processing
 - Lower documentation requirements (contracts, etc.)
- Broader criteria for approval
 1. State / Federal Department or entity
 2. ‘Trusted Trader’
 3. Low risk low volume
 4. Low risk high volume

Business Sponsorship – Requirements

	Category 3	Category 4
Description	Low risk with low volume usage and high percentage of Australian workers	Low risk with high volume usage and high percentage of Australian workers
Key requirements	• Public or private company with at least \$4 million annual turnover in the last 2 years • Active 457 sponsor and sponsored at least 1 primary 457 visa holder in the last 2 years • Nomination non-approval rate of less than 3% for the previous 2 years • 90% Australian workforce • No adverse monitoring outcome	• Public or private company with at least \$4 million annual turnover • Active 457 sponsor and sponsored at least 10 primary 457 visa holder in the last 2 years • Nomination non-approval rate of less than 3% for the previous 2 years • 75% Australian workforce • No adverse monitoring outcome

482 Nomination

- Occupation Lists to establish 'streams'
 - STSOL
 - MLTSSL / Regional Lists
- Requirement for 2 years' work experience in last 5
- Mandatory labour market testing (with limited exemptions)
- Change in terminology 'Annual Market Salary Rate'

Nomination Application

- Any SBS or OBS holder (no need for new sponsorship)
- Occupation must be on list
- Position must be genuine & **full time**
- Contract of employment to be provided unless exempt
- English requirement – discretionary
- **AMSR** if under \$250,000 & TSMIT
- No less favourable employment

Nomination Application

Occupation Lists	
Short Term Skilled Occupation List (242 occupations)	• 1 or 2 year nomination and visa period unless ITO applies • No pathway to PR unless changes to list • Check if caveats apply
Medium & Long Term Strategic Skills List (208 occupations)	• 1 to 4 year nomination and visa period • Pathway to PR • Check if caveats apply
Regional Occupation List (59 occupations)	• All regional occupations are medium and long term strategic skills occupations • 1 to 4 year nomination and visa period • Caveat applies re: regional postcode only

Nomination Application

Caveats

- Apply to wide range of occupations
- Stipulate specific salary, business, and position requirements
 - May specify specific nature of role – ie, not customer facing
 - May set minimum salary
 - May require business to have minimum turnover, minimum employees
 - May set specific location
- Expected to continue to evolve and change based on labour market data

Nomination Application

- Genuine Position
 - Assessment is of whether the position exists and is what it says it is
 - Should not be used to create a position to facilitate stay / entry to Australia
- Area of greatest concern for many nomination applications
 - Relationship between nominee and business (i.e, director / shareholder / family)
 - Position 'doesn't fit' with business
 - Position seems 'inconsistent with size' of business

Nomination Application

- Annual Market Salary Rate (AMSR)
 - Does not apply above \$250k threshold
 - Must be above TSMIT unless reasonable to disregard
 - Must be determined in accordance with Legislative Instrument
- Guaranteed Annual Earnings (GAE) replace base and total rem.
 - Must not be less than AMSR of position
 - Must not be less than TSMIT

Nomination Application

- AMSR determined by looking at:
 - a) Award/Enterprise Agreement as a starting point
 - b) If no Award/AE then an equivalent Australian employee
 - c) If no equivalent Australian then advertisement and other salary data

Nomination Application

Labour Market Testing

- Currently stipulated only in policy but expected change to:
 - 2 advertisements
 - National recruitment website, national print or radio
 - No Gumtree, Social Media including Linked-In!
 - Appear for 21 days within last 12 months (6 months from 18 June, 4 with redundancies)
 - In English
 - Specify Annual Earnings

Nomination Application

Exemptions to LMT

- Nominee is internationally recognised in profession, sport, arts, academia or research
- Held a 457 or 482 visa and lodged new nomination following restructure or change to remuneration
- International Trade Obligations (Free Trade, WTO GATS, etc)
- Disaster relief

482 Visa

Fees	
STSOL	MLTSSL Regional Occupation List
- Adult: \$1150 - Child: \$290	- Adult: \$2400 - Child: \$600

Onshore or offshore. Must have substantive visa, BVA, BVB, or BVC

482 Visa Application

- Compliance with previous visa conditions
- Nomination approved
- Genuine Intention to perform the role
- Meet skill requirements (+2 years' full time)
- Meets health & character
- Hold health insurance
- Relevant licenses

482 Visa Application

2+ year requirement

- Ostensibly to increase skill requirements of 482 workforce
- In practice seems focused on preventing onshore students from accessing program
 - Except when they are wanted – nurses, doctors, etc.
- Should be full time in the 5 years prior to application

482 Visa Application

- Health Waiver – changed from employer supported to ‘standard’
- Must demonstrate not a burden to the Australian community

Skilling Australia Fund Levy

- Currently SAF Levy Bill before Parliament
 - Unlikely to pass this financial year – N.B. may mean that employers potentially must meet the TB for the last financial year
 - Expected to replace current Training Benchmark system entirely
- Will result in winners and losers...
 - \$1200 per year per nomination for businesses with turnover <10M
 - \$1800 per year per nomination for business with under >\$10M

Take Home

- STSOL is radically different from any previous Australian visa
- No PR, no guarantees
- Will change the way employers recruit and attract quality candidates
- 2 year work requirement – will cut out a lot of onshore graduate recruitment
- Accredited sponsorship is a must have if you rely on 482 staff
 - Otherwise look at 400 for urgent work

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