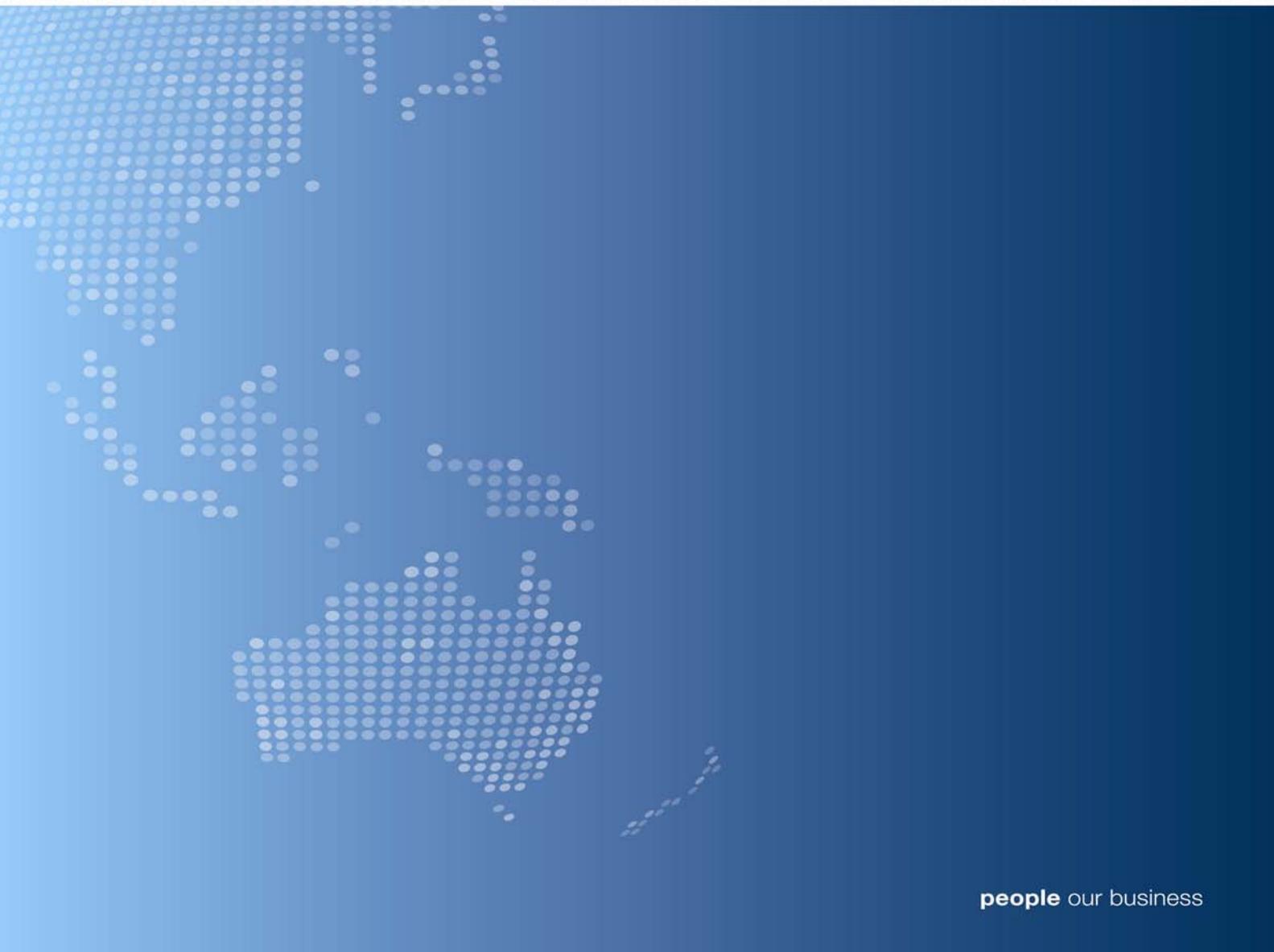
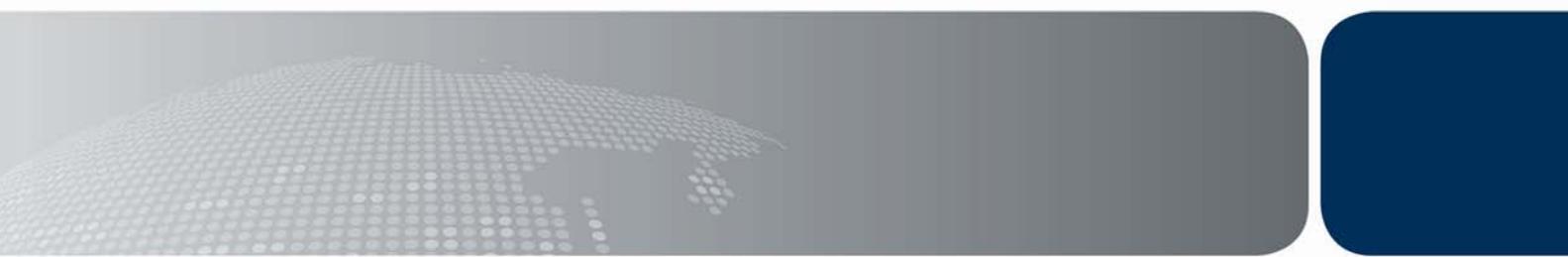




Australian Government
Department of Immigration
and Citizenship

Guide to the 457 Program for the Tourism and Hospitality Industries

November 2011





Background information

Introduction

Australia has a number of skilled migration programs each with a different aim and purpose. The 457 visa program is the simplest and fastest option to address immediate skill shortages in your business.

However, like any migration program, the 457 program has a number of requirements that can seem complex to an outsider. This guide is designed to provide an overview of the 457 program for employers in the tourism and hospitality sectors.

The department also provides a booklet (Booklet 9) that comprehensively covers all aspects of the 457 program. If there is something that you would like further information on, then please look at the booklet. You can find the booklet on the department's web site.

See: www.immi.gov.au/allforms/booklets/books9.pdf

What is the 457 visa program?

The 457 program allows employers to address labour shortages by employing overseas workers where they cannot find an appropriately skilled Australian.

The 457 visa is a temporary skilled visa. This means that 457 visa holders can only work in eligible skilled occupations, and they do not have the right to stay in Australia permanently.

457 visa holders can:

- work in Australia for a period of between one day and four years
- change employers, providing the new employer is an approved sponsor
- bring any eligible family members, who can work and study, with them to Australia
- travel in and out of Australia as often as they like.

What occupations are eligible under the 457 program?

The 457 program is for skilled occupations only. This will mean that for the tourism and hospitality industries many typical occupations will **not** be eligible under the 457 program.

The department uses the Australian and New Zealand Standard Classification of Occupations (ANZSCO) to determine which occupations are eligible.

ANZSCO classifies occupations according to five 'skill levels'. Generally, occupations that are classified as skill level one, two and three are eligible under the 457 program.

Put another way, occupations that have a skill level equivalent to at least a Certificate III and two years of on the job training and above are eligible under the 457 program.

The department has a full list of the occupations that are eligible on the website.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments

What typical hospitality and tourism occupations are eligible?

The top 10 most common occupations in the hospitality industry so far this financial year are.

Cook
Chef
Cafe or Restaurant Manager
Hotel or Motel Manager
Pastrycook
Marketing Specialist
Program or Project Administrator
Accommodation and Hospitality Managers nec
Sales and Marketing Manager
Accountant (General)

What can I do if the vacancy in my business is not in an eligible 457 occupation?

If the vacancy in your business is not an eligible occupation then you will not be able to use the standard 457 program.

The only option available to employ a 457 visa holder for ineligible occupations is to negotiate a 'labour agreement' with the department for those workers.

See: www.skilledmigration.govspace.gov.au/files/2011/08/Labour-Agreement-Information-Pack-October-20115.pdf

What other migration options are available to the hospitality and tourism sectors?

Working Holiday Makers

Working Holiday visas are available for people aged 18 to 30 years of age who are interested in a working holiday of up to 12 months in Australia. Visa holders can work in any occupation however they can only work for a maximum of six months with each employer and the work must be secondary to the main purpose of their visit.

See: www.immi.gov.au/visitors/working-holiday/

Student Visas

There are no occupation limitations on student visa holders, and you may employ student visa holders. However, student visa holders **cannot** work more than 20 hours per week when their course is in session.

See: www.immi.gov.au/media/fact-sheets/50students.htm

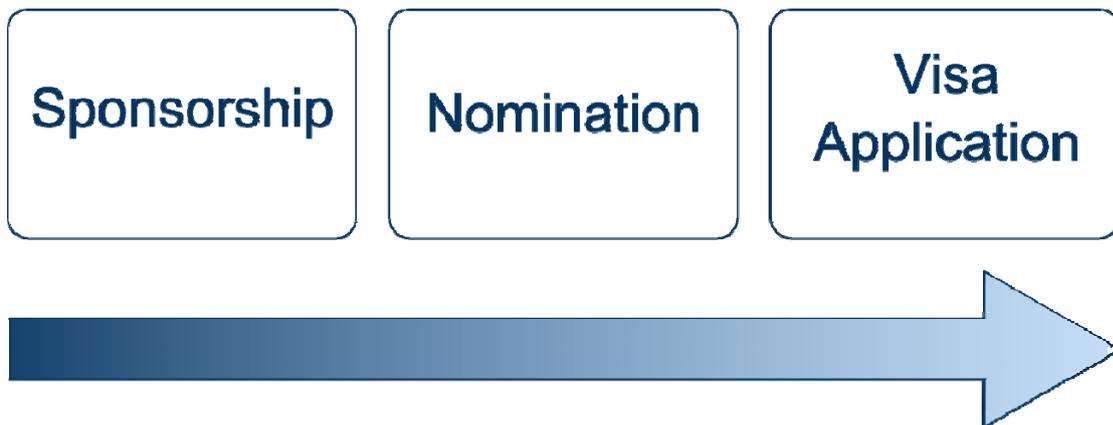
Using the 457 program

How do I use the 457 program to employ an overseas worker?

There are three steps to 'sponsoring', or employing, an overseas worker on a 457 visa. These are as follows.

Sponsorship	The employer applies for approval as a standard business sponsor.
Nomination	The employer nominates an overseas worker to fill a position in their business.
Visa application	The person nominated to work applies for the 457 visa.

The following diagram illustrates the three stages and their order for subclass 457 visas:



As the employer you will be responsible for the sponsorship and nomination stages. Your employee will be responsible for the visa application, although you may wish to assist them to ensure that they complete the process successfully.

Did you know?

There are currently over 18 000 businesses who are standard business sponsors and the majority of these are small and medium business operators.

How long will it take to process my applications?

The department seeks to process 457 visa applications as quickly as possible. In order to achieve the fastest possible processing time, make sure that you take the time to familiarise yourself with the requirements of the program.

You are encouraged to complete your application with as much information as possible at time of lodgement. Applications with missing information may take longer to process.

Sponsorship

How do I become a standard business sponsor?

To nominate skilled overseas workers for a 457 visa, you must first become an approved standard business sponsor. A standard business sponsor is the term the department uses for approved sponsors under the 457 program. The point of the sponsorship stage is to assess whether you are a suitable employer for overseas workers on 457 visas.

The key requirements for becoming an approved sponsor are:

- demonstrating you are a lawfully operating business
- attesting that you have a strong record of employing local labour and non-discriminatory employment practices and
- demonstrating you have a strong record of training Australians.

You will be required to complete an application to become a standard business sponsor by completing the relevant form and submitting it to the department for assessment. You can complete this form online.

See: www.immi.gov.au/e_visa/employer-sponsored.htm

Lawfully operating a business

This requirement is fairly self explanatory. It requires you to demonstrate that your business is legally established and that your business is actually operating. You can do this by providing documents such as Business Activity Statements (BAS) or profit and loss statements for the last financial year.

Attesting to employing local labour

The 457 visa program is designed to only be used where you cannot find an appropriately skilled Australian. The sponsorship form requires you to make an attestation that you have a strong record or demonstrated commitment to employing local labour and non-discriminatory employment practices.

Training of Australians

The most complicated aspect of the standard business sponsorship application relates to demonstrating the training of Australians. The 457 program requires you to demonstrate that you have a strong record of training Australians by meeting either of the 'training benchmarks'.

Benchmark A

Recent expenditure to the equivalent of at least 2 per cent of business payroll in payments to an industry training fund, and a commitment to maintain this expenditure for the term of approval as a sponsor.

For example, to meet Benchmark A, employers in the tourism and hospitality industry can make a contribution to a recognised industry body that provides training opportunities for their members. Alternatively, you can show evidence of having made a contribution to a recognised scholarship fund at a university, TAFE or training institute.

Benchmark B

Recent expenditure to the equivalent of at least 1 per cent of business payroll on training for your employees, and a commitment to maintain this expenditure for the term of approval as a sponsor.

For example, to meet Benchmark B, you can provide evidence of training that you have provided to employees in your business. There are a number of activities that can count towards the benchmark – the key requirement is that the training is structured and leads to your employee improving their skills.

If you employ apprentices or trainees under a Training Contract that has been lodged with the relevant authority in your State/Territory, or recent graduates under a formal training program, 100 per cent of the salary provided to that employee can be counted towards Benchmark B.

Please note, these requirements are different if you are a new business.

For further information on the training benchmarks, please read Booklet 9.

See: www.immi.gov.au/allforms/booklets/books9.pdf

Sponsorship Obligations

The department treats the welfare of overseas workers on 457 visas very seriously. There are a number of sponsorship obligations that you will take on as an approved sponsor, and it is important that you are aware of these obligations as penalties may apply if you do not comply.

See: www.immi.gov.au/allforms/booklets/books9.pdf

Nomination

The second step in using the 457 program is nominating a worker to fill a position in your business. The point of this step is to ensure that the occupation is eligible under the 457 program, and that the overseas worker is being paid the appropriate salary for the position in Australia.

You will need to have at least lodged a sponsorship application before you can nominate a position for an overseas worker.

Just like with the sponsorship stage, you will be required to complete a form and submit it to the department for assessment. This can be done online.

See: www.immi.gov.au/e_visa/employer-sponsored.htm

Selecting a 457-eligible occupation

As discussed earlier, only eligible skilled occupations can be sponsored under the 457 program. You can see the full list of eligible occupations on the department's website.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments/

If you are not sure whether a particular occupation name matches the vacancy in your business, you can see the descriptions for each ANZSCO occupation on the Australian Bureau of Statistics website.

See:

www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1220.0Search02006?opendocument&tabname=Summary&prodno=1220.0&issue=2006&num=&view=

If your occupation is not on the eligible occupations list, then you will not be able to use the standard 457 program.

Market Salary Rates

Once you have selected an eligible occupation, you need to demonstrate to the department that the overseas worker will be paid fairly.

The 457 program requires that overseas workers are paid at least as well as equivalently experienced Australians in the same workplace. Essentially this means that overseas workers can not be used to undercut Australian wages or conditions. This requirement is known as the 'market salary rate'

How do I show that an overseas worker is being paid the market salary rate?

Depending on your business, demonstrating the market salary rate can be simple or quite complicated.

If you have an equivalent Australian worker to the overseas worker, for example you have an Australian cook with three years experience and you wish to employ an overseas cook with three years experience, then you need to tell the department how much the Australian is paid and show that the overseas worker will be paid at least as well.

If you don't employ an equivalent worker, then you need to demonstrate why the amount you are paying is in-line with what an Australian would be paid to do the same job. There are a number of ways that you can do this that are explained in detail in Booklet 9.

See: www.immi.gov.au/allforms/booklets/books9.pdf

Salary packaging

Salary packaging is permitted under the 457 program. The agreed value of any non-monetary benefits such as the provision of accommodation or meals can be included as part of the market salary rate providing the Australian worker would get the same benefits.

The Temporary Skilled Migration Income Threshold

You must also demonstrate that the annual market salary rate is at least equal to the Temporary Skilled Migration Income Threshold or the TSMIT. Essentially the TSMIT represents the minimum amount that an overseas worker needs to be paid to live in Australia, considering that they don't have access to the social and medical safety nets of Australian citizens.

The TSMIT is currently set at \$49 330.

Did you know?

There are over 81 000 primary 457 visa holders in Australia at the moment.

Visa application

The visa application is the third stage of sponsoring an overseas skilled worker under the subclass 457 visa program. The overseas skilled worker and any dependants must apply for and be granted a visa to travel to or remain in Australia.

You will need to have at least lodged a sponsorship application, and a relevant nomination for the overseas worker to lodge a visa application.

The point of the visa application stage is to assess whether the overseas worker has the skills to perform the job, meets the required level of English proficiency and whether they meet the health and character requirements to enter Australia.

Just like the sponsorship and nomination stages, the visa application can be lodged online.

See: www.immi.gov.au/e Visa/employer-sponsored.htm

Genuine intention and skills assessments

Visa applicants are required to demonstrate that they have a genuine intention to perform the nominated occupation, and are required to demonstrate that they have the skills and experience necessary to perform the occupation. Evidence such as employment references, educational certificates or formal skill assessment reports can be provided to demonstrate this requirement.

English language proficiency

It is important that 457 visa holders can speak, write and understand a sufficient level of English while they are in Australia. The department uses the International English Language Testing System (IELTS) to determine an applicant's level of English language proficiency.

Most applicants in trade occupations (including chefs and head chefs) must demonstrate that their level of English proficiency is equivalent to an IELTS test score of at least five in each of the four test components of speaking, reading, writing and listening. Some applicants are exempt from this requirement.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments/

Health insurance

All 457 visa applicants must provide evidence that they have made adequate arrangements for health insurance during the period of their intended stay in Australia, before grant of the visa. Health insurance from either Australian or overseas insurance providers is acceptable and will be considered adequate as long as the policy provides at least the minimum cover required by the department.

Did you know?

If this process seems too complicated, there are registered Migration Agents that can assist you.

Further information

For further details on any of the stages of the 457 visa process please read Booklet 9:

See: www.immi.gov.au/allforms/booklets/books9.pdf