

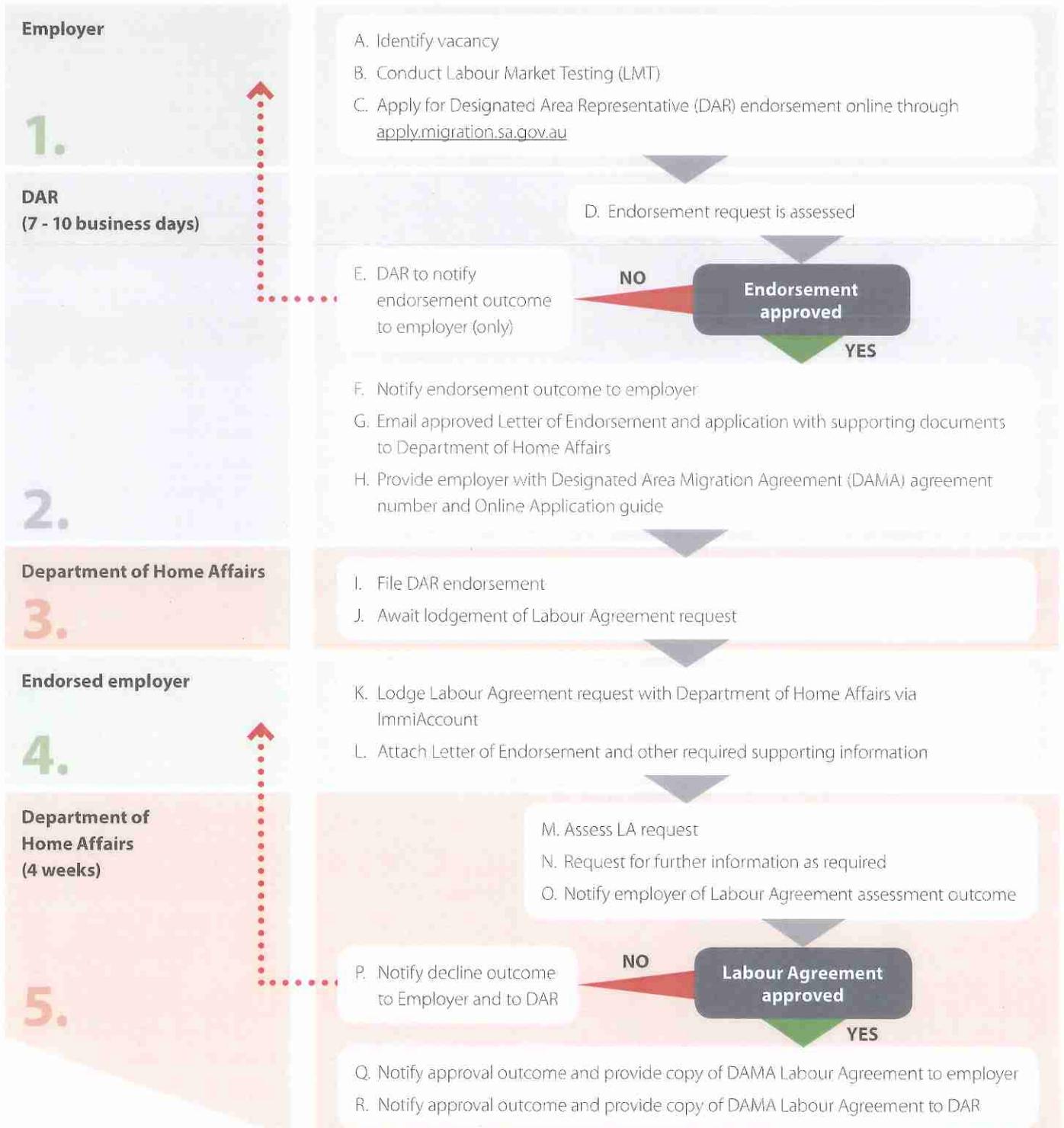
DAR Endorsement and Labour Agreement Request Process Flowchart



IMMIGRATION
SOUTH AUSTRALIA

Action owner and response timeframe

Process step



Next steps:

Following approval of Labour Agreement, the employer will need to complete a nomination application for a worker (employee) from overseas through their ImmiAccount. The worker will be required to submit their individual visa application with the Department of Home Affairs.



DAMA

Costs

Temporary Skill Shortage (TSS) Nomination – Temporary Visa

| | |
|---|---|
| Nomination Fee | \$330 |
| SAF Levy – Small <\$10M annual turnover | \$4,800 for 4 years (\$1,200 per year or part thereof) |
| SAF Levy – Other >\$10M annual turnover | \$7,200 for 4 years (\$1,800 per year or part thereof) |

Employer Nomination Scheme (ENS) Nomination – Permanent Visa

| | |
|---|--|
| Nomination Fee | \$0 (Normally \$540, regional areas exempt) |
| SAF Levy – Small <\$10M annual turnover | \$3,000 one off |
| SAF Levy – Other >\$10M annual turnover | \$5,000 one off |

Note: Levy payments are tax deductible.

Visa Application Charge (VAC) fees – single applicant

| | |
|-----------------|---------|
| TSS 4 year visa | \$2,455 |
| ENS visa | \$3,755 |

Prices are correct as at March 2019. Refer to the latest pricing at:
<https://immi.homeaffairs.gov.au/visas/getting-a-visa/fees-and-charges/overview>.



DAMA Labour Market Testing (LMT) requirements

Employers seeking to nominate overseas workers under a DAMA are required to provide evidence that they cannot find a suitable Australian Worker. Before an overseas worker can be nominated, employers need to test the local labour market by advertising the vacant position in Australia. Evidence of LMT is required when applying for a DAR endorsement **and** at the nomination stage.

Employers must provide a copy of two advertisements that meet the Department of Home Affairs' LMT requirements. As the LMT requirements are specified in the Migration Act (1958) and Migration Regulations (1994) they are not flexible or negotiable and there are no exemptions. DAMA applications that do not meet the requirements cannot be approved.

LMT Requirements

LMT requirements outline the duration, content and eligible mediums of advertising.

Advertising must be done:

- within the 4 months immediately before lodging a nomination application, or
- if within 4 months before lodging the nomination application, and the employer or an associated entity has made any Australian citizen or permanent resident workers redundant or retrenched them from positions in the nominated occupation, the advertising must have occurred since the date that these events occurred. When this occurs, information about these redundancies or retrenchments must also be provided.

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

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

- it is acceptable to publish a salary range, for example AUD80,000 to AUD90,000.
- at least 2 advertisements were 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.
 - industry specific recruitment websites relevant to the occupation that are in significant use by the industry are an acceptable method of LMT advertising.
 - 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. 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 with national reach; or
 - on the business' website if the employer is an accredited sponsor.
- advertisements including on websites, are expected to have run for at least 4 weeks.
- applications or expressions of interest for the advertised position must have been accepted for at least 4 weeks.

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

The nominated position can be advertised in:

- the same medium (such as newspaper advertisements) on two separate occasions;
or
- two different mediums simultaneously or on two separate occasions.

More information on LMT is available on the Department of Home Affairs' website at: <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing#content-index-5>.



Designated Area Migration Agreement AMSR and TSMIT requirements

Annual Market Salary Rate (AMSR) and Temporary Skilled Migration Income Threshold (TSMIT)

Employers seeking to sponsor an overseas worker under a Designated Area Migration Agreement (DAMA) must meet certain salary and employment condition requirements. These requirements help to ensure that:

- overseas workers are paid no less than an Australian worker would doing the same work in the same location - that is, the 'annual market salary rate (AMSR); and
- the DAMA program does not undercut the Australian labour market.

The AMSR for the nominated occupation and the guaranteed annual earnings the overseas worker will be paid must be at least as much as the Temporary Skilled Migration Income Threshold (TSMIT). TSMIT is currently \$53,900.

In some cases a salary concession ("reduced TSMIT") is approved for occupations nominated under a DAMA. Any applicable concessions will be detailed in the DAMA labour agreement.

If the overseas worker will be paid an annual salary less than \$250,000 employers need to show:

- they have determined the AMSR correctly;
- the overseas worker will not be paid less than the AMSR, that is, less than an Australian worker would be paid doing the same work in the same location; and
- the AMSR and the overseas worker remuneration, is no less than TSMIT (or reduced TSMIT where a concession is approved).

How to determine the AMSR

To determine the AMSR, consider what an equivalent Australian worker would be paid to undertake the same role. This information may come from enterprise agreements or industrial awards, job outlook information, advertisements for the last 6 months in the same location, remuneration surveys, existing employee records, or advice from unions or employer associations.

Employers nominating overseas workers under a DAMA must show The Department of Home Affairs (the Department) how AMSR has been determined and provide supporting documents.

Scenario 1: Where there is an equivalent Australian or permanent resident worker

The AMSR equals what an employer is paying an Australian worker to undertake the same role.

If the worker's salary is based on an enterprise agreement or industrial award, the employer needs to provide:

- the name of the agreement or award as recorded by the Fair Work Commission where applicable;
- the salary level or occupation group that applies to the nomination.

If there is no relevant agreement or award, or the employer is paying their Australian workers above the award rate, the employer needs to provide:

- an explanation of salary arrangements, and
- copies of relevant employment contracts, and
- pay slips for the equivalent Australian worker.

Note: An Australian worker who is more or less experienced than the nominee and/or does similar work at a different pay grade is not considered equivalent to the nominee. The Department cannot approve a nomination if the nominated overseas worker will be paid less than the equivalent Australian worker, or if only generic market salary data or salary surveys are provided.

Scenario 2: Where there is no equivalent Australian or permanent residence worker and -

a. There is an enterprise agreement or industrial award

The employer is required to provide:

- the name of the agreement or the award as recorded by the Fair Work Commission; and
- the salary level or occupation group that applies to the nomination occupation.

b. There is not an enterprise agreement or industrial award

The employer must determine and then demonstrate to the Department what the ASMR is.

This can be achieved by explaining how relevant information was used to determine what the equivalent Australian worker would be paid. Relevant information must include at least two of the following:

- Job Outlook information;
- advertisements from the last six months for equivalent positions in the same location (e.g. state, urban vs regional area);
- remuneration surveys completed by a reputable organisation; or
- written advice from unions or employer associations.

Note: If the market salary rate determined is a 'range', the employer needs to explain and provide specific details regarding why the particular ASMR has been selected.

DAMA Labour Agreement Examples

Key criteria for DAMA employers in relation to TSMIT and AMSR:

1. An overseas worker must be paid at least TSMIT; and
2. An overseas worker must also be paid at least AMSR (overseas workers cannot be paid less than equivalent Australian workers)

An overseas worker can be paid more than an equivalent Australian worker as long as their earnings are more than TSMIT (meets both criteria above)

If the equivalent Australian worker earnings (AMSR) is less than TSMIT (\$53,900), the Australian worker must also be paid at least TSMIT. In order to meet both criteria 1 and 2 above, this may require an employer to 'top-up' their Australian workers' earnings.

The following examples illustrate the criteria above;

| Example | | |
|---------|--|---|
| 1 | Australian Doctor AMSR: \$120,000 Nominee will be paid: \$120,000 | Nomination Regulations are met as the nominee annual earnings is at least TSMIT and at least the AMSR. |
| 2 | Australian Doctor AMSR: \$120,000 Nominee will be paid: \$140,000 | Nomination Regulations are met as the nominee annual earnings is at least TSMIT and at least the AMSR. |
| 3 | Australian Doctor AMSR: \$120,000 Nominee will be paid: \$90,000 | Nomination Regulations are not met as the nominee annual earnings is at least TSMIT but are not at least the AMSR. |
| 4 | Australian Dairy Worker AMSR: \$45,500 Nominee will be paid \$45,500 | Nomination Regulations are not met as the nominee annual earnings is not at least TSMIT but are at least the AMSR. Neither the AMSR nor the nominee annual earnings are at least TSMIT. |
| 5 | Australian Dairy Worker AMSR: \$45,500 Nominee will be paid \$53,900 including guaranteed overtime of 8 hours per week. Employer 'tops-up' Australian Dairy Worker earnings to \$53,900, and they are also offered overtime of 8 hours per week to meet this (same conditions as overseas worker). | Nomination Regulations are met as the nominee annual earnings is at least TSMIT and at least the "topped up" AMSR for Australian Dairy Worker. |

The information contained in this factsheet is current as at April 2019. For the latest information about TSMIT and AMSR check the Department's website <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/salary-requirements>.



Sponsor Obligations

Temporary Skill Shortage Visa (TSS)

What you must do

You have obligations as a sponsor. Some of your obligations apply beyond the term of sponsorship approval.

To retain or renew your standard business sponsorship, you must continue to meet your sponsor obligations.

Tell us when certain events occur

You must tell us, in writing, when certain events occur.

To tell us:

- send an email to an address specified in the [relevant legislative instrument](#), or
- complete the new Notification of sponsor changes form in [ImmiAccount](#)

The email address specified in the legislative instrument is sponsor.notifications@abf.gov.au

Examples of things you must let us know about in writing include changes to your:

- legal name
- trading name
- registration details
- business structure
- ongoing communication contact
- owners, directors, principals or partners
- business address

You must let us know in writing if your business:

- becomes insolvent or is bankrupt
- goes into receivership, liquidation or administration
- ceases to exist as a legal entity

You must let us know in writing if the person you sponsor:

- ceases employment with you
- has a change in duties
- did not commence working with you

You must also let us know in writing if there are any changes to how you meet your training obligations.

This obligation starts on the day we approve your standard business sponsorship or the work agreement commences.

This obligation ends two years after:

- your sponsorship or the work agreement ends and
- you no longer employ a sponsored visa holder

All businesses

Let us know within 28 calendar days if:

- the visa holder's employment ends or is expected to end (the sponsor must tell us if the end date changes)
- there are changes to the work duties carried out by the sponsored visa holder
- you have paid the return travel costs of a sponsored visa holder or any of their family members in accordance with the obligation to pay return travel costs
- you have become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*
- your business ceases to exist as a legal entity

Companies

Let us know within 28 calendar days if a new director is appointed.

Also let us know within 28 calendar days if an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*:

- the company resolves by special resolution to be wound up voluntarily under subsection 491(1) of the *Corporations Act 2001*
- a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*
- a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*
- a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*
- the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*
- procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*

Individuals

If you operate your business as an individual, let us know within 28 days if:

- you enter into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*
- you enter into a debt agreement under Part IX of the *Bankruptcy Act 1966*
- a sequestration order is made against your estate under Part IV of the *Bankruptcy Act 1966*

- you become a bankrupt by virtue of the presentation of a debtor's petition under Part IV of the *Bankruptcy Act 1966*
- you present a declaration of intention to present a debtor's petition under Part IV of the *Bankruptcy Act 1966*
- a composition or scheme of arrangement is presented in relation to you in accordance with Division 6 of Part IV of the *Bankruptcy Act 1966*

Partnerships

Let us know within 28 calendar days if:

- a new partner joins the partnership
- any of the events listed for an individual or a company occurs

Unincorporated associations

Let us know within 28 calendar days if:

- a new member is appointed to the managing committee of the association
- any of the events listed for an individual or a company occurs

Where to send a notice of an event or change

You must send details of these events by:

- email (preferred): sponsor.notifications@abf.gov.au
- submitting a 'Notification of sponsorship changes' form via [ImmiAccount](#).

Ensure your employee works only in the nominated occupation

You must ensure that your sponsored employee works only in the occupation you nominated them for.

If you want a visa holder to work in a different occupation, lodge a new nomination.

If you are sponsoring them under the Temporary Skill Shortage visa (subclass 482), the employee will also need to apply for and be granted a new visa.

This obligation starts:

- on the day we grant the nominee a visa or
- on the day the nomination is approved if the nominee is already working for you

This obligation ends on the day (whichever is the earliest):

- your employee has a nomination approved for a different approved sponsor
- we grant your employee a visa that is not a TSS, bridging, criminal justice or enforcement visa
- your employee leaves Australia and their TSS visa (or any subsequent bridging visa) is no longer in effect

If you are a standard business sponsor, you must employ the person you have sponsored under a written contract of employment.

Unless the nominated occupation is exempt, you cannot supply or be involved in recruiting or hiring the sponsored employee to another business unless:

- you were lawfully operating a business in Australia when we approved your standard business sponsorship or when the terms of your approval were last varied, and

- the business is an associated entity

This obligation ends on the day we grant your employee a visa that is not a TSS, bridging, criminal justice or enforcement visa.

This obligation continues we grant your employee another TSS visa to continue to work for you.

Ensure equivalent terms and conditions of employment

If you are a standard business sponsor:

- the annual earnings of the employee must be at least the same as those stated on the nomination application when we approved the application
- the employment conditions of the employee must not be less favourable than those of an equivalent Australian worker

Note, this obligation:

- applies only if the annual earnings of the employee is less than AUD250,000.
- also applies to labour agreement sponsors unless otherwise stated in the labour agreement

This obligation starts the day (whichever is the earliest):

- we grant your employee TSS visa or
- we approve your nomination if your employee already holds a TSS or subclass 457 visa

This obligation ends the day:

- the nominated employee stops working for you or
- we grant your employee a visa that is not a TSS, bridging, criminal justice or enforcement visa

This obligation continues we grant your employee another TSS visa to continue to work for you.

Provide training to Australians and permanent residents

As part of the transition towards the SAF levy arrangements, as of 18 March 2018, businesses are no longer required to demonstrate at sponsorship application stage that they have met the 'training benchmarks'. If they are approved as a sponsor, they are, however, required to meet their training obligation for any future full year of their sponsorship where the SAF arrangements are not in effect. For example (noting using **example dates** only):

- Sponsorship approved 1 April 2017. SAF implemented 1 April 2018. The sponsor would be required to meet the training benchmarks for the period between 1 April 2017 and 1 April 2018. After that time, there is no training obligation and only SAF payments must be made if a nomination is lodged.
- Sponsorship approved 2 February 2018. SAF implemented 1 April 2018. There is no training obligation and only SAF payments are required, as a full year of sponsorship has not passed before the SAF is implemented.

Not engage in discriminatory recruitment practices

If you are a standard business sponsor who lawfully operates a business in Australia, you must not engage in, or have not engaged in, discriminatory recruitment practices that adversely affect Australian citizens, or any other person, based on their visa or citizenship status.

Keep records to show that in recruiting a TSS visa holder, you did not discriminate on citizenship or visa status.

Note: This obligation started on 19 April 2016. It is not engaged if discrimination in recruitment decisions is evident on other grounds such as sex, gender, race, social group or pregnancy. These issues are outside the remit of us and should be directed to other relevant agencies, such as the [Fair Work Ombudsman](#) or the [Australian Human Rights Commission](#).

Keep records

You must keep records to show your compliance with your sponsorship obligations. All records must be kept in a reproducible format and some must be capable of verification by an independent person. In addition to records kept under other Australian government, and state or territory laws, also keep records of:

- written requests for payment of travel costs for the employee or their family, including when the request was received
- how and when you paid the travel costs, how much you paid, and who you paid it to
- any event you need to report to us, including the date and method of notification and where the notification was provided
- tasks performed by the employee in relation to the nominated occupation and where the tasks were performed
- earnings paid to the sponsored visa holder (unless the sponsored visa holder earns AUD250,000 or more)
- money applied or dealt with in any way on behalf of, or as directed by, the employee (unless the sponsored visa holder earns AUD250,000 or more)
- non-monetary benefits provided to the employee. Record the agreed value and the time at which, or the period over which, those benefits were provided (unless the sponsored visa holder earns AUD250,000 or more)
- if there is an equivalent worker in your workplace, the terms and conditions of the equivalent worker, including the period over which the terms and conditions apply (unless the sponsored visa holder earns AUD250,000 or more)
- the written contract of employment you engage each employee under
- how you are complying with the training obligations if you were lawfully operating a business in Australia when we approved your standard business sponsorship or the terms of your approval as a standard business sponsor were varied
- the records you need to keep as party to a work agreement, if applicable

This obligation starts the day we approve your sponsorship or the nominee starts work with you.

This obligation ends two years after:

- your sponsorship or the work agreement ends and
- you no longer employ a sponsored visa holder

Provide records and information

You must provide records or information if requested by a departmental officer. The records or information will be those that:

- you are required to keep under Commonwealth, state or territory law
- you are obliged to keep as a sponsor

The records and information will be used to determine whether:

- a sponsorship obligation is being or has been complied with, and
- other circumstances in which the Minister might take administrative action exist or have existed

Provide the records or information in the manner and timeframe requested by us.

This obligation starts on the day we approve your standard business sponsorship or a work agreement starts.

This obligation ends two years after:

- your sponsorship or the work agreement ends and
- you no longer employ a sponsored visa holder

Assume all costs yourself

You must pay and assume all of the following costs yourself:

- cost of becoming a sponsor
- nomination charges
- migration agent costs associated with sponsorship and nomination applications

You must also pay and assume all costs associated with the recruitment process including:

- recruitment agent fees
- migration agent fees
- advertising
- screening, short listing, interviewing and conducting reference checks of candidates
- salaries of recruitment or human resource staff
- outsourcing background checks, police checks and psychological testing
- responding to queries from potential candidates and advising unsuccessful applicants
- travelling nationally or internationally to interview and/or meet applicants

You must not, or attempt to, transfer or charge these costs to another person such as a sponsored visa holder or their sponsored family members.

This obligation starts on the day we approve your standard business sponsorship or the work agreement starts.

This obligation ends two years after:

- your sponsorship or the work agreement ends and
- you no longer employ a sponsored visa holder

Pay travel costs

You must pay reasonable and necessary travel costs to let the sponsored employee and their sponsored family members, leave Australia.

We consider all of these costs to be reasonable and necessary:

- travel from the employee's usual place of residence in Australia to their departure point from Australia
- travel from Australia to the country for which the employee holds a passport and intends to travel to

- economy class air travel or reasonable equivalent

To pay travel costs, a written request for payment must be made by:

- the sponsored employee or
- The Department of Home Affairs on behalf of the sponsored employee

Travel costs must be paid within 30 days of receiving the request.

Pay travel costs once only. If, after paying travel costs your employee returns to Australia holding the visa for which you sponsored them, you don't have to pay their travel costs again.

This obligation starts on the day (whichever is earliest):

- we grant the visa
- we approve your nomination if the nominee held a TSS visa on that day

This obligation ends on the day (whichever is the earliest):

- your employee has a nomination approved for a different approved sponsor
- we grant your employee a visa that is not a TSS, bridging, criminal justice or enforcement visa
- your employee leaves Australia and their TSS visa (or any subsequent bridging visa) is no longer in effect

Pay costs to locate and remove an unlawful non-citizen

If your sponsored employee or any of their sponsored family members becomes an unlawful non-citizen, you might have to repay the costs incurred by the Commonwealth in relocating and/or removing them from Australia.

If required, you must pay the difference between the actual costs incurred by the Commonwealth (up to a maximum of AUD10,000) less costs you might have already paid under your obligation to pay travel costs to enable sponsored people to leave Australia.

This obligation starts on the day your sponsored employee or family member becomes an unlawful non-citizen.

The obligation ends five years after they leave Australia. That is, we might require payment up to five years after your sponsored employee left Australia.

Cooperate with inspectors

Inspectors are appointed under the *Migration Act 1958* (the Act) to investigate whether:

- your sponsorship obligations are being, or have been, complied with
- you have hired an illegal worker
- there are other circumstances in which we could take administrative action

You must cooperate with inspectors by:

- providing access to your premises, any person on your premises
- producing and providing documents within a requested timeframe
- complying with any other request made by an inspector

This obligation:

- starts on the day sponsorship is approved or the visa applicant starts work in the nominated position

- ends five years after the day the approved sponsorship ends or the applicant stops working for you

Monitoring of sponsors and visa holders

We monitor your compliance with your sponsor obligations when you are a sponsor and up to five years after your sponsorship ends.

We also monitor your sponsored employees to ensure they comply with their visa conditions

In response to information provided to us, we might:

- write to you to ask for information in accordance with the obligation to provide records and information
- undertake site visits, usually to the sponsored business premises, with or without notice
- exchange information with other Commonwealth, state and territory government agencies, including the Fair Work Ombudsman, the Department of Jobs and Small Business, and the Australian Taxation Office

Your compliance with the sponsorship obligations might be monitored by Immigration inspectors, Fair Work Inspectors or Fair Work Building Industry Inspectors who have investigative powers under the *Migration Act 1958*. Failure to cooperate with inspectors is a breach of your sponsorship obligations.

Subject to legislation passing, the Department will publish information identifying sponsors who have not complied with their sponsorship obligations and any action taken against them. Further information will be available if this occurs.

Sanctions

If you do not meet your obligations, we could take one or more of the following actions:

Administrative

We might:

- bar you from sponsoring additional visa holders for a specified time
- not approve your application for sponsorship for this or any other visa
- cancel all of your existing sponsorship approvals

Enforceable undertaking

We might ask you to enter into an enforceable undertaking. Enforceable undertakings require you to promise, in writing, to undertake to complete certain actions to show that the failures have been rectified and won't happen again.

Civil

We might:

- issue an infringement notice of up to AUD12,600 for a body corporate and AUD2520 for an individual for each failure
- apply to a court for a civil penalty order of up to AUD63,000 for a corporation and AUD12,600 for an individual for each failure

Other circumstances in which administrative action might be taken

In addition, you could also have sanctions imposed if:

- you provide false or misleading information to us or the Administrative Appeals Tribunal
- you no longer satisfy the criteria for approval as a sponsor or for variation of a term of that approval
- you have been found by a court or competent authority to have contravened a Commonwealth, state or territory law
- the person you have sponsored breaks a law relating to the licensing, registration or membership needed to work in the nominated position

The types of actions that could be taken depend on whether you are a standard business sponsor or have a work agreement.

If you have sponsored someone under a work agreement, we could suspend or terminate the agreement in accordance with the clauses of the particular work agreement.

