

An Employer's Guide to Accessing a Labour Agreement under the South-West DAMA

Important Information

By making this request to the South-West Designated Area Representative (South-West DAR) you are seeking the endorsement of the Designated South-West Local Government (i.e. Shires of Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, City of Bunbury, City of Busselton, Shires of Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup, Nannup) to be able to:

- access the South-West Designated Area Migration Agreement (DAMA); and
- request to enter into a Labour Agreement with the Commonwealth of Australia (the Commonwealth).

The Commonwealth considers, but is not bound by, an endorsement by the South-West DAR. Endorsement by the South-West DAR does not guarantee a positive migration outcome. The South-West DAR is not a party to the Labour Agreement between you (the employer) and the Commonwealth.

You understand and accept that the South-West DAR is under no obligation to endorse you for a Labour Agreement.

1. Applying for a Labour Agreement

1.1 A Labour Agreement is a legally binding agreement that will be made between you and the Commonwealth to allow you to sponsor overseas workers under the subclass 482 (TSS), subclass 186 (ENS) and/or subclass 494 (SESR) visa programs under the labour agreement stream. We always advocate that employment should be offered to Australians first. Where there is a skills shortage, overseas workers are critical to supplement the local workforce in circumstances where there is a genuine, significant demand for workers in a particular occupation(s) that cannot be met from within the Australian labour market. The South-West DAMA also functions to provide access to occupations that are not available under the standard skilled visa programs.

1.2 Further information regarding other visa options can be found at <https://www.homeaffairs.gov.au/>

2. What you will need to demonstrate

In order to request endorsement from the South-West DAR to access the DAMA you will need to complete *Form 232 - Endorsement Application* and provide the following information:

2.1 Good Corporate Citizen

A. Evidence that you have been actively operating for at least twelve months and are financially viable. You will need to provide:

- business documents, including for associated entities (if applicable) such as:
- your Business Registration Certificate;
- Australian Business Number (ABN);
- Australian Company Number (ACN) (if applicable);
- Trust Deed (if applicable); and
- recent financial accounts or BAS statements; and
- a letter of support from a registered Chartered Accountant or a Certified Practising Accountant confirming that you have been actively operating for at least twelve months and have the financial capacity to meet the migration obligations for the workers you wish to sponsor, for the proposed period that they will be employed by you. The letter must include the key financial data i.e. your turnover, net assets and profit/loss for the most recent financial year.

Note: labour hire organisations cannot use the DAMA program, only direct employers can. A labour agreement specific to labour hire organisations (“On Hire”) can be found at [Labour agreements \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

B. A statement confirming whether there have been relevant investigations or audits, resulting in an adverse finding to the business or any associated entities (including previously associated entities) in the last five years by bodies such as:

- the Office of the Fair Work Ombudsman, or former authority with this function, or relevant State or Territory government authority in relation to compliance with workplace relations provisions;
- the relevant State or Territory government authority in relation to compliance with workplace health and safety provisions; and
- the Department of Home Affairs (Home Affairs) in relation to compliance with migration provisions.

Information about any such investigations or audits will need to be provided with this request. Any other relevant adverse information should also be declared.

2.2 Valid need for overseas workers and concessions

Employers need to provide a business case to demonstrate their need to access available concessions (for each occupation and each concession).

C. A Statement regarding the number of overseas workers you will need, the roles they will fill and whether you are requesting any concessions to the standard subclass 482, subclass 186 and/or subclass 494 visa requirements.

The available concessions under the South-West DAMA are:

- English: the English language level may be reduced from the standard requirement, as below;
 - **TSS (Subclass 482)/SESR (Subclass 494) English concession:** an average score of IELTS 5.0 with no minimum component score (unless registration or licencing requires a higher level of English).

- **ENS** (Subclass 186): the minimum standard English language requirement applicable to the ENS non-labour agreement visa streams under the Migration Regulations apply.

An acceptable level of English language level may also be demonstrated by:

- the applicant being a native English speaker holding a passport from one of the following countries: the United Kingdom, the Republic of Ireland, Canada, New Zealand or the United States of America; or
 - evidence that the applicant has completed at least five years of continuous full-time study in a secondary or higher education institution where instruction was conducted in English
- Minimum income: The TSMIT concession may not be available for all occupations included in the DAMA. Where an overseas worker has been nominated/identified for a concessional occupation, the nominating third party (employer/sponsor) must provide the overseas worker with an amount of annual earnings which is equal to or greater than:
 - the Annual Market Salary Rate, and
 - Reduced TSMIT (for concession type 1) or TSMIT (for concession types 2)

Where employers are able to provide a strong business case, the following concessions to the TSMIT may apply;

- Concession Option Type 1 (up to 10% reduction to TSMIT), the base rate of pay must be equal to or greater than 90 per cent of TSMIT; or
- Concession Type 2 (up to 10% reduction to TSMIT and the inclusion of non-monetary earnings) the base rate of pay may be equal to or greater than 90 per cent of TSMIT; as well as the inclusion of 'non-monetary earnings' capped at 10% of TSMIT. Non-monetary earnings refers to benefits such as phone, vehicle, food and board.

Employers seeking access to a TSMIT concession will need to provide evidence that the salary and employment conditions being offered to an overseas worker are in line market rates in the South-West region.

- Age concessions

The following age concessions may apply:

- 55 years for overseas workers in skill level 1-4 occupations; and
- 50 years for overseas workers in skill level 5 occupations

Not all occupations are eligible for the above concessions. Read more about [occupations and concessions](#) and how they relate to the occupations within the South-West Designated Area Migration Agreement.

D. Evidence that the recruitment of overseas workers is only to supplement the Australian workforce and will not undermine employment and training opportunities for Australians. You will need to complete a domestic recruitment summary table showing that you have made genuine efforts to recruit domestic

workers in the nominated occupation and location over the past four months. This information should include:

- the types of advertising or recruitment efforts (e.g. website, print media or radio) made in the last four months with respect to the relevant occupations;
- the locations and duration (including start and end dates) where those advertising or recruitment activities took place;
- the number of applications received;
- the number of applicants hired; and
- the general reasons why the other candidates were unsuccessful.

Recruitment activities undertaken must meet Department of Home Affairs Labour Market Testing (LMT) requirements as they apply to the subclass 482 and subclass 494 visas.

You should also provide: -

- details of any redundancies or retrenchments that have occurred in the last six months including any associated (including previously associated) entities for roles in the nominated occupation or similar occupations; and
- details of your current workforce (organisation chart) including the number of Australian citizens/permanent residents, subclass 482, 186 and/or 494 visa holders and other temporary visa holders (including subclass 457 visa holders).

2.4 Equal pay and conditions

E. Confirmation that the proposed terms and conditions of employment of the overseas worker(s) will be no less favourable than what would be provided to an Australian performing equivalent work in your workplace. If you do not already employ someone in the same position, you will need to provide evidence of the market salary and listing some of the following example as types of evidence:

- pay rates from applicable enterprise agreements in the local region;
- applicable industry awards;
- data from reputable industry remuneration surveys (usually conducted by peak industry bodies or professional associations);
- Australian Bureau of Statistics earnings data; and
- job vacancy advertisements

Evidence to satisfy the annual market salary rate will be met is also a requirement by the Department of Home Affairs at the time of nomination.

F. As well as being equivalent to, or higher than the base rate of pay (usually based on a 38 hour week unless varied by an award) must also be equal to or higher than the Temporary Skilled Migration Income Threshold (TSMIT) unless a concession has been negotiated (see 2.2 above). The TSMIT is currently \$53,900 per annum.

G. Overseas workers must be engaged in accordance with applicable Australian workplace laws.

H. Additionally, the overseas worker(s) must be employed on a full-time basis as a direct employee.

I. The position to be filled must also be located in the designated South-West city or shire regions (i.e. with the Shires of Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, City of Bunbury, City of Busselton, Shires of Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup, Nannup).

Conditions associated with the South-West DAMA include that the overseas worker must live and work in the designated area. The overseas worker may be able to travel outside the South-West for work-related reasons for short periods of time where this is consistent with the declared duties of the position. You must seek the agreement of the South-West DAR if the overseas worker will be outside of the designated area for more than three out of twelve months.

Read more about [market salary rates](#) and the market rate requirement for subclass 482, subclass 186 and/or subclass 494 visas holders under the South-West Designated Area Migration Agreement

2.5 Skills and skills assessments

J. You acknowledge that overseas workers sponsored under the DAMA must satisfy minimum skill requirements as prescribed by Australian and New Zealand Standard Classification of Occupations (ANZSCO) for the occupation, and the skill requirements as specified by the labour agreement.

Please note that the minimum qualifications and experience required under the DAMA may sometimes be higher than minimum levels specified in ANZSCO for the occupation.

K. You must also provide a statutory declaration stating:

- you or a member of your staff has interviewed or will interview the applicant;
- you or a member of your staff has reviewed and confirmed, or will review and confirm, the applicant's experience and references;
- you are satisfied, or will be satisfied, that the applicant has the skills and experience for the role; and
- if a licence/registration is required for the applicant to work in the occupation in the South-West, you undertake to ensure that the overseas employee will gain this licence/registration at the earliest possible time and before they commence employment with you.
- Overseas workers must commence employment within 90 days of their arrival in Australia on the subclass 482, subclass 186 and/or subclass 494 visas, or if they are already in Australia, within 90 days of visa approval.

2.6 Settlement information

A. You must undertake to provide the overseas worker with settlement information:

- prior to you engaging them, or
- if they are already working for you, prior to them lodging their visa application, unless they have been living and working in the South-West for at least 12 months prior to them lodging their visa application. You can obtain a settlement information kit from the South-West DAR.

B. You understand that it is essential that suitable housing accommodation is readily available for the overseas worker before they commence employment. You are responsible for providing satisfactory evidence that accommodation options are available within reasonable proximity to the locality of their work site. This does not include emergency housing or very short-term housing options.

2.7 Sponsorship obligations

A. You acknowledge you have read and understood your sponsorship obligations should Home Affairs enter into a Labour Agreement with you. Details can be found at: [Existing sponsor \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

2.8 Conditions of endorsement and other matters

A. You understand that it is a criminal offence in Western Australia (including the South-West region) to make a false or misleading statement to an official.

B. You agree to provide any and all information required by the South-West DAR to fulfil its obligations under the DAMA (including but not limited to, any updated information regarding the business, its workforce and evidence of its ongoing compliance with the obligations under the Labour Agreement) within 28 days of such a request being made.

C. You understand and accept that the South-West DAR has no liability to you for any costs, loss or damage incurred or suffered by you directly or indirectly arising from or in connection with:

- your request to or entry into a Labour Agreement; or
- anything done by you, or on your behalf, relating to the entry into or the performance of the Labour Agreement; or
- anything done to you relating to the entry into or the performance of the Labour Agreement or work performed by employees employed following entry into the Labour Agreement.

D. You understand that the South-West DAR will manage the endorsement applications in a form of quota ensuring that all skills and roles can be fulfilled.

E. You agree to provide the outcome or results (approved or rejected) of your Labour Agreement with Home Affairs to the South-West DAR in writing within 28 days.