

**AMBER MIGRATION NEWSLETTER**  
*19 March 2018*

Finally, the Subclass **482 Temporary Skilled Shortage visa** became a reality on midnight 18 March 2018 together with 26 legislative instruments in relation to primarily visa subclass 482, 186 and 187. In this s **Amber Migration** Newsletter, we outline the key features of visa subclass 482 and the changes that took place on 18 March 2018. Also, we would like to bring your attention to the **Global Talent Scheme** announced by Citizenship & Multicultural Affairs Minister on 18 March 2018.

**482 Temporary Shortage Sponsorship, Nomination & Visa applications**

Similar to its 457 predecessor, a subclass 482 visa enables a foreign employee to work in their nominated occupation for their sponsoring employer in Australia. This process involves the making of a business sponsorship application, a nomination application and a visa application with the Department of Home Affairs.

The following tables summaries the key features of this newest visa subclass:

<p><b>Standard Business Sponsorship</b> – Current approved SBS’s</p>	<p>Sponsor can continue to use their current subclass 457 business sponsorship approval to make a subclass 482 nomination application.</p>
<p><b>New SBS applications</b> - Training requirements</p>	<p>The Bills to implement the Skilling Australians Fund levy are currently before the Parliament. As part of the transition towards the SAF levy arrangements, as of 18 March 2018, applicants for a new SBS are no longer required to meet either Training Benchmark A or B. However, if their application is approved, they are required to meet their training obligation for any future full year of their sponsorship where the SAF arrangements are not in effect.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Sponsorship approved 1 April 2017. SAF implemented on 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.</li> <li>• 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.</li> </ul>
<p><b>SBS</b> – new reportable event</p>	<p>Business sponsors are required to notify DoHA as part of their sponsorship obligations if a 482 visa holder fails to commence employment as per employment contract.</p>

<p><b>Nomination – Skilling Australians Fund</b></p>	<p>Once implemented, an SAF Levy per nomination per the number of years sought will be payable upfront, at the time of lodgement.</p>
<p><b>Nomination – Labour Market Testing</b></p>	<p>Unless exempt (where international trade obligations apply), sponsors must provide documentary evidence of labour market testing when making a nomination application. For nomination applications lodged between 18 March 2018 and 17 June 2018, LMT must have been undertaken within 12 months immediately before the nomination application is made. For nomination applications lodged on or after 18 June 2018, LMT must have been undertaken within the 6 months immediately before making the nomination application.</p> <p>Evidence which meets the following criteria will generally be considered sufficient:</p> <ul style="list-style-type: none"> <li>• the nominated position has been advertised <b>in Australia</b>;</li> <li>• the advertisement was <b>in English</b> and included the following information: <ul style="list-style-type: none"> <li>○ the title, or a description, of the position;</li> <li>○ the name of the approved sponsor or the name of the recruitment agency being used by the sponsor;</li> <li>○ the annual earnings for the position (unless the annual earnings will be greater than the Fair Work High Income Threshold, currently \$142,000);</li> </ul> </li> <li>• at least <b>two advertisements</b> were published: <ul style="list-style-type: none"> <li>○ on a national recruitment website (for example, jobactive.gov.au) – that is, a prominent or professional recruitment website that publishes advertisements for positions throughout Australia. A general classifieds website or an advertisement solely through a social media notification, such as Twitter or Instagram is not an acceptable method;</li> <li>○ in national print media – that is, national newspapers or magazines that are published at least monthly and marketed throughout Australia;</li> <li>○ on national radio – that is, radio programmes that are broadcast or syndicated nationally;</li> <li>○ if the sponsor is accredited – on the business' website.</li> </ul> </li> </ul>
<p><b>Nomination – TSMIT &amp; Australian Market Salary Rate</b></p>	<p>TSMIT is unchanged at 43,900.</p> <p>Detailed justifications are required when external salary information is used to address the Australian Market Salary Rate requirement.</p> <p>When using an Australian employee’s employment terms and conditions as the annual market salary rate benchmark, sponsors are required to provide separate comparisons for annual earnings, earnings, and employment conditions other than earnings.</p> <p>The term “base rate of pay” is removed. New term “annual market salary rate” means what an Australian citizen or permanent resident earns or would earn for performing equivalent work on a full-time</p>

	basis for a year in the same workplace and the same location as the applicant.
<b>Nomination – Certification of employment contracts</b>	Sponsors are required to certify the employment contract being offered to a 482 nominee complies with all laws of the Commonwealth, State or Territory related to employment, including National Employment Standards if applicable.
<b>Nomination – Occupation Lists</b>	Two occupation lists are applicable to the 482 visa subclass, namely, the STSOL and the MLTSSL. The former allows the visa holder 2 + 2 years of stay in Australia with no pathway for 186 or 187 permanent residence. The latter allows 4 years stay at a time and with a 186/1897 permanent residence pathway. On 18 March 2018, new STSOL and MLTSSL were released with lessor occupations, after the removal of these occupations: Horse breeder, post office manager, fitness centre manager, sports centre manager, aeroplane pilot, flying instructor, helicopter pilot, wine maker, agricultural technician, property manager and real estate representative.
<b>Visa – Visa held at time of application</b>	482 visa applicants must hold a substantive visa or a Bridging A, B or C visa if making the application inside Australia.
<b>Visa – Full-time positions</b>	482 visas are only available for full time positions.
<b>Visa – Minimum work experience</b>	A primary subclass 482 visa applicant is required to have at least two years of relevant work experience in addition to meeting the entry requirement for the nominated occupation. For example, the entry requirement for the occupation of Marketing Specialist is a Bachelor degree or 5 years of relevant professional experience. A subclass 482 visa applicant for this occupation is required to have at least 2 years of relevant experience in addition to these entry requirements.
<b>Visa – Skills assessment</b>	<p>Skills assessment is now a legal requirement for 25 occupations (mostly trade related, except the occupations of Program or Project Administrator and Specialist Manager nec) for applicants from a specified list of countries, unless they are exempt.</p> <p>The positive skills assessment must have been obtained within 3 years immediately before the visa application is made, unless an “alternative arrangement” has been made. DoHA has not specified what “alternative arrangement” is acceptable.</p> <p>Exemptions apply to:</p> <ul style="list-style-type: none"> <li>• Primary 482 applicants who hold a 457 or 482 visa and are employed in Australia in the occupation in question;</li> <li>• Applicants employed by a company operating an established business overseas in the occupation in question or a similar occupation who are nominated by a business sponsor that is that company or an associated entity;</li> </ul>

	<ul style="list-style-type: none"> <li>Applicants who hold a relevant qualification for the occupation as specified in ANZSCO, if the qualification was obtained as a result of a course undertaken in Australia or in a country not mentioned in the list of countries for that occupation;</li> <li>The nominated occupation requires a licence, registration or membership and that is held by the applicant;</li> <li>The applicant has met the standards set by TRA for the nominated occupation.</li> </ul>
<b>Visa – English language requirements</b>	Where an English test is required as evidence of Vocational English ability, the test must have been undertaken 3 years <u>before</u> the date of the 482 visa application. Unless exempt, occupations that are on the Long-term list are subject to slightly higher English test score compared to the Short-term list.
<b>Visa – Genuine Temporary Entrant requirement</b>	For 482 Short-term stream, GTE requirement is added to include consideration of the applicant’s intent to stay in Australia temporarily, applicant’s circumstances, immigration history and any other relevant matter.
<b>Visa – Grounds for cancellation</b>	After the grant of a 482 visa, DoHA is allowed to revisit these factors: if the visa holder had a genuine intention at the time of visa grant to perform the occupation they were nominated for; if the visa holder has ceased to have a genuine intention to perform that occupation; or if the position associated with that occupation is genuine. If DoHA is satisfied that any of the above factors no longer exists, the visa is subject to cancellation.

### Becoming an Accredited Business Sponsor

As previously reported to you, an accredited sponsor enjoys automatic priority processing of 457/482 nomination and visa applications, with most applications processed in less than 5 days. Since 18 March 2018, these benefits have expanded from priority processing to less stringent LMT procedure (ie advertising on the company’s website is allowed) and provision of a character reference to partially waive the police check requirements for their sponsored employees. For these benefits, we once again highly recommend that you seek the status of an accredited sponsor if you are eligible to do so.

To be approved as an accredited business sponsor, the business must meet standard sponsorship requirements, as well as one of the following 4 categories at the time of application:

<i>Category</i>	<i>Required characteristics (* Special consideration applies)</i>
<b>Category 1</b> Commonwealth, state and territory government agencies	<ul style="list-style-type: none"> <li>have Australian workers comprising at least 75% of their workforce in Australia</li> </ul>

<p><b>Category 2</b></p> <p>Australian Trusted Traders</p>	<ul style="list-style-type: none"> <li>• have Australian workers comprising at least 75% of their workforce in Australia</li> <li>• engage all TSS and/or subclass 457 visa holders as employees under a written contract of employment that includes at least the minimum employment entitlements as required under the National Employment Standards (NES) (unless their occupation is exempt from this requirement)</li> <li>• have all Australian employees paid in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rates for all occupations in their business</li> </ul>
<p><b>Category 3</b></p> <p>Low volume usage and high percentage of Australian workers (at least 85%)</p>	<ul style="list-style-type: none"> <li>• have Australian workers comprise at least 85% of their workforce in Australia</li> <li>• are not a sole trader or a partnership*</li> <li>• have an annual turnover of at least AUD4M for the last two years*</li> <li>• have been a standard business sponsor for at least one year*</li> <li>• have nominations approved for at least one primary TSS or subclass 457 visa holder*</li> <li>• have a nomination non-approval rate of less than 3% for the last year</li> <li>• have no adverse monitoring outcomes</li> <li>• have all Australian employees paid in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rates</li> <li>• engage all TSS and/or subclass 457 visa holders as employees under a written contract that meets NES where they apply</li> </ul>
<p><b>Category 4</b></p> <p>High volume usage and medium percentage of Australian workers (at least 75%)</p>	<ul style="list-style-type: none"> <li>• have Australian workers comprise at least 75% of their workforce in Australia</li> <li>• are not a sole trader or a partnership*</li> <li>• have an annual turnover of at least AUD4M for the last two years</li> <li>• have been a standard business sponsor for at least two years</li> <li>• have nominations approved for at least 10 TSS and/or subclass 457 visa holders in the last two years</li> <li>• have a nomination non-approval rate of less than 3% for the last two years</li> <li>• have no adverse monitoring outcomes</li> <li>• have all Australian employees paid in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rates</li> <li>• engage all TSS and/or subclass 457 visa holders as employees under a written contract that meets NES where they apply</li> </ul>

## Permanent Skilled Changes (186/187)

There are not a lot of changes announced on 18 & 19 March 2018 that we have not previously reported to you in relation to subclasses 186 Employer Nomination Scheme and 187 Regional Sponsored Migration Scheme, except that 187 visa applicants are now required to have at least 3 years of relevant work experience before they are eligible to make a 187 visa application.

## Reminder to holders/applicants of a 457 visa as at 18 April 2017

DoHA has published the following table to summarise transitional arrangements for holders or applicants of a 457 visa as at 18 April 2017:

<i>Client</i>	<i>TRT requirements expected to apply</i>
If client held a subclass 457 visa on 18 April 2017 and continues to hold this visa or a 457 visa/TSS visa/related bridging visa at time of application  <b>or</b>  if client lodged a subclass 457 visa application on or before 18 April 2017 which was subsequently granted and continues to hold this visa or a 457 visa/TSS visa/related bridging visa at time of application.	New requirements apply subject to the transitional provisions outlined below: <ul style="list-style-type: none"><li>• <b>occupation list requirements will not apply</b></li><li>• the <b>age requirement</b> will remain at <b>less than 50</b> years of age with existing age exemptions still available, and</li><li>• the <b>minimum period</b> an applicant is required to have been employed as the holder of a subclass 457 or TSS visa will remain at <b>two years</b>.</li></ul>

## Global Talent Scheme

On 19 March 2018 Citizenship and Multicultural Affairs Minister Alan Tudge announced a 12 month Global Talent Scheme pilot program that will enable employers to use a new visa to sponsor highly skilled foreign workers from July 2018. Unless the 457/482 visas, there will be no set list of occupations for this new visa. The visa will have these two streams: (i) the Established business stream that is for businesses that are publicly listed or have an annual turnover of at least \$4 million for each of the past two years; and (ii) the Start-up stream that is for start-up businesses operating in STEM-related field (eg digital, biomedical, agtech). We enclose the Fact Sheet published by DoHA and will update you when the associated legislation is available.

If you have any questions concerning the information provided in this newsletter, please contact:

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