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Employer Sponsored Migration



Australian Government
Department of Immigration
and Citizenship

About this booklet

This booklet is designed so that you can understand the steps for applying for **Employer Sponsored Migration to Australia**, and complete the application form with minimal, if any, help.

This booklet is one of a series of booklets about migration to Australia. The booklets are:

- 1 Partner Migration
- 2 Child Migration
- 3 Parent Migration
- 4 Other Family Migration
- 5 Employer Sponsored Migration
- 6 General Skilled Migration
- 7 Business Skills Entry
- 8 Special Migration

For general information about migration to Australia, read information form 1126i *Migrating to Australia*, or visit the website www.immi.gov.au/immigration.htm

Using a migration agent

You do not need to use a migration agent to lodge a visa application. However, if you choose to use an agent, the department recommends that you use a registered migration agent.

Under Australian law, anyone who uses knowledge of migration procedures to offer immigration assistance to a person wishing to obtain a visa to enter or remain in Australia must be registered or exempt from registration (see page 36).

All registered migration agents are bound by the Migration Agents Code of Conduct, which requires agents to act professionally in their clients' lawful best interests. A list of registered migration agents is available from the Migration Agents Registration Authority (MARA) website www.themara.com.au

You can contact the MARA at:

E-mail: themara@themara.com.au

PO Box Q1551
QVB NSW 1230
AUSTRALIA

Telephone: 61 2 9299 5446

Fax: 61 2 9299 8448

The MARA investigates complaints against registered migration agents and may take disciplinary action against them. If you have a concern about a registered migration agent, you should contact the MARA. The Code of Conduct and complaint form are available from the MARA website.

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Terms you need to know

| | |
|--------------------------------|---|
| Applicant | The applicant is the person (or persons) applying to migrate or remain permanently in Australia. |
| ASCO | Australian Standard Classification of Occupations published by the Australian Bureau of Statistics |
| Department | Department of Immigration and Citizenship. |
| DEWR | Department of Employment and Workplace Relations. |
| DITR | Department of Industry, Tourism and Resources. |
| ENS List of Occupations | Positions nominated under the Employer Nomination Scheme (ENS) must correspond to an occupation that is on the ENS list of occupations. This list is available on form 1121i, which is included with the hard copy of this booklet and is also available from the department's website www.immi.gov.au/allforms/pdf/1121i.pdf |
| ETA | Electronic Travel Authority |
| Migrate | If you apply from outside Australia, you will be applying to migrate. If you are applying in Australia, you will be applying for permanent residence. In this booklet the term 'migrate' will cover both. |
| Nominator | The employer or company that is seeking to fill an identified vacancy. |
| Nominee | The person who has been nominated to fill the position. |
| RSMS | Regional Sponsored Migration Scheme. |

PART 1

General information

Basic requirements

Categories

There are 4 categories for employer sponsored migration to Australia:

[Employer Nomination Scheme \(ENS\)](#)

[Regional Sponsored Migration Scheme \(RSMS\)](#)

[Labour Agreements \(LA\)](#)

[Invest Australia Supported Skills \(IASS\)](#)

These categories are employer driven. The first 3 categories enable Australian employers to recruit highly skilled workers, either from overseas or from people temporarily in Australia, where an employer has been unable to fill their recruitment needs from the Australian labour market or through their own training efforts. The IASS enables employers (who have an approved IASS agreement) to transfer 'key' managerial and specialist employees of their company to Australia.

More information about the categories is in Part 2 – Categories.

Nomination

Employers who are considering nominating persons under the ENS, RSMS or LA may locate suitable nominees in various ways, including:

- through their efforts in testing the Australian labour market;
- personal contact and/or experience with the nominee;
- recommendation from third parties; or
- through the Skill Matching Database (see page 4).

SKILL MATCHING is a scheme that allows Australian employers to sponsor overseas migrants who have applied for a permanent general skilled migration visa and are prepared to be sponsored by an employer, and live and work in an area of Australia where their skills are in demand.

The education, employment and work details of these applicants are placed in the department's Skill Matching Database. It is used by State and Territory Governments and employers who have been unable to recruit suitably skilled personnel from the local labour market. An abridged version of the Skill Matching Database is available from the department's website www.immi.gov.au/skills/. The applicants remain on the database for up to 2 years, or until they migrate to Australia. If the applicants are nominated by an employer under the RSMS, ENS or a LA they do not need to lodge another application. These applicants are automatically deemed to have an RSMS, ENS or LA application and can be processed accordingly.

All prospective applicants must first be nominated by their direct employer in Australia. The nomination must be received by a Business Centre of the department in Australia (please see the list of Business Centres on page 32). If the nomination is approved, the employer will advise the nominee and provide them with a copy of the nomination approval letter from the department.

The nomination should be lodged **before or at the same time** as the visa application. At the latest, the visa application must be lodged within **6** months of the approval of the nomination.

The same nomination must be approved before the visa application can be approved.

Information about nominations specific to each category can be found in Part 2.

Visa application

The nominee can be in Australia or outside Australia when they apply for their visa.

If you have a valid visa application for one of the following general skilled migration categories:

- Skill Matching (subclass 134);
- Skilled – Independent (subclass 136);
- Skilled – Australian Sponsored (subclass 138);
- Skilled – Independent Overseas Student (subclass 880);
- Skilled – Australian Sponsored Overseas Student (subclass 881);

and have subsequently been nominated by an employer for an LA, ENS or RSMS visa, you are deemed to have made an application for the visa class for which you have been nominated. In these circumstances you are not required to complete a new visa application.

If you have a valid visa application for one of the following general skilled migration categories:

- Skilled – Independent (subclass 175);
- Skilled – Sponsored (subclass 176);
- Skilled – Independent (subclass 885);
- Skilled – Sponsored (subclass 886);
- Skilled – Regional (subclass 887);

and have subsequently been nominated by an employer for an LA, ENS or RSMS visa, you will be required to complete a new visa application. You will not be required to pay an application charge for this new application.

In either case, you will still be assessed against, and need to meet, the requirements of the LA, ENS or RSMS visa.

Important: Nominees applying in Australia must hold a visa with permission to work, and:

- be a temporary resident (except holders of temporary visas – diplomatic, domestic workers, expatriate, and retirement); or
- hold a working holiday visa; or
- hold a student visa granted in relation to an award course at diploma level or above and successfully **completed** by the applicant; or
- hold a Skilled-Independent Regional (Provisional) visa; or
- hold a Skilled (Provisional) visa.

They must not be the holder of an Electronic Travel Authority (ETA), Visitor visa, Special Purpose visa or a Business Short Stay visa.

Visa applications can be lodged at the same time as, or after the corresponding nomination was lodged. At the latest, visa applications must be lodged within **6 months** of the approval of the corresponding nomination.

Visa applications must be lodged at the same Business Centre of the department as the corresponding nomination, even if the nominee is applying from outside Australia.

English language requirements

In most cases the nominee must have a 'vocational' level of English or if applying under regional arrangements, a 'functional' level of English. Information on the International English Language Testing System (IELTS) can be found at www.idp.com.au. Adult dependents are expected to have 'functional' English. Higher Visa Application Charges may apply to those who do not have a 'functional' level of English.

Qualification assessment

The nominee's qualifications may need to be assessed if:

- the nominee has not worked in the occupation in Australia for 2 years before applying; or
- the nominee's base salary will be less than the salary specified by Gazette Notice for highly paid executive positions. Nominees should refer to the Gazette Notice for the current minimum salary level. The Gazette Notice can be found by following the eligibility/employer links from www.immi.gov.au/skilled/skilled-workers/ens/; or
- registration, licensing or membership of a professional body is mandatory in the proposed field of employment.

If the nominee is not sure whether the nominated occupation falls into one of these categories, they should check with their employer. The Business Centre of the department where the nomination was lodged can provide information on this subject, including details on the assessing body, forms to complete and information on the costs involved.

IMPORTANT

If the nominee's qualifications need to be assessed, that assessment must be completed before the nominee lodges their visa application, and MUST be provided to the department at the same time as the visa application.

Costs and charges associated with your application

Listed below are some of the costs and charges which you should find out about before applying.

Visa Application Charge

Payment must accompany your application and is generally not refunded if the application is unsuccessful. To check the Visa Application Charge, see form 990i *Charges* available from the Forms section of the department's website

www.immi.gov.au/allforms/pdf/990i.pdf or check with the nearest office of the department.

If members of your family unit are included with you in your visa application, only one application charge is payable for the family unit.

However, some members of your family unit may not be eligible to be included in your visa application, eg. if you are applying for a subclass 855, 856 or 857 (onshore) visa and your family members are offshore. (You must still declare these members of your family unit on your visa application.) If members of your family unit arrive in Australia after you have made your visa application, but before a decision has been made on your application, they may be able to be added to your visa application. Alternatively, it may be possible for them to make a separate visa application. If a separate application is made, then a separate application charge is payable. **Prior** to lodging your visa application, you should contact the Business Centre to discuss your particular circumstances.

Method of payment

In Australia

To make a payment, please pay by credit card, debit card, bank cheque or money order made payable to the Department of Immigration and Citizenship. Debit card and credit card are the preferred methods of payment.

Outside Australia

Before making a payment outside Australia, please check with the Australian Government office where you intend to lodge your application as to what methods of payment and currencies they can accept and to whom the payment should be made payable.

Nomination fee

At the time of lodging an application for nomination under the Employer Nomination Scheme (ENS), employers are required to pay a fee.

Nominations under the Regional Sponsored Migration Scheme (RSMS), Labour Agreements (LA) and the Invest Australia Supported Skills (IASS) program do not have a fee. See form 990i *Charges* which is available from the Forms section of the department's website www.immi.gov.au/allforms/pdf/990i.pdf

Second instalment of Visa Application Charge

If you or any other person over the age of 18 included in your application have been assessed as not having 'functional' English, a second instalment application charge may be requested by the department.

English proficiency testing

If you are required to sit an English proficiency test, either in or outside Australia, the cost is a matter between you and the test provider. Some professions require an Occupational English Test (OET) as part of the qualifications assessment. Information on the OET can be found at www.oet.com.au

Medical costs

You and members of your family unit will be required to undergo a medical and x-ray examination. The cost of the examination is a matter between you and the doctor undertaking the examination.

Regional Certifying Bodies

Some Regional Certifying Bodies may charge for the work involved in certifying a nomination under the Regional Sponsored Migration Scheme (see page 17).

Other costs

You should also be prepared to pay other costs associated with your application, such as the cost of certified translations of some documents.

This information is provided to give you an indication of the possible total cost of your application. They should be used as a guide only and are subject to change without notice. For further details see form 990i *Charges*, or contact any Australian mission.

Dependants

Your application may cover a family unit, namely a main applicant and, if applicable, spouse and dependants. It is important to note that your dependants must satisfy health and character requirements before your application can be approved.

Note: Special arrangements apply to assessing the 'family unit' for applicants who are holders of a Skilled-Independent Regional (SIR) (Provisional) (Class YX) visa and are applying for a Regional Sponsored Migration Scheme subclass 857 visa.

Spouse

Your spouse is the person you live with as husband and wife, either legally married or in a de facto (common law) relationship.

For holders of an SIR visa applying for a subclass 857 visa, family relationships are based on the situation when their SIR (Provisional) (Class YX) visa was approved.

Dependent children

A dependent child may be your natural, adopted or step-child. 'Step-child' means a natural or adopted child of your current spouse or a natural or adopted child of your former spouse where the child is under 18 and you have a legal responsibility to care for them (eg. where your former spouse is deceased and you have legal custody of the child). You will need to provide a certified copy of the overseas or Australian court order which you have in relation to the child.

A child of any age is not considered dependent if he or she is married or in a de facto/common law relationship or is engaged to be married.

A child 18 years of age or over will not be considered dependent unless you can show that they are wholly or substantially reliant on you for financial support for their basic needs of food, shelter and clothing. You must also show that you have provided that support for a substantial period and that the child is more reliant on you than on any other person or source. Unless you can provide evidence of this, they should apply separately. You should also be aware that a child aged 25 or over will generally not be considered dependent.

Children of any age who have a total or partial loss of bodily or mental functions which stops them earning a living are regarded as dependent and part of the family unit (whether or not they migrate with you). Give details of such children and whether they are in your care or in an institution.

In all cases you should attach evidence of your child's dependency on you.

Other dependants

You may include other relatives in your application if they are wholly or substantially reliant on you for financial support for their basic needs of food, shelter and clothing and they have been reliant on you for that support for a substantial period. They must also be more reliant on you for support than on any other person or source.

A relative may also be considered dependent on you if they are reliant on you for financial support because they have a mental or physical disability which stops them from earning a living to support themselves.

Other relatives dependent on you or your spouse may include, for example, an aged, unmarried relative.

If you have dependants who are 18 years of age or over, please obtain a form 47A Details of child or other dependent family member aged 18 years or over. A form 47A must be completed for each dependant 18 or over, whether migrating or not.

Custody requirement

The department will seek to ensure that allowing a child to migrate is not in contravention of Australia's international obligations in relation to the prevention of child abduction. If your application includes a child under 18 years of age and the child's other parent is not migrating with you or there is any other person who has the legal right to determine where the child can live, you will need to provide a statutory declaration from each of them giving permission for the child to migrate. Alternatively, you can provide a certified copy of a valid court order showing that you/your spouse has the legal right to remove the child from the country.

Living in Australia

The following information is about some of the important things you should consider before deciding to apply to migrate to, or remain permanently in, Australia. The information provided here is a general guide only and it is entirely your own responsibility to investigate your settlement prospects in Australia.

Cost of living in Australia

The cost of living in Australia, compared to many other countries, is high. It is essential that you think about how you will provide for yourself and your family for at least the first 2 years. Do not assume you will find a job quickly.

The cost of relocating is high. There are significant costs involved in travelling to Australia, moving household goods and setting up a new home.

Two-year waiting period for social security

Most newly arrived migrants have to live as permanent resident visa holders in Australia for 2 years before they can get most social security payments. These include unemployment assistance (Newstart Allowance or Sickness Allowance), student assistance (Austudy or Youth Allowance) and other assistance such as a Health Care Card. To be eligible for Age and Disability pensions, you generally have to live as a permanent resident visa holder in Australia for 10 years.

It is very important to understand that you should have enough money to support yourself (and your dependants) for at least your first 2 years in Australia. If you have a sponsor or an assurer, you should ask them, prior to your arrival in Australia, about the support they are willing and able to provide.

Waiting period exemptions

A payment called Special Benefit may be available during the waiting period, if you are in hardship because you have suffered a substantial change of circumstances beyond your control. This payment is only available in very limited circumstances. Inability to find a job or running out of money are not sufficient reasons to qualify for Special Benefit.

If you become widowed, disabled or a single parent after commencing to live in Australia as a permanent resident visa holder, you may be eligible for an allowance or pension. You may also be able to get a pension without having lived in Australia for 10 years if you are covered by an international social security agreement. As at 4 May 2007, Australia has social security agreements with 18 countries.

If you are a migrant who is a refugee, or a partner or a dependent child of a refugee; an Australian citizen, or a partner or a dependent child of an Australian citizen; or a permanent resident who has lived in Australia for 2 years at any time, you may be exempt from the two-year waiting period for most social security payments.

A payment called Carer Payment may also be available during the waiting period if you are providing constant care.

Help for families with children

New migrants with dependent children may be able to receive Family Assistance payments to help with the cost of raising children. Generally, you must hold a permanent visa in order to be eligible, but there are some exceptions. There is no waiting period for these payments. Family Assistance payments are intended only as an income supplement and do not provide enough to live on. There are 3 Family Assistance benefits. They are Family Tax Benefit Part A, Family Tax Benefit Part B and Child Care Benefit. The amount of Family Tax Benefit you may be entitled to depends on the age and number of children in your family and on your family's total annual income over the current income year. Child Care Benefit may be paid to help with the cost of putting your child into child care. The amount you may receive will depend on your family's annual income over the current income year, the type of child care you choose and how many hours of child care services you use.

There are also 2 other forms of extra assistance for families with babies. Maternity Payment provides money to help with the extra costs of a new baby. Maternity Immunisation Allowance is a separate payment for families with children who have been fully immunised between 18 and 24 months of age or are exempt from the immunisation requirements.

The Family Assistance Office can help you with details about Family Assistance payments. You can find more information on the website **www.familyassist.gov.au**. In Australia, you will find the Family Assistance Office in all Medicare offices, Centrelink Customer Service Centres and the Australian Taxation Office (ATO) shopfronts. Further information can be obtained from:

Website: **www.familyassist.gov.au**
Telephone: 136 150 (in Australia)
131 202 (for information in languages other than English)

Further information on social security

Centrelink contributes to the social and economic outcomes set by government by delivering services to assist people to become self-sufficient and supporting those in need. There are many rules which affect all Centrelink administered entitlements. The information provided here is a general guide only and you must discuss your specific needs with Centrelink.

You can find Centrelink offices and telephone numbers in the local telephone directory, or call 131 021 to make an appointment. You can speak to Centrelink staff and have your questions answered in languages other than English by calling 131 202. This is not an interpreter service. Calls to 13 numbers are charged at the cost of a local call from anywhere in Australia. Calls from public pay phones or mobile phones may be charged at a higher rate.

More information about social security payments or international agreements before arriving in Australia can be obtained from:

Website: **www.centrelink.gov.au**
Mail: Manager
International Services
Centrelink
GPO Box 273
HOBART TAS 7001
AUSTRALIA
Telephone: 131 021 (to make an appointment)
131 202 (for information in languages other than English)
61 3 6222 3455 (outside Australia)

Health

The Australian Government provides help with medical expenses and hospital care through a scheme called Medicare. The government also subsidises the cost of most medicine under the Pharmaceutical Benefits Scheme (PBS). Medicare and the PBS are administered by Medicare Australia.

To find out if you are eligible, and to enrol in Medicare, visit your local Medicare office with your passport, travel documents and permanent visa. If you are not already the holder of a permanent visa, you will also need to provide details of any permanent visa/migration applications you have lodged.

Most temporary visa holders are not eligible to enrol in Medicare, but there are some exceptions, for example people who have applied for a permanent visa and meet the necessary criteria. You should visit your local Medicare office to find out if you are eligible. If all eligibility requirements are met, you may be advised of your Medicare card number and your card will be posted to you in about 3 weeks. In most cases, you will pay for medical care then receive a refund for some of the payment.

Medicare Australia also administers the Australian Childhood Immunisation Register. If you have a child, please make sure that you bring their immunisation records to help your doctor in Australia determine if their immunisation is up-to-date. This is a requirement for some government payments.

Medicare Australia also administers the Australian Organ Donor Register (the Donor Register). People who are aged 18 years of age or more can register their consent (or objection) on the Donor Register. For people with serious or life-threatening illness, organ or tissue transplantation may mean a second chance at life.

In addition, Medicare Australia also provides help with Family Assistance payments and services. Some of the payments available at your local Medicare office include Family Tax Benefit, Child Care Benefit, Maternity Payment and Maternity Immunisation Allowance.

Medicare Australia has an information kit which is translated into 18 languages and is available in English large print, Braille and on audio CD. The kit has information about Medicare Australia's services and explains the eligibility requirements for benefits and payments. A copy of the kit is available from Medicare Australia's website, your local Medicare office or Migrant Resource Centre.

For more information:

Website: **www.medicareaustralia.gov.au**

E-mail: info@medicareaustralia.gov.au

Telephone

(in Australia): 132 011* – Medicare
1800 020 613** – Pharmaceutical Benefits Scheme
1800 653 809** – Australian Childhood Immunisation Register
1800 777 203** – Australian Organ Donor Register
1800 552 152** – Hearing and speech impaired
131 450* – Translating and Interpreting Service

Mail: Medicare Eligibility
Medicare Australia
PO Box 1001
TUGGERANONG DC ACT 2901
AUSTRALIA

* Call charges apply

** Call charges apply from mobile and pay phones only.

Private health insurance

Many Australians have private health insurance. This covers some or all of the cost of treatment as a private patient in private or public hospitals, and can extend to some services that Medicare does not cover, such as dental and optical services.

The Australian Government has introduced financial incentives aimed at encouraging people to take out private health insurance, such as a 30% rebate on private health insurance premiums (and higher rebates for people aged 65 years and over), and an additional 1% tax levy on people who earn more than AUD50,000 per year and who don't take out private health insurance (Medicare Levy Surcharge). A person must be eligible for Medicare to receive the 30% rebate on private health insurance.

To encourage people to take out hospital cover at an early age, the government introduced the Lifetime Health Cover scheme. If a person takes out hospital cover after 1 July following their 31st birthday, they will pay more for the same level of cover than a person who took out cover before the 1 July following their 31st birthday. The cost increases by 2% for each year that a person delays taking out cover.

Special conditions apply for new migrants who arrive in Australia after 1 July following their 31st birthday. Migrants do not pay an increased cost if they purchase private hospital cover before the first anniversary of the day they became eligible for Medicare. It is important to consider taking out hospital cover in the first year after you become eligible for Medicare. Any delay may increase the cost of your cover as the price may also include an additional amount of Lifetime Health Cover 'loading'.

More information about private health insurance can be obtained from:

Website: www.health.gov.au/internet/wcms/publishing.nsf/Content/private-1

E-mail: privatehealth@health.gov.au

Mail: MDP 86
Department of Health and Ageing
GPO Box 9848
CANBERRA ACT 2601
AUSTRALIA

Other information about Australia

The *Living in Australia* web pages www.immi.gov.au/living-in-australia/ provide detailed information about services for prospective and newly arrived migrants.

The *Beginning a Life in Australia* booklets are provided for each state and territory and are available in English and 24 community languages. They also provide detailed information about services for prospective and newly arrived migrants and can be downloaded from the web pages at www.immi.gov.au/living-in-australia/settle-in-australia/

PART 2

Categories

Employer Nomination Scheme (ENS)

Background

The Employer Nomination Scheme (ENS) allows Australian employers to fill highly skilled positions in Australia with a non-Australian citizen or resident. The ENS enables Australian employers to recruit, on a permanent basis, highly skilled staff from overseas or temporary residents currently in Australia, when they have been unable to fill a vacancy from within the Australian labour market or through their own training programs.

Streamlined arrangements are in place where an Australian employer is using the ENS to nominate a person who has already been working for the employer in Australia on a temporary residence visa. Nominees in this category will generally not be required to undergo a formal skills assessment before they qualify for a permanent residence visa under the ENS.

The objectives of the ENS are to:

- enhance Australia's ability to compete globally;
- satisfy genuine shortages in the Australian labour market for highly skilled workers to fill highly skilled positions;
- maintain the integrity of the migration program whilst enabling employers to meet genuine needs in a timely and administratively straightforward manner;
- maintain employment and training opportunities for Australian residents;
- enhance opportunities for Australians to acquire new skills and knowledge through the transfer of skills; and
- ensure there is a net benefit to Australia.

The process

The ENS process consists of 2 distinct stages:

Stage 1: Nomination by the employer

Stage 2: Nominee's application for a visa. (**Note:** the nomination must be lodged prior to, or at the same time as, the visa application.)

Stage 1: Nomination by the employer

The employer submits to the nearest Business Centre of the department (for a list of Business Centres of the department, see Part 4) a completed form 785 *Employer nomination*

under the *Employer Nomination Scheme* with all supporting documentation attached. A decision on the nomination will be made on the basis of the information the employer provides, their circumstances and the legal processing requirements in place when the nomination is lodged. The prescribed fee must be paid at the time of lodging the nomination (see page 6).

The employer must:

- evidence a genuine employer/employee relationship with their nominee;
- be actively and lawfully operating in Australia;
- have a need for a paid employee;
- have a satisfactory record of training Australians (or, in the case of a new business, must have satisfactory plans in place for future training); and
- be an employer of good standing (ie. must have a history of compliance with immigration laws and with relevant workplace relations laws).

The position must:

- correspond to a highly skilled occupation that appears on a list of occupations gazetted for the purposes of the ENS (this list is available on form 1121i which is available from the department's website www.immi.gov.au/allforms/pdf/1121i.pdf);
- be full-time and available on a permanent basis;
- be paid at least a specified minimum salary, also gazetted for the purposes of ENS; and
- comply with all relevant Australian standards and workplace legislation for wages and working conditions.

The minimum salary level is commensurate with the average annual salary for all Australians. A different minimum salary level may apply to certain occupations listed on the Gazette Notice. Nominations offering less than the minimum salary will not be approved. Employers should refer to the Gazette Notice for the current minimum salary level at the time of lodging their application. The Gazette Notice can be found by following the eligibility/employer links from www.immi.gov.au/skilled/skilled-workers/ens/

If the nomination is approved, the Business Centre of the department will advise the employer. The employer should inform the proposed nominee that they must lodge their application for a visa within 6 months of the approval of the nomination.

If the nomination is not approved, the employer will be advised in writing of the reasons for that decision. This decision is reviewable by the Migration Review Tribunal (MRT).

If the nominee fails to meet the regulatory criteria for a visa, the employer will be able to recruit someone else without completing a fresh nomination. The new nominee must lodge their application within **6 months** of the approval of the original nomination. If this situation does occur, the employer may contact the Business Centre of the department where they lodged the nomination to check what steps they should follow.

Stage 2: Nominee's application for visa

Unless already deemed to have applied (see page 4), the nominee must complete and lodge the application form 47ES *Application for employer sponsored migration to Australia*, provided with this booklet, and pay the application charge (see page 6).

The visa application must be lodged at the same Business Centre of the department as the corresponding nomination, even if the nominee is applying from outside Australia.

TIME LIMIT

The nominee has 6 months from the date of approval of the ENS nomination to lodge their visa application at the Australian Business Centre that approved the nomination.

ASSESSMENT

A decision on the application will be made on the basis of the information the nominee provides, and the legal requirements which apply at that time. If the nominee's circumstances change in any way after they make their application, they must inform the relevant office of the department of their new circumstances.

The department will assess the visa application against the following:

- that the nominee has been working full-time in Australia in the nominated occupation on a subclass 457, 418, 422, 428, 421, 444 or 461 temporary residence visa for at least 2 years prior to the visa application being made (including at least the last 12 months with the nominating employer); or
- **at the time of application have** qualifications that are assessed as equivalent to the Australian standard by the appropriate assessment body in Australia for the nominated position, and has 3 years post-qualification full-time work experience in the occupation immediately before the visa application is lodged (unless exceptional circumstances apply); or
- has been nominated for a position that attracts a base salary of at least the salary specified by Gazette Notice for highly paid executive positions. Nominees should refer to the Gazette Notice for the current minimum salary level. The Gazette Notice can be found by following the eligibility/employer links from www.immi.gov.au/skilled/skilled-workers/ens/

The department will also assess the visa application against the following:

- that the nominee is able to satisfy any mandatory licensing, registration or professional membership requirements;
- that the employment, as outlined in the approved nomination, is still available (evidence of a formal letter of appointment OR a contract signed by both the employer and the nominee is to be included);
- that the nominee is less than 45 years (unless exceptional circumstances apply – see below);
- that the nominee has vocational English language ability – see page 16, (unless exceptional circumstances apply – see below); and
- that the nominee and all family unit members meet mandatory health and character requirements.

WARNING

The nominee should not anticipate that their visa application will be successful. They should not make any travel arrangements or commence finalising their affairs (such as resigning from current position or disposing of any property) until the department has advised them in writing that the visa application has been approved.

Exceptional circumstances – ENS

Note: All requests for ‘exceptional circumstances’ on skill, age or English grounds will be assessed and decided at the visa application stage.

Nominating employers may assist their nominees in demonstrating ‘exceptional circumstances’ on skill, age or English by completing the relevant parts of Question 21 on the employer nomination form 785 which must be lodged with the relevant departmental Business Centre before (or at the same time) your nominee lodges their visa application at the same office.

The information you provide at this time will be taken into consideration by your nominee’s visa decision officer when deciding their visa application.

Skills requirements

Where a nominee has qualifications that have been assessed as equivalent to the Australian standard by the appropriate assessing body in Australia, but does not have 3 years post-qualification full-time work experience, exceptional circumstances might be considered in regards to the 3 years post-qualification requirement.

In seeking exceptional circumstances, the employer can provide details of why the position is so unusual or highly specialised that a suitably qualified employee with 3 years post-qualification experience cannot be found.

The 3 years post-qualification requirement may be considered exceptional and be waived where the occupation being nominated is on the Migration Occupations in Demand List (MODL).

Age requirements

Nominees are also expected to be **under 45 years** and have **vocational English** at the time of visa application. If you intend to nominate a person who does not meet either of these criteria, your nominee will need to show exceptional circumstances. You may assist your nominee by providing supporting documentation relevant to these claims either when lodging your nomination claim or when they lodge their visa application.

The following guidelines outline the basis on which exceptional circumstances on **age** grounds might be considered:

- for applicants over 45 but under 50 years old, the circumstances may be considered exceptional if:
 - the position is essential to the operation of the business; and
 - the employer demonstrates that it is not possible to find a suitably qualified person younger than the applicant.
- for applicants over 50 but under 55 years old, the circumstances may be considered exceptional if:
 - the occupation is an Australian Standard Classification of Occupations (ASCO) major group 1, 2 or 3 occupation; and
 - the position is so unusual or highly specialised that it is not possible to find a suitably qualified person younger than the applicant.
- for applicants over 55 but under 60 years old, the circumstances may be considered exceptional if:
 - the occupation is an ASCO major group 1 or 2 occupation; and
 - the position would normally require a person with skills and experience acquired over many years (eg. senior academics or scientists); and
 - the position is so unusual or highly specialised that it is not possible to find a suitably qualified person younger than the applicant.

If the applicant is 60 years or older, exceptional circumstances are generally not considered.

Vocational English language requirement

A 'vocational' level of English is required of ENS applicants.

There are 2 methods of demonstrating vocational English language ability:

- the applicant provides evidence that he or she holds a degree, higher degree, diploma or trade certificate that required at least 2 years full-time study or training, and all instruction was conducted in English; or
- the applicant sits an International English Language Testing System (IELTS) test and provides evidence that they have a minimum score of 5 out of 9 for all 4 components of the test (speaking, reading, listening and writing). Your nearest test centre can be found by contacting IDP Education Australia, the British Council or an Australian overseas mission.

If the nominee does not have vocational English, there will need to be a submission provided by the employer or visa applicant requesting approval on the grounds that exceptional circumstances apply. The nominee should have been working in the occupation in Australia for 2 years before applying to be considered for exceptional appointment, and during this period undertaken some English training.

Other issues include:

- the nature of the work to be performed, particularly why vocational English is not essential to perform the full range of required duties;
- how the nominee/visa applicant might transfer their skills to Australian employees;
- how they may be able to comply with Occupational Health and Safety (OH&S) issues; and
- the efforts made to recruit a suitably qualified person who does have vocational English.

Where exceptional circumstances are being sought, comprehensive information in support of the exceptional circumstances can be supplied when you lodge your nomination application or when the visa application is lodged if it is not lodged with the nomination application.

If exceptional circumstances are being sought on more than one criterion, justification must be provided for each individual criterion. If an appointment is assessed as being exceptional on one criterion (eg. age), then all other normal criteria must still be met (ie. occupation and English).

Information on the Employer Nomination Scheme is also available from the department's website www.immi.gov.au/skilled/skilled-workers/ens/

Regional Sponsored Migration Scheme (RSMS)

Background

The RSMS allows employers in regional or low population growth areas of Australia to fill skilled positions that they are unable to fill from the local labour market. Any employer can participate in the scheme as long as their business and the position being filled is in an area covered under the RSMS. All areas of Australia are covered except Brisbane, the Gold Coast, Sydney, Newcastle, Wollongong, Melbourne and Perth. See Part 6 for a list of postcodes specifying which parts of Australia are 'Regional' for the RSMS.

The nomination form 1054 *Employer nomination under the Regional Sponsored Migration Scheme* must be completed by the employer or someone with legal authority to act on the employer's behalf. The person signing the nomination must be aged at least 18 years. Under the RSMS, employers are able to nominate staff from overseas or temporary residents currently in Australia to fill full-time, permanent vacancies.

The process

The RSMS process consists of 3 distinct stages:

Stage 1: Certification of the nomination

Stage 2: Nomination by the employer

Stage 3: Nominee's application for visa

(Note: The nomination must be lodged prior to, or at the same time as, the visa application.)

Stage 1: Certification of the nomination

Note: The nomination under the RSMS cannot be approved by the department unless it has been certified by a relevant Regional Certifying Body which has been gazetted by the Minister for Immigration and Citizenship. A list of gazetted bodies is available from the department's website www.immi.gov.au/skills/regional-certifying-bodies.htm

The employer (nominator) submits a form 1054 *Employer nomination under the Regional Sponsored Migration Scheme* to a gazetted Regional Certifying Body (which has the jurisdiction within the State/Territory where the position is located).

The Regional Certifying Body will assess the nomination against the following criteria:

- there is a need for a paid employee in the business that is actively and lawfully operating in regional Australia by the nominating employer;
- the position is a genuine full-time vacancy;
- that **unless the nomination is 'exceptional' (see page 19)**, the position nominated requires the appointment of a person who has qualifications equivalent to at least Australian diploma level. **Note:** Under policy, all ASCO level 1–4 applications including 'trade certificates' are considered to be at the diploma level or higher;
- the position is available for at least 2 consecutive years; and
- the employer is aware that a contract or letter of appointment between the employer and the nominee will need to be sighted by the department before the nominee's visa can be granted.

Stage 2: Nomination by the employer

The completed and certified nomination form should be returned by the Regional Certifying Body to the employer or the employer's representative who will send it to the relevant Business Centre of the department for assessment. Ideally, the certified nomination and the nominee's visa application would be lodged together. The decision on the nomination can be made before a suitable nominee is identified.

The department will assess the nomination to determine that:

- the nomination has been correctly certified by a Regional Certifying Body;
- the position complies with all relevant Australian standards and workplace legislation for wages and working conditions;
- the position requires the appointment of a person who has qualifications equivalent to at least Australian diploma level (a Trade Certificate with full apprenticeship is accepted as equivalent to or higher than a diploma qualification); and
- nothing adverse is known about the business background of the employer and that the employer has a satisfactory record of compliance with workplace relations laws.

If the nomination is approved, the Business Centre of the department will advise the employer. The employer should inform the proposed nominee that they must lodge their application for a visa within 6 months of the approval of the nomination.

If the nomination is not approved, the employer will be advised in writing of the reasons for that decision. The decision is reviewable by the Migration Review Tribunal (MRT).

If the nominee fails to meet the regulatory criteria for a visa, the employer will be able to recruit someone else without completing a fresh nomination. The new nominee must lodge their application within 6 months of the approval of the original nomination. If this situation does occur, the employer should contact the Business Centre of the department where they lodged the nomination to check what steps they should follow.

If the position to be filled is an occupation that requires registration or licensing, or is a trade occupation, the nominee's skills will generally need to be assessed as acceptable to the relevant Australian authority. However, if the employer has identified their nominee from the Skill Matching Database, the nominee's qualifications have already been assessed as meeting Australian standards for the position.

Stage 3: Nominee's application for visa

Unless already deemed to have applied for their RSMS visa (see page 4), all nominees must complete and lodge application form 47ES *Application for employer sponsored migration to Australia*, provided with this booklet, and pay the application charge (see page 6).

The visa application must be lodged at the same Business Centre of the department as the corresponding nomination, even if the nominee is applying from outside Australia.

Preferably, the nomination and the visa application would be lodged together.

TIME LIMIT

The nominee has 6 months from the date of approval of the RSMS nomination to lodge their visa application at the relevant Business Centre of the department.

ASSESSMENT

A decision on the application will be made on the basis of the information the nominee provides, and the legal requirements which apply at that time. If the nominee's circumstances change in any way after they make their application, they must advise the department of their new circumstances.

The visa application will be assessed by the department against the following:

- the nominee has the relevant qualifications for the nominated position which are equivalent to at least an Australian diploma level (unless approved as 'exceptional');
- that the nominee is able to satisfy any mandatory licensing, registration or professional membership requirements;
- that the position is for a fixed term of at least 2 years (supported by evidence of a contract or letter of appointment signed by both the employer and the nominee);
- that the nominee is less than 45 years, unless approved as 'exceptional' (see below);
- that the nominee has 'functional' English language ability (see page 21), unless approved as 'exceptional' (see below); and
- that the nominee and any family unit members meet mandatory health and character requirements.

WARNING

The nominee should not anticipate that their visa application will be successful. They should not make any travel arrangements or commence finalising their affairs (such as resigning from their current position or disposing of any property) until they have been advised by the department in writing that the visa application has been approved.

Exceptional circumstances – RSMS

Where the position requires a diploma or higher qualification, but the nominee only has experience and training equivalent to a diploma or higher qualification, and does not have formal qualifications, the position can still be approved if it is accepted as an 'exceptional' appointment.

Note: Requests for consideration of 'exceptional circumstances' on skill grounds will normally be assessed and decided at the nomination stage. However, all requests for 'exceptional circumstances' on age or English grounds will be assessed and decided at the visa application stage.

Nominating employers may assist their nominees in demonstrating 'exceptional circumstances' on grounds of skill, age or English by completing the relevant parts of Question 20 on the employer nomination form 1054 which, after having it certified by the relevant Regional Certifying Body, must be lodged with your nearest departmental Business Centre before (or at the same time) your nominee lodges their visa application at the same office.

The information you provide at this time will be taken into consideration by your nominee's visa decision officer when deciding their visa application.

Note: An employer nomination for RSMS lodged in favour of a position below ASCO 1–4 can only be approved if it is accepted as an ‘exceptional appointment’. Therefore, in these circumstances the nominating employer must complete Question 20 on form 1054 which asks the nominating employer to confirm that they want the position considered as an ‘exceptional appointment’ and then provides space to list the reasons in support of this request.

Skill requirements

Positions that have a skill level requirement of less than a diploma and, therefore, do not meet the standard RSMS criteria, may be considered ‘exceptional’ if:

- the occupation has a skill level requirement of at least a AQF Certificate II (ie. is within Australian Standard Classification of Occupations (ASCO) major groups 5 to 7); and
- the nominee has filled the position while on a subclass 457 visa (during a period of at least 2 years prior to the nomination being submitted); and
- the Regional Certifying Body also confirms that:
 - the sponsoring employer is actively and lawfully operating, and the nominated position is located, in a regional area under its jurisdiction; and
 - there is a demonstrated need for a full-time paid employee in the business located in regional Australia which is available for at least 2 years.

Nominations for elementary clerical, sales and service workers, and labourers and related workers (ASCO major groups 8 and 9) are not generally considered to fall within the scope of the RSMS program and would not, under policy, meet the ‘exceptional’ circumstances requirement.

The inability to find a person with relevant qualifications is, in itself, not considered sufficient grounds for assessing the circumstances as ‘exceptional’. There must be other demonstrated special factors (eg. skills, qualifications or experience) relating to the nominated position to support approval on ‘exceptional’ grounds.

Age requirements

Nominees are also to be **under 45 years** and **have ‘functional’ English** at the time of visa application.

Exceptional circumstances on the basis of **age** might be considered:

- for applicants over 45 but under 50 years old, the circumstances may be considered exceptional if:
 - the position is essential to the operation of the business; and
 - the employer demonstrates that it is not possible to find a suitably qualified person younger than the applicant.
- for applicants over 50 but under 55 years old, the circumstances may be considered exceptional if:
 - the occupation is on the Migration Occupations in Demand List (MODL) or is an Australian Standard Classification of Occupations (ASCO) major group 1, 2 or 3 occupation; and
 - the position is so unusual or highly specialised that it is not possible to find a suitably qualified person younger than the applicant.
- for applicants over 55 but under 60 years old, the circumstances may be considered exceptional if:
 - the occupation is on the MODL or an ASCO major group 1 or 2 occupation; and
 - the position would normally require a person with skills and experience acquired over many years (eg. senior academics or scientists); and
 - the position is so unusual or highly specialised that it is not possible to find a suitably qualified person younger than the applicant.

If the applicant is 60 years or older, exceptional circumstances are generally not considered.

‘Functional’ English language requirement

A ‘functional’ level of English is required of RSMS applicants.

A visa applicant may be regarded as having ‘functional’ English if one of the following requirements are met:

- they have a qualification (or experience) or have attained the IELTS test (results for which Part 3 of Schedule 6 of the *Migration Regulations* has awarded 10 points or more); or
- they provide evidence of having sat for and attained the ‘functional’ level of the IELTS test in the last 12 months immediately before they applied for their visa, achieving an average band score of at least 4.5 on the 4 test components; or
- evidence that they hold a degree, higher degree, diploma or trade certificate that required at least 2 years of full-time study or training and all instructions for that award (including instruction received in other courses for which the applicant was allowed credit) was conducted in English; or
- if the nominee cannot provide evidence of having been educated in English (to the level described in the point immediately above, or it is not reasonably practicable for the nominee to sit an IELTS test) the nominee can be assessed by the departmental assessing officer as having ‘functional’ English – the departmental assessing officer must be satisfied that the interview assessment is an accurate reflection of the applicant’s level of English proficiency; or
- evidence that the nominee has been assessed by an AMEP service provider in Australia as having ‘functional’ English.

The applicant is required to provide documentary evidence in all cases except where assessment is made at the interview.

Exceptions on the grounds of having less than ‘functional’ English should consider:

- the nature of the work, particularly why ‘functional’ English is not essential to perform the required duties; and
- how that person would be able to operate in the Australian workforce having regard to issues such as passing skills to Australian employees and complying with OH&S requirements, training and/or transferring their skills.

An employer must also demonstrate that the prospective visa applicant worked in the nominated position in Australia on a subclass 457 visa for a reasonable period immediately prior to the visa application being made (at least 12 months), and had during this period undertaken some training in English.

Note: If ‘exceptional’ circumstances are sought for more than one criterion, justification must be provided in each case. Furthermore, if circumstances are assessed as ‘exceptional’ for one criterion, **all** the other criteria must still be met.

Visa cancellation

Powers under the Migration Act to cancel RSMS visas came into effect on 1 July 2001. These provide for the cancellation of an RSMS visa where the employee has not commenced employment with the employer within **6 months** of arriving in Australia or after visa grant if in Australia. The Act also provides powers to cancel an RSMS visa if the employee left the position within **2 years** of commencement of employment. It is not intended to cancel a visa where the employee had made a genuine effort to complete the 2-year contract with the employer.

Information on the Regional Sponsored Migration Scheme is also available from the department’s website www.immi.gov.au/skilled/skilled-workers/rsms/

Labour Agreements (LA)

Background

Labour Agreements cover both permanent and temporary entry visa subclasses. This booklet will only provide information relating to permanent entry.

A Labour Agreement is a formal arrangement negotiated between the department and DEWR (representing the government), and an employer or industrial association. Labour Agreements enable Australian employers to recruit a specified number of workers from overseas in response to identified or emerging skill shortages in the Australian labour market.

Labour Agreements are designed to ensure that overseas recruitment supports the longer term improvement of employment and training opportunities for Australians.

Accordingly, employers or industry associations are required to make commitments to the employment, education, training and career opportunities of Australians as part of the agreement. Employers must also demonstrate an employer–employee relationship as a pre-requisite to a Labour Agreement.

Note: Before commencing negotiations for access to a Labour Agreement, employers should first consider whether other visa options meet their requirements, eg. the Employer Nomination Scheme for **permanent** entry (page 13), or the Standard Business Sponsorship for **temporary** entry – see www.immi.gov.au/skilled/skilled-workers/

The process

After the agreement has been negotiated, the process consists of 3 stages:

Stage 1: Acceptance of the Labour Agreement

Stage 2: Nomination by the employer

Stage 3: Nominee's application for a visa

Stage 1: Acceptance of the Labour Agreement

Employers or industry associations wishing to enter into a Labour Agreement will be asked to provide key information relevant to considering their request to access a Labour Agreement covering such topics as:

- company background;
- industry background (where applicable);
- benefits to Australia;
- skill level and types of occupations sought;
- evidence of shortage of skills sought;
- English language levels required;
- salaries and employment conditions offered for the full-time positions; and
- training efforts of the employer.

The negotiation period for a Labour Agreement is normally between 6 and 12 weeks.

Employers may be able to nominate applicants on the Skill Matching Database under a Labour Agreement.

Once the Labour Agreement, usually 2–3 years in duration, has been signed by DEWR, the company and the department, it becomes effective, and copies are forwarded to the relevant parties. The Business Centre of the department in the relevant state/territory will be responsible for processing all applications lodged under the Labour Agreement.

Stage 2: Nomination by the employer

The employer submits the completed form 1192 *Employer nomination for a permanent appointment* (under a Labour Agreement) to the Business Centre of the department which manages the Labour Agreement.

The nomination will be assessed by the department to determine that:

- the nomination is in accordance with the relevant Labour Agreement;
- the vacancy falls within the agreed ceiling for the agreement;
- the terms and conditions of employment offered are in accordance with the agreement;
- the nominee is under 45 years of age (unless 'exceptional' circumstances apply); and
- the position nominated has the qualifications and skills (including English language skills) specified in the Labour Agreement.

If the nomination is approved, the Business Centre of the department administering the agreement will advise the employer. The employer should inform the proposed nominee that the nomination has been approved and provide them with a copy of the department's nomination approval letter.

If the nomination is not approved, the employer will be advised in writing of the reasons for that decision.

Stage 3: Nominee's application for visa

Unless already deemed to have applied for their visa (see page 4), the nominee must complete and lodge the application form 47ES *Application for employer sponsored migration to Australia* (a copy is in the Forms section provided with this booklet) and pay the application charge (see page 6).

The visa application must be lodged at the same Business Centre of the department as the corresponding nomination, even if the nominee is applying from outside Australia.

ASSESSMENT

The nominee's visa application will be assessed against the following:

- that they have the qualifications, skills (including English language skills) and experience specified in the agreement;
- that they are able to satisfy any mandatory licensing, registration or professional membership requirements under the Labour Agreement;
- that unless it has been determined that 'exceptional circumstances' apply, the nominee has not turned 45 years; and
- that they and all family unit members meet mandatory health and character requirements.

In most cases, if the employer's first choice for a nominated position fails to meet the regulatory criteria for a visa, it will be possible to recruit someone else without completing a new nomination. If this happens, please contact the office where you lodged the nomination for advice.

WARNING

The nominee should not anticipate that their visa application will be successful. The nominee should not make any travel arrangements or commence finalising their affairs (ie. resigning from their current position or disposing of any property) until they have been advised by the department in writing that the visa application has been approved.

Exceptional circumstances

Nominees are normally expected to be under 45 years at the time of visa application. Where the proposed nominee is 45 years or older, the employer must provide a submission to the department outlining why 'exceptional circumstances' apply.

Information on Labour Agreements is also available from the department's website www.immi.gov.au/skilled/skilled-workers/la/

Invest Australia Supported Skills (IASS) program

Background

The Invest Australia Supported Skills (IASS) program has replaced Regional Headquarters (RHQ) agreements.

The Invest Australia Supported Skills (IASS) program is designed to encourage international firms to choose Australia as a location for foreign direct investment. It allows companies that make a significant investment in Australia to bring out key expatriate managerial and specialist employees from within the company group which are essential to establish operations in Australia.

Agreements will be for 3 years, although individual visas, once granted, may extend beyond the period of the agreement. IASS agreements are for both permanent and temporary entry of key managerial and specialist employees (although only permanent entry is covered in this booklet). Companies wishing to obtain visas for very small numbers of personnel, or which are seeking staff for existing investments, should access other business immigration programmes.

Applicants must meet at least one of the following 4 criteria for investments of strategic significance to be eligible for the IASS program:

- the project will boost Australian industry innovation through, increasing research, development and commercialisation capability, the new application of skills and knowledge Technology transfer, and Cluster development; OR
- the project will have significant economic benefit to regional Australia taking account a region's investment needs; OR
- the project's estimated investment exceeds AUD50,000,000 and thus inherently makes a significant contribution to economic growth, employment and/or infrastructure; OR
- the company is establishing a regional headquarters or regional operating centre in Australia.

IASS agreements provide streamlined immigration arrangements to organisations that the Minister for Industry, Tourism and Resources (DITR) has determined as being a company managing functions that support an international operation.

Although IASS agreements are similar to Labour Agreements, the purpose for which IASS agreements are established is different from that for standard Labour Agreements in that:

- visas granted under IASS agreements are to enable the transfer of employees of the company who are managerial and key expatriate specialist personnel of the company group; and
- visa applications to which an IASS agreement applies receive priority over applications to which a Labour Agreement applies.

The process

The IASS process consists of 3 stages:

Stage 1: Approval of the IASS agreement

Stage 2: Nomination by the employer

Stage 3: Nominee's application for a visa.

Stage 1: Approval of the IASS agreement

The company submits its proposal to *Invest Australia* in the Industry, Tourism and Resources portfolio. An application form and further information can be obtained by sending an e-mail to iass@investaustralia.gov.au. *Invest Australia* is responsible for assessing all proposals for establishing IASS agreements in Australia. Proposals are assessed against criteria agreed to by *Invest Australia* in consultation with the department.

Once the agreement, of 3 years in duration, has been signed by the Minister for Industry, Tourism and Resources, the company and the department, it becomes effective, and copies are forwarded to the relevant parties. The Business Centre of the department in the relevant state/territory will be responsible for management of the IASS agreement.

Stage 2: Nomination by the employer

For each nomination under the IASS agreement, the company supplies the Business Centre of the department with copies of form 1192 *Employer nomination for a permanent appointment* (under an Invest Australia Supported Skills agreement).

Stage 3: Nominee's application for a visa

The nominee must complete and lodge the application form 47ES *Application for employer sponsored migration to Australia*, provided with this booklet, and pay the Visa Application Charge (see page 6).

The visa application must be lodged at the same Business Centre of the department that manages the IASS agreement, even if the nominee is applying from outside Australia.

ASSESSMENT

The nominee's visa application will be assessed by the relevant office of the department where they have lodged the application. The application will be assessed against the following:

- that the nominee has the relevant skills, qualifications and experience to fill the position; and
- that the nominee's visa application is accompanied by the relevant nomination form which has been signed by an executive of the company; and
- that the nominee and all family unit members meet mandatory health and character requirements.

WARNING

The nominee should not anticipate that their visa application will be successful. They should not make any travel arrangements or commence finalising their affairs (ie. resigning from their current position or disposing of any property) until they have been advised by the department in writing that the visa application has been approved.

Information on the Invest Australia Supported Skills scheme is also available from the department's website www.immi.gov.au/skilled/skilled-workers/iass/

PART 3

Health and character

Health

Strict health standards

You and all dependent family members must meet strict health standards designed to protect Australia from high health risks and costs, and overuse of scarce health resources such as organs for transplant.

Medical examination

You will be asked to undertake an examination by a doctor, selected by Australian authorities. Usually, a chest x-ray, medical examination and possibly some laboratory or specialist tests and referral to Medical Officers of the Commonwealth for final decision will be required. Costs will be your responsibility. All members of your immediate family must meet the standards for your application to be successful. Dependants who are not planning to migrate must also be examined.

If you are outside Australia when you apply for your visa, forms for your medical examination, together with directions to listed doctors, will be provided by staff processing your migration application. If you are pregnant, you are advised not to be x-rayed until after the birth of your baby, meaning that your application may not be finished until then. Alternatively, although not preferred by the Australian Government, you may care to discuss with your radiologist the use of a lead shielded x-ray.

If you are inside Australia when you apply for your visa, you should arrange to have the medical examination and any associated tests completed **before** the visa application(s) are lodged. The necessary forms (26 and 160) are available from the department's website www.immi.gov.au/allforms/

Health conditions of concern

In view of the World Health Organisation's declaration of a global epidemic of tuberculosis, particular care is taken to screen for this disease including stringent treatment recommendations where signs of earlier infection, however small or old, are apparent.

Australia has one of the lowest rates of tuberculosis in the world and maintains one of the strictest regimes for screening and treatment. Detection of the disease will not lead to automatic rejection, but your application may only continue after recommended treatment and successful retesting.

Other health conditions of concern are those where a person is assessed by Australian authorities as requiring treatment, support or assistance which are considered to be in short supply, or which cost a significant amount. This may differ from treatment in other countries.

Doctors

Doctors may charge you fees in accordance with their usual practice. They may recommend that you undertake other treatment or specialist consultations. This may be in your own interest because listed doctors know what is required for the assessment of your examination results in Australia.

Basis for decision

A decision is made on, any detection of tuberculosis, however old or small, and, of medical conditions which are likely to result in significant health treatment and community services costs in Australia, or which may use treatment or services in short supply. Some allowance is made for normal health and welfare costs (calculated as a multiple of average annual costs for an Australian). When the Medical Officer of the Commonwealth is of the opinion that an applicant's costs are beyond these and are therefore significant, this generally leads to refusal. The cost assessment takes no regard of whether a person has or intends to take private health insurance or make other financial or nursing arrangements to lessen the claim on public funds.

It is not the doctor who examines you who determines whether you meet the health requirement, but Australian authorities.

Character

To enter Australia, applicants must be of good character.

In order for the Australian Government to determine whether you are of good character, you will be asked to provide police certificates for each country you have resided in for 12 months or more over the last 10 years. This includes Australia if you have resided in Australia for a total of 12 months or more over the last 10 years.

In some instances, applicants may also be required to provide personal details to enable additional character checks to be undertaken. Please complete and include with your application, a form 80 *Personal particulars for character assessment* for each applicant aged 16 years or over included in your application. This form is available free from offices of the department or from the department's website www.immi.gov.au/allforms/

To avoid unnecessary delays in processing your visa application, you can begin to seek police certificates before you lodge your application. Further information on how to do this is available on form 47P, which is available free from the department's website www.immi.gov.au/allforms/ or any office of the department.

Note: You may send a certified copy of your police clearance, however, the department may request the original police clearance at a later date.

PART 4

Preparing your application

Forms

Provide completed forms

- The appropriate employer nomination form:
 - form 785 *Employer nomination under the Employer Nomination Scheme* – (ENS);
 - form 1054 *Employer nomination under the Regional Sponsored Migration Scheme* – (RSMS); or
 - form 1192 *Employer nomination for a permanent appointment* – (LA and IASS agreements).
- The appropriate visa application form(s):
 - form 47ES *Application for employer sponsored migration to Australia* – (ENS, RSMS, LA, and IASS agreements).
 - form 47A *Details of child or other dependent family member aged 18 years or older* (for each dependant aged 18 or older).

Note: Other forms may be required and will be provided by the office of the department at the appropriate time.

Forms may change from time to time and applicants should check when lodging their application that the most recent version of a form has been used.

Application charge

- Charges are listed on form 990i *Charges* which is available from the Forms section of the department's website www.immi.gov.au/allforms/pdf/990i.pdf

Other documents

Other documents you must provide

Other documents you must provide are listed on the following pages.

You should provide all the documents necessary to support your claims to eligibility when you make your application.

If you cannot provide all the documents when you make your application, you should tell the department which documents are missing and when you expect to be able to provide them.

If you do not provide all the necessary documents **a decision may be made on the information you have provided**. It is in your interests to support your application with as much information as possible at the time of application.

Certified copies

Do not supply original documents with your application. If we require an original document at any stage, we will ask for it.

You should provide 'certified copies' of original documents. This means a copy which is authorised as a true copy by a person before whom a Statutory Declaration may be made. Such authorised persons include the following: a magistrate, Justice of the Peace, Commissioner for Declarations, Commissioner for Affidavits, a person before whom a Statutory Declaration may be made under the law of the state in which the Declaration is made, a solicitor, registered medical practitioner, bank manager, postal manager and Australian Postal Corporation Officer with 5 years service.

English translations

Documents in languages other than English must be accompanied by an English translation completed by a translator accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). You should ask at your nearest office of the department for further information about how to get your documents translated.

We suggest you check off each of the following documents as you attach it to your application to ensure that you include all necessary documents.

All applicants

You must provide the following documents with your completed application form.

- Documents to prove your identity – a certified copy of your birth registration showing both parents' names. If you do not have a birth certificate or are unable to get one, you must provide a certified copy of the identification pages of at least one of the following documents:
 - passport
 - family book showing both parents' names
 - identification document issued by the government
 - document issued by a court that verifies your identity.

If you are unable to provide one of these documents, you must provide other acceptable evidence that you are who you claim to be.

- 2 recent passport sized photographs (45mm x 35mm) of yourself and any other person included in the application (and 4 photos of each person if health examinations have not been completed). These should be of the head and shoulders only, and should show the person facing the camera and against a plain background. You should print the name of the person on the back of each photograph.

- If you or anyone included in the application is or has been married, certified copies of the marriage certificate(s).
- If anyone included in the application has been divorced or widowed, a certified copy of the divorce decree absolute or the death certificate of the deceased spouse (as appropriate).
- If anyone included in the application has changed his or her name (eg. by marriage or deed poll), a certified copy of evidence of the name change.
- Certified copies of birth certificates or the family book, showing names of both parents, for all the children included in the application.
- Certified copies of documents to verify custody and access arrangements for children under 18 years unless both parents of the child are included in the application.
- Completed medical and x-ray examinations for all persons included in your application. **[Only if you are inside Australia when you lodge your application (see page 26)]**
- A police good conduct/character certificate (see form 47P *Character requirements: penal clearance certificates*) for each person aged 16 years or over included in your application, for each country, including Australia, lived in for more than 12 months over the past 10 years.
- If any child included in the application is adopted, certified copies of the adoption papers.
- If you have served in the armed forces of any country, certified copies of military service record or discharge papers.
- If you are using a migration agent or exempt agent or authorised recipient, a completed form 956 *Appointment of a migration agent or exempt agent or other authorised recipient*.

ENS

- Evidence of qualifications and experience (certified copies of all qualifications, work references and if applicable, evidence that your qualifications are recognised in Australia). **Note:** Must be provided when application is lodged if required.
- If you have not been working in the occupation for which you have been nominated in Australia for the last 2 years (including at least the last year for your nominating employer) while holding a subclass 457, 418, 422, 428, 421, 444 or 461 visa or visas **and** you have not been nominated for a position that pays more than AUD151,500 base salary, then you **must** provide a completed skills assessment from the assessing authority for your occupation (see form 1121i).
- Form 785 *Employer nomination under the Employer Nomination Scheme* signed by your nominating employer, **or**
- A copy of the approval letter (if the nomination has been decided).

RSMS

- Evidence of qualifications and experience (certified copies of all qualifications, work references and if applicable, evidence that your qualifications are recognised in Australia).
- Form 1054 *Employer nomination under the Regional Sponsored Migration Scheme* signed by your nominating employer, **or**
- A copy of the approval letter (if the nomination has been decided).

Labour Agreement

- Evidence of qualifications and experience (certified copies of all qualifications, work references and if applicable, evidence that your qualifications are recognised in Australia).
- Form 1192 *Employer nomination for a permanent appointment* (under a Labour Agreement) signed by an executive of the company, **or**
- A copy of the approval letter (if the nomination has been decided).

IASS agreement

- Form 1192 *Employer nomination for a permanent appointment* (under an Invest Australia Supported Skills agreement) signed by an executive of the company, **or**
- A copy of the approval letter (if the nomination has been decided).

Lodging your application

All applications including visa applications from overseas applicants should be lodged at the Australian Business Centre processing the nominee application of the employer.

The preferred method of lodgement is by mailing your application to one of the department's Business Centres:

New South Wales

All ENS and RSMS applications should be sent to the Parramatta Business Centre.

Nominations and visa applications for LAs, IASS and RHQ agreements should be lodged at whichever Business Centre is managing the agreement.

Parramatta

Parramatta Business Centre
Street address:
Level 4
9 Wentworth Street
PARRAMATTA NSW 2150

Postal address:
GPO Box 9984
SYDNEY NSW 2001

General fax:
(02) 8861 422

E-mail
parramatta.business
centre@immi.gov.au

Sydney

Sydney Business Centre
Street address:
Level 2
26 Lee Street
SYDNEY NSW 2000

Postal address:
GPO Box 9984
SYDNEY NSW 2001

General fax:
(02) 9032 4055

E-mail
dima.businesscentre.nsw
@immi.gov.au

Australian Capital Territory

Canberra

Canberra Business Centre

Street address:
3 Lonsdale Street
BRADDON ACT 2612

Postal address:
GPO Box 717
CANBERRA ACT 2601

General fax:
(02) 6248 0479

E-mail
dima.businesscentre.act@
immi.gov.au

Victoria

Melbourne

Melbourne Business Centre

Street address:
Level 25
2 Lonsdale Street
MELBOURNE VIC 3000

Postal address:
PO Box 241E
MELBOURNE VIC 3001

General fax:
(03) 9235 3206

E-mail
dima.businesscentre.vic@
immi.gov.au

Tasmania

Hobart

Hobart Business Centre

Street address:
Level 13
188 Collins Street
HOBART TAS 7000

Postal address:
GPO Box 794
HOBART TAS 7001

General fax:
(03) 6223 8247

E-mail
dima.businesscentre.tas
@immi.gov.au

Queensland

Brisbane

Brisbane Business Centre

Street address:
299 Adelaide Street
BRISBANE QLD 4000

Postal address:
GPO Box 9984
BRISBANE QLD 4001

General fax:
(07) 3360 5147

E-mail
dima.businesscentre.qld
@immi.gov.au

Western Australia

Perth

Perth Business Centre

Street address:
Third Floor City Central
166 Murray Street
PERTH WA 6000

Postal address:
Locked Bag 7
NORTHBRIDGE WA
6865

General fax:
(08) 9415 9288

E-mail
bcperth@immi.gov.au

South Australia

Adelaide

Adelaide Business Centre

Street address:
Level 3
55 Currie Street
ADELAIDE SA 5000

Postal address:
GPO Box 2399
ADELAIDE SA 5001

General fax:
(08) 8237 6699

E-mail
dima.businesscentre.sa
@immi.gov.au

Northern Territory

Darwin

Darwin Business Centre

Street address:
Pella House
40 Cavanagh Street
DARWIN NT 0801

Postal address:
GPO Box 864
DARWIN NT 0800

General fax:
(08) 8981 6245

E-mail
dima.businesscentre.nt
@immi.gov.au

If you have any enquiries:

- Go to the department's website – www.immi.gov.au/immigration.htm; or
- **Inside Australia** – telephone **131 881** (for the cost of a local call); or
- **Outside Australia** – contact the nearest Australian mission.

PART 5

Processing visa applications

You must have a visa to travel to and stay in Australia

This information booklet explains how to make visa applications and how they are processed.

It is important that you read this information

It is important that you read this information – it may affect whether you are granted a visa or have your visa cancelled.

You should read all information and instructions about the class of visa you want. If you do not think you can qualify for a visa, you may wish to reconsider whether to apply because any visa charge paid will not be refunded if you are unsuccessful.

Where to get information

In Australia, you can get information about visas, charges and forms at offices of the department or you can call **131 881** (for the cost of a local call), or you can go to **www.immi.gov.au/immigration.htm**. Outside Australia, you should contact your nearest Australian mission, or go to **www.immi.gov.au/immigration.htm**

How to apply for a visa

To make a valid application, you must:

- indicate the class of visa that you want;
- use the correct form; or
- lodge an application via the internet (where applicable);
- provide your residential address;
- pay the required charge (where applicable);
- satisfy any other requirements (for example, you may have to be outside Australia to apply for the visa);
- send or deliver your application to the same Business Centre of the department that processed your employer's nomination.

You must also:

- complete the application in English;
- answer all questions truthfully – if you provide incorrect information or documents, your visa may not be granted;
- provide originals or certified copies of any required documents unless the department advises otherwise.

Family members

For most visas, family members (spouses, dependent children or dependent relatives) who apply at the same time can apply on the same form and pay one charge. A child who is born after an application is made (but before it is decided) will be automatically included in the parent's application, once the department is notified of the details of the newborn child. In some circumstances, a spouse or dependent child can be added to an application.

Limitations on applications

If you are in Australia, you may be prevented from making further applications if, for example:

- you do not hold a substantive visa (which is any visa other than a bridging visa, a criminal justice visa or an enforcement visa) and have had a visa cancelled or refused since you last arrived in Australia;
- your last visa was granted on the condition that you would not be granted a substantive visa while you remain in Australia;
- you hold a sponsored visitor visa;
- you are in immigration detention;
- you have previously applied for a protection visa.

In these cases, the department can provide you with information about which visas, if any, you can apply for.

More than one application

If you apply for more than one visa, the visa granted last will generally be the visa you have (and the visa granted first will no longer be valid). You can get advice about your situation from any office of the department or nearest Australian mission.

Communicating with the department

Communication with the department about your application should generally be in writing. You should send the communication to the office where you applied unless the department notifies you of another address.

Withdrawal of applications

You can withdraw your application by advising the department in writing at any time before a decision is made. Any charges that you paid at time of application are usually not refunded.

You must correctly identify yourself

If you communicate with the department about your application, you must:

- include your name (as in your application);
- include your date of birth;
- include the client number given to you by the department, or, if you do not have a client number, the department's file number or the application receipt number;
- if your application is made outside Australia, include the name of the office where you applied.

Residential address

You must provide the address of where you intend to live while your application is being dealt with. Failure to give your residential address will result in this application being invalid. A post office box will not be accepted as your residential address.

Let the department know if you change your address

If you change your residential address for more than 14 days while your application is being processed, you must tell the department your new address and how long you will be there. The department will send communication about your application to the latest address for correspondence you have provided.

Communication about your application can be sent to another person that you have authorised, but you will be taken to have received the communication that the department sends to that person. The department must be informed (in writing) of any address change for either you or your authorised person.

Extra information about your application

Additional information can be provided (in writing) at any time, until a decision is made on your application. All relevant information is taken into account.

If you are invited to give additional information or comment on information, you will be given a date by which to do so. After that date, the department can continue processing your application. You cannot delay a decision by saying that you may or will give more information later.

Interviews

If you are invited to attend an interview, you must attend on the date and time agreed with the department. If you do not, the department can process your application and make a decision on the basis of the information it already has.

Invitation to comment

If another person gives the department information that could result in you being refused a visa, the department will generally give you an opportunity to comment on the information. You will need to comment by a set date.

Advise the department if your circumstances change

If any of your circumstances change, such that any answer in your application or information given to the department is no longer correct, you must inform the department (in writing) as soon as practicable.

You must continue to do this until a decision is made on your application (or, in the case of a visa granted outside Australia, until you travel to Australia and are cleared by immigration). Your visa may be cancelled if you give incorrect information or fail to advise the department that some information is no longer correct. However, if you advise the department of the correct information before your visa is granted (or in the case of a visa granted outside Australia, before you are immigration cleared), your visa cannot later be cancelled on the basis of that incorrect information.

Visa decisions

Processing times vary between offices. You will be notified by the department when a decision has been made on your application.

If you are refused a visa, you will be notified why you were refused and, if applicable, where you can apply for merits review of the decision. You will be notified of your time to seek review or your time to depart Australia.

When the department advises you, or a person you have authorised to act and receive communication on your behalf, of the decision on your visa application, you will be taken to have received the notification:

- 7 working days after the date of the letter (if sent in Australia); or
- 21 days after the date of the letter (if sent outside Australia).

If the notification is handed to you, you will be taken to have been notified at that moment.

If the notification is faxed or e-mailed to you, you will be taken to have been notified at the end of that day.

You must abide by all conditions on your visa

If your visa is granted subject to conditions (for example, restrictions on work or study) you must abide by those conditions or your visa may be cancelled. If you wish to change those conditions or stay longer than your visa allows, contact the department for information about how to do this.

If you wish to leave Australia while your application is being processed, check with the department before you leave

You should inform the department if you travel (either to or from Australia) during processing of your application. This is because your application may be refused if you are in the 'wrong place' when a decision is made.

For most visas applied for in Australia:

- you must be in Australia; and
- you must be in Australia when a decision is made.

For most visas applied for overseas:

- you must be outside Australia when a decision is made.

In addition, if you have applied in Australia you must ensure before you leave Australia that you have a visa to return. Otherwise you may not be able to return to Australia and, if your application is refused, you may not have a right of review.

Bridging visas

If you apply for a visa in Australia, you will usually be granted a bridging visa to keep you lawful, in case your previous visa ceases before a decision is made on your application. It will also keep you lawful if your visa is refused and you seek merits review of that decision.

However, if you wish to travel overseas, you will need to apply for a specific bridging visa to allow you to return to Australia (unless you already have another visa which allows you to return to Australia).

Options for receiving written communications

You may authorise another person to receive all communications, both written and electronic, about your application with the department. You will be taken to have received any documents sent to that person as if they had been sent to you.

To do this you will need to complete the section on the application form with the heading *Options for receiving written communications* and form 956 *Appointment of a migration agent or exempt agent or other authorised recipient*. For an explanation of what a migration agent or exempt agent or authorised recipient can do please read the sections below.

Authorised recipient information

An authorised recipient is someone you appoint to receive written communications about your application with the department.

All written communication about your application will be sent to your authorised recipient, unless you indicate that you wish to have health and/or character information sent directly to you.

The department will communicate with the most recently appointed authorised recipient as you may only appoint one authorised recipient at any time for a particular application.

Migration agent information

A migration agent is someone who can:

- advise you on the visa that may best suit you;
- tell you the documents you need to submit with your application;
- help you fill in the application and submit it; and
- communicate with the department on your behalf.

If you appoint a migration agent, the department will assume that the migration agent will be your authorised recipient, unless you indicate otherwise.

Your migration agent will be the person with whom the department will discuss your application and from whom it will seek further information when required.

Exempt agent information

The following people do not have to be a registered migration agent in order to provide immigration assistance, but they must not charge a fee for their service:

- a close family member (spouse, child, adopted child, parent, brother or sister);
- a sponsor or nominator for this visa application;
- a member of parliament or their staff;
- an official whose duties include providing immigration assistance (eg. a Legal Aid provider);
- a member of a diplomatic mission, consular post or international organisation.

Consent to communicate electronically

The department may use a range of means to communicate with you. However, electronic means such as fax or e-mail will only be used if you indicate your agreement to receiving communication in this way.

To process your application the department may need to communicate with you about sensitive information, for example, health, police checks, financial viability and personal relationships. Electronic communications, unless adequately encrypted, are not secure and may be viewed by others or interfered with. If you agree to the department communicating with you by electronic means, the details you provide will only be used by the department for the purpose for which you have provided them, unless there is a legal obligation or necessity to use them for another purpose, or you have consented to use for another purpose. They will not be added to any mailing list.

The Australian Government accepts no responsibility for the security or integrity of any information sent to the department over the internet or by other electronic means.

PART 6

Regional Certifying Bodies

For an up-to-date list of all Regional Certifying Bodies, please consult the department's website www.immi.gov.au/skills/regional-certifying-bodies.htm

Regional Sponsored Migration Scheme (RSMS)

This is a list of postcodes which specify what parts of Australia are regional for the purposes of the RSMS, the Regional subclass 457 visa and the Trade Skills Training visa.

RSMS postcodes

Australian Capital Territory

Entire Territory

New South Wales (Except Sydney, Newcastle and Wollongong)

2250 to 2251 – (Central Coast)
2256 to 2263 – (Central Coast)
2311 to 2312
2328 to 2411
2420 to 2490
2536 to 2551
2575 to 2594
2618 to 2739
2787 to 2898

Northern Territory

Entire Territory

Queensland (Except the greater Brisbane area and the Gold Coast)

4124 to 4125
4133
4211
4270 to 4272
4275
4280
4285
4287
4307 to 4499
4515
4517 to 4519
4522 to 4899

South Australia

Entire State

Tasmania

Entire State

Victoria (Except Melbourne metropolitan area)

3211 to 3334
3340 to 3424
3430 to 3649
3658 to 3749
3753
3756
3758
3762
3764
3778 to 3781
3783
3797
3799
3816 to 3909
3921 to 3925
3945 to 3974
3979
3981 to 3996

Western Australia (Except Perth and surrounding areas)

6041 to 6044
6083 to 6084
6121 to 6126
6200 to 6799

Australian Government Websites

assisting business entry and skilled migration

Australian Government

Department of Immigration and Citizenship

www.immi.gov.au/skilled/business/

Including information on:

- business entry and skilled migration
- contacts for Australian missions overseas
- business trips to Australia

With links to:

- Australian missions overseas
- Australian Government websites
- Useful business websites

Business Entry Point

www.business.gov.au

Australian Taxation Office

www.ato.gov.au

State/Territory Governments

Australian Capital Territory

ACT Government

www.business.act.gov.au

New South Wales

Department of State and Regional Development

www.business.nsw.gov.au

Northern Territory

Department of Business, Economic and Regional Development

www.nt.gov.au/dberd/

Queensland

Department of State Development

www.statedevelopment.qld.gov.au

South Australia

Department of Trade and Economic Development

www.immigration.sa.gov.au

Tasmania

Tasmanian Government

www.tas.gov.au

Victoria

Skilled Migration Program

www.liveinvictoria.vic.gov.au

Western Australia

Small Business Development Corporation

www.sbdc.com.au

Employer Sponsored Migration

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Department of Immigration and Citizenship
www.immi.gov.au

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