

# EMPLOYER'S GUIDE TO ACCESS A LABOUR AGREEMENT UNDER THE PILBARA DAMA

INFO01

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### Important Information

By making this request to the Pilbara Designated Area Representative (**Pilbara DAR**) you are seeking the endorsement of Regional Development Australia Pilbara to be able to:

- Access the Pilbara Designated Area Migration Agreement (**DAMA**); and
- Request to enter into a Labour Agreement with the Commonwealth of Australia (**the Commonwealth**).

The Commonwealth considers but is not bound by an endorsement by the Pilbara DAMA. Endorsement by the Pilbara DAR does not guarantee a positive migration outcome. The Pilbara DAR is not a party to the Labour Agreement between you and the Commonwealth.

### Applying for a Labour Agreement

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

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

### What you will need to demonstrate

To request endorsement from the Pilbara DAR to access the DAMA you will need to complete the Pilbara DAMA Endorsement and Application Form (FM1) and provide the following information.

1. Evidence that you have been actively operating for at least twelve (12) months and are financially viable. You will need to provide:
  - Business documents, including for associated entities (if applicable) such as:
    - Your Business Registration Certificate;
    - Australian Business Number (ABN);
    - Australian Company Number (ACN) if applicable;
    - Trust Deed (if applicable); and
    - A letter of support from a registered Chartered Accountant or a Certified Practising Accountant confirming that you have been actively operating for at least twelve (12) months and have the financial capacity to meet the migration obligations for the workers you wish to sponsor, for the proposed period that they will be employed by you. The letter must include the key financial data i.e., your turnover, net assets, and profit/loss for the most recent financial year.

**NOTE:** Labour Hire organisations cannot use the DAMA program, only direct employers can. A labour agreement specific to labour hire organisations (“On-Hire”) can be found at:

<https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-agreements>

2. A statement confirming if there have been relevant investigations or audits, resulting in an adverse finding to the business or any associated entities (including previously associated entities) in the last five years by bodies such as:
  - The Office of the Fair Work Ombudsman, or former authority with this function, or relevant State or Territory Government authority in relation to compliance with workplace relations provisions;
  - The relevant State or Territory Government authority in relation to compliance with workplace health and safety provisions; and
  - The Department of Home Affairs in relation to compliance with migration provisions.

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

## Concessions

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

### English Language Concession

English language level may be reduced from the standard requirement i.e.,

- **TSS and SESR** – average score of IELTS 5.0 with no minimum component (unless registration or licensing requires a higher level of English);
- **ENS** – average score of IELTS 5.0 with no component being less than IELTS 4.0 or equivalent (unless registration or licensing requires a higher level of English).

**NOTE:** There are some DAMA occupations for which an English language concession is not available.

The English language requirements may be met if a visa applicant meets the definition of “exempt applicant” in the relevant legislative instrument setting out the Language Test Requirements for TSS, SESR and ENS visas.

### TSMIT

Minimum income – The TSMIT concession may not be available for all occupations included in the DAMA. Where employers can provide a strong business case, a concession to the TSMIT may apply.

- Type 1 – ‘Reduced TSMIT’ (up to 10% concession to TSMIT). Where TSMIT is equal to or greater than \$53,900, the base rate of pay must be equal to or greater than 90% of TSMIT; or
- Type 2 – (up to 10% concession to TSMIT and the inclusion of non-monetary earnings). Where TSMIT is equal to or greater than \$53,900, the base rate of pay may be equal to or greater than 90% of TSMIT; and these earnings may include ‘non-monetary earnings (other)’ capped at \$4,851 annually. Non-monetary earnings (other) refers to benefits such as phone, vehicle, food, and board.

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

### Age Concession

Age concession for the ENS and SESR visa programs of:

- 55 years for Overseas Workers in skill level 1-4 occupations;
- 50 years for Overseas Workers in skill level 5 occupations.

### Valid need for Overseas Workers

A statement regarding the number of overseas workers you will need, the roles they will fill and whether you are requesting any concessions to the standard TSS (subclass 482), ENS (subclass 186) and/or SESR (subclass 494) visa requirements.

1. Evidence that the recruitment of overseas workers is only to supplement the Australian workforce and will not undermine employment and training opportunities for Australians. You will need to complete the domestic recruitment summary table showing that:
  - You have made genuine efforts to recruit domestic workers in the nominated occupation and location over the past twelve (12) months. This information should include:
    - The types of advertising or recruitment efforts (e.g., website, print media or radio) made in the last twelve (12) months with respect to the relevant occupations;
    - The locations and duration (including start and end dates) where those advertising or recruitment activities took place;
    - The number of applications received;
    - The number of applicants hired; and
    - The general reasons why the other candidates were unsuccessful.

Recruitment activities undertaken must meet Department of Home Affairs Labour Market Testing (LMT) requirements as these apply to TSS or SESR nominations.

You should also provide:

- Details of any redundancies or retrenchments that have occurred in the last six (6) months including any associated (including previously associated) entities for roles in the nominated occupation or similar occupations; and
- Details of your current workforce including the number of Australian citizens/permanent residents, subclass 482, 186 and/or 494 visa holders and other temporary visa holders (including subclass 457 visa holders).

### Equal Pay and Conditions

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

- Pay rates from applicable enterprise agreements in the local region;
- Applicable industry awards;
- Data from reputable industry remuneration surveys (usually conducted by peak industry bodies or professional associations);

- Australian Bureau of Statistics earnings data; and
- Job vacancy advertisements

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

- As well as being equivalent to, or higher than the base rate of pay (usually based on a 38-hour week unless varied by an award) must also be equal to or higher than the TSMIT unless a concession has been negotiated.
- Overseas workers must be engaged in accordance with applicable Australian workplace laws.
- Additionally, the overseas worker/s must be employed on a full-time basis as a direct employee.
- The position to be filled must also be in the City of Karratha or Town of Port Hedland.
- Conditions associated with the DAMA include that the overseas worker must live and work in the designated area. The overseas worker may be able to travel outside the Pilbara region for work-related reasons for short periods of time where this is consistent with the declared duties of the position. You must seek the agreement of the Pilbara DAR if the overseas worker will be outside of the designated Pilbara area for more than three (3) out of twelve (12) months.

## Skills

Applicants will be required to obtain a skills assessment where outlined in the legislative requirements of the relevant standard visa program, or as specified in the DAMA labour agreement.

You must also provide a statutory declaration stating:

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

## Settlement Information

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

- Prior to you engaging them; or
- If they are already working for you, prior to them lodging their 482-visa application, unless they have been living and working in the Pilbara for at least twelve (12) months prior to them lodging their visa application.

You can obtain a settlement information kit from the Pilbara DAR.

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

### Sponsorship Obligations

You acknowledge you have read and understood your sponsorship obligations should the Department of Home Affairs enter into a Labour Agreement with you.

### Conditions of Endorsement and Other Matters

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

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

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

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

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