

## Subclass 494 Visa FACT SHEET

The subclass 494 visa allows employers to sponsor overseas workers to live and work in regional Australia on a temporary basis. This visa is designed to assist regional employers who are unable to meet their skilled Australian workforce needs from the local labour market. The visa is valid for a five-year period with visa holders able to apply for a permanent visa if they meet the relevant criteria. The minimum requirements for SESR visas are as follows:

**NOTE:** Different criteria apply to the Labour Agreement stream of this visa. Please contact us for further details regarding this stream.

### SESR Visa Requirements

#### Employer

The business seeking to employ you must be **actively and lawfully operating in Australia**.

In addition, there must not be any **adverse information** known that is relevant to the business's suitability as an approved sponsor.

**NOTE: Adverse information** includes, but is not limited to, contraventions of Commonwealth, State or Territory Laws relating to matters such as immigration, industrial relations or taxation; pending investigations or disciplinary actions; being the subject of administrative action for possible contravention of the law; insolvency; or having provided bogus documents or false/misleading information to the Department of Home Affairs (the 'DOHA').

#### **Accreditation**

Certain businesses may be able to apply for *accredited status*, which enables them to receive priority processing for subclass 494 nomination and visa applications. Please contact us to check if your employer's business may be eligible for accreditation.

#### Nominated Position

The position to be filled must be on either the Medium and Long-term Strategic Skills List (MLTSSL) or the Regional Occupation List (ROL) and:

- be a **genuine, full-time position in a designated regional area of Australia**
- **likely to exist for the next 5 years**
- be in the sponsor's business (or that of an associated entity), and be **subject to a signed, written contract of employment** that does not expressly exclude the possibility of extending the period of employment (unless exempt – please contact our office to discuss)
- have a salary that is:
  - at least **\$53,900** per year (excluding any non-monetary benefits) **AND**
  - at least the **annual market salary rate (AMSR)** for your nominated occupation

**NOTE:** the **AMSR** for your nominated occupation (excluding non-monetary benefits) must also be no less than \$53,900 per year. The **AMSR** is the salary that an Australian earns (or would earn) for performing equivalent work on a full-time basis for a year in the same workplace at the same location. You will be exempt from this requirement if your salary is more than \$250,000 per year.

### **Nominated Position, cont.**

- be subject to terms and conditions of employment that are no worse than those that apply (or would apply) to Australians performing equivalent work in the same location
- have been subjected to 'Labour Market Testing' (LMT) i.e. the sponsor must have attempted to recruit a suitably skilled and qualified Australian to work in the nominated position. This requires the sponsor to provide **evidence** that it has advertised the position within the last 4 months, for at least 4 weeks

**NOTE:** Alternative LMT criteria apply in certain circumstances. Evidence provided in support of LMT must meet strict criteria regarding the location, type and content of the advertisement. Sponsors are not required to undertake LMT if an International Trade Obligation applies. Please contact us for further information regarding the type of LMT required for your nomination.

- be certified by a designated Regional Certifying Body

### **Visa Applicant**

As the visa applicant, you must (unless exempt from the requirements):

- be **under 45 years** of age
- have your **skills assessed** as suitable for your nominated occupation by the relevant skills assessing authority. If your skills assessment is based on an Australian qualification while holding a student visa, that qualification must have been CRICOS registered
- have at least **three years** of full-time **experience** (or the part-time equivalent) in your nominated occupation (or a related field)
- genuinely intend to work in the nominated position
- meet any mandatory licensing, registration, or professional membership requirements
- have **competent English** i.e.
  - hold a valid passport issued by the UK, USA, Canada, New Zealand, or the Republic of Ireland (and you are a citizen of that country) **OR**
  - an IELTS test score of at least 6 in EACH test component **OR**
  - an OET test score of at least B in EACH test component **OR**
  - a TOEFL iBT test score of at least 12 for listening, 13 for reading, 21 for writing and 18 for speaking **OR**
  - a PTE test score of at least 50 in EACH test component **OR**
  - a CAE (C1 Advanced) (test score of at least 169 in EACH test component

**NOTE:** In each case, the test must have been undertaken within the three years **PRIOR** to lodging the visa application.

- meet the relevant health and character criteria

**Note:** Exemptions may apply to some of the criteria listed above. Please contact us to discuss if any exemptions apply to your situation.

## APPLICATION PROCESS

### Stage 1: Sponsorship Application

The application for standard business sponsorship is lodged with the DOHA on behalf of your employer. The main criterion is that your employer's business is actively and lawfully operating in Australia. An approved sponsorship is valid for five years. During this time, the business can nominate overseas workers for SESR visas (and subclass 482 Temporary Skill Shortage (TSS) visas).

#### SPONSORSHIP OBLIGATIONS

Businesses who are approved to sponsor overseas workers for SESR visas **MUST** comply with certain obligations imposed by the DOHA. These obligations are designed to protect overseas workers from exploitation, and to ensure that the visa program is used correctly.

In particular, please note that a business approved as a standard business **must provide equivalent terms and conditions of employment to the visa holder as they would an Australian employed in the same work at the same location.**

Additionally, **the sponsor must not attempt to recover any of the costs associated with applying for sponsorship or nominations** (including migration agent costs and Skilling Australians Fund levies), or any costs directly associated with **recruiting overseas workers** for nominated positions. Approved sponsors may however be able to recover GST and/or claim a tax deduction for payment of fees and costs associated with applying for sponsorship, and we recommend that independent tax advice is sought in this regard if relevant.

Approved sponsors must also **maintain certain records** relating to their sponsorship and SESR (and TSS, if applicable) nominations. This includes records substantiating the sponsor's **annual turnover**, as well as records confirming **how, and by whom, each Skilling Australians Fund levy was paid**. Such records must be provided to the DOHA upon request.

**Please contact our office for further information, including a full list of sponsorship obligations.**

### Stage 2: Nomination Application

The nomination application is lodged with the DOHA on behalf of your employer, either at the same time as the sponsorship application, or during the sponsorship validity period. The main criterion is that the nomination meets the requirements listed above.

**Note:** The annual market salary rate for the skilled position must also be assessed by a local Regional Certifying Body (RCB), the advice of which the DOHA takes into account when making its decision. RCB assessment applications are lodged with the relevant RCB on the employer's behalf, in most cases before the nomination application is lodged with the DOHA.

### Skilling Australians Fund Levy

Sponsors must pay the Skilling Australians Fund (SAF) levy for each SESR nomination lodged with the DOHA. The amount payable varies based on the sponsor's annual turnover:

- For employers with an **annual turnover of LESS THAN AU\$10 million**, the SAF levy is **AU\$3,000 per nomination**.
- For employers with an **annual turnover of AT LEAST AU\$10 million**, the SAF levy is **AU\$5,000 per nomination**.

The SAF levy must be paid upfront, at the time that the nomination is lodged.

**NOTE:** If a SESR visa holder changes employer, a pro-rated SAF levy is payable by the new sponsoring employer at the nomination stage for the remaining visa validity period of the SESR visa.

**Please contact our office for further information regarding the SAF levy.**

### Stage 3: Visa Application

Your visa application is lodged with the DOHA either at the same time as the nomination application, or before the nomination expires (generally within 12 months of approval). The main criterion is that you fulfil the requirements listed above.

You may generally be in or outside Australia when applying for this visa. However, you may be ineligible to apply in Australia if you do not hold the required type of visa or have previously been refused a visa (or had your visa cancelled).

Once the DOHA has approved all three applications, you will be granted a SESR visa. The visa is valid for 5 years. You may be either in Australia or overseas when your visa is granted.

#### *Visa Conditions*

There are several conditions attached with this visa that you must comply with. For instance, you must only work in the occupation which was nominated and for the employer that nominated you.

Additionally, you must notify the DOHA of any changes to your residential address, email addresses, phone number, passport details, employer address/location of your employed position, within the timeframe required. You must also comply with requests from the DOHA for information or attend an interview as requested by the DOHA. If you would like more information about the visa conditions, please contact us.

### Next Steps

Once you have held this visa at least three years, you may be eligible to apply for a permanent subclass 191 Permanent Residence (Skilled Regional) visa, provided you meet all of the relevant criteria. This includes the requirement to have resided in a specified regional or designated regional area of Australia (in accordance with your nomination or sponsorship, as referred to above) for at least three years, met the minimum income requirements for that period and complied with the conditions of the SESR visa. The permanent visa does not require employer sponsorship.

**PLEASE NOTE:** We estimate that it may take several weeks to prepare and lodge your application, with the time taken largely dependent on how promptly you (and your sponsor, if applicable) provide us with the necessary supporting information and documents.

The time that it takes the DOHA to process your application is dependent upon its processing time service standards, and may also vary due to a number of other factors, including the complexity of your case, perceived risk factors and processing priorities. Please contact us for current information regarding likely processing timeframes for this type of application.