



An Australian Government Initiative



Regional  
Development  
*Australia*

## PILBARA

# Designated Area Migration Agreement

## How to Access the Pilbara DAMA – Employers

January 2024

### Important Information

By making a 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 DAR. 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), SESR (subclass 494) and ENS (subclass 186) 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://immi.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 FM002 DAMA Application for Endorsement Form and provide the following information:

1. Evidence that you have been actively operating for a least twelve (12) months and are financially viable. This could include:
  - Evidence of already being a standard business sponsor.
  - Business registration/business name change registrations.
  - ABN/ACN certificate.
  - Trust deed (if applicable)

**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. Business profile, which could include:
  - Website extracts.
  - Promotional material.
  - Business capability statement/promo material referencing the Pilbara operation.
3. Evidence that the business is operating in the City of Karratha, Town or Port Hedland or Shire of East Pilbara. This could include:
  - Lease agreement.
  - Contracts and/or invoices from suppliers/customers.
4. Job description of each requested position. The job description must match the job advertisements.
5. Organisation chart less than six months old. All requested positions must be displayed (including in multiple locations). If the business is expanding, proposed business structure. The requested positions should match the job advertisement/s.
6. Financial statement for the financial year and business activity statement for the last 12 months immediately preceding the application. This could also include:
  - Letter from your Accountant stating 12 month’s operation, net assets, profit/loss and turnover.
7. **IF REQUIRED** – A Statutory declaration about adverse information. Evidence to be attached. The statement should note any 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.
8. Summary of domestic recruitment efforts for each requested position:
  - Copies of at least two job advertisements – 1 must be of national reach (i.e. Seek, Jora, government job sites, and 1 local reach (ie Facebook, business website etc).

- Evidence to prove the nominated positions have been advertised for 28 consecutive days. Advertising must have been completed during the twelve months prior to submitting a nomination (preferably within 6 months prior).
9. Statement on why the business is not using the standard 482 visa and the impact of negative result (if the business is not endorsed to access the Pilbara DAMA).
10. Evidence to prove the worker will receive terms and conditions no less favourable than those provided to an Australian citizen or permanent resident (required for each requested position). This should include:
- Employment contract for a current/former Australian or Australian permanent resident employee in the same level position.
  - Recent payslips for a current or former Australian or Australian permanent resident employee in the same level position.
  - Relevant enterprise agreement/award for the position (if applicable) OR
  - Any other evidence of market salary levels for the position.

A checklist is available on the website with the above information – CL003 DAMA Document Checklist.

## 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:

### Concession to English Language Requirement

IELTS means the International English Language Testing System or the equivalent in another accepted English language test. Other accepted English language tests are:

- Occupational English Test (OET);
- Test of English as a Foreign Language internet-based test (TOEFL iBT);
- Pearson Test of English (PTE) Academic test; or
- Cambridge English: Advanced (CAE) test.

The English language requirements may be met if a visa applicant would be regarded as an 'exempt applicant' for the purpose of the legislative instruments applicable to TSS, SESR and ENS visas.

For any Occupations that are **not eligible** for the English Language concession, the Overseas Worker is required to meet the minimum standard English language requirements applicable to the TSS, SESR and ENS non-labour agreement visa streams under the Migration Regulations.

For the Occupations that **are eligible** for the English Language concession, the following applies:

- **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: The English language concession is not available for all Pilbara DAMA occupations.**

### **Temporary Skilled Migration Income Threshold (TSMIT) Concession**

The TSMIT is currently set at AUD\$70,000 for nomination applications lodged on, and after 1 July 2023.

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% concessions to TSMIT). Where TSMIT is equal to or greater than \$70,000, the base rate of pay must be equal to or greater than 90% of TSMIT (\$63,000); or
- Type 2 – (up to 10% concession to TSMIT and the inclusion of non-monetary earnings). Where TSMIT is equal to or greater than \$70,000, 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) refer 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.

### **Annual Market Salary RATE (AMSR)**

Employers who wish to nominate workers for subclass 482, 494 and 186 must meet certain salary and employment condition requirements. These requirements help to ensure that:

- Employers pay overseas workers no less than an Australian worker who is doing the same work in the same location, that is, the ‘annual market salary rate (AMSR)’.
- These visa programs are not used to undercut the Australian labour market.

If you will pay the overseas worker an annual salary less than AUD\$250,000 you need to show:

- You have determined the AMSR correctly.
- You will not pay the overseas worker less than the AMSR, that is, less than an Australian worker would be paid and
- Both the AMSR and what you will pay the overseas worker, excluding any non-monetary benefits in both cases, is no less than the TSMIT.

Both the AMSR for the nominated occupation and the guaranteed annual earning you will pay to the worker must be at least as much as the current TSMIT.

The TSMIT does not include non-monetary benefits such as accommodation or a car. Employers must pay such benefits in addition to the TSMIT.

### **Permanent Residence Pathway**

A permanent residence pathway for Overseas Workers may be available via the Subclass 494 (Skilled Employer Sponsored Regional) (SESR) and through Subclass 186 (Employer Nomination Scheme) (ENS) visa program for all applicable occupations under the Pilbara DAMA.

The following conditions will ordinarily be included in a Labour Agreement and will apply to any nomination for an ENS visa (in addition to the ENS requirements outlined in the Migration Legislation).

- a) The Overseas Worker, at the time of an application for approval of the nomination in relation to an ENS visa (‘the ENS nomination’), holds a TSS visa, a Subclass 457 visa (or a bridging visa in association with a TSS/457) visa; and
- b) The Third Party’s ENS nomination identifies an Occupation in the Pilbara DAMA that was the subject of the most recently approved TSS visa for the Overseas Worker; and

- c) The Overseas Worker has been employed on a full-time basis, in the ENS nominated occupation, an applicable occupation under the Pilbara DAMA, or a closely related occupation that is, also specified in the Pilbara DAMA, for a period of at least three (3) years before the ENS nomination is made;
- d) For the whole time that the Overseas Worker was employed in accordance with paragraph c):
  - i. He or she must have held a TSS visa, a Subclass 457 visa (or a bridging visa in association with a TSS/457) visa; and
  - ii. He or she must have worked in the Pilbara Designated Area; and
- e) The Overseas Worker identified in the ENS nomination will be employed on a full-time basis in the position for at least two (2) years; and
- f) The terms and conditions of employment of the Overseas Worker will not include an express exclusion of the possibility of extending the period of employment.

### Age Concession

Age concession for the SESR and ENS visa programs of:

- 55 years for overseas workers in skill level 1-4 occupations.
- 50 year for overseas workers in skills level 5 occupations.

## Valid need for Overseas Workers

You will need to write 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.

- g) 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 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 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 Australia citizens/permanent residents, subclass 482, 186 and/or 494 visa holders and other temporary visa holders.