



WORKBOOK

Migration Law Updates for
Sponsored Visas (482,
186/187, 494) Workshop

Completion of this Workshop awards a
Registered Migration Agent **3 CPD Points**

This Workshop is an
approved CPD Activity
Item Number **WK632**

Table of Contents

INTRODUCTION	7
Foreword	7
CPD Points	7
Currency of document.....	7
Authors.....	7
LIST LEGEND	8
CONTENT OUTLINE.....	9
LEARNING OUTCOMES	9
SUMMARY OF LAW CHANGES.....	10
TIMELINE OF LAW CHANGES	15
NEW FEES AND CHARGES.....	19
MAKING A VALID VISA APPLICATION UNDER THE TSS.....	21
Visas to be held for Onshore Application Criteria	22
NEW OCCUPATION LISTS – STSOL / MLTSSL / ROL.....	23
Application of new 11 March 2019 Occupation Lists	26
Certain Occupations with Caveats (Minimum Conditions to be met)	27
MLTSSL List Caveats – applicable for 482 TSS and 186 ENS (but not 187 RSMS)	27
STSOL List Caveats – applicable for 482 TSS.....	29
Regional Occupation List Caveats – applicable for 482 TSS.....	33
Summary of applicable Occupation Lists for subclasses.....	36
LABOUR MARKET TESTING CHANGES.....	37
New amendments to LMT requirements	39
Exemptions to Labour Market Testing requirement – International Trade Obligations.....	41
TRAINING AND SAF REQUIREMENT CHANGES	45
Training Contribution Charges (SAF) Applicable.....	48
Exceptions to Training Contribution (SAF) Charge.....	48
SAF Replacing Training Expenditure and Sponsorship Obligations.....	49
Refunds Applicable for SAF and Nomination Fees.....	50
Refunds for nomination fee and training contribution (SAF) charges applying to subclass 482 ...	50
Refunds for nomination fee and training contribution (SAF) charges applying to subclass 186/187	51
ADVERSE INFORMATION CHANGES.....	52
EMPLOYMENT CONTRACT CHANGES	53

REASONABLE TO DISREGARD POSITIONS WHICH ARE NOT FULL-TIME	54
ENGLISH LANGUAGE CHANGES.....	55
English Language Exemption Changes for 186/187.....	56
MARKET SALARY RATE CHANGES	57
GENUINE POSITION AND GTE CHANGES	59
Genuine Position Policy under 457 – also applies to the 482.....	60
Position Created to secure a Migration Outcome	60
Tasks of the position do not align, or at least substantially align, with the tasks of the nominated occupation.....	61
Position does not appear to be consistent with the nature of the business – includes Size and Scope considerations.....	61
General Factors in favour of or against genuine position.....	62
Referral to Sponsorship Monitoring	63
Discretion of Decision-maker supported by court case.....	63
Genuine Position requirements for specific occupations.....	64
LINKING NOMINATIONS TO TSS VISAS	67
WORK EXPERIENCE REQUIREMENTS	69
SKILL ASSESSMENT REQUIREMENTS	70
Prescribed occupations and countries where Skills Assessment are Mandatory	71
Exemptions from Mandatory Skills Assessment for 482/186	73
CHARACTER REQUIREMENTS	74
HEALTH REQUIREMENTS.....	75
WORKFORCE REQUIREMENTS.....	76
NEW TSS VISA CONDITIONS	77
GRANT PERIODS	78
NOMINATIONS CAN NOW BE APPEALED IF SPONSORSHIP IS REFUSED.....	79
AGE CAPS FOR 186 AND 187 APPLICANTS.....	80
SPONSORSHIP SANCTIONS CHANGES AND TFN DATA MATCHING	81
CONSEQUENCES FOR 457 APPLICANTS AND VISA-HOLDERS	82
Consequences for 457 applicants affected by Occupation List Changes between 18 April 2017 and March 2018	82
Consequences for 457 applicants and Visa-holders transitioning to TSS	84
Consequences for 457 applicants and Visa-holders transitioning to 186.....	86
Direct Entry Solution for STSOL applicants before March 2018	86
TRANSITIONAL PROVISIONS FOR SAF AMENDMENTS COMMENCING 12 AUGUST 2018.....	87
INTRODUCTION OF REGIONAL SPONSORED SUBCLASS 494 FRAMEWORK.....	89

Major Notable changes to Subclass 494 as compared to Subclass 187	90
Designated Regional Areas	93
Restrictions on Certain Visa Applications while Subclass 494 held	95
New Visa Conditions to Enforce Regional Commitments	97
Transitional Provisions as at 16 November 2019	98
STANDARD BUSINESS SPONSOR OBLIGATIONS	99
General Sponsorship Obligations	100
Obligation to ensure equivalent terms and conditions of employment.....	101
Obligation to pay travel costs to enable sponsored persons to leave Australia	103
Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen	104
Obligation to keep records in a reproducible format	105
Obligation to provide records and information to the Department.....	106
Obligation to provide information to the Department when certain events occur.....	107
Obligation to ensure primary sponsored person works or participates in their nominated occupation.....	109
Obligation not to recover, transfer or take actions that would result in another person paying for certain costs	110
Obligation to provide Training.....	111
Obligation not to engage in discriminatory recruitment practices.....	112
Obligation to cooperate with inspectors in the course of Monitoring action	113
Obligation not to provide false or misleading information.....	114
Obligation to ensure Application or Variation Criteria continue to be met.....	115
Obligation not to benefit from a Migration Outcome	116
Other Work-Related breaches and offences	118
CONSEQUENCES OF BREACHING SPONSORSHIP OBLIGATIONS	119
Sanctions for Breach of General Sponsorship Obligations	120
Issuing a Formal Warning Letter.....	122
Barring a sponsor from doing certain things	123
Cancelling an approval of a sponsor	125
Accepting an undertaking from the sponsor	126
Serving an infringement notice on the sponsor	127
Issuing proceedings for a Civil Penalty Order	128
Sanctions for Breach of Obligation not to Benefit from a Migration Outcome	130
Serving an infringement notice on the sponsor	131
Issuing proceedings for a Civil Penalty Order	132

Issuing proceedings for a Criminal sanction	134
MONITORING PROCESS.....	137
Powers of Inspectors.....	140
Process for issuing a sanction.....	142
HYPOTHETICAL SCENARIOS	143
APPENDIX 1 – LIN 19/048 New 482 TSS Occupation List STSOL/MLTSSL effective 11 March 2019	159
APPENDIX 2 – LIN 19/049 New 186 MLTSSL Occupation List effective 11 March 2019	179
APPENDIX 3 – LIN 19/047 New 187 MLTSSL/Regional Occupation List effective 11 March 2019.....	192
APPENDIX 4 – LIN 18/036 Labour Market Testing requirements from 12 August 2018.....	218
APPENDIX 5 – LIN 20/029 Exemptions for International Trade Agreements.....	224
APPENDIX 6 – MIGRATION AMENDMENT (SKILLING AUSTRALIANS FUND) REGULATIONS 2018.....	227
APPENDIX 7 – IMMI 18/017 New Training Benchmarks effective 18 March (IMMI 18/047 for 186 contains identical content).....	237
APPENDIX 8 – MIGRATION (SKILLING AUSTRALIANS FUND) CHARGES REGULATIONS 2018.....	242
APPENDIX 9 – LIN 19/212 Exempt occupations from requiring signed Employment Contract or working for SBS sponsor for 482/494 applications	245
APPENDIX 10 – IMMI 18/032 English Proficiency Requirements for Subclass 482	249
APPENDIX 11 – IMMI 18/033 TSMIT and Australian Market Salary Rate	253
APPENDIX 12 – IMMI 18/039 Mandatory Skills Assessment Countries and Occupations	257
APPENDIX 13 – LIN 19/216 English, Age and Skill Exemptions for 186/187	265
APPENDIX 14 – LIN 19/219 New Subclass 494 Occupation List.....	271
APPENDIX 15 – LIN 19/260 Subclass 494 Assessing Authorities.....	290
APPENDIX 16 – LIN 19/214 Regional Certifying Bodies	311