

Legal 500

Country Comparative Guides 2023

Australia

Corporate Immigration

Contributor



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Services

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This country-specific Q&A provides an overview of corporate immigration laws and regulations applicable in Australia.

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Australia: Corporate Immigration

1. What are the relevant government entities relating to immigration in your jurisdiction?

The Department of Home Affairs (the Department) is the Australian Government interior ministry responsible for:

- National security policy and operations
- Emergency management, including crisis management and disaster recovery
- Counter terrorism policy and coordination
- Cyber security policy and coordination
- Countering foreign interference
- Critical infrastructure protection
- Multicultural affairs
- Countering violent extremism programs
- Transport Security

The Portfolio of the Department also includes:

- the Australian Border Force, which is the independent operational enforcement arm with responsibility across numerous areas of border force operations, compliance, investigations, removals and enforcement;
- the Australian Securities and Intelligence Organisation (ASIO), which is Australia's intelligence/counter-intelligence and foreign interference agency; and
- the National Emergency Management Agency (NEMA), was created after Australia's significant fire and floods and combined the National Recovery and Resilience Agency and Emergency Management Australia, to create a single agency to better respond to emergencies, help communities recover, and prepare Australia for future disasters.

The Portfolio, is part of a whole-of-government approach

2. What are the options available for sponsor-based employment in your jurisdiction and timelines involved in securing a work permit?

There are two types of sponsor-based employment programs – Standard Business Sponsors and Temporary Activity Sponsors:

1. Standard Business Sponsorship (SBS) allows Australian or overseas businesses to sponsor overseas workers to meet skilled workforce needs under :

- the Temporary Skill Shortage (TSS) visa (Subclass 482); and
- the Skilled Employer Sponsored Regional (SESR) visa (Subclass 494).

2. Temporary Activity Sponsorship allows a business to:

- sponsor an applicant for a Temporary Activity visa (Subclass 408);
- sponsor an applicant for a Temporary Work (International Relations) visa (Subclass 403) under the Pacific Australia Labour Mobility (PALM) scheme; or
- nominate and sponsor an applicant for a Training visa (Subclass 407).

The processing times vary across visa categories. The current indicative processing time as of 1 August 2023 are as follows:

Visa	Processing times
Temporary Skill Shortage (TSS) visa (Subclass 482)	5 days to 5 months
Skilled Employer Sponsored Regional (SESR) visa (Subclass 494)	32 days to 12 months
Temporary Activity visa (Subclass 408)	1 day to 3 months
Temporary Work (International Relations) visa (Subclass 403)	2 days to 3 months
Training visa (Subclass 407).	10 days to 49 days

3. What are the primary options available for un-sponsored work and investment in your jurisdiction?

Work restrictions apply across a range of visa subclasses.

Un-sponsored work

Business Visitor visa holders may enter Australia to engage in business activities but are not permitted to work of such.:

- an Electronic Travel Authority (ETA) visa

(Subclass 601);

- an eVisitor visa (Subclass 651).
- a Visitor (Business Visitor or Frequent traveller stream) visa (Subclass 600);

The Subclass 651 and 600 visas are granted subject to Condition 8115 permits business activities

The Subclass 400 visa:

- short-term, highly specialised, non-ongoing work of 3 months and up to 6 months where there is a strong business case; or
- in limited circumstances, participation in an activity or work relating to Australia's national interests.

Investment

The Business Innovation and Investment Program (BIIP) is designed to attract high-quality investors and entrepreneurs to invest in Australia. The BIIP comprises two visa Subclasses:

- The Business Innovation and Investment (Provisional) (Subclass 188).
- The Business Innovation and Investment (Permanent) (Subclass 888).

The Business Innovation and Investment (Provisional) (Subclass 188) visa and the Business Innovation and Investment (Permanent) visa (Subclass 888) streams are:

- The Business Innovation stream.
- The Investor stream.
- The Significant Investor stream.

The required investments vary depending on the Subclass, for example:

- The Investor visa stream (Subclass 188) requires the applicant to make a complying investment of at least A\$2.5 million and for the applicant to maintain the complying investment for the duration of the visa and to have 65 points on the business innovation and investment points test.
- The Significant Investor visa stream (Subclass 188) requires the applicant to make a complying investment of at least A\$5 million and for the applicant to maintain the complying investment for the duration of the visa.

The Subclass 188 and 888 Visas allow the Visa holder to work during the validity of the Visa.

4. What are the requirements for becoming a sponsor of employment-based migrants and what are the role and reporting duties of sponsors?

To be approved as a Standard Business Sponsor, the employer/must lodge a Sponsorship Application and evidence that:

- the company is actively and lawfully operating the business;
- the employment of the employee will benefit Australia;
- it is able to comply with sponsorship obligations;
- it will be the direct employer or 'related to' the direct employer of the employee;
- there is no adverse information regarding the sponsor; and
- it has a strong record of, or commitment to, employing local labour and non-discriminatory employment practices.

Employers, including approved Standard Business Sponsors, are monitored by the Department and the ABF to ensure that they comply with the obligations in relation to the foreign worker (and any accompanying family member(s)).

Monitoring takes place through interviews and site visits, desk auditing through monitoring forms, referral to other agencies and/or other sections of the Department, as well as education and awareness-raising activities.

Sponsorship Obligations apply to all approved Standard Business Sponsors and former approved Standard Business Sponsors and must include, but are not limited to, the following obligations:

- To ensure non-discriminatory recruitment practices.
- To cooperate with inspectors.
- To ensure equivalent terms and conditions of employment (namely, to pay the market salary rate, however described) to the primary visa holder.
- To pay prescribed costs of the departure of the visa holder (or a former visa holder) from Australia.
- To pay prescribed costs to the Commonwealth in relation to locating the former visa holder and removing the former visa holder from Australia.
- To keep records.

- To provide records and information to the Department.
- To notify the Department of prescribed changes in the circumstances of an approved sponsor, a former approved sponsor, a visa holder or a former visa holder.
- To ensure that a visa holder works or participates in an occupation, programme or activity nominated by an approved sponsor (including by preventing the hire of a visa holder).
- To require an approved sponsor or former approved sponsor to not recover, transfer or take any action that would result in another person paying for certain prescribed costs.
- To require an approved sponsor or former approved sponsor to meet prescribed training requirements (prior to 12 August 2018).

The following Sponsorship Obligations apply to all approved Temporary Activity Sponsors and must include, but are not limited to, the following obligations:

- To cooperate with inspectors.
- To keep records.
- To provide records and information to the Minister.
- To notify the Department when certain events occur.
- To notify the Department of prescribed events or changes.
- To not recover, charge or transfer certain costs.
- To pay fees to locate or remove an unlawful non-citizen.

Additional obligations apply to some Temporary Activity Sponsors, including:

- To ensure the visa holder undertakes the job, programme or activity described in their visa application.
- To secure an offer of a reasonable standard of accommodation for the visa holder.
- To pay the travel costs of sponsored visa holders.

5. Are applications filed electronically, or paper base? Is a physical visa/work permit document issued or is an electronic approval issued?

Most Applications are filed electronically with very few exceptions where the Department accepts and/or requires paper-based Applications.

All Visa Grant Notices are electronic and no physical visas or permits are issued.

6. Is an in-person attendance/interview required as part of the visa/work permit application process? Is an individual required to enrol their biometrics (digital photo, fingerprint scan) as part of the visa/work permit process?

There is no in-person attendance/interview generally required as part of the visa/work permit application process.

Some Visa Applications require specified passport holders to undergo biometrics to evidence identity.

The following visitor and other temporary visa subclasses are part of the biometric program.

400 – Temporary Work (Short Stay Specialist)

403 – Temporary Work (International Relations) – Government Agreement, Foreign Government, Domestic Worker (Diplomatic/Consular), and Privileges and Immunities streams

407 – Training

408 – Temporary Activity – Invited Participant, Australian Government endorsed event, exchange, sport, religious worker, domestic worker (executive), special program, entertainment activities and research activity types

462 – Work and Holiday

482 – Temporary Skill Shortage

491 – Skilled Work

494 – Skilled work (Employer Sponsored)

600 – Visitor Visa

7. What persons qualify as dependants? Can dependants work based on their dependant visa status? Are there any restrictions?

A 'dependant' must be a 'member of the family unit' (MOFU) of the person coming to work on a sponsored basis. MOFU is defined in Regulation 1.12 of the Regulations. Generally, a person is considered a MOFU of the 'family head' if the person is:

- a spouse or de facto partner of the family

head;

- a child or step-child of the family head or of a spouse or de facto partner of the family head (who is not engaged, married or in a de facto relationship); or
- a dependant child.

'Spouse' is defined in section 5F(1) of the Migration Act 1949 (the Act) to mean two persons (whether of the same sex or a different sex) who are in a married relationship.

The concept of a 'de facto partner and de facto relationship' is defined in section 5CB(1) of the Act; a person is the de facto partner of another person (whether of the same sex or different sex) if the person is in a de facto relationship with the other person. For this purpose, a person is in a de facto relationship with the other if they are not married to one another, and:

- they have a mutual commitment to a shared life to the exclusion of all others;
- their relationship is genuine and continuing;
- they live together or do not live separately or apart on a permanent basis; and
- they are not related by family.

'Dependant child' is defined in Regulation 1.03 of the Migration Regulations 1994 (the Regulations) and refers to a single or unattached person who has not turned 18.

If they have turned 18, the 'adult dependant child' must be wholly or substantially reliant on the 'family head' or the 'family head's spouse' or de facto partner or inter-dependent partner for their basic needs, or be incapacitated for work.

Spouses and partners of primary TSS visa holders and SESR have unrestricted work rights.

If a child's visa is granted on the basis that the child meets the requirements of 'dependent child' as defined in Regulation 1.03 of the Regulations, the child would be expected to be a full-time student and be wholly or substantially reliant on their parents for financial support. Therefore, any access to the labour market is required to be consistent with the dependency requirements.

Under the TSS visa program, a dependent child applicant ceases to hold the TSS visa once they turn 23 years of age.

8. What is the general time frame and processes for obtaining permanent residence and

citizenship for sponsored and unsponsored business-related immigration?

The processes for obtaining permanent residency depend on the visa Subclass applied for.

Sponsored Permanent Residency

Under the Subclass 186 ENS, the process has two steps:

Step 1 – nomination of an 'approved appointment' requires the employer to show that:

- the business is lawfully and actively operating in Australia and is of good standing;
- it meets the training benchmark as part of its commitment to the ongoing training of its Australian citizens and permanent resident staff (before 12 August 2018);
- it has the need to fill a full-time nominated position for at least two years (with the possibility of extending the employment);
- the position is on the Medium- and Long-Term Strategic Skill List (MLTSSL); and
- the terms and conditions of employment must be at least equivalent to those that are, or would be, provided to an Australian permanent resident/citizen worker. The salary must additionally meet at least the salary specified in the Legislative Instrument and accord with the relevant market salary rate for that position.

The second step of the Subclass 186 ENS depends on whether the applicant applies under the Temporary Residence Transition (TRT) stream or the Direct Entry stream.

An applicant for a Subclass 186 ENS under the TRT stream must meet the following:

Step 2 – a visa application is made by the person to fill the position, who must, unless exempted:

- have the relevant skills;
- have worked in Australia for at least the past three years as a primary Subclass 457 or 482 visa holder in the nominated occupation with the nominating employer before the lodgement of the nomination application;
- be under 45 years of age; and
- have 'competent' English (at least a score of six on each component of reading, writing, listening and speaking) under the IELTS or at least a score of 'B' on each component of

reading, writing, listening and speaking under the Occupational English Test (OET) (or as otherwise prescribed).

An applicant for a Subclass 186 ENS under the Direct Entry stream must meet the following:

Step 2 – a visa application is made by the person who is nominated to fill the position, who must, unless exempted:

- be under 45 years of age;
- have three years of relevant work experience;
- provide evidence of a positive skills assessment from the relevant authority; and
- have 'competent' English (at least a score of six on each component of reading, writing, listening and speaking) under the IELTS or at least a score of 'B' on each component of reading, writing, listening and speaking under the OET (or as otherwise prescribed).

Un-sponsored business-related immigration

There are several programs available through which individuals can obtain permanent residency without being sponsored. These include the:

1. Skilled Independent Visa (Subclass 189). This visa is for invited workers who have skills identified as being in short supply and needed in Australia;
2. Skilled Regional Visa (Subclass 887). This visa is for people who have lived and worked in a specified regional area on a previously eligible visa;
3. Global Talent Visa (Subclass 858) for people who have an internationally recognised record of exceptional and outstanding achievement in an eligible field.

The process varies considerably across each visa subclass and advice should be sought as to the process for each type of visa.

Current indicative processing times as of 1 August 2023:

Visa	Processing times
Employer Nomination Scheme visa (Subclass 186)	3 months to 13 months
Skilled Independent (Subclass 189)	5 months to 8 months
Skilled-Regional (Subclass 887)	4 months to 28 months
Global Talent (Subclass 858)	7 months to 11 months

Citizenship

Citizenship is available for permanent residents of Australia or eligible New Zealand citizens who meet the residence requirement.

General residence requirement:

- have been living in Australia on a valid visa for 4 years immediately before the day of application
- hold a permanent visa or a Special Category (Subclass 444) visa for the last 12 months immediately before the day of application; and
- not have been absent from Australia for more than 12 months in the past 4 years, including no more than 90 days in the 12 months immediately before applying.

Current indicative processing times for Australian citizenship by conferral (general eligibility and other situations) as at 1 August 2023

Period counted	25% of applications are processed in:	50% of applications are processed in:	75% of applications are processed in:	90% of applications are processed in:
From date of application to decision	3 months	4 months	6 months	10 months
From date of approval to ceremony	73 days	4 months	5 months	7 months
From date of application to ceremony	8 months	11 months	13 months	16 months

9. What productive type activities can a business visitor undertake and for how long?

Subclass 601, 651 and 600 visas generally allow multiple entry and stay for up to three months during the validity period of the visa grant.

The Business visitor Visa is granted subject to condition 8115 prohibits work but allows for "business visitor activity".

Definition of business visitor activity

For the purposes of Condition 8115, the term "business

visitor activity" is defined in the Migration Regulations 1994 as:

(a) means any of the following activities undertaken by a person:

(i) Making a general business or employment enquiry;

(ii) Investigating, negotiating, entering into, or reviewing a business contract;

(iii) An activity carried out as part of an official government to government visit;

(iv) Participation in a conference, trade fair or seminar in Australia unless the person is being paid by an organiser for participation; but

(b) does not include either of the following activities:

(i) an activity that is, or includes, undertaking work for, or supplying services to, an organisation or other persons based in Australia;

(ii) an activity that is, or includes, the sale of goods or services directly to the general public.'

10. Can remote work be carried out from your country?

TSS and SESR visa holders must work directly for their employer and be paid in accordance with the salary that would be offered to an equivalent Australian worker in the same geographical location.

However, there is no restriction in permitting a visa holder to work remotely within Australia or from home if directed by their employer.

Subclass 600 visa applicants intending to continue online work (including social media influencers and bloggers) while visiting Australia for short stays would generally not be considered in breach of condition 8101 (No Work) or 8115 (Business visitor activity), unless the applicant is being paid by an Australian organisation (for example, an applicant receiving remuneration to attend a promotional event in Australia).

Digital nomads who use technology to work remotely while travelling between different locations (who are either self-employed or employed by a company without an office in Australia), may also do so whilst the holder of a Subclass 600 visa in either the Tourist stream or Business Visitor stream for short stay periods (for example, a 3 month stay period with multiple entries).

11. Are there any productive work / revenue generating activities that can be carried out as a visitor and without the need for a work permit? If so, what activities and for how long?

See answer to question 10

12. Is there a remote work or nomad visa category in your jurisdiction? If not, how likely is it that this will be implemented in future?

See answer to question 10

13. How easy is it to switch visa categories/jobs/employer from within country? And/or if made redundant, can the individual regularise their stay in another capacity and what is the timeframe allowable?

Sponsored workers in the TSS program can change employers in Australia. In accordance with the conditions on their Visa, they must not commence work for a new Sponsor until a new TSS Nomination has been lodged and approved.

To change occupations, a TSS Visa holder must have both a new TSS Nomination and Visa Application lodged and approved prior to commencing work in the new occupation.

If the person is lawfully in Australia and holds a substantive Visa is generally no restriction on changing visa categories.

Some bridging Visa holders may also be eligible to apply for a Visa while they remain within the country.

Where a TSS Visa holder has been made redundant, they have 60 days during which they can:

- Find a new Sponsor;
- Apply for a new Visa; or
- Depart Australia

14. What common issues or concerns may arise for employers under business immigration in your jurisdiction?

An Australian employer can only nominate foreign workers to fill prescribed positions as noted in the relevant Skilled Occupation List which specifies:

- The Australian and New Zealand Standard Classification of Occupations (**ANZSCO**) code for each occupation. The ANZSCO provides information on the skill level of jobs, qualifications and/or experience required to work in occupations.
- Caveats, which exclude the use of the occupation in certain circumstances (applies to the ENS and TSS visas only).
- Whether the occupation is included on the MLTSSL, Short-term Skilled Occupation List (STSOL), Regional Occupation List (ROL) or the Regional Sponsored Migration Scheme (RSMS) ROL List.
- The authority for skills assessments regarding specified occupations, as relevant.

There are multiple Skilled Occupations Lists which have not been updated for some years and may be subject to review as part of the current review of the Migration Program given their restrictive nature.

15. Is there a fast track process / certification that business can obtain to expedite visa / permit processing?

Employers that are eligible to become Accredited as Standard Business Sponsors must meet specified requirements.

For example:

- Category 3 is for employers who have Australian workers who comprise at least 85% of their workforce in Australia.
- Category 4 is for employers who have Australian workers who comprise at least 75% of their workforce in Australia.

Accredited sponsors can access priority processing in accordance with Ministerial Direction 100.

16. What are the recent trends, both political and social that have impacted your jurisdiction with regard to immigration policy and law?

Australia relies on the Migration Program as an economic and population tool and including post-pandemic with the ongoing significant skilled workforce shortages.

With the election of the new Federal Government in May 2022, the Minister of Home Affairs instigated a review of the migration system by an Expert Panel. The Expert

Panel's Review of the Migration System – Final Report 2023 released in May 2023 provides underpinning principles that could be considered in building a new migration system. The Department has also provided the Outline of the Government's Migration Strategy "A Migration System for more prosperous and secure Australia".

The Minister of Home Affairs also requested the Senate's Joint Standing Committee on Migration to launch another Inquiry into the role of permanent migration in nation building- "Migration, Pathway to Nation Building".

Following BDO's Submission to the Joint Standing Committee Maria Jockel has been invited to appear before the Committee at the public hearing for the Inquiry on 17 August 2023 regarding addressing the skill shortages in the Aged Care sector.

17. How is the COVID-19 pandemic shaping the immigration landscape in your jurisdiction?

The Covid 19 pandemic and the extended closure of Australia's borders severely disrupted Australia's labour market. Consequentially, the Government's focus has been to protect Australian jobs.

When Australia's borders reopened in November 2021 there were over 1.5 million Visa applications backlogged.

The Department finalised over 7.5 million temporary and migration Visa applications since 1 July 2022. Of these 7.5 million finalisations just over 3,904,500 are visitor visas, 620,700 are student visas and 97,800 are temporary skilled Visa applications.

The Government announced at the Jobs and Skills Summit in September 2022 an extra 500 positions to support temporary and migrant Visa processing.

The Government has set the 2023 – 24 Migration Program at 190,000 places with an emphasis on skilled migrants. The Program has an approximate 70:30 split between skilled and family visas.

Skilled workforce shortages are impacting nearly all industry sectors and pose one of the greatest challenges that Australia has faced in decades, with labour force pressures contributing to the inflationary pressures in the economy.

18. Are there any new and / or anticipated changes impacting immigration law and / or

policy in your jurisdiction?

Australia arguably has the most complex and dynamic immigration laws and policies with constant and ongoing changes to various aspects of the law and policy, some of which are referred to below.

The Australia–India Economic Cooperation and Trade Agreement came into force in December 2022. The measures include 1000 Working Holiday Maker Visa's for 1000 Indian nationals and as part of closer economic trade.

From 1 July 2023 specified New Zealand citizens who hold the Special Category Visa are eligible to apply for Australian citizenship.

The Australia-UK Free Trade Agreement came into force on 31 May 2023 to facilitate bilateral trade and investment between Australia and the UK with a waiver of the Labour Market Testing requirements for UK passport holders regarding employer sponsored visas.

In July 2023, the Prime Minister announced changes to the Indonesian – Australia Comprehensive Economic Partnership, the terms of which will involve improved access to qualifications Australia for Indonesian businesspeople and recognition of engineering qualifications between the two countries. There is no indication as to when these changes will become available.

With international students contributing over \$25 billion to the economy, and following the setbacks caused by the pandemic, there is now a strong rebound in the international education sector. The Government has extended post – study work rights to give eligible international higher education graduates with select qualifications an additional two years on the Temporary Graduate Visa (Subclass 485).

The top 20 occupations reported occupations which are in demand are across various industries, including healthcare, construction, information technology, engineering, and professional services.

The Government has established Jobs and Skills Councils across industry to bring together employers and unions to work in partnership with governments and the education and training sectors to align workforce planning for the sectors given the skilled workforce shortages.

The Department is implementing multiple system security enhancements to enhance system performance, particularly targeting the automated cyber attempts for

lodgement.

The Government has also implemented a review of the Administrative Appeals Tribunal regarding merits review and introduced an Aged Care Labour Agreement to address the significant skill shortages in the aged care sector.

With the multiple inquiries, and Government announcements, ongoing change is anticipated including regarding the various reviews of the Migration Program and at a time of both workforce and skilled workforce shortages impacting Australia's economy.

19. How do you see technology developing and evolving to support immigration process in the future?

Since the reopening of the Australian border, the ImmiAccount, the primary method for Visa and citizenship application submission, has experienced very high and increasing demand.

As of 7 June 2023, 5.091 million applications had been lodged through ImmiAccount in the 2022 – 23 financial year.

The increasing demand has resulted in the Department closely monitoring the data traffic, upgrading the system capacity, enhancing network and performance of the applications, and investigating the platform and infrastructure to better meet the growing usage.

The Department continues to invest in technology to improve the delivery of visa and related services.

In addition, the Department is increasingly relying on automation to streamline the processing of some times of Applications.

20. What are the Right to Work requirements in your jurisdiction?

Only Australian citizens and permanent residents and New Zealand citizens have unrestricted work rights.

All other visas are granted subject to Visa conditions, including as to work rights.

The Migration Act 1958 contains civil and criminal liability provisions for permitting unlawful non-citizens to work or permitting lawful non-citizens to work in breach of work-related conditions. This imposes an obligation for employers to take reasonable steps at reasonable times

to verify the visa status and work rights of foreign nationals.

'Work' is defined in section 245AG of the Act and is taken to denote any form of work, whether for reward or otherwise. For example, it may be paid work, voluntary work, or work carried out in return for accommodation, food, or other benefits.

Employers are required to regularly verify work rights for anyone who will be employed in Australia using the Department's Visa Electronic Verification Online (VEVO) system to ensure compliance with work rights requirements. Temporary Visa holders should have their work rights checked every three months to verify ongoing work rights.

BDO Migration Services offers a work right checking service to assist employers with these obligations.

21. What are the types of civil and criminal penalties employers may face for non-compliance with immigration rules i.e. employing an individual who does not have the Right to Work?

The Migration Act 1958 has a three-tiered sanctions framework: infringement notices; civil penalty orders; and criminal offence provisions.

There are four types of civil liability offences:

- Permitting an unlawful non-citizen to work (90 penalty units).
- Permitting a lawful non-citizen to work in breach of a work-related condition (90 penalty units).
- Referring an unlawful non-citizen for work (90 penalty units).
- Referring a lawful non-citizen for work in breach of a work-related condition (90 penalty units).

The maximum civil penalties are:

- For an individual: AUD \$24,750.
- For executives of bodies corporate: AUD \$123,750.

There are four types of criminal liability offences:

- Permitting an unlawful non-citizen to work.
- Permitting a lawful non-citizen to work in breach of a work-related condition.
- Referring an unlawful non-citizen for work.

- Referring a lawful non-citizen for work in breach of a work-related condition.

The person committing the offence may be subject to a penalty of two years imprisonment where the elements of knowledge or recklessness can be proved. If the worker is subject to or will be subject to exploitation and the person knows of or is reckless to that circumstance, they may be liable to the aggravated criminal offence; in this event, the penalty is five years' imprisonment.

22. Are there labour market testing requirements in your jurisdiction and if so, what do they involve?

Unless exempted under Australia's International Trade Obligations, Labour Market Testing (LMT) is required for the TSS program.

TSS visa Short-term and Medium-term streams and the SESR visa LMT require sponsors to provide a copy of the advertising material used to advertise the position.

For most nominations, advertising must be carried out within the four months immediately before lodging a nomination application.

Advertising of the nominated position must:

- be in Australia and in English, and include the following information:
 - the title, or a description, of the position;
 - the skills or experience required for the position;
 - the name of the approved sponsor or the name of the recruitment agency being used by the sponsor; and
 - the salary for the position if the annual earnings for the position are lower than AUD\$96,400. It is acceptable to publish a salary range; for example, AUD\$80,000 to AUD\$90,000.
- be on the Government's Workforce Australia website;
- be on at least two advertisements published in any of the below:
- on a prominent or professional recruitment website with national reach (for example <https://workforceaustralia.gov.au>) that publishes advertisements for positions throughout Australia;

- in national print media – that is, newspapers or magazines with a national reach that are published at least monthly and marketed throughout Australia;
- on national radio with a national reach; or
- on the business's website if the sponsor is an accredited sponsor; and
- run for at least four weeks, including advertisements on websites.

In addition, applications or expressions of interest for the advertised position must have been accepted for at least four weeks.

If there are no suitable Australian citizens or permanent resident workers for the position, the LMT requirements are met.

In certain circumstances, employers can meet the alternate requirements in the form of a submission to evidence that they have met the LMT requirement. These include where:

- the occupant must have an internationally recognised record of exceptional and outstanding achievement in a profession or in the field of sport, academia and research, or as a top-talent chef;
- there is a new nomination for an existing TSS, SESR or Subclass 457 visa holder solely because:
 - the annual earnings that will apply to the nominee have changed; or
 - a change in business structure has resulted in the visa holder no longer being employed by the standard business sponsor even though they have not changed position.
- there is an intra-corporate transfer, i.e. the transfer of an existing employee of a company operating overseas to an associated entity of that company operating in Australia;
- the annual earnings will be equal to or greater than A\$250,000; or
- the nominees are within:
 - The ANZSCO Minor Group 253 – Medical Practitioners (except General Practitioner (ANZSCO 253111) and Medical Practitioners (ANZSCO 253999)).
- The ANZSCO Unit Group 4111 – Ambulance Officers and Paramedics.

23. Are there quota requirements, restrictions or

a cap on the numbers of foreign nationals hired per company in your jurisdiction?

There are no quotas for the number of foreign nationals which can be hired per company.

The Department has caps on the number of Permanent Residency Visas which can be granted in the Employer Sponsored program, which for the 2023-2024 year is capped at 36,825.

24. Are there any exit procedures in your jurisdiction, if an individual is departing permanently?

There are no exit procedures for an individual departing Australia permanently.

Employers of TSS visa holders are required to notify the Department of the cessation of the primary sponsored visa holder within 28 days of cessation of employment.

If requested in writing, employers must pay for the return travel costs for TSS holders and their family members.

Visa holders who have worked and earned superannuation while in Australia on a temporary visa, can apply to have their superannuation paid as a departing Australia superannuation payment (DASP) after they have departed Australia.

25. Are there any requirements for medical certificates or vaccinations for your jurisdiction?

Employees sponsored to work may be required to undergo medical examinations based on risk criteria associated with their travel and residence history and their proposed period of stay in Australia.

The health assessment process depends on the visa applied for, the age of the person, the proposed length of stay, the person's medical history, the types of activities they intend to engage in while in Australia, and the relevant Public Interest Criteria (PIC) that must be met regarding health. This can include medical and X-ray examinations and, in certain cases, a HIV test, hepatitis B or C test or other specific tests.

All applicants and their migrating dependants (and in some instances, dependants who may not be migrating with the primary applicant) must meet the health criteria.

If an applicant or a member of their family cannot satisfy the health requirements, the application must be refused

unless the visa applied for allows for a health undertaking or a health waiver.

A health waiver may be available for applicants for some visa subclasses if a Medical Officer of the Commonwealth (MOC) finds that the applicant does not meet the health requirement.

The applicant must first meet all other eligibility criteria for the visa. The Department must then be satisfied that granting the visa is unlikely to:

- result in a significant cost to the community; and/or
- prevent Australian citizens from accessing healthcare or community services in short supply.

The Department will not exercise a discretion to grant a health waiver if the applicant fails to meet the health requirement due to:

- the person having active tuberculosis; and/or
- the person's condition posing a possible danger to the community or threat to public health.

26. Are there any language requirements for your jurisdiction?

Different visas have different English language requirements.

For the TSS Visa Short term stream, the English language tests and the required results are as follows:

Test	Required results
<u>International English Language Testing System (IELTS)</u>	Overall band score of at least 5.0 with a score of at least 4.5 in each of the test components.
<u>Occupational English Test (OET)</u>	Score of at least 'B' in each of the four components
<u>Test of English as a Foreign Language internet-based Test (TOEFL iBT)</u>	iBT total score of at least 35 with a score of at least 3 for each of the test components of listening and reading, and a score of at least 12 for each of the test components of speaking and writing
<u>Pearson Test of English Academic (PTE Academic)</u>	Academic overall test score of at least 36 with a score of at least 30 in each of the test components
<u>Cambridge C1 Advanced test</u>	Overall test score of at least 154 with a score of at least 147 in each of the test components.

For the Medium- term stream, the English language tests

and the required results are as follows:

Test	Required results
<u>International English Language Testing System (IELTS)</u>	Overall band score of at least 5.0 with a score of at least 5 in each of the test components.
<u>Occupational English Test (OET)</u>	Score of at least 'B' in each of the four components
<u>Test of English as a Foreign Language internet-based Test (TOEFL iBT)</u>	iBT total score of at least 35 with a score of at least 4 for each of the test components of listening and reading, and a score of at least 14 for each of the test components of speaking and writing
<u>Pearson Test of English Academic (PTE Academic)</u>	Academic overall test score of at least 36 with a score of at least 36 in each of the test components
<u>Cambridge C1 Advanced test</u>	Overall test score of at least 154 with a score of at least 154 in each of the test components.

An exemption from needing to prove English language proficiency is available;

- For a passport holder from:
 - Canada;
 - New Zealand;
 - the Republic of Ireland;
 - the United Kingdom;
 - the United States of America.
- where the applicant has at least 5 years of full-time study in at least a secondary level institution and where most classes were in English.
- the nominated occupation in Australia that will be performed is :
 - diplomatic or consular mission of another country;
 - an Office of the Authorities of Taiwan.
- nominated occupation requires :
 - a licence, registration or membership; or
 - to be granted a licence, registration, or membership;
 - evidence of equal or higher English language proficiency than that required to be granted the licence, registration or membership.
- the applicant is:
 - an employee of an overseas business;
 - the business or its associated entity has nominated them to work in Australia;

- they will receive guaranteed annual earnings of at least AUD96,400.

27. What are the government costs associated with a typical employment based visa?

The TSS visa program fees and charges for visas as of 1 July 2023 are:

- Nomination Application: AUD\$330 per nominee.
- Visa Application:
 - Short-term stream: AUD \$1,455 for a primary applicant; AUD\$1,455 for an additional applicant 18 years and over; and AUD\$365 for an additional child applicant under 18.
 - Medium-term stream: AUD\$3,035 for a primary applicant; AUD\$3,035 for an additional applicant 18 years and over; and AUD\$760 for an additional child applicant under 18.

The SESR visa programme fees and charges for visas are:

- Nomination Application: nil.
- Visa Application: AUD\$4,640 for a primary applicant; AUD\$2,320 for an additional applicant 18 years and over; and AUD\$1,160 for an additional child applicant under 18.

The ENS visa programme fees and charges for visas are:

- Nomination Application: AUD\$540.
- Visa application: AUD\$4,640 for a primary applicant; AUD\$2,320 for an additional applicant 18 years and over; and AUD\$1,160 for an additional child applicant under 18 years.

The Skilling Australians Fund (**SAF**) levy must be paid in full at the time the employer nominates an overseas worker under the TSS visa and SESR programme and the Employer Nomination Scheme (ENS) (Subclass 186)/Regional Sponsored Migration Scheme (**RSMS**) (Subclass 187) visa programmes.

The amount of the levy depends on the turnover of the business. The levy does not apply to dependent visa applicants.

Business size	TSS visa	ENS/RSMS visas
Small (annual turnover less than AUD\$10 million)	AUD\$1,200 per year or part thereof	AUD\$3,000 one-off
Other businesses	AUD\$1,800 per year or part thereof	AUD\$5,000 one-off

28. Is a local contract of employment required in order to obtain a work based visa or work permit? Are there salary or other thresholds to be met?

Under the TSS visa program, unless exempt, the applicant must be employed under an employment contract with the sponsor, or an associated entity of the sponsor.

The Temporary Skilled Migration Income Threshold (TSMIT) is currently \$70,000 in addition to superannuation or the annual market salary rates for that occupation, whichever is the higher.

29. What are the maximum periods of stay for individuals on an employment based visa / work permit?

Under the TSS Medium-term stream visa program, occupations on the MLTSSL visas can be granted for a period of up to four years and can be extended for further periods of up to four years each.

Under the TSS Short-term stream visa program, occupations on the STSOL are only eligible for a Subclass 482 visa permitting a stay for up to two years or up to four years if an ITO applies and can only be renewed once while the person is onshore. Further, there is no permanent residency pathway for occupations on the STSOL.

Under the SESR visa program, occupations on the Skilled Occupation List visas can be granted for up to five years. This visa cannot be extended; however, if eligible, the person can apply for permanent residence after three years.

30. Does your jurisdiction allow dual nationality?

Yes.

31. What are the most positive aspects of your immigration system compared to the rest of the

world?

While Australia's immigration laws and policies are highly codified, complex and frequently change, our immigration system continues to attract both temporary workers migrants from across the world.

Australia has enjoyed some 30 years of sustained economic prosperity, which the Minister of Home Affairs has credited to Australia's Migration Program.

Australia will continue to be a sought-after destination on the global stage, as a stable, open and multicultural society and as a nation of Immigrants.

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