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Australia CORPORATE IMMIGRATION

Contributor

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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 relevant government entity relating to immigration in Australia is the Department of Home Affairs.

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

In terms of work visa options, if an overseas national wants to work in Australia for a period of more than six months, then the most appropriate visa would be the subclass 482 Temporary Skill Shortage (TSS) visa. The TSS visa allows a business to sponsor skilled employees for a period of anywhere up to four years, depending on the occupation. There are three stages/applications involved with this application. Briefly, these are:

- Sponsorship application: The business provides company and financial information to prove to the Department that it has a viable operation in Australia and will be able to sponsor overseas individuals to work in Australia. If the Department agrees, they will provide sponsorship approval which is valid for five years.
- Nomination application: The business nominates a position for the overseas individual to work in. As part of the application, the business must show that the position can be classified by an occupation that can be nominated for the visa, that it will pay market salary for the role, that market salary for the role is above the Temporary Skilled Migration Income Threshold (TSMIT) of AUD\$53,900 per annum and that labour market testing has been conducted (unless an exemption applies - such as the applicant is an intra-corporate transfer between related entities).

- Visa application: The employee (and any dependant family members) apply for the visa. They must show that they can prove their identity and meet health and character requirements. The employee must also show that they meet the English and the skills requirements (which is dependent on the occupation that is nominated). The visa is valid for two to four years and is again, dependent on the occupation nominated. Dependant family members can work and study on this visa.

Once the application is prepared, the processing time with the Department of Home Affairs fluctuates. It is presently two to six months unless the business has accredited status where processing is approximately one to two weeks.

If the role is less than six months, then we can consider the subclass 400 Temporary Work (Short Stay Specialist) visa. This visa is for highly specialised projects of usually, three months. However, up to six months can be requested (and granted at the Department of Home Affairs's discretion) if a strong business case can be presented. Dependant family members can be included, however, they cannot work or study while in Australia. The processing time for this visa is currently 1-4 weeks from the date the application is submitted.

There are many other visa options, including permanent residence that we can consider if we have an understanding of the employee's background, position and length of time they want to remain in Australia.

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

There are also many un-sponsored work and investment visas in Australia. For work, an individual may consider one of the skilled visa options, such as the subclass 189 Skilled Independent visa. For investment, an individual may consider one of the investor visas such as the

subclass 188 Business Investment and Innovation visa.

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

As noted in question 2, the business provides company and financial information to prove to the Department that it has a viable operation in Australia and will be able to sponsor overseas individuals to work in Australia.

Overseas businesses may be approved to sponsor workers in Australia if they seek to set up an Australian business or have a contract with an Australian business that needs to be completed.

Once the business becomes an approved sponsor, they will need to comply with various sponsorship obligations. These include but are not limited to:

- Send the Department notifications when certain events occur, for example, when a new Director is appointed, etc.
- Ensure your sponsored employee only works in their nominated role and if there is a change, ensure appropriate steps are taken depending on the nature of the change.
- Ensure your sponsored employee has equivalent terms and conditions of employment with Australian workers.
- Keep records in relation to sponsored employees, such as payment of return travel, etc.
- Provide information when requested by the Department of Home Affairs, including cooperating with inspectors in the event of a review.
- Assume costs of sponsoring the employee (e.g. immigration nomination application charges, recruitment, etc).
- Pay costs for the sponsored employee and any sponsored family members to return to their home country at the end of their employment.

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

Almost all applications are filed electronically with clear, colour scanned copies of documents required to accompany the application before a payment is made.

An electronic approval is received, and the approval is linked to the individual's passport. It is therefore important that the individual update their passport details with the Department of Home Affairs to ensure that their visa is linked to their new passport.

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?

An in-person attendance/interview for the visa application is not normally required.

A biometrics appointment is required for some visas residing in some locations, such as for the subclass 400 visa application.

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

The definition of dependant may vary depending on the type of visa. However, for a TSS visa application, Individuals that can be included as a dependant are:

- The individual's husband/wife or de factor partner (where they have resided together as a de facto couple for at least six months).
- Children of the individual and their spouse that are aged under the age of 18 years.
- Children aged between 18 and 23 years that are financially dependent on the visa applicant or their spouse.
- Over 23 years of age and be unable to earn a living to support themselves due to physical or cognitive limitations and be dependent on the visa applicant or their spouse.

8. What is the general time frame and processes for obtaining permanent residence and citizenship for sponsored and unsponsored business-related immigration?

Permanent Residence

There are many visa options available that permit permanent residence be obtained outright without any minimum residence requirement in Australia.

For example, the Employer Nomination Scheme Visa (ENS) Subclass 186 visa under the Direct Entry stream allows a sponsored employee to apply for the visa once they obtain a skills assessment to evidence their skills are at an Australian level and can provide evidence of three years of full-time relevant experience obtained anywhere in the world.

The Global Talent Independent program also permits individuals with global recognition in various target sectors to be considered for permanent residence.

Citizenship

In order to be eligible for citizenship, a person must be a permanent resident and meet a residence requirement. This requires the individual to:

- live in Australia on a valid visa for the past four years.
- be a permanent resident for the past 12 months,
- be away from Australia for no more than 12 months in total in the past 4 years, including no more than 90 days in total in the past 12 months.

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

A business visitor visa holder can undertake the following:

- Business meetings,
- Make general business or employment enquiries,
- Negotiate contracts,
- Take part in a conference or trade fair - they must not be paid by the organisers to take part.

The individual must not undertake any activity that may be construed as work, this includes providing training to individuals.

The validity of the visa depends on:

- The type of visa. The eVisitor/ETA visa which is obtained electronically for some nationalities provides for a twelve-month visa that permits a three month stay.
- A subclass 600 tourist visa is granted for the period requested, for a period of up to twelve months.

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

A hybrid work model is permissible. However, if full-time remote work is required while the individual holds a TSS visa, then the Department of Home Affairs may question whether the person needs to be in Australia and if an Australian visa is required.

If the person is a visitor visa holder and wishes to work online (e.g. to check emails, etc) which is incidental to the main purpose of their stay, then they may undertake this activity. If, however, they want to work full-time, then there may be a concern regarding whether they are a genuine visitor.

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?

N/A

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?

There is no remote work or nomad visa category at present. There are no plans to implement such a visa in the future.

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?

Assuming the person is a TSS visa holder, they may change employers in Australia. However, before they commence the new role with their new employer, they will need to ensure a new TSS nomination application is submitted and approved before they commence their new role. Their visa will remain with the same expiry date. If there is a change of occupation, then a new visa application will also need to be submitted and approved.

If a TSS visa holder is made redundant, then they must ensure that within sixty days (or before the expiry of their visa, whichever is earlier), they either:

- Depart Australia
- Apply for another visa
- Find a new employer to submit a new nomination application for them (and a new sponsorship application if they are not an approved business sponsor). If there is a change in occupation, a new visa application will also need to be submitted.

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

Not all occupations can be nominated for a TSS visa and likewise, not all individuals meet the criteria to be eligible for the visa. This may limit the reliance of businesses on visas if they do not have adequate immigration support to provide them with the necessary strategies and visa options to enable them to meet their needs.

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

A business may obtain accredited status on their standard business sponsorship approval. Amongst many benefits, priority allocation of applications is one of the benefits.

Occupations on the Priority Migration Skilled Occupation List, which are occupations that are identified as positions that support Australia's economic recovery from the pandemic, are given priority processing for their visa application.

16. What are the recent trends, both political and social (including COVID-19 pandemic), that have impacted your jurisdiction with regard to immigration policy and law? How will this shape the immigration landscape moving forward?

Australia is presently suffering from a skill shortage. There are presently 500,000 vacant positions and unemployment has reached a record low of 3.5%. Based on these factors, the Australian Government has committed to reviewing our skilled migration regime to help ease the labour shortage and facilitate faster processing of visa applications.

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

See answer to question 16.

18. Are there any anticipated changes in the immigration laws of your jurisdiction?

We anticipate a change in both the TSS occupation list and the Priority Migration Skilled Occupation Lists in the future which may allow further occupations to be permitted longer stays (including the option of employer sponsored permanent residence), priority processing and entry to Australia.

We also anticipate that processing times will return to the faster, pre-pandemic levels to address the current skill shortage in Australia.

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

The Department of Home Affairs has implemented an online Visa Entitlement Verification Online (VEVO) system which has meant that employers can check a proposed or current employees visa status immediately.

Likewise, most visa applications may be submitted via the Department of Home Affairs ImmiAccount. This has reduced reliance on paper applications that had to be mailed or submitted in person. It has also allowed visa holders with upcoming visa expiries to have immediate confirmation that their visa application has been submitted successfully and a Bridging Visa granted.

The Department of Home Affairs is regularly updating their systems to ensure a better user experience.

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

All employers must confirm a proposed employee's work rights before they commence employment. If they are not an Australian citizen, they must provide sufficient evidence (e.g. a passport) for the employer to conduct a VEVO check to check their work rights. These checks must be completed regularly. As an example, for temporary visa holders, this must be conducted every three months. Deloitte can assist with this process.

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?

There are significant penalties for employing a person with no work rights or even non-compliance with sponsorship obligations. These include:

- A warning
- An infringement notice
- Standard business sponsorship may be revoked
- Proceedings for a civil penalty order
- Fines and possible imprisonment from criminal proceedings
- Imprisonment for aggravated offences where there has been found to be exploitation of workers (for example, slavery)

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

Migration program planning caps are in place for skilled visas to 'improve the productive capacity of the economy and fill skill shortages in the labour market, including those in regional Australia. As an example, in the 22-23 financial year, there are 30,000 places for the employer skilled program.

Labour Market Testing is required for employer sponsored visas. For the TSS visa, an employer must advertise the role in three locations (one being Workforce Australia), for 28 days in the four months prior to the nomination application being submitted (or since any redundancies in the occupation). There are exemptions and alternate evidence available in certain circumstances (for example, if the nominated individual is to be paid a high salary or is an intra-corporate transfer).

23. Are there quota requirements, restrictions or a cap on the numbers of foreign nationals hired per company in your jurisdiction?

See question 22.

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

permanently?

If a TSS visa holder departs Australia, their sponsoring employer must notify the department of their cessation of employment within 28 days of their last day of employment.

If the sponsored employee requests return travel from their sponsoring employer, the sponsor must pay for the return travel.

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

Visa applicants may be required to meet health requirements for their visa application. Medical examinations may be required, and this is normally dependent upon factors such as:

- the type of visa (for example, a temporary or permanent resident visa)
- duration of stay in Australia,
- whether the individual has spent time in what the Department of Home Affairs considers a high risk country
- whether the individual has a health condition
- age

Vaccination certificates may be required depending on individual's personal circumstances.

26. Are there any language requirements for your jurisdiction?

N/A.

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

N/A.

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?

An employment contract or assignment letter is required to be evidenced in a TSS nomination application, unless certain requirements apply.

As part of the TSS nomination application, the business

must provide evidence it will pay market salary for the role and that market salary for the role is above the Temporary Skilled Migration Income Threshold (TSMIT) which is presently AUD\$53,900 per annum.

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

The maximum duration of a TSS visa dependant on the nominated occupation for the role.

For occupations on the Short Term Skilled Occupation List, the maximum duration is two years. A further two year visa can be applied for which provides a maximum of four years. These occupations are not permitted to apply for employer sponsored permanent residence.

For occupations on the Medium and Long Term Strategic Skills List (MLTSSL), the maximum duration is four years and it can be renewed multiple times. Employer sponsored permanent residence is also available.

30. Does your jurisdiction allow dual nationality?

N/A.

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

There are countless positive aspects to our immigration system compared to the rest of the world, including:

- Transparent immigration legislation
- Department of Home Affairs is run by the government and thus is meant to be fair, non-corrupt and not for profit.
- Online immigration applications allow easy preparation. Documents submitted are scanned and submitted online, there is no need to have them certified or notarised.
- The ability to apply for permanent residence without any mandatory time spent on a temporary visa

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