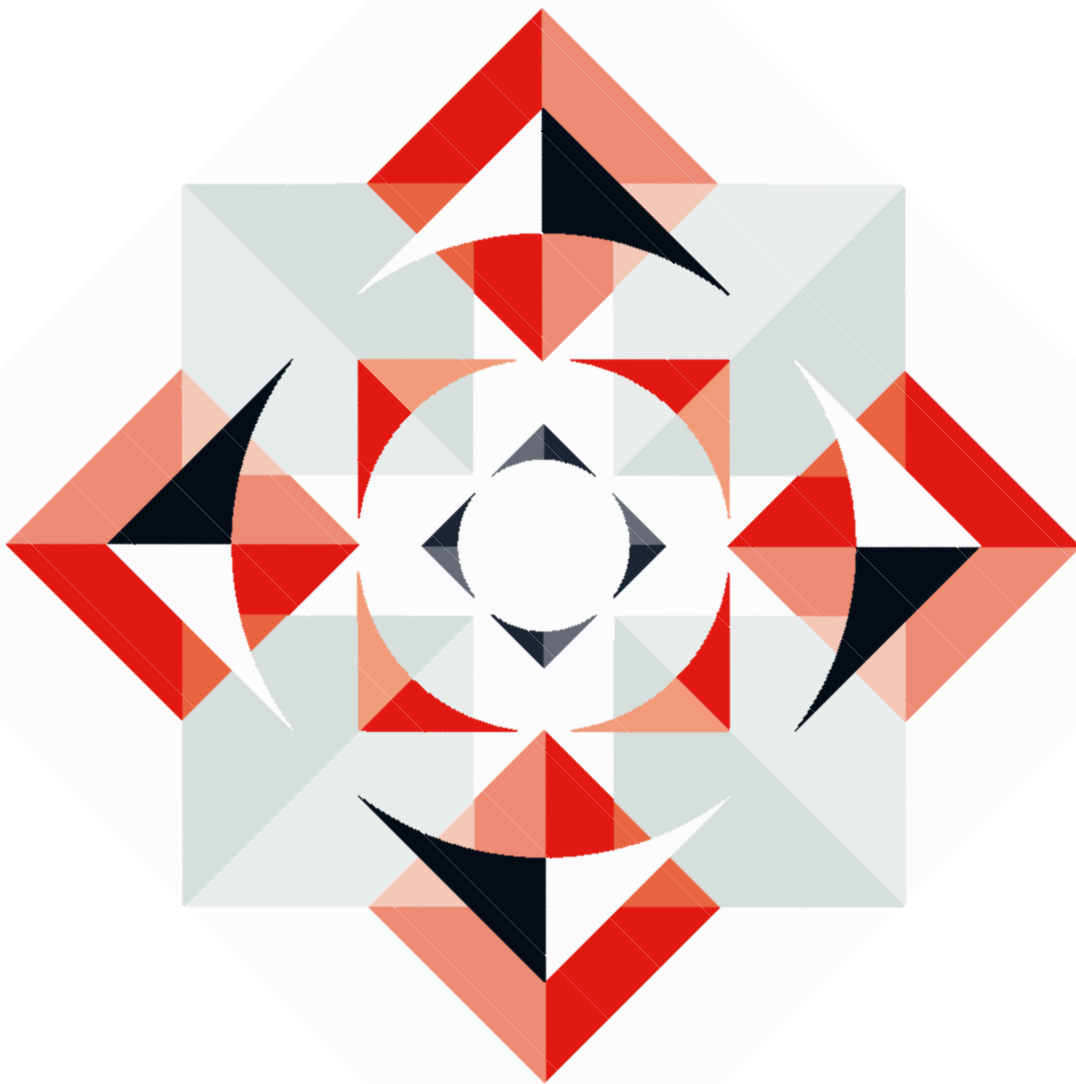


# Immigration law in Australia – an overview



## ► Inside

Business visitors

Permitted activities

Visa categories

Employment authorisation



## Introduction

This inbrief is designed to provide a general overview about business visits and employment authorisation requirements for Australia. As with all countries the immigration laws may be amended with little or no notice and this guide is designed to be general in nature.

This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Our Hong Kong office can source Australian law advice through its links with local firms in Australia.

## Business visitors

### What constitutes a business visit?

A business visit is generally a short term trip in order to undertake business related activities for which the Immigration Authorities would not require the individual to have employment or work authorisation. Whilst the Immigration Authorities do not provide an exhaustive list of permitted activities as a business visitor, they do provide a guide. Individuals should ensure that they obtain the relevant employment/work permission if they intend to carry out activities that do not fall within the guidelines on permitted activities.

It is important to note that the activities conducted will define the nature of the trip to Australia and not the length of the trip. For example a very short visit of a few weeks may still require the individual to hold employment/work authorisation because the activities amount to substantive, productive work.

## Permitted activities

### What constitutes a permitted activity?

Business visitors must generally limit their activities in Australia to the following:

#### 1. General business or employment enquiries.

Examples of authorised business or employment enquiries include:

- identifying new business or employment opportunities
- purchasing goods from Australia
- establishing contact with Australian-based people or organisations involved in prospective employment or business
- attending business meetings, but not if the visa holder is providing services to that business
- fact-finding and identifying new business or employment opportunities
- visiting an Australian company that provides goods or services to the business visitor's business overseas, so as to conduct quality assurance activities or ensure that certain required standards are met
- attending job interviews.

## 2. Contract-related activities

Examples of authorised contract-related activities include:

- investigating or negotiating business contracts or trade agreements
- signing contracts for sale of goods or services
- review a contractual arrangement
- providing legal advice, on behalf of the overseas company involved in business contract negotiations, relating to the contract
- buying real estate in Australia to add to a business investment portfolio
- visiting an Australian company that produces goods for their business to conduct quality assurance activities or ensure that certain standards are met

## 3. Government to Government activities

Examples of authorised Government-Government activities include:

- attending government meetings or international government conferences
- government-employed representatives undertaking inspections for the purpose of meeting bilateral obligations.

Visits may be at all levels of government, and must form part of an official government visit recognised by both the relevant Australian and foreign government agencies.

## 4. Participation in conferences, trade fairs and seminars

Examples of authorised conference, trade fair and seminar activities include:

- participating in conferences, trade fairs and seminars on an unpaid basis, and which does not involve the sale of goods or services directly to the public
- attending training sessions or other such events

Activities that are not permitted include:

- activities that include the undertaking of work for, or supplying services to, an organisation or other person based in Australia



- activities that include the sale of goods or services directly to the general public (including the sale of goods at trade fairs)
- providing training, system development, post-sale implementation, support or maintenance
- delivering presentations at a conference as part of a pre-negotiated contract that provides a material benefit to the visitor

Individuals should note that there are 'grey' areas as to what constitutes a permitted activity. Even in circumstances where activities are limited to those above, employment or work authorisation may be required if the visitor will generate profit for the host entity, receive compensation or take direction from the host entity in Australia. For specific advice on legally permitted activities, please contact our immigration lawyers.

## Visa types

There are a number of visas that are intended to facilitate business activities in Australia. Eligibility for these visas are dependent upon the nationality of the foreign national and their intended activities in Australia. In most cases, business visitors will require a short stay visa such as a Temporary Work (Short Stay Specialist) (Subclass 400) visa, a Visitor (Subclass 600) visa, an Electronic Travel Authority (Subclass 601) visa, or an eVisitor (Subclass 651) visa.

**Temporary Work (Short Stay Specialist) (Subclass 400) visa** – permits short-term, highly specialised, non-ongoing work. It covers employment rather than casual business activities. This visa is generally granted for a stay period of up to 3 months. However, a stay period of up to 6 months may be granted in limited circumstances, where a strong business case exists.

**Visitor (Subclass 600) visa** – allows the foreign national to visit Australia for tourism or business purposes for periods of up to 3, 6 or 12 months. This visa may permit single or multiple entries to Australia during the validity period.

**Electronic Travel Authority (Subclass 601) ('ETA') visa** – allows for certain nationalities to apply online for tourism or business visits only. This visa permits multiple entries over a 12-month

period, for up to three months from each entry.

**eVisitor (Subclass 651) visa** – allows for certain nationalities to apply online for tourism or business visits only. This visa allows the individual to stay for three months at a time within a 12-month period.

Most EU nationals including British nationals can apply online for an ETA or eVisitor visa prior to arrival. Other foreign nationals should apply for a visa at their local Australian Consulate or Visa Centre.

## Basic requirements

The following are general requirements for business visitors for the abovementioned categories and are subject to change by the Australian immigration authorities:

### Temporary Work (Short Stay Specialist) (Subclass 400) visa

The foreign national must:

- be invited, or supported, to engage in short-term, highly specialised, non-ongoing work by the organisation they will be working for in Australia.
- have specialist skills, knowledge or experience that is required, but cannot be found, in Australia.
- be of good health and character.
- be a genuine temporary entrant and therefore have no intention to permanently reside in Australia.

### Visitor Visas (Subclasses 600, 601 and 651)

The foreign national must:

- show a genuine intention to visit for business purposes and not for paid employment
- be of good health and character
- show that there are no restrictions on his or her traveling to Australia
- prove that he or she does not have any intention to permanently reside in Australia
- provide a ticket for onward travel from Australia

Certain documents may be furnished to support the application such as evidence of sufficient funds for the visit and return to the foreign national's home country, evidence of accommodation arrangements, and an employer letter stating an intention to return to work. These documents will vary from case to case, and may be dependent

upon the nationality of the foreign national.

Please note that documentary requirements and processing times may vary across Australian diplomatic posts. Please contact our immigration lawyers for advice.

## Maximum period of stay

The period of time that an individual may remain in Australia as a business visitor is dependent on each visa subclass:

Temporary Work (Short Stay Specialist) Subclass 400 visa – The maximum permitted stay is up to three months but may be up to six months under limited circumstances where the supporting business provides a strong business case. eVisitor (Subclass 651) visa – The maximum permitted stay is up to three months within a 12 month period.

### Electronic Travel Authority (Subclass 601)

**('ETA') visa** – The maximum permitted stay is up to 12 months with multiple entries of up to three months per visit.

Visitor (Subclass 600) visa – This visa permits periods of stay of up to 3, 6, or 12 months, on a single or multiple entry basis.

## Employment authorisation

Foreign nationals who wish to take up employment or work in Australia will not be able to do this on the visitor visa subclasses listed above. Work authorisation may be obtained through a number of routes, depending on their personal circumstances. In general, however, foreign nationals will seek work authorisation through one of the following visa programmes:

- **The point-based skilled migration route** – for skilled workers who are nominated by a state or territory government agency, sponsored by an eligible relative or who qualify for independent migration on the basis of their professional skill.
- **The sponsored or nominated work visa route** – for foreign nationals who have been sponsored by employers to work in Australia for an approved business.

This section provides the basic requirements for the Temporary Skill Shortage (Subclass 482) visa ('TSS visa'), which is the most common employer

sponsored visa available on a temporary basis. Please contact our immigration lawyers for specific advice on other visa categories.

### Temporary Skill Shortage (Subclass 482) visa applications

#### Validity period

The TSS visa's validity period is directly linked to the occupation classification being nominated for approval. Occupations that are located on the Short-term Skilled Occupation List ('STSOL') will result in a TSS visa validity period of up to 2 years, with the option for renewal upon expiry for a further 2 years. By contrast, nominated occupations located on the Medium and Long-Term Strategic Skills List ('MLTSSL') may be approved for a validity period of up to 4 years.

#### Basic Requirements

The employer company (Australian or overseas) must apply to the Department of Home Affairs ('DHA') for permission to sponsor the foreign national and demonstrate evidence that they have met Labour Market Testing ('LMT') requirements.

The foreign national must:

- have been nominated for a position by an approved sponsor have the required qualification(s), skills and work experience required to perform the functions of the nominated position have obtained a positive skills assessment by the specified assessing authority. (This requirement is dependent upon the nominated occupation and nationality of the foreign national). have the necessary English language skills
- satisfy health and character requirements
- receive the market salary rate and terms and conditions no less favourable than Australians in the same role and location

#### Submission Process

The process for obtaining employment and work authorisation through the TSS visa involves three steps, summarised below:

##### Step 1: Business Sponsorship

The employer seeking to hire a foreign national must obtain Business Sponsorship status from the DHA. Sponsorships will generally be valid for up to five years. Overseas businesses may be eligible for sponsorship status, however this is predicated on the business' intention to sponsor foreign workers for the purpose of setting up a business in Australia with overseas connections, or to meet contractual obligations.

##### Step 2: Nomination Application

The sponsor must nominate a position within their business that is to be filled by the foreign national. Approval of the nomination is subject to the sponsor evidencing that they have undertaken Labour Market Testing, in an attempt to fill the position from within the local labour force; and the business proving that the terms and conditions of employment on offer to the foreign national is in accordance with current market standards, and no less favourable than that which would be offered to an equivalent Australian citizen or permanent resident employee.

##### Step 3: Visa Application

At this stage, the visa applicant is required to demonstrate that they meet the skill requirement for the nominated position, along with the relevant health and character requirements associated with the visa. Applications may be lodged online through the DHA's ImmiAccount portal.

Once granted, the foreign national must commence work within 90 days of arrival in Australia.

The application and submission process for points-based migration is different to that outlined for the TSS visa above.

Points-based migration requires the foreign national to submit an Expression of Interest online and have received an invitation to apply prior to submitting a visa application. The foreign national is also required to meet various skill, health, character, English language and other requirements to obtain a visa situated within the points-based migration programme. Please contact our immigration lawyers for further details.

Please note that documentary requirements and processing times can vary between visa subclasses. Additionally there are administrative actions and financial penalties for non-compliance with immigration requirements in Australia. Please contact our immigration lawyers for specific advice.

#### For further information on this subject please contact:

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