



International Human Resources Management Network

Visas for Employers - When You Need to Deploy Yesterday

26 October 2023

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I acknowledge the Traditional Owners of the land on which we are meeting.
I pay my respects to their Elders, past, present and emerging, and the Elders
from other communities who may be here today.

Overview

- Visa framework for accessing global marketplace for talent
- Issues, strategies & reform
- Q&A

Skills Shortage

- the most severe skills shortage in 48 years:
31% of occupations are in shortage
- down about 500,000 temporary migrants
compared to 2019

Common Non-Sponsored Work Visas

Candidates who already have some level of work rights in Australia....or not

Do they hold a valid visa? For example:

- Working Holiday Maker
- Student Visa
- Graduate Visa

Be aware of work restrictions

- have a policy
- regular VEVO checks: <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/check-conditions-online>
- keep records

Subclass 417 Working Holiday Visa and Subclass 462 Work & Holiday Visa

- Subject to certain exceptions, can only work for same employer for 6 months – this requirement has been relaxed for both subclasses until 31 December 2022, after which may work another 6 months.

Subclass 500 Student Visa

- Work usually limited to 40 hours per fortnight while course in session – but relaxed until 30 June 2023

Subclass 485 Temporary Graduate Visa

Period of unrestricted work following graduation from Australian course.

- Graduate Work Stream: usually 18 months but currently extended to 24 months
- Post-Study Work Stream: those graduating with a degree usually get 2-4 years, but some degrees currently granted an additional 2 years

Visas Most Commonly Used by Employers

If you wish to commit to a particular candidate on a longer-term basis than student or working holiday type visas, what is available to you?

- Subclass 482 TSS visa
- Subclass 186 Employer Nomination Scheme
- Subclass 494 Skilled Employer Sponsored Regional (Provisional) visa
- Subclass 191 Permanent Residence (Skilled Regional) visa
- Subclass 400 Temporary Work (Short Stay Specialist) visa
- Misc others

Subclass 482 Temporary Skills Shortage (TSS) Visa

- Most common employer-sponsored visa
- Amongst other things, applicants must have equivalent of at least 2 years of relevant full-time post-qualification experience
- 2 streams...

Subclass 482 Temporary Skills Shortage (TSS) Streams

Medium-Term Stream	Short-Term Stream
Up to 4 year visa validity period	Up to 2 year visa validity period
Unlimited renewals	2 + 2 years onshore
Narrower range of skilled occupations, typically classic trades and professions eg nurse, engineer, electrician, programmer, welder, chef	Wider range of skilled occupations
Pathway to PR via 186 visa	No pathway to PR (subject to some limited concessions from July 2022 to [1/6/24?] for workers here at least 12 months between 1/2/20 to 14/12/21)
Higher English level required	Lower English level required

Subclass 186 Employer Nomination Scheme

- Permanent employer-sponsored visa
- Two streams:
 - Temporary Residence Transition stream: potentially eligible after 3 years on 482/TSS Medium-Term stream visa with same employer
 - under 45 years old (unless exception applies eg certain doctors, academics, or income above FWHIT \$162k)
 - Direct Entry Stream: may apply directly if, amongst other things:
 - under 45 years old (no exemption)
 - have equivalent of at least 3 years of relevant full-time post-qualification experience
 - obtain a skills assessment

Subclass 494 Skilled Employer Sponsored Regional (Provisional) visa

- Regional employer-sponsored
- Must live and work in regional Australia ie not Melbourne, Sydney or Brisbane
- 5 year temporary visa
- Broad range of skilled occupations
- Regional Certifying Body to assess the proposed salary
- Under 45 years old
- Equivalent of at least 3 years of relevant full-time post-qualification experience
- Generally requires Skills Assessment
- Can't apply for certain permanent visas in first 3 years (eg partner, 186, 190)
- After 3 years may apply to transition to **Subclass 191 Permanent Residence (Skilled Regional) visa** – 191 requires no sponsor (no one eligible until November 2022).

Subclass 400 Temporary Work (Short Stay Specialist) visa

- Strictly speaking not a sponsored visa, but must have secured work on a specific short-term (under 6 months) project
- Highly specialised roles that can't reasonably be filled locally
- Fast processing
- Can't apply onshore

Strategies for Candidates Falling Short for Typical Employer-Sponsored Visas

For example, not enough experience or English too low? How to bridge the gap?

- Subclass 482 criteria assessed at “time of decision”
- Subclass 407 Training Visa
- Subclass 408 (COVID stream) visa

Subclass 482 “Time of Decision”

- experience and English assessed at time of decision, not application
- simple but risk refusal
- could be years if go to AAT

Subclass 408 Australian Government Endorsed Events (COVID-19 Pandemic) stream

- Stream of the pre-existing 408 visa created in response to pandemic
- Granted for 6-12 months (but processing could take a year, which may be a plus)
- Available to applicants in Australia who already have (or recently held) a visa with work rights, who are either working or have a job offer in Australia
- Unclear how much longer this stream will exist

Issues & Reform

- So many! LMT, SAF etc.
- Processing times
- Occupations lists

Processing Times

What is a service standard?

- 482:
 - Short-term stream: 44 to 346 days
 - Medium-term stream: 30 to 184 days
- 494: 73 to 355 days
- 186:
 - Transitional stream: 6 to 28 months
 - Direct Entry stream: 4 to 14 months
- Backlog of over 880,000 visa applications

How to Expedite Processing

- Clear and complete applications
- Accredited Sponsorship
- Choose a visa with faster service standard
- Advocate/Complain/Beg
- Select occupation carefully

Clear and Complete Applications

- Optimise for triage, avoid requests for further information, avoid refusals. How?
 - Clear submissions addressing regulatory and policy criteria
 - Address issues and anomalies
 - Complete portfolio of evidence backing up the submissions
 - Keep updating pending applications with relevant information and evidence

Accredited Sponsorship

- Priority processing above Standard Business Sponsors for 482 and 494
- LMT concession ie 1 of the 3 ads can be on company website
- Some evidentiary concessions eg police certificates
- Different categories including:
 - **Government agencies**
 - **“Trusted Traders”**: global supply chain
 - **“Low Volume”** users: 85% Australian workforce; at least 1 approved nomination in last 2 years; 97% approval rate; \$4m turnover
 - **“High Volume”** users: 75% Australian workforce; at least 10 approved nominations in last 2 years; 97% approval rate; \$4m turnover
 - **“Major Investment”** in Australia: \$50m etc.

Choose a Visa With a Faster Service Standard

Trade off speed for duration?

Service standards:

- 417 Working Holiday: 1 to 44 days
- 400 Temporary Work (Short Stay Specialist): 3 to 37 days (only offshore)

Advocate/Beg/Complain

Communication with the people processing your application is extremely limited - by design.

A recent email response:

“Please be advised the address feedback@homeaffairs.gov.au is not a method for providing feedback to the Department of Home Affairs and therefore your email will not be actioned or responded to further”

Advocate/Beg/Complain

- Generic mailbox for the relevant processing unit
 - Provide compelling or compassionate reasons to expedite eg lives at risk; major projects involving jobs and \$\$\$; critical response to pandemic or bushfires; international standing; regional community or industry at risk. Because everyone wants faster processing.
- Web submission to Global Feedback Unit: <https://www.homeaffairs.gov.au/help-and-support/departamental-forms/online-forms/complaints-compliments-and-suggestions>
 - Likely ignored (or standard template responses) unless over service standard.
- Contact local MP based on your location.
 - Provide compelling or compassionate reasons why the application is important to the community, and ask them to advocate with the Minister's office directly.

Advocate/Beg/Complain

- Contact Senior bureaucrat:
 - <https://www.homeaffairs.gov.au/about-us-subsite/files/home-affairs-org-structure.pdf>
 - firstname.surname@homeaffairs.gov.au
- Contact the Minister:
 - andrew.giles.mp@aph.gov.au
 - <https://www.homeaffairs.gov.au/help-and-support/departmental-forms/online-forms/contact-the-minister>
 - Infinitely better chance if mutual contact willing to call them
 - Always present with strong written submissions to justify intervention on policy grounds rather than nepotism

Don't do this on routine basis!

Select Occupation Carefully

- Is there more than one potential occupation that fits? eg Chef vs Cook
- 482 Medium Term list occupations are processed faster
- PMSOL. Defunct?

Occupation Lists

- Who should be responsible for determining business needs?
- Haven't been updated in years despite a pandemic and fundamentally different labour market
- Multiple occupations lists creating different classes of sponsored workers
- Short term list, with no clear pathway beyond 2 x 2 year 482/TSS visas makes a job opportunity in Australia considerably less appealing, both for the would-be employer and potential worker
- Only thing worse than an occupation being stuck on the short term list...is not being on any list at all

What if Occupation is Not on Any Relevant List?

- If there is an existing industry Labour Agreement (eg for meat workers) that grants concessions?
- Alternatively, do you have compelling arguments to negotiate an individual company Labour Agreement?
- Lobby for that occupation's inclusion on one of the lists eg management consultants



Reforms on the Horizon

New government, new minister: Andrew Giles is a former lawyer who practised in both employment law and immigration law.

Jobs Summit

The Home Affairs and Immigration Ministers announced areas of priority.

- Developing more pathways to permanent residency.
- Increasing the migration program numbers: increase to the permanent Migration Program from 160,000 visa places to 195,000 in 2022-23.
- Improving visa processing timeframes: allocated \$36.1m (\$42.2m according to last night's budget?) to increase staff capacity by 500 people by mid-2023
- Considering extending the relaxation of work restrictions on students beyond mid-2023
- Considering extending graduate work rights for longer periods
- Reassessing the occupation lists to ensure they are fit for purpose
- Raising Temporary Skilled Migration Income Threshold of \$53,900 (last increased in 2013)
- Addressing worker exploitation (no more work with same employer 3 years?)
- Examining industry sponsorship
- Addressing regional labour shortages

Other Recent Changes

- 482 nomination transfers have been given priority – process within 7-10 days
- Removed requirement for health exams for most people applying for temporary work visas
- LMT???

Questions?

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<https://www.linkedin.com/in/immigrationlawyermelbourne>



Save the “date”

March 2023...LIVE!



Thank you for attending

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