

Immigration Guide

Australia

PwC International Assignment Services



Introduction

Australia has a universal visa system, whereby all foreign nationals who do not hold an Australian passport or permanent residence status in Australia are required to obtain a visa appropriate for their purpose of visit.

Business Visitor

A business visit is generally regarded as a short-term trip to undertake business visitor activities which are defined as including: making general business or employment enquiries; investigating, negotiating, entering into or reviewing a business contract; activities related to an official government to government visit; or participating in a conference, trade fair or seminar (provided no payment is being received from the organiser for participation).

This visa cannot be used by individuals who would be working for or supplying services to an organisation or individual in Australia.

The application process and visa type for business visitor visas will depend on the visa applicant's country of passports and certain eligible individuals may apply for these visas online. All other applicants must apply for a subclass 600 visa.

Work Permit

The Temporary Work (Skilled) subclass 457 visa program is for employers who wish to sponsor foreign nationals to work in skilled positions in Australia on a temporary basis. These visas can be valid for a period of up to four years.

Essentially there are three steps involved in a visa application of this type:

1. The company must apply for sponsorship approval;
2. The company must nominate a position to be filled; and
3. The visa applicant must lodge a visa application.

STEP 1:
Sponsorship Approval

The sponsorship application process will involve an assessment of the company's status and their commitment to training Australian citizens and residents. In order to be approved as a sponsor, the company will need to meet the following requirements:

- ***It is a lawfully and actively operating business.*** The company must be actively engaged in business activities; or
- ***It is an overseas business*** that will establish a business in Australia and/or will fulfill obligations for a contract or other business activity in Australia.
- ***It has a commitment towards the training of Australian citizens.*** The company must demonstrate that their Australian business operations have a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in their business operations. Businesses, which have been established for 12 months or more, must show a record of training activities, as opposed to demonstrated commitment. The minimum requirements are as follows:
 - The business must be able to produce evidence that they have spent at least 1% of gross payroll on providing training to their Australian citizen and permanent resident employees; or
 - The business can make a payment of 2% of gross payroll into an industry training fund. Start-up companies need to produce evidence of how they will meet these benchmarks.
- ***There must be no adverse information about the business.*** Adverse information includes the conviction, finding of non-compliance, administrative action, investigation, legal proceedings or insolvency. Adverse information is relevant to a business' suitability as an approved sponsor, when it occurred within the previous three years.
- ***It agrees to abide by the relevant sponsorship undertakings.*** A list of the employer obligations with which the company must comply is set out on the DIBP's website.

- ***The business must also attest that they have a strong record of, or a demonstrated commitment to:***
 - Employing local labour; and
 - Non-discriminatory labour practices.

***STEP 2:
Nomination of position to be filled***

This step requires an employer to lodge a nomination application with the DIBP identifying:

- i. the position to be filled by the foreign worker
- ii. the skills and experience required to perform the role, and
- iii. the terms and conditions of employment that will be provided to the foreign worker.

The position must be for a role within the sponsoring business or an associated entity (within the meaning of section 50AAA of the Corporations Act 2001 (Cth)), unless it is an exempt occupation. The position also needs to be classified in an occupation on the Consolidated Sponsored Occupations List (**CSOL**) in order to be eligible for nomination under the 457 visa program. The DIBP may also request evidence that there is a genuine need for the position within the business taking into account its size and nature.

The sponsoring employer must identify a nominee with the necessary qualifications and/or employment experience at the required skill level for the nominated occupation.

The sponsoring employer must also demonstrate how the nominee's terms and conditions of employment (including salary) will be at or above the prevailing market rate for the proposed position and employment location. The market rate for the nominated position must be equal to or above the Temporary Skilled Migration Income Threshold (**TSMIT**) of AU\$53,900 base salary per annum (current as at 1 July 2016). Please note that the TSMIT is adjusted periodically in line with Australian Average Annual Earnings. Where the market rate is less than the TSMIT, the nomination cannot be approved.

***STEP 3:
Visa Application***

The third step in the process is the individual's 457 visa application. This application, which can include family members, requires an applicant to show that they:

- 1) have the necessary qualifications and/or employment experience for the nominated position;
- 2) satisfy the English language requirements for the visa (unless exempt);
- 3) meet all necessary health and character requirements for the visa;

- 4) hold adequate health insurance for their duration of stay in Australia

If an individual already holds a subclass 457 visa with a different sponsor, this step does not need to be completed. The new sponsor will need to lodge a nomination application (step two) in order to take over sponsorship of the individual's 457 visa. The transfer will take effect as soon as the nomination is approved and will require the visa holder to start work with their new sponsor immediately (unless serving out a notice period).

Timeline

The application procedure outlined above for steps 1 to 3 can take between eight to twelve weeks to finalise. Processing times may vary on a case by case basis.

Family Members

Accompanying dependent family members can be included in a Temporary Work (Skilled) subclass 457 visa application. The accompanying spouse will be given full work rights for the duration of the 457 visa approval period and dependent children will be able to attend school.

Sponsorship Obligations

Approved business sponsors must comply with a number of obligations relating to its 457 visa holders. Most of these relate to notification requirements and recordkeeping obligations for an organization's 457 visa population.

Where sponsors fail to satisfy their sponsorship obligations, the authorities may:

- Bar the sponsor, or former sponsor, from sponsoring any more employees
- Bar the sponsor, or former sponsor, from making further sponsorship applications
- Cancel the sponsorship
- Issue the sponsor with an Infringement Notice

- Issue the sponsor with a formal warning
- Apply to a court for a civil penalty order.

Short Stay Work Visas

A subclass 400 Temporary Work (Short-stay Activity) visa allows an individual to enter Australia to undertake highly specialised work or to participate in a particular event.

The visa will allow an individual to stay in Australia for up to 3 months (6 months where a sufficient business case exists). The work being carried out in Australia must be highly skilled and the duties being performed in the role must be able to be completed within 3 months. It is not appropriate for a number of individual subclass 400 visa holders to be rotated through an ongoing position.

A subclass 400 visa does not involve any company sponsorship or nomination, but the host Australian business must provide a letter of support confirming the highly specialised nature of the work to be performed and details of the individual's employment conditions whilst in Australia.

Contact

This Guide is intended to provide a general overview of the immigration requirements and options for foreigners seeking to reside and work in Australia. For advice relating to a specific immigration matter please contact:

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