

# Immigration Guide

## Australia



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## 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 to their purpose of visit.

## Business Visitor

A business visit is generally regarded as a short-term trip taken to conduct business activities for which work authorisation is not required in the destination country. Once a foreign national requires work authorisation in Australia, he or she is no longer considered a 'business visitor' from an immigration perspective, even though he or she may be making a short 'visit' for what he or she considers 'business' purposes.

In Australia, business applicants must 'not intend to' engage in activities that will have adverse consequences on employment or training opportunities for Australian citizens or Australian permanent residents.

The application process and visa type for business or visitor visa applications is dependant on the individual's nationality - further details can be found on the Department of Immigration and Citizenship (DIAC) website.

## Work Permit

The Temporary Business Entry 457 visa is designed to facilitate business entry of individuals who would benefit Australia, and are seeking to remain in the country 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 actually and 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.

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- ***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 training; 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 DIAC 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.

Once the sponsorship application for the employer has been approved, it will remain valid for 3 years from the date of approval. During this period, the employer may sponsor as many foreign nationals it wishes to work for the business in Australia, subject to the application requirements outlined below.

## STEP 2:

### Nomination of position to be filled

The purpose of this part of the application is to identify the position to be filled by the visa holder, and the skills and experience required for the position. When making a decision on the approval of the nomination application, DIAC will assess whether:

- The position is for a role within the sponsoring business or a related entity, unless it is an exempted occupation;
- The position is in relation to an approved occupation. A minimum skill level applies to all positions to be filled by overseas employees. DIAC will assess the nominated position according to gazetted occupational classifications in order to determine whether roles and responsibilities of the nominated position meet the skills threshold for the corresponding occupation;
- The position meets equivalent terms and conditions of Australian employees and is remunerated at market salary rates. The position must be remunerated at least at the Temporary Skilled Migration Income Threshold (TSMIT) of \$47,480 (current as at 1 July 2010). Please note that the TSMIT will be adjusted periodically in line with Australian Average Annual Earnings. Please also note that where the market rate is less than the TSMIT, the nomination cannot be approved.

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### STEP 3:

#### Visa Application

The third and final step in the application process is the completion of the visa application on behalf of the applicant. If the applicant currently holds a 457 visa, they are no longer required to apply for a new visa if the applicant changes employer, although the new employer is still required to nominate the relevant position to be filled by the visa holder.

In order for the visa to be granted, it must be demonstrated that the visa applicant:

- has the skills, qualifications, experience and an employment background which match those required for the position;
- meets English language requirements;
- meets all necessary health and character requirements; and
- holds the required level of private health insurance.

#### Timeline

The application procedure outlined above for steps 1 to 3 can take between six to eight weeks to finalise.

#### Family Members

Accompanying dependent family members can be included in a Temporary Business 457 visa application to Australia. The accompanying spouse will be given full work rights for the duration of the 457 visa approval period. Accompanying dependent children will be permitted to attend schooling in Australia, though the fees to attend an educational institution will be determined by the relevant school.

#### Non-compliance

Employers who provide false or misleading information could face penalties of up to 10 years imprisonment or a fine of up to \$110,000 or both.

#### Contact

This Guide is intended to provide a general overview of the immigration requirements and options available to foreigners seeking to reside and work in Australia. For advice tailored to your precise requirements, please contact:

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