

COVID-19: (AUSTRALIA) COVID-19 MIGRATION FAQs

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**This information is accurate as of 4.00 pm Monday 6 April 2020 and is subject to change as this situation evolves.*

As the COVID-19 situation continues to develop, an increasing number of policies are being announced by the Australian Government regarding movement of people across Australia's border as well as visa holders in Australia.

We provided an update in our alert 'COVID-19: (Australia) Travel Bans and Other Migration FAQs' which is available on our HUB. Further to this update, please see below responses we have collated to some frequently asked questions. This FAQ summary was most recently updated on 6 April 2020.

SUMMARY OF KEY POLICIES

1. No overseas arrivals are permitted to enter Australia unless otherwise exempt. (Q1)
2. There is also a ban on departure from Australia unless otherwise exempt. (Q2)
3. Temporary visa holders in Australia are still required to maintain their lawful status. (Q5)
4. Supermarket and aged care sectors have been provided special concessions which enables them to engage existing Student visa holder employees for more than 40 hours per fortnight. Student visa holders enrolled in nursing courses will also be able to work in support of the COVID-19 response. (Q6)
5. Special concessions have been given to the agriculture industry for their engagement of working holiday makers and seasonal workers. (Q7)
6. Working Holiday Visa holders working in critical sectors (health, aged and disability care, agriculture and food processing, and childcare) can work for one employer for more than 6 months and will be eligible for an extension of their stay via an application for a new special visa. (Q8)
7. Employer-sponsored temporary visa holders (e.g. TSS visa holders) who are stood down (or had their hours reduced), but not laid off, can maintain their visa status without being considered in breach of their visa condition. (Q9)
8. Temporary visa holders will be able to access their superannuation funds (up to \$10,000) to support themselves. Visitors and temporary visa holders unable to support themselves are encouraged to return to their home country as limited financial assistance will be available to them in Australia. (Q10)

Q1. WHO IS EXEMPT FROM THE OVERSEAS ARRIVAL BAN AND CAN STILL ENTER AUSTRALIA?

9. Australian citizens and permanent residents can still enter Australia without requiring any further permission from the Department of Home Affairs (Department).
10. Direct family members (i.e. spouse, dependents and legal guardians) of Australian citizens and permanent residents can also enter Australia. However, further actions are required before they can do so:

If they do not hold a visa they must apply for one and attach evidence of their relationship to an Australian citizen or permanent resident to their visa application.

If they already hold a valid visa to travel to Australia, they must fill in the COVID-19 enquiry form on the Department's website and obtain approval from the Department before they can travel. Partner and child visa holders can come to Australia without applying for an exemption.

11. New Zealand citizens who are usually resident in Australia can also enter but must show proof of residency (e.g. driver's license or other documents evidencing residency) upon entry.
12. Certain airline passengers transiting through an Australian airport to a prescribed country (excluding passengers who have been in China, Iran, South Korea or Italy in the last 14 days)¹.
13. People with compassionate and compelling circumstances to travel to Australia are required to submit a request through the COVID-19 enquiry form and have their request assessed on a case-by-case basis by the Commissioner of the Australian Border Force. They should not travel unless the Department has approved their request [2].
14. All overseas arrivals will be placed in hotel isolation for 14 days at the place of their arrival. For example, a Queensland resident arriving in Australia at the Melbourne Airport will be placed in isolation in a hotel in Melbourne upon their arrival.

Q2. WHO IS EXEMPT FROM THE DEPARTURE BAN AND CAN STILL LEAVE AUSTRALIA?

15. The following persons can leave Australia without applying for an exemption:

persons who ordinarily reside in a country other than Australia;

airline and maritime crew and associated safety workers;

New Zealand citizens holding a subclass 444 visa;

persons engaged in the day-to-day conduct of inbound and outbound freight;

persons associated with essential work at an offshore facility; and

persons travelling on official government business (including a member of the Australian Defence Force).

16. The following persons need to apply online via the COVID-19 enquiry form for an exemption to travel outside Australia:

persons whose travel relates to the response of the COVID-19 outbreak, including the provision of aid;

persons whose travel is essential for the conduct of critical industries and businesses (including export and import industries);

persons travelling to receive urgent medical treatments not available in Australia;

persons travelling on urgent and unavoidable personal business or on compassionate or humanitarian grounds;
and

persons whose travel is in the national interest.

17. Anyone wishing to apply for an exemption to travel outside Australia is encouraged to do so as early as possible, preferably at least 12 hours before their intended departure time.

Q3. HOW LONG WILL THE TRAVEL RESTRICTIONS LAST?

There are currently no established timeframes for the travel restrictions. The Prime Minister has referenced a period of 6 months multiple times in his press release on 19 March 2020 announcing the initial travel ban when discussing an estimated timeframe for conditions to normalise. The travel restrictions will be reviewed regularly but no confirmed end date has been announced.

Q4. ARE VISA APPLICATIONS STILL BEING PROCESSED?

The Department has indicated that visa processing (for General Skilled Migration in particular) will continue within the restraints of the current situation.

The Department is prioritising processing visa applications for applicants exempt from the overseas arrival ban to support urgent travel. Online applications for the Electronic Travel Authority (ETA) are unavailable while the travel restrictions are in place.

Q5. IS THE DEPARTMENT OFFERING ANY FLEXIBILITIES TO HELP TEMPORARY VISA HOLDERS MAINTAIN THEIR LAWFUL STATUS IN AUSTRALIA?

18. The Department has indicated their willingness to apply a certain level of flexibility to temporary visa holders who wish to remain in Australia lawfully. This includes flexibility around granting waivers to No Further Stay conditions (where there are less than 2 months validity remaining on their current visa) and onshore Visitor visa applications.
19. The availability of some services required for visa applications such as medical examinations, English testing and biometric collections may be impacted by COVID-19. Applicants will be given additional times to provide these where required.
20. The Department has also announced a new category of visa - the COVID-19 pandemic Temporary Activity (subclass 408) visa in the Australian Government Endorsed Event (AGEE) stream. This visa will enable certain eligible temporary visa holders currently employed in, or who have skills relevant to, critical sectors (including health, aged and disability care, agriculture and food processing, and childcare) to extend their stay in Australia if they cannot return to their home country.
21. To be eligible for the new 408 AGEE visa, the applicant must also be:

in Australia; and

unable to depart Australia as a result of COVID-19; and

either the holder of a visa that is ceasing in 28 days or less, or was the holder of a visa that ceased no more than 28 days from the date of their 408 visa application; and

unable to apply for and be granted the same visa they currently hold or any visa other than a 408 visa.

22. Temporary visa holders who are concerned about their visa status should seek professional advice or contact the Department.

Q6. WHAT ARE THE DETAILS OF THE CONCESSIONS OFFERED TO THE SUPERMARKET, AGED CARE AND NURSING SECTORS REGARDING STUDENT VISA HOLDERS?

Temporary concessions have been put in place to allow Student visa holders to work for more than 40 hours per fortnight in the supermarket and aged care sector. Important details of the concession are as below:

23. Woolworths, Coles and Aldi have been given access to this concession. Other supermarket operators can register with the Department via this form to request access to the concession. The concession for supermarkets will cease on 1 May 2020.
24. All aged care Approved Providers or Commonwealth funded aged care service providers that have been issued with a RACS ID or a NAPS ID (including both residential and home care) have been given access to this concession. Providers would have been contacted by the Department of Health and are not required to submit additional applications.
25. This concession for supermarket and aged care sectors is only available to existing Student visa holder employees in their existing roles.
26. Student visa holders already enrolled in nursing can undertake work to help and support the COVID-19 response as directed by health officials. The Department will not take enforcement actions regarding student nurses working under these circumstances.
27. Employers are still required to abide by all relevant Australian workplace laws.

Q7. WHAT ARE THE DETAILS OF THE CONCESSIONS AND REQUIREMENTS FOR THE AGRICULTURE INDUSTRY REGARDING TEMPORARY VISA HOLDERS?

28. Seasonal Worker Programme workers with visas due to expire can apply for a COVID-19 pandemic Temporary Activity (subclass 408) visa in the Australian Government Endorsed Event (AGEE) stream.
29. Pacific Labour Scheme workers with visas due to expire can apply for a Temporary Work (International Relations) (subclass 403) visa in the Pacific Labour Scheme stream.
30. Seasonal Workers and Pacific Labour Scheme workers will also be exempt from the requirement to work for a single employer and will be able to move between approved employers.
31. Working Holiday Makers working in agriculture or food processing will be exempt from the restriction that limits them to only working for 6 months with any 1 employer. They will also be eligible for the 408 visa in the AGEE stream.

32. Conditions will be placed on visa holders to self-isolate for 14 days before moving to a different region and register their self-isolation here. Non-compliance with self-isolation and social distancing rules may lead to visa cancellation.
33. Agriculture employers will need to commit to providing accommodation and developing protocols that comply with social distancing requirements.

Q8. WHAT ARE THE DETAILS OF THE CONCESSIONS AND REQUIREMENTS FOR WORKING HOLIDAY MAKERS?

34. Working Holiday Makers working in critical sectors (including agriculture and food processing, health, aged and disability care and childcare) will be exempt from the restriction that limits them to only working for 6 months with any one employer.
35. The definition of specified work required to qualify for a second or third working holiday maker visa has not changed.
36. However, Working Holiday Makers in critical sectors who have not completed the 3 or 6 months specified work to qualify for their second or third working holiday visa and are unable to return to their home country can apply for the COVID-19 pandemic Temporary Activity (subclass 408) visa in the Australian Government Endorsed Event (AGEE) stream without incurring a visa application charge. This visa will allow its holder to continue working in Australia until it is safe and practicable to return to their home country.

Q9. ARE THERE ANY CONCESSIONS FOR OTHER TEMPORARY WORK VISA HOLDERS SUCH AS TEMPORARY SKILLED SHORTAGE (SUBCLASS 482) VISA HOLDERS?

37. Temporary Skilled Shortage visa (subclass 482) and Temporary Work (Skilled) visa (subclass 457) visa holders who have had their hours reduced or been stood down, but did not have their employment terminated, can maintain their visa validity without breaching their visa conditions. Their sponsoring businesses will also not be considered in breach of their sponsorship obligations if they reduce the hours of these employees or stand them down.
38. If 482 or 457 visa holders had their employment terminated, they will need to find a new sponsor within the timeframe specified by their visa conditions (60 days or 90 days depending on when their visa was granted) or depart Australia.

Q10. ARE THERE ANY FINANCIAL ASSISTANCE AVAILABLE TO TEMPORARY VISA HOLDERS IN AUSTRALIA?

39. Temporary visa holders who have legal work rights in Australia will be given access to up to AU \$10,000 of their superannuation this financial year.
40. New Zealand citizens will be eligible for the JobKeeper payments via their employer. Protected SCV New Zealand citizens are eligible to all welfare payments.

41. Temporary visa holders who are unable to support themselves are encouraged to return to their home country where they may be able to access financial support.

WHAT OTHER POLICIES ARE CURRENTLY UNDER CONSIDERATION TO EASE THE IMPACT OF COVID-19 ON TEMPORARY VISA HOLDERS AND BUSINESSES THAT EMPLOY THEM?

All existing COVID-19 policies are under constant review and a number of additional measures may also be considered such as further expansion of the Student visa concessions to other sectors if and when required.

Businesses who may benefit from further policy decisions regarding temporary visa holders may consider speaking to their industry body to make representations to the Australian Government.

HOW WE CAN HELP

K&L Gates has a dedicated Australian migration team working within the Labour, Employment and Workplace Safety practice to provide comprehensive advice and seamless services regarding employment of overseas workers.

During this challenging time, we can assist employers with:

- advising on the effects of the travel restrictions on current and upcoming visa applications by non-Australian employees;
- reviewing and advising on contract terms for existing temporary visa holder employees who may be affected by the current travel ban and other COVID-19-related migration policies;
- advising on strategies for temporary visa holders in Australia to maintain their lawfulness in Australia; and
- other migration enquiries.

[1] A list of relevant countries can be found on the Department of Home Affairs novel coronavirus alert page [here](#).

[2] There is currently no definition on what constitutes 'compassionate and compelling' reasons for travel. However, it has been discussed on a policy level that certain flexibility be afforded to people who are in critical occupations working in essential services, infrastructures (e.g. healthcare workers and oil and gas rig changeover crews) or are otherwise critical in the COVID-19 response. Humanitarian/compassionate reasons will also be considered.

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