Employment and sponsorship of overseas workers guideline



**Acknowledgement**

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We acknowledge Aboriginal and Torres Strait Islander people as Australia’s first peoples and as the Traditional Owners and custodians of the lands and waters on which we rely. We pay respect to Elders past and present of the lands where we conduct our work and recognise their ongoing contributions as the first educators on the land now known as Victoria.

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1. Overview

In circumstances where a suitable Australian citizen or permanent resident cannot be found to do skilled work in the Victorian Curriculum and Assessment Authority (VCAA), consideration may be given to offering employment to a suitable worker from overseas to fill a position. Prior to considering the employment of an overseas skilled worker, the VCAA first needs to determine whether the overseas worker is eligible to apply for a visa on their own, without the support of an employer. The overseas worker should be encouraged to seek independent advice and assistance from a lawyer or registered migration agent on their visa options.

If the worker is not eligible on their own to apply for a visa that will enable the worker to reside and work in Australia, then consideration may be given to sponsoring the person's employment.

1. Objectives

The objectives of this guideline are:

* **Addressing labour shortages:** to fill skilled positions where suitable Australian citizens or permanent residents cannot be found.
* **Evaluation of visa eligibility:** to assess whether an overseas worker is eligible for a visa without employer sponsorship.
* **Eligibility criteria:** consider offering sponsorship for employment to overseas workers who cannot obtain a visa to work in Australia independently.
* **Compliance with visa regulations:** ensure that overseas workers possess valid visas with appropriate work rights and meets professional requirements.
* **Monitoring and compliance:** regularly confirm and monitor visa conditions to prevent breaches and ensure compliance.
1. Principles
	1. Compliance with visa requirements

Ensure visa documentation, work rights, qualifications, and employment conditions align with regulations.

1. Common visa types

***Working holiday visa (subclass 417 and 462)***

Employers may recruit individuals who are on a working holiday visa on both casual and fixed-term basis, for a maximum period of six months, depending on the expiry date of the visa. This allows employers to adjust their hiring practices to accommodate the temporary nature of the working holiday visa.

Prospective employees on a working holiday visa should not be offered a permanent, ongoing contract and should instead be offered a fixed-term contract that aligns with the remaining duration of the visa.

Detailed information about working holiday visa is available from the Australian Government Department of Home Affairs webpage [link].

***Temporary activity visa (subclass 408)***

This visa allows individuals to come to Australia to do specific types of work on a short-term, temporary basis.

To be eligible, an individual must have the skills to undertake the activity to be carried out in Australia, be supported, or sponsored and meet additional requirements of the relevant stream. An individual on a temporary activity visa can stay in Australia for the duration of the event, or up to 4 years.

***Temporary work (Short stay specialist) visa (subclass 400)***

The highly specialised work stream of this temporary visa lets individuals do short-term, highly specialised work in Australia. It is suitable if an individual has specialised skills, knowledge, or experience not generally available in Australia, that can help Australian business and can't reasonably be found in Australia.

Individuals on a temporary work visa can do short-term work in a highly specialised job, the work or activity must not be ongoing.

1. Visa requirements

Prior to offering employment to a skilled worker who is not an Australian citizen or permanent resident in Australia, a copy of the worker's visa documentation indicating their current visa status, including a copy of their visa grant notice from the Department of Home Affairs (Home Affairs) should be sought. The VCAA must be satisfied that:

* the visa provides the overseas worker with sufficient work rights to undertake the position
* the overseas worker's qualifications have been assessed and that they meet the professional registration and licensing requirements for the position to be offered to the person
* the overseas worker is not offered employment beyond the expiry date of their visa
* the overseas worker is not subject to any work conditions that place restrictions on the employment of the overseas worker (for example, that limit the number of hours or the period of employment that may be offered to him or her); where this is the case, any employment offered must be consistent with the conditions listed on their visa
* the overseas worker is provided with a letter of offer that contains additional terms and conditions for the employment of an overseas worker.

Where the VCAA chooses to sponsor a skilled worker for a visa, the VCAA must comply with all of the sponsorship obligations related to the sponsored person. These can be quite onerous and can have significant financial implications. There are serious penalties for non-compliance. As such, it is strongly recommended that managers carefully consider the sponsorship obligations before applying to become a sponsor or nominating someone for sponsorship.

Reasonable steps must be taken regularly to confirm that an overseas worker is not employed in breach of their visa conditions. There are heavy penalties under the *Migration Act 1958* (Cth) for employers who allow an overseas worker to work in breach of their visa conditions or without a valid visa.

The suggested method of verifying visa details is to register for the Home Affairs free online Visa Entitlement Verification Online (VEVO) service. Consent must be obtained from the overseas worker prior to undertaking the VEVO check.

Home Affairs recommends that employers check the VEVO service or request a VEVO email every 3 months as evidence that the employer regularly took steps to confirm the employee's permission to work. This should occur for all employees holding a temporary visa, such as a working holiday visa, partner visa, student visa or bridging visa.

Information about the VEVO service is available from the Department of Home Affairs website [link].

The VCAA is responsible for paying the sponsorship and nomination application fees associated with the sponsorship arrangement. The overseas worker is responsible for the payment of the visa application fees.

1. Managing this guideline
	1. Authorisation

This guideline is issued under the authority of the Chief Executive Officer.

* 1. Accountability for the guideline

The owner for this guideline is VCAA Human Resources. The owner reports to the Chief Executive Officer on the management of this guideline.

The owner is responsible for:

* development and regular review of this guideline
* development of protocols, processes and guidelines to support implementation
* monitoring compliance of applicable employees, organisational units, and/or locations.
	1. Important dates

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| Date of adoption:  | July 2024  |
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