



IMMIGRATION PLANNING CONSULTANTS

Coronavirus Update for Australian Visa Holders, Students, 485 and TSS Visas

This sheet sets out FAQ our clients have been asking at this unusual time.

In Brief

Department of Home Affairs policy is changing daily, and employers should beware that it is not necessarily keeping pace with government announcements.

Answers to FAQ about

1. I am overseas, can i return to Australia?

As of 9 pm 20 March 2020, only the following persons will be allowed to enter Australia, and will be required to self-isolate for 14 days on arrival:

- Australian citizens
- Permanent visa holders
- New Zealand citizens ordinarily resident in Australia
- Pacific islanders transiting home
- Immediate family members of an Australian citizen or permanent resident

Can I return to Australia due to special or compassionate reasons?

Discretion exists to allow temporary visa holders to return to Australia despite the travel ban, for instance if they have special skills - such as medical skills that may assist during this outbreak - or there are compelling and compassionate reasons for allowing them to return to Australia. Applications are lodged here: <https://immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/covid19-enquiry-form>

Do the travel bans to Australia include healthcare workers?

Yes, however healthcare workers with skills that will enable them to assist with COVID-19 management could apply for an exemption.

Will my visa be extended due to the travel bans?

The Department of Home Affairs are not planning to extend visas affected by travel bans.

My visa application is pending, but due to COVID-19 isolation measures I cannot return information requested within the given 28 days.

The Department of Home Affairs advice is that you will be given additional time to complete medical, police checks and the like. Please contact our office for advice if you have any additional concerns.

Will my visa application be refused due to the travel bans?

No, however there may be processing delays and you will not be able to travel to Australia until the travel bans are lifted.

I am living in Australia on my temporary visa – if I travel overseas, will I be allowed to return?
You will not be able to return while the travel restrictions are in place. We recommend that you do not travel at this time.

2. STUDENT WORK LIMIT FAQ

I am a student visa holder, can I work more than 40 hrs/week?

The usual work limitations still apply. If your course is not 'in session' and you are a primary student visa holder, you should supply proof of your course break to your employer so that additional hours of work can be approved.

I am studying online can I work more than 40 hrs/week?

No, your course would be 'in session' in this instance.

Can students work longer hours in supermarkets, aged care and nursing?

The government has recently announced that some employers will not be penalised for employing student visa holders for more than 20 hours per week. Namely, supermarkets, aged care providers and employers of students who in March 2020 were enrolled to study nursing.

If you are a student who is enrolled to study nursing your employer is authorised to employ you for longer hours.

If you are a student employed at an aged care facility your employer should have received notification from the Department of Health notifying that students can be employed for extra hours.

If you are a student employed to work at a supermarket, your employer needs to register before they can increase your hours. You can check if your employer is registered or not here:

<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/temporary-relaxation-of-working-hours-for-student-visa-holders>

Employers of students who were enrolled in a Nursing course in March 2020, can engage that individual for more than 20 hrs weekly. We recommend that employers obtain a Confirmation of Enrolment to confirm the student was indeed enrolled in nursing. A registered nurse who was not enrolled to study nursing is not currently included in these measures, and their hours should be restricted if their course is in session.

Supermarkets must first register and be given approval before allowing any student visa holders to work more than 20 hours per week: <https://svcr.homeaffairs.gov.au/>

Can I apply for a Graduate 485 visa without English tests?

We understand many clients are unable to book English tests due to COVID-19. However, it remains a legal requirement to have completed the test before you apply for your 485 visa. We recommend you plan well-ahead to book your English tests.

3. WORKING HOLIDAYMAKER FAQ

I hold a working-holiday visa, can I work more than 6 months due to COVID-19?

You will need to obtain permission from the Department of Home Affairs before you can work more than 6 months. See <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/waivers-and-permissions/work-longer-than-6-months>

4. TEMPORARY SKILLS SHORTAGE FAQ

I hold a TSS visa and have been stood-down without pay, or my hours were reduced - will my visa be cancelled?

Indefinite unpaid leave as a result of a lack of work or required business/office closures is currently not acceptable and would be viewed as a breach of your employer's sponsorship obligations to pay you at the required salary level. This is because the visa was granted on the basis that there was a full time position vacant, and sponsored workers are unable to work elsewhere, nor access social security.

Exemptions to this rule exist where:

- ***There is a legal obligation to provide unpaid leave***, for instance maternity leave or mandatory COVID-19 quarantine and the LWOP does not exceed 12 months; or
- ***There are 'significant personal reasons'*** and the LWOP does not exceed 3 months. The Department of Home Affairs are yet to clarify whether temporary business closures due to COVID-19 might fall into this category.

Unless one of the above exemptions applies TSS visa holders may also be in breach of condition 8607, which requires you not to cease work for more than 60 days.

Due to the above uncertainty we recommend that remote work options and paid leave entitlements are exhausted before unpaid leave is taken.

If your employment must be stood down and you are seeking to rely on the 'substantial personal circumstances' exemption, keep the following records:

- *Evidence the arrangement is mutually agreed upon by your sponsor and yourself.*
- *Evidence of a formal application for leave without pay that has been formally approved by your employer (including leave applications that are processed and approved electronically). This should document why you are taking unpaid leave; and*
- *Evidence that your role and duties remain consistent with the position approved at nomination.*

Can I temporarily work in another position, or for another employer on my TSS visa?

No. You can only change employer if a new nomination is approved. If you are changing occupation a new nomination and a new 482 visa application are required.

Does my employer still need to show labour market testing (advertising) and pay a Skilling Australians Fund levy to nominate me?

Yes, no changes have been made to these requirements at this time. Submissions to relax these requirements have been made to the Department of Home Affairs.

My employment has been terminated due to COVID-19

Sponsors need to comply with both the Migration Act 1958 and Fair Work Act 2009 legislation, and any other relevant federal or state legislation at all times.

If you have been made redundant, as a TSS visa holder the period you cease employment must not exceed 60 consecutive days. The purpose of this is to give a TSS visa holder, who ceases employment with their current sponsor time in which to find a new approved sponsor, without concern their visa may be cancelled.

My TSS visa has been granted, but I cannot travel to Australia, what will happen to my job offer?

This will depend on your employment contract and the employer in question. You should liaise with your business contact.

My temporary visa is about to expire, can my employer still nominate me for TSS, 494 or ENS?

Yes. Please contact us so that we can assist you to lodge the application correctly, with the greatest chance of success.

5. SKILLED MIGRATION

Many States and Territories are not accepting new Subclass 190 and/or Subclass 491 applications, or are only accepting applications from persons resident in that State. See current list below

	Skilled Nominated Visa (Subclass 190) – direct to PR	Skilled Work Regional (Provisional) visa (Subclass 491)
Australian Capital Territory –	Open	Open
New South Wales	Open	Closed to offshore applicants
Victoria	Open	Open
Northern Territory	Local applicants only	Local applicants only
Queensland	Closed	Closed
South Australia	Residents of SA only, priority for health professionals*	Open
Tasmania	Closed to overseas applicants	Closed to overseas applicants in Category 3A unless the occupation is listed in ‘High Demand’ section.
Western Australia	Open	Open

Further Information:

This update was prepared on the 29 March 2020 and was accurate at that time, but changes are frequently occurring which may impact the accuracy of the information contained.

If you require advice specific to your situation contact us at office@jtimmigration.com.au or 03 8060 2457

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