

# Immigration response to the COVID-19 global pandemic

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In response to the COVID-19 global pandemic, the Australian government has implemented several key immigration measures including entry and departure bans as well as a new pathway under the Temporary Activity Visa (subclass 408) Government Endorsed Agreement stream for certain former and current holders of temporary visas to lawfully remain in Australia and who but for the COVID-19 pandemic, are unable to leave Australia. Additional measures include flexibility in work conditions for certain student visa holders working in the critical sectors of supermarkets, aged care and disability services, health and agriculture.

The Department of Home Affairs has created a dedicated 'Covid-19 and the border' website which is updated regularly regarding Australia's immigration and border arrangements during the COVID-19 pandemic as well as a national Coronavirus telephone hotline. The website is a useful resource and includes links to other Government COVID-19 resources including the Department of Health, Department of Social Services and Australian Tax Office.

## Travel bans

Strict entry and departure travel restrictions are currently in place as follows:

- Effective 09:00pm AEDT 20 March 2020, all non-Australian citizens and non-Australian residents who intend to travel to Australia are banned from entering until further notice. Limited exemptions are available to immediate family members and New Zealand citizens usually resident in Australia as discussed further below
- Effective 12pm AEDT 25 March 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* came into effect and which prevents an Australian citizen or permanent resident from departing an Australian territory as a passenger on an outgoing aircraft or vessel. Per the explanatory statement, this Determination will be in effect for an initial period of 4 weeks. Limited exemptions are also available to this exit ban.

## Limited exemptions to the entry ban

Limited exemptions to the entry ban are available for immediate family members of Australian citizens and permanent residents – this is limited to spouses (married or de facto), legal guardians and dependants, for example, dependent children. These family members must obtain/hold an appropriate temporary visa to enter Australia (for example, Visitor visa) and must present appropriate evidence of the relationship, such as marriage certificate, evidence of de-facto relationship such as shared finances or property, birth certificate or birth certificate for children.

Practice tip: Holders of Temporary Partner (subclass 309 or subclass 820) visas or Dependent Child (subclass 445) visas are eligible to enter Australia and do not need to apply to enter under the exemptions.

An exemption to the entry ban also applies to New Zealand Citizens who are usually resident in Australia – where seeking to enter Australia, such New Zealand citizens must provide proof of residency in Australia (driver's licence or documents in relation to residency such as recent utility bill or bank statement to evidence Australian address).

The Commissioner of the Australian Border Force may consider an additional exemption in relation to the travel bans for the following:

- Foreign nationals travelling at the invitation of the Australian Commonwealth Government to assist in the COVID-19 response or whose entry would be in the national interest;
- Critical medical services, including air ambulance and delivery of supplies, that regularly arrive into Australia from international ports;

- Persons with critical skills (for example, medical specialists, engineers, marine pilots and crews) by exception;
- Diplomats accredited to Australia and currently resident in Australia, and their immediate family;
- Case-by-case exceptions may also be granted for humanitarian or compassionate reasons. In all cases, appropriate evidence will need to be provided to support how the individual meets the excise of the Commissioner's discretion as listed above. Travel to Australia should not be attempted until the approval of the specific exemption.

Applicants requesting an exemption based on the Commissioner's Discretion must include the following information:

- passenger details: name, DOB, visa type and number, passport number, Australian residential address, Australian telephone number)
- case information: why this case should be considered for Commissioner discretion/exemption
- supporting statement: the request should be accompanied by a statement and evidence of how the individual meets one of the grounds for an exemption or excise of the Commissioner's discretion listed above.

Importantly, applicants seeking to rely on these limited exemptions are required to undertake an additional pre-clearance step by submitting a travel request form prior to travel to Australia.

Practice tip: Travellers permitted entry to Australia under these limited exemptions will be required to self-isolate for 14 days following arrival to Australia at a designated facility (such as a hotel).

### **Transiting through Australia**

The travel bans also apply to individuals seeking to transit through Australia, except for the following who can transit through Australia on their way to or from New Zealand or a Pacific Island Forum Country, providing their flight will depart Australia within 72 hours of the arriving flight:

- New Zealand citizen;
- Citizen of a Pacific Island Forum country,
- Timor Leste citizen or
- resident of New Caledonia or French Polynesia.

All other nationalities will need to apply for a transit exemption. In addition, individuals seeking to transit Australia will require an appropriate Australian visa (for example Transit (subclass 771) visa), unless they are a national of an exempt country and will be departing Australia within 8 hours of their arrival.

### **Limited exemptions to the departure ban**

Limited exemptions also apply to the departure ban for Australian permanent residents and citizens from Australia. An automatic exemption applies under s6 of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* for:

- A person ordinarily resident in a country other than Australia;
- A member of the crew of an aircraft or vessel (other than an outgoing aircraft vessel) or if a worker associated with the safety or maintenance of the aircraft or vessel;
- A person engaged in the day to day conduct of inbound and outbound freight;
- A person whose travel is associated with essential work at an offshore facility;
- A person travelling on official government business (including a member of the Australian Defence Force).

The Australian Border Force can grant a discretionary exemption to the departure ban under s7 of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* for an Australian citizen; a permanent resident or an operator of an outgoing passenger aircraft or vessel where:

- They can demonstrate exceptional circumstances providing a compelling reason for needing to leave Australian territory; and
- The request is made in writing.

The Department's Covid-19 website provides the following examples of exceptional circumstances providing a compelling reason for needing to leave Australia:

- travel is as part of the response to the COVID-19 outbreak, including the provision of aid
- travel is essential for the conduct of critical industries and business (including export and import industries)
- travelling to receive urgent medical treatment that is not available in Australia
- travelling on urgent and unavoidable personal business
- compassionate or humanitarian grounds
- travel is in the national interest.

Practice tip: At the time of writing, border closures were also in place for the following Australian States/Territories, restricting internal travel within Australia (with limited exemptions specific to the relevant State/Territory): Northern Territory, Queensland, South Australia, Tasmania, Western Australia.

### **Temporary Activity (subclass 408) visa - Australian Government Endorsed Event stream**

On 7 April 2020, *Legislative Instrument - F2020L00409 -LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020* came into effect. This Instrument specifies the COVID-19 pandemic as declared by the World Health Organization on 11 March 2020, as an event for paragraph 408.229(b) of Schedule 2 to the Regulations and also specifies the class of persons for the purposes of paragraph 408.229(c) of Schedule 2 and subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations.

The purpose of the instrument is to provide a pathway for certain former and current holders of temporary visas to lawfully remain in Australia and who, but for the COVID-19 pandemic, are unable to leave Australia.

To meet the criteria for this the COVID-19 pandemic 'event', applicants must be in Australia and:

- hold a visa that is 28 days or less from ceasing to be in effect; or
- have held a visa that is no more than 28 days from ceasing to be in effect; AND
- be unable to make a valid application, or meet the Schedule 2 criteria for the same temporary visa they hold or held or any other subclass of temporary visa other than the Subclass 408 visa.

Under the Department's guidelines, the applicant must be engaged in or have the relevant skills to undertake critical work relating to supply of essential goods and services in the following critical sectors: agriculture, food processing, health care, aged care, disability care and childcare. Appropriate evidence of this work will need to be submitted with the application.

Subclass 408 visas granted under these arrangements will be granted for the following periods:

- Applicants who have held visas granted under the Seasonal Worker Program or Working Holiday Maker program and are working in critical sectors will be granted a visa for up to 12 months.
- Applicants working in critical sectors will be granted a visa for up to 12 months;
- All other applicants will be granted a visa for up to six months with the validity period dependant on the individual circumstances such as when they may be able to return home.

## **Student visa measures for the Supermarket, Aged Care, Disability Services and Health sectors**

Temporary measures have been undertaken to relax the work conditions of certain student visa holders engaged in specified sectors to allow this cohort to work more than 40 hours a fortnight. Importantly, these measures only apply to existing workers in their existing roles. They are temporary measures and will be reviewed by the government regularly. Employers will be advised in writing when these considerations no longer apply (for example, the Department has advised that the arrangements for supermarkets will cease on 1 May 2020. A list of the approved is available on the Department's website).

The current specified sectors that benefit from these flexible arrangements are as follows:

- **Approved supermarkets** – to keep shelves stocked during the Covid-19 crisis, approved supermarkets have access to the temporary relaxation of working hours for student visa holders until 1 May 2020.
- **Aged care & Disability Services providers** - All aged care Approved Providers or Commonwealth funded aged care service providers that have been issued with a RACS ID or a NAPS ID have been given access to the temporary relaxation of working hours for student visa holders. All registered disability service providers have also been given access to the temporary relaxation of working hours for student visa holders. These providers should refer to the correspondence provided to them by the Department of Health for further details.
- **Medicine and Nursing** – Student visa holders already enrolled in medicine and nursing studies can work more than 40 hours a fortnight to undertake work to help and support the health effort against COVID-19 as directed by health officials. The Department has advised that it will not take any enforcement action regarding students working in these circumstances.

## **Additional measures for the Agricultural sector and Working Holiday Makers**

The Government has also introduced additional measures for the agricultural sector to provide flexibility for Seasonal Worker Programme workers, Pacific Labour Scheme participants and Working Holiday Makers, to extend their stay in Australia:

Under the arrangements:

- Seasonal Worker Programme workers with visas due to expire will be able to apply for a Temporary Activity (subclass 408) visa in the Australian Government Endorsed Event stream as outlined above.
- Pacific Labour Scheme workers with visas due to expire can apply for a new Temporary Work (International Relations) (subclass 403) Pacific Labour scheme stream visa.
- Seasonal Worker Programme and Pacific Labour Scheme workers currently in Australia will be able to move between approved employers and are exempt from the requirement to work for a single employer.

In addition, Working Holiday Makers (holding Subclass 417 or 462 visas) who are working in critical sectors (e.g. agriculture, aged or health care) are exempt from the 6-month work limitation with one employer imposed by condition 8547 on the grounds of exceptional, unforeseen circumstances because of the COVID-19 pandemic. This cohort is also eligible to apply for a Temporary Activity (subclass 408) visa in the Australian Government Endorsed Event stream if their current visa is expiring in the next 6 months.