



## Frequently Asked Questions

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### **PERMANENT WORK VISAS**

***I am skilled, under 50 years of age and wanting to migrate to Australia permanently for work – am I eligible for a visa?***

The General Skilled Migration (GSM) visa scheme allows professional and skilled people between the ages of 18 and 49 to migrate permanently to Australia, where they have skills in particular occupations required in Australia. You will have to have a sufficient level of English, have work experience, necessary qualifications and meet the Points Test.

If you have an Australian employer willing to nominate you, you may also be eligible for an Employer Nomination Scheme (ENS) visa.

***Should I apply for a GSM visa or an ENS visa?***

If you have an Australian employer willing to nominate you, you can apply under ENS. An ENS visa is generally preferable to a GSM visa, as it takes less time to process in most cases.

***I have an employer willing to nominate me under ENS, what do I do next?***

Being granted a visa under ENS is a two-stage process: first your employer will need to lodge a nomination application, and then you will need to lodge a visa application. These can be lodged at the same time or sequentially. However note that the visa application cannot be lodged before the nomination is lodged.

***Can you find me an Australian employer who will nominate me for a visa?***

No, we cannot find an Australian employer to nominate you. However, if you have a current or prospective employer who is unsure about whether to nominate you, we are happy to discuss the requirements and process with them and answer any queries they may have.



## Frequently Asked Questions

### **BUSINESS PEOPLE**

#### ***I would like to come to Australia to set up my own business, what kind of visa should I apply for?***

The business skills stream encourages successful business people to settle permanently in Australia and operate or develop existing or new businesses. Amongst other requirements, you will need a solid business plan, appropriate business registration and licenses, sufficient funds and assets and a successful business career to date. Depending on the visa subclass there may also be English language and maximum age requirements. Note that in most cases you must first apply for a 4 year provisional visa before becoming eligible for permanent residency.

### **EMPLOYERS**

#### ***I am a business manager or owner and would like to sponsor or nominate one of my employees to remain in Australia – what do I have to do?***

Employers can sponsor or nominate a foreign worker for either a temporary or permanent visa in Australia. The temporary 457 visa can be granted for a period of up to 4 years and requires that the visa-holder works only for the sponsoring business. A business must first apply to DIAC to become an approved sponsor (valid for 3 years), and can then nominate as many employees as their business requires. The sponsored employee must work in an occupations required in Australia and there are requirements that both the employer and employee must satisfy. Employers can also nominate a person for a permanent residency visa under ENS.

### **STUDENTS**

#### ***I have almost completed my studies in Australia and would like to stay and work – what are my options?***

Depending on your occupation, you may be eligible for a GSM permanent residency visa. If you have found an Australian employer willing to nominate you, you may be eligible for an ENS permanent residency visa. There are also temporary visa options for you to remain in Australia. These include the 457 temporary work visa and the Graduate Temporary Visa subclass 485 (GTV). The GTV allows international students who have completed at least 2 academic years of study in Australia to remain for a further 18 months. During this time, the visa holder can gain work experience, English language skills or other requirements necessary to be eligible for a permanent visa.

#### ***I am a student visa holder but have decided to stop my studies and work full time in Australia. Once I lodge my 457 visa application can I start to work full time?***

Most student visas permit the holder to work only up to 20 hours a week while their course of study is in session. If this work limitation applies to you then you **do not** have full time work rights before you have been **granted** the 457 visa. You must abide by the student visa conditions for as long as you hold that visa.



## Frequently Asked Questions

### **FAMILY & PARTNER MIGRATION**

***My partner and I have been in a de facto or spouse relationship for many years, but have lived in separate countries for most of that time. Will we be to get a partner visa?***

Yes, it is possible for you to be granted a partner visa, provided that you maintained your relationship throughout the times apart, you never intended to be apart permanently, and you can provide a reasonable explanation for the physical separation, evidence of your ongoing relationship and continuing communication throughout this time. We are happy to discuss the kinds of evidence that DIAC will require.

***I am in a same-sex de facto relationship – am I eligible for a partner visa?***

Yes, same-sex couples are eligible to apply for a partner visa. As with opposite sex couples, you will have to demonstrate to DIAC that you are in a long-term, exclusive, committed and genuine relationship.

***I am an Australian permanent resident and would like to bring my parents to Australia to live permanently – is this possible?***

There are migration options for parents of Australian permanent residents who are 'settled' in Australia. Eligibility will depend on which countries all other family members reside in and particularly how many live in Australia. A further option exists for a parent who has never been (or is no longer) married and has been dependant on the Australian sponsor for at least 3 years. Note that processing times for parent visas are extremely long.

***I am an Australian permanent resident and would like to bring my adult brother/ sister to Australia to live permanently – is this possible?***

You may be able to assist your brother/ sister through demonstration of ties to Australia and with the cost of resettlement. However there is no "Brother/sister" visa, and the family visa stream allows for migration of brothers and sisters only in very limited circumstances. Your brother/ sister will likely need to apply to migrate independently, such as through the skilled or employer sponsored streams. We are happy to discuss your family's circumstances and options.

### **REMAINING IN AUSTRALIA**

***I have remained in Australia unlawfully after my previous visa expired – what can I do?***

You may be able to apply for a visa after remaining in Australia illegally, however this will depend on your particular circumstances. It may be necessary for you to leave Australia to lodge a visa application offshore before you can return and legalise your status. In some cases you may be able to lodge an application and remain in Australia during processing. We are happy to discuss strategies based on your own particular circumstances.



## Frequently Asked Questions

### **AFTER LODGING A VISA APPLICATION**

#### ***I have lodged a visa application with DIAC but have not yet received any response, what can I do?***

Each visa type has a different likely processing time, based either on order of lodgement or processing priorities put in place by the government. Some visa categories have a strict annual limit of visas able to be granted. In most cases DIAC does not accept requests for expedited processing. If you have not yet received an acknowledgement letter or email from DIAC which confirms that they have received the application you should contact DIAC to make sure they received the application.

Where your application is not yet lodged, here are a few tips to give your application the best chance of success:

- Ensure that your application is as complete as possible;
- Post your application directly to the relevant DIAC processing centre;
- Use a postal method that 'tracks' your application so you know when it has arrived at DIAC and keep this record (for example, a courier service);
- If you are applying under ENS, you can try to lodge a 'decision ready' application with the assistance of a Migration Agent.
- If you are applying under GSM, you may be able to convert your application to ENS if you find a willing employer.

In all cases, make sure that you have received an acknowledgement letter or email from DIAC which confirms that they have received the application.

#### ***My visa application has been refused, is there anything I can do?***

If you applied for a visa while in Australia, it is likely that you can apply for review of the refusal decision to the Migration Review Tribunal. In some cases, applications that were lodged offshore will also be eligible for review. Note that this is a lengthy and expensive process, and that in many cases it is advisable to lodge another visa application rather than seek review. We are happy to discuss the best strategy for you.

#### ***I have already lodged my visa application using a Migration Agent but am no longer happy with them – can I change Migration Agent half way through the process?***

Yes, you are able to appoint a new Migration Agent or to just end a previous Agent's appointment. You will have to complete Form 956 and provide it to DIAC.

### **CONTACTING VISA LAWYERS AUSTRALIA PTY LTD**

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