

Several countries across the world have now imposed travel restrictions and stringent measures in place in efforts to prevent the spread of the coronavirus disease 2019 (COVID-19). This is an unprecedented event and, as such, the impact of these restrictions are changing daily, and the scope of how much this will affect Australia, our immigration program, and current non-residents in Australia is unclear.

This alert provides a high-level review of the current travel restrictions in place, as well as an overview of how COVID-19 could affect sponsors, employers and skilled visa holders in Australia.

General Travel Restrictions

1. Total Travel Ban – Recently Announced

In efforts to contain and prevent the spread of the COVID-19, the Australian government has imposed significant travel restrictions to limit exposure to the virus within Australia. Most recently, to enhance security measures, the Australian government announced that that **all non-citizens and residents will be banned from entering Australia from 9 p.m. on 20 March 2020**. This is a significant escalation from the previous ban, which was limited to travellers from mainland China, Italy, the Republic of Korea and Iran.

A Level four travel advice has been instituted on the **entire world** by the Australian government. Level Four is the highest rating for travelling danger issued by Australia's Department of Foreign Affairs.

2. All Travellers to Australia to Self-isolate for 14 Days

From 15 March 2020, the Australian government announced:

- All travellers to Australia will be required to self-isolate for 14 days
- This applies to **all** travellers, including Australian citizens and permanent residents
- Heavy penalties are in place for those who do not comply – the penalties will differ according to the state or territory; however it has been confirmed that for some states, it may be up to AU\$50,000

3. Partner and Immediate Families of Australian Citizens and Permanent Residents Holding Temporary Visas

Partners and immediate families of Australian citizens and permanent residents (spouses, minor dependents or legal guardians only) holding temporary visas are being dealt with on a case-by-case basis by the department.

What Does COVID-19 Mean for Temporary Visa Holders or Applicants Outside Australia?

Applying for an Australian Visa

As set out above, strict travel restrictions are in place for certain countries due to COVID-19. The advice issued by the Department of Home Affairs is that applicants **should not apply** for any visa until checking **the latest information** on the Department of Home Affairs website.

Temporary visa holders (such as the TSS 482 visa/457 visa holders) who are ineligible for entry into Australia under these measures may have their visa cancelled. Arrangements will be made to reinstate visas as appropriate following the lifting of these enhanced border control measures.

Otherwise, applicants should be aware that some services relating to the visa application process may be impacted by COVID-19.

What Does COVID-19 Mean for Temporary Visa Holders Currently in Australia?

In light of the escalating health and travel concerns, the Department of Home Affairs has confirmed it has adopted a flexible approach for visa holders during this time.

Considerations for Sponsors and TSS Visa Holders

The Temporary Skill Shortage (TSS) subclass 482 Visa contains the condition 8607, which provides that if a visa holder has ceased employment with their sponsor, they will have 60 days to search for a new sponsor or leave Australia. This condition may become problematic given the nature and impact of COVID-19 on employment arrangements and current travel restrictions in and out of Australia and other countries in the world.

Leave Without Pay

In the current climate, it is possible that a visa holder may be asked to take extended leave during which time they will not be paid, for example taking out unpaid sick or carers leave. Policy reasoning behind this condition indicates that if a TSS visa holder is placed on unpaid leave (which is a likely scenario given the business downturn) then this may not be considered to be in breach of the condition solely on the basis of unpaid leave. This is premised on the fact that the visa holder may be considered to remain under the sponsor's employment (despite not working or receiving pay). However, the policy indicates that this period should not exceed three months, unless **exceptional circumstances** apply or the sponsor is obliged to provide the leave as an entitlement under Australian workplace laws. This will be assessed on a case-by-case basis.

Temporary Layoff

If an employer decides to temporarily lay off employees due to business downturn, the employee may be considered to have ceased employment, placing the visa holder in breach of condition 8607 if:

- The Department of Home Affairs has not been advised
- If more than 60 days have passed since the layoff

It is, therefore, recommended that before any layoff action is taken due to business downturn, that the department be notified and the particular circumstances be discussed.

If you believe that your visa conditions may be impacted due to the travel restrictions, please contact a member of the Migration Team.

The Department of Home Affairs has also published some guidance outlining different visa holder situations that may be impacted due to COVID-19 – with the primary concern being the impact on visa conditions due to travel restrictions – see below:

1.1 Visa Holders Who Cannot Return Overseas

If you wish to remain in Australia after your visa's expiry date, you must apply to have your visa extended. This application for extension should be done **prior to your visa expiring**. You may also be eligible for a bridging visa, which allows you to lawfully stay in Australia until a decision on your visa application is made.

1.2 Visa Has a "No Further Stay" condition

Visas that contain a "no further stay" condition (for example: 8503, 8534, 8535) mean that another valid visa application cannot be made to remain in Australia. To stay lawfully in Australia beyond the visa expiration date, a request to waive this condition must be lodged.

There is a possibility for the Minister to waive this "no further stay" condition if there are "compelling and compassionate" circumstances that have developed over which a person had no control and resulted in a major change to the person's circumstances. Given that the virus has spread vastly across the globe, there is a wider scope for applying this waiver and is likely that the Department of Home Affairs will take a "compassionate" view in waiving the condition.

1.3 No Valid Visa

If your visa has expired, you will need to apply for a Bridging E Visa. This is a short-term visa that allows you to remain lawfully in Australia while you are awaiting a decision from the Department of Home Affairs or are finalising arrangements to leave the country. If your Bridging Visa expires while you are overseas, you **cannot** apply for an extension from offshore – you must apply for another visa once the travel restrictions are lifted.

(a) Returning to Australia

The current travel restrictions mean that you cannot return to Australia if you hold a temporary visa (unless the Australian citizen or permanent resident exemption applies). Additionally, if you are currently outside Australia and during this time your Bridging Visa expires, you can only apply for another Bridging Visa once the travel restrictions have been lifted.

1.4 Temporary Visa Holders Outside Australia

Temporary visa holders who are illegible for entry and are not exempt will have their visas considered for cancellation if they attempt to travel to Australia while the travel restrictions are in place. (There are exceptions for year 11 and 12 students who remain in China).

Individuals who have already had their visas cancelled have been informed in writing and have been provided with advice with the Department of Home Affairs on how to seek revocation of decision for cancellation. Visas will proceed to be reinstated if it is demonstrated that the concerned individuals have been outside of affected travel restricted countries for a minimum of 14 days.

1.5 Cannot Return to Australia Before My Visa Expires and Want to Return

You will need to apply for a new visa once the travel restrictions are lifted.

1.6 Cannot Return to Australia in Time for My New Visa That Requires Me to Be in Australia at the Time of Application or Grant

You will need to apply for a new visa once the travel restrictions are lifted.

Please contact our Australian Business Immigration team if you have any queries regarding the implications COVID-19 may have on your business and/or your Australian visa.

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