

# COVID-19 and Australian Immigration

## Answering Your Questions

4 April 2020

Ward Keller's Registered Migration Agent, [Rachael Adolphe](#), joined [Leon Loganathan](#) and Peter Gowers on their [Territory Story podcast](#) this week to facilitate a Q & A session to answer your questions about how Australian Immigration has been affected by COVID-19. We hope that the following Q & A answers any queries and concerns you may have.

### **1. What happens if you are onshore and you cannot leave Australia because your home country has also put a travel ban in place and your temporary visa will expire soon?**

You must apply for a new visa before your current visa expires. You may then be eligible to be granted a bridging visa that will keep you lawful until a decision is made on your visa application.

If your visa has the No further stay condition (includes 8503, 8534 and 8535), it means you can't apply for most other visas until you leave Australia. In this case, if your visa has less than 2 months validity remaining you can request to waive this condition. Our firm will be able to assist with this.

There are lots of other scenarios for people with temporary visas who will be stranded here due to the travel restrictions.

**We will be offering 15-minute phone appointments to guide you through the information that is available for your situation. And of course, if you need help with making further visa applications, our team is here to assist.**

### **2. Are the Department still processing visa applications?**

For offshore applicants, even if a visa can be granted it may be the case that because of the travel bans, they will not be able to enter Australia. With this scenario it is possible that the Department will cease processing certain visa types or delay granting the visa at least for the foreseeable future.

For onshore applicants' visas are still being processed particularly where onshore applicants hold a visa that will expire in the next two months. The Department will likely be prioritising applications to ensure people can remain in Australia lawfully.

We are still seeing activity on processing of visas of other temporary and permanent visa types. The Migration office of the Northern Territory are still accepting applications for Northern Territory nominated skilled visas both temporary and permanent and family visas such as partner, child and parent where the applicants are onshore appear to be processing.

Generally, it would be wise to anticipate a slowing down of visa processing during this COVID-19 crisis particularly if a case officer can see the applicant is safely onshore in Australia with a valid visa.

### **3. All medicals, biometrics and English language tests are either postponed indefinitely or only very few places and dates are available. What happens to my visa application because of this?**

The government is very much aware that these are exceptional times and that these closures are factors beyond applicant's control. They will postpone processing a visa application if the current crisis has prevented you from attending to medicals, biometrics etc.

However, this only applies to applications already lodged and where it is not a time of application criterion. If the visa class that you wish to apply for requires you to have evidence of an English test before you apply, then there are no exemptions. This is because these matters may be prescribed by law, and the government cannot change the law easily for each visa class.

### **4. Temporary visa holders cannot return to Australia? Are there any exemptions?**

If you are a New Zealand citizen who usually lives and works in Australia, you are exempt from the travel ban and are permitted to re-enter Australia.

If you hold a temporary visa and you are the partner or child of an Australian citizen, you must submit a form to the immigration department with proof such as your marriage certificate, or evidence of your de-facto relationship such as shared finances or property, your birth certificate or the birth certificate of your children before you are due to travel. You must not travel until the department has advised that you can.

Last week the government also announced exemptions to essential service workers who are sponsored on a temporary visa.

### **5. What will happen to appeals at the Administrative Appeals Tribunal (AAT)?**

The AAT are still operating and have recently put in place two significant changes to protect staff and applicants.

The first change is that they have moved all hearings to be conducted over the phone. Hearings continue to be scheduled and are being conducted successfully over the phone. If a phone hearing is scheduled and the applicant prefers a face to face hearing, the hearing can be rescheduled, however the date this will be is unknown.

Secondly, they are fast tracking applications where a Tribunal Member can make a decision on the papers without a hearing. This means if there is enough evidence to support an appeal, we can request your application be fast tracked. If applicants would like to have their AAT evidence assessed to determine if such a fast track request can be made our Registered Migration Agents at Ward Keller can assist.

### **6. Prior to the COVID-19 crisis if people had plans to make an application for another visa, should they still apply?**

Most visas are still open for applications and as mentioned earlier invitations are still being issued by States and Territories for business and skilled visas including by the Northern Territory government.

Preparing for a skilled visa can often take considerable time and planning and it is likely that by the time it is ready for grant, the travel bans will be lifted.

This is also a great time to lodge Partner and Parent visas if the applicants are onshore.

Also, for New Zealand citizens who were looking to apply for the NZ stream of the skilled visa to obtain Australian permanent residency, we are advising that this is a good time to prepare such an application.

Also if there are permanent residents who have been meaning to get around to a citizenship application, now is a good time to look at what is required and the evidence you need to support your application and take the necessary steps for an application.

Ward Keller are positioned to assist applicants on and offshore in all immigration matters, but at this time we have a real focus on applicants who are onshore and need advice, visa preparation and lodgement, or other complex matters such as submissions, appeals or waiver requests.

## **7. People often ask if they can extend their visa. Is that possible, especially now in these circumstances?**

The Australian visa system does not allow you to extend the validity of a visa. If you hold a visa and it expires, the only way of holding a visa is to apply for a new visa. This applies regardless of whether you are onshore or offshore. All the criteria for each visa are embedded in law and even this pandemic will not stop you from getting refusal or a returned (invalid) visa application if you do not meet those criteria.

## **8. What do I do if I am on an employer sponsored visa and my employer cannot continue my employment?**

The government are aware of this group of vulnerable persons in Australia. The Migration Institute of Australia (MIA) of which we are members, have been lobbying the government and informing them of a number of scenarios that are causing concern. Some examples of these are:

Experiencing severe financial hardship after being stood down or terminated.

- Inability to work for anyone else other than their sponsoring employer.
- Ineligible for government financial support.
- Inability to leave the country and no way of accessing financial support.
- Inability to pay for their private health insurance due to financial hardship and becoming vulnerable without health care if they fall ill or at risk of breaching their visa conditions for not maintaining adequate healthcare.
- Businesses particularly in regional areas who must suspend all or part of their business are worried they will not have access to the required skilled labour they need to operate their businesses when they are able to resume operating.

The available advice we have for 457 and 482 visa holders is that all migration legislation still stands and there has been no relaxations regarding conditions or social services eligibility.

We encourage you to negotiate with your employer to take leave without pay as opposed to being made redundant. The reason for this is that you will remain an employee and visa holders may be permitted to take up to 12 months leave without pay. Unfortunately, your visa conditions would not allow you to work for anyone else during this time but you would not have to leave the country in the 60 or 90 day period normally required.

You are permitted to reduce your hours to work **part-time** however your annual salary must not drop below Temporary Skilled Migration Income Threshold (TSMIT) or the salary of your caveated occupation if applicable.

## **9. Temporary visa holders are not entitled to Social Security payments, but are their employers entitled to any payments to assist?**

There are a number of stimulus packages the government have rolled out and we encourage all sponsoring employers to look at whether the business is eligible for any of these options of financial support. Unfortunately, the

[Job Keeper payment](#) that was announced this week by the federal government is only payable to the employer for Australian citizens, permanent residents and NZ citizens who hold the 444 visa.

**10. Some sponsoring employers who have invested a lot of money and rely heavily on their sponsored work force. These employees have often been here for years and paying taxes. Why can't these employers access the [Job Keeper](#) funds for their loyal employees?**

During the press conference when the Job Keeper package was announced, the Prime Minister was asked this question and he categorically denied that there will be support for these workers. We know that this question is being looked at by the Department of Home Affairs, but at this stage this seems to be a political issue. The government needs to be seen to support Australians first and foremost.

At least in the other states there may be plenty of out-of-work Australians who can fill these jobs, even the unskilled harvesting jobs for the time being. The problem is that in Northern Territory we do not have that luxury to fall back on a pool of skilled Australians like the other more densely populated states. Many skilled Australians left the Northern Territory the moment they knew that they would lose their jobs and to be with their families' interstate.

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