

VISA AND WORK RIGHTS POLICY 2022

The Vice-Principal (Operations) as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 17 March 2022
Last amended: 20 April 2022 (administrative amendments)
Signature:
Position: Vice-Principal (Operations)

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1 Name of policy

This is the Visa and Work Rights Policy 2022

2 Commencement

This policy commences on 4 April 2022.

3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University, staff and affiliates, including international visitors.

4 Overview

- (1) This policy supports the University's strategic priorities of:
- attracting and developing outstanding staff;
 - fostering excellence and innovation in research and teaching; and
 - building a culture based on its values, including diversity and inclusion, and openness and engagement.

Note: See the [Strategic Plan](#).

- (2) This policy provides an overview of:
- the visas available to employ international candidates and invite international visitors to the University; and
 - the University's responsibilities in complying with immigration legislation.

5 Application

- (1) This policy applies to:
- staff and affiliates, including international visitors; and
 - all activities conducted by and on behalf of the University.
- (2) If there is any inconsistency between this policy and Commonwealth legislation, then Commonwealth legislation will apply.

6 Definitions

affiliate	has the meaning provided in the Staff and Affiliates Code of Conduct 2021 , which at the date of this policy is: means a person appointed or engaged by the University to perform duties or functions on its behalf, including but not limited to: <ul style="list-style-type: none">an honorary title holder engaged under the Honorary Titles Policy 2013;a consultant or contractor to the University; andan office holder in a University entity, a member of any University committee, board or foundation. An affiliate is not an employee of the University.
delegate	has the meaning given in the University of Sydney (Delegations of Authority – Administrative Functions) Rule 2020 , which at the date of this policy is: the position upon the holder of which the delegation is conferred.
DHA	means the Commonwealth Department of Home Affairs.
faculty	means, as appropriate, a faculty or a University school.

Human Resources	<p>means the University's Human Resources professional services unit.</p> <p>Note: Contact hr.servicecentre@sydney.edu.au</p>
international candidate	<p>means a person who is not an Australian citizen or permanent resident who will be or has been offered employment with the University.</p>
international staff member	<p>means a person who is not an Australian citizen or permanent resident, who is employed by the University.</p>
international visitor	<p>means a person who is not an Australian citizen or permanent resident, who:</p> <ul style="list-style-type: none"> • has been invited to observe or participate in research or training at the University; • may be an affiliate of the University; and • may either be in or outside Australia; but • is not an employee of the University
lead researcher	<p>has the same meaning as given in the Research Code of Conduct 2019, which at the date of this policy is:</p> <p style="padding-left: 40px;">means the person responsible for the intellectual, administrative and ethical aspects of a research project.</p>
nomination	<p>means the visa nomination application that the University submits to the DHA that provides details of the activities to be carried out by an international candidate, staff member or international visitor.</p>
non-citizen	<p>has the meaning given in section 5 of the Migration Act 1958 (Cth), which at the date of this policy is:</p> <p style="padding-left: 40px;">means a person who is not an Australian citizen.</p>
notifiable event	<p>means an event, as specified by the DHA, requiring notification in accordance with the sponsorship obligations in the Migration Regulations 1994, by the University.</p> <p>Note: See Division 2.19 of the Migration Regulations 1994.</p>
organisational unit	<p>has the meaning given in the Recruitment and Appointment Policy 2021, which at the date of this policy is:</p> <p style="padding-left: 40px;">means a University work unit:</p> <ul style="list-style-type: none"> • with a specific purpose or function; • that has a director or head of the function; and • a separate budget. <p>An organisational unit may include team structures, but the teams are not themselves organisational units.</p>
procedures	<p>means the Visa and Work Rights Procedures 2022</p>

primary visa holder	means a visa holder who is sponsored by the University and who is not the dependant of another visa holder.
school	means a school within a faculty.
secondary visa	means a visa for: <ul style="list-style-type: none">• a spouse or de facto partner and dependent children of the primary applicant or visa holder;• dependent children of the primary applicant's spouse or de facto partner; and• other dependent relatives of the primary applicant, and their spouse, permissible under that visa.
skilled occupation list	<p>means the list which specifies the occupations available for a skilled visa sponsorship, as determined by the relevant legislative instrument.</p> <p>Note: See the skilled occupation list on the DHA's website for more information.</p>
sponsor	means the University when it nominates an international visitor, candidate or staff member as an applicant for a visa to work or visit the University.
supervisor	means: <ul style="list-style-type: none">• for a student or trainee from outside of Australia: the person appointed to discharge the responsibilities set out in clause 15 of the Higher Degree by Research Supervision Policy 2020;• for an international visitor attending the University to collaborate: the University staff member who invited and will collaborate with them at the University;• for a staff member from outside Australia: the person nominated by the University to manage them.
work rights	means rights to perform certain activities and receive remuneration for them, as allowed or restricted by the applicable visa subclass and conditions.
visa grant notice	means the notice issued by DHA that: <ul style="list-style-type: none">• informs the applicant that their visa has been granted; and• outlines the visa conditions.

7 General principles

- (1) Staff and affiliates (including international visitors) with foreign citizenship or non-Australian permanent residents, are required to demonstrate to the University that they are eligible to obtain or hold an appropriate Australian visa.

Note: See the [DHA website](#) for the definition of permanent resident.

- (2) The University supports obtaining visas for international candidates or visitors:
 - (a) to attract and develop outstanding researchers and staff;
 - (b) for scholarly exchange; and
 - (c) to facilitate cross-cultural competence
- (3) The University is not obliged to sponsor current staff, international candidates or international visitors for permanent residency or any other form of visa.
- (4) The University supports the visa type that:
 - (a) most closely matches the purpose of travel to Australia; and
 - (b) is the most appropriate permit to enter Australia.
- (5) The University may temporarily employ non-citizens or host international visitors who hold an appropriate visa to work, train, perform, visit or participate in activities at the University.
- (6) Visas are issued by the DHA in accordance with migration law.

Note: Relevant legislation includes, but is not limited to the [Migration Act 1958 \(Cth\)](#) and [Migration Regulations 1994 \(Cth\)](#).

- (7) In exceptional circumstances the Vice-Chancellor or Vice-Principal (Operations), in consultation with the Chief Human Resources Officer, may approve a request which does not meet the requirements of this policy. Approval must not conflict with migration law.

8 Visa types

- (1) An international candidate's or international visitor's visa will be determined by the purpose of their travel to Australia. This may be to:
 - (a) commence employment;
 - (b) undertake training;
 - (c) give lectures;
 - (d) undertake highly specialised and non-ongoing work; or
 - (e) undertake research activities.
- (2) The University will only sponsor individuals for the relevant visa where the prospective staff member or international visitor meets the eligibility criteria as set out by the DHA and the provisions of this policy.
- (3) The University may host international visitors on non-sponsored visas to perform activities such as attending conferences or collaborating with staff.

Note: Refer to the [Visa and Work Rights Procedures 2022](#) for more information about these visa types.

9 Eligibility for a University sponsored visa

- (1) **Academic positions.** The University uses the Temporary Skill Shortage visa (subclass 482) for:
 - (a) full-time academic positions where the position cannot be recruited locally; and
 - (b) part-time academic positions in very limited circumstances as outlined in **subclause 8(2)** of the [procedures](#).
- (2) **Professional staff positions.** The University uses the Temporary Skill Shortage visa (subclass 482) for professional staff positions only if all of the following criteria are met for the nominated position:
 - (a) the position is full-time;
 - (b) the position is on the [DHA's Skilled Occupation List](#);
 - (c) the position:
 - (i) is specialised;
 - (ii) is classified as HEO Level 8 or higher;
 - (iii) requires unique skills and experience not readily available in the local labour market or meets the requirements for exceptional circumstances outlined in **subclause 8(7)** of the [procedures](#);and
 - (d) a competitive selection process has been completed.
- (3) The University may consider requests to sponsor international candidates for the Employer Nomination Scheme permanent residence visa (subclass 186):
 - (a) as part of a competitive recruitment or employee attraction strategy, consistent with the procedures; or
 - (b) for staff members who have completed three years of full-time employment in their nominated position at the University within the previous four years.
- (4) The University may use the temporary activity visa (subclass 408) or training visa (subclass 407) for international affiliates or visitors where the appointment will not adversely affect or displace an Australian student, staff member, affiliate or visitor.

Note: Refer to **Part 2** in the [procedures](#) for further information on the eligibility requirements for the sponsored visas.

10 Nomination and visa costs

- (1) The faculty, school or organisational unit which nominates an international candidate or international visitor for a University sponsored visa:
 - (a) is responsible for meeting the cost of all applicable nomination and [Skilling Australians Fund \(SAF\)](#) charges; and

Note: SAF charges are required under the [Migration \(Skilling Australians Fund\) Charges Act 2018 and are](#) paid by an employer at the nomination stage, to sponsor certain visa applications to contribute to the training of Australians.

Note: The Immigration and Global Mobility team provides the estimated nomination and visa costs to the relevant faculty, school or organisational unit.

- (b) must not pass on these costs to the visa applicant or any external parties or receive any benefits for the sponsorship as provided in the [Migration Amendment \(Charging for a Migration Outcome\) Act 2015](#).
- (2) Unless the faculty, school or organisational unit determines otherwise, the visa applicant will be required to meet visa application fees for:
 - (a) the Permanent Residency (subclass 186); or
 - (b) the Temporary Skill Shortage visa (subclass 482), Temporary Activity visa (subclass 408), or Training visa (subclass 407).
- (3) If the faculty, school or organisational unit meets the visa application cost for the staff member, Fringe Benefit Tax (FBT) liabilities may be incurred. These liabilities must be met by the faculty, school or organisational unit.

11 Compliance

- (1) Visitors or staff who do not hold an Australian permanent resident visa or Australian citizenship are required to obtain or hold an appropriate Australian visa.
- (2) Unless exceptional circumstances apply, the University will not offer:
 - (a) fixed term positions to staff members on temporary work visas beyond their visa expiry date; or
 - (b) continuing positions to staff members on temporary work visas.

Note: See exceptional circumstances specified in **subclauses 15(3) and 15(4)** of the [procedures](#). Contact the relevant [HR Partner](#) for further information.

- (3) University supervisors who engage or supervise prospective or current staff or international visitors are responsible for:
 - (a) complying with the relevant immigration legislation;

Note: Relevant legislation includes, but is not limited to the *Migration Act 1958 (Cth)* and *Migration Regulations 1994 (Cth)*.

 - (b) preventing individuals from participating in activities at the University without the appropriate visa and work rights;
 - (c) engaging with Human Resources to confirm the appropriate visa; and
 - (d) immediately notifying Human Resources of any non-compliance by staff members or international visitors.
- (4) Any financial penalties incurred by the University as a result of non-compliance by the University, a staff member or international visitor to the University, will be allocated to the faculty, school or organisational unit which invited, engaged or supervised the individual.

Note: Refer to **clause 12** for information on the various roles and responsibilities in meeting compliance.

12 Roles and responsibilities

- (1) The **relevant delegate** is responsible for:
 - (a) approving the appointment or affiliation of prospective international staff members and international visitors to the University; and
 - (b) directing the lead researcher, supervisor or hiring manager to complete an assessment of the prospective international staff member or international visitor to confirm that they meet the requirements set out in the [procedures](#).
- (2) **Lead researchers, supervisors and hiring managers** are responsible for:
 - (a) understanding the University's obligations for any visa held by a staff member or international visitor and taking appropriate steps to maintain compliance with those obligations;
 - (b) notifying Human Resources:
 - (i) if the staff member or international visitor fails to comply with their visa conditions;
 - (ii) if a notifiable event occurs; or
 - (iii) if there are any changes to the activities performed by the staff member or international visitor, including the timeframe to complete those activities.
 - (c) not commencing any appointment of a staff member or international visitor until the appropriate visa grant decision letter has been forwarded to Human Resources;
 - (d) not permitting visa holders to participate in activities that would result in non-compliance with their visa;
 - (e) requiring that visa holders maintain valid work rights; and
 - (f) directing their local faculty, school or organisational unit administrative support staff to:
 - (i) facilitate the submission of a single package of complete, accurate and legally certified visa documents to Human Resources;
 - (ii) if residential accommodation is included in the sponsorship agreement, assist in finding reasonable residential accommodation;
 - (iii) seeking Human Resources' advice if in doubt as to whether an event or situation is notifiable to DHA; and
 - (iv) work with Human Resources and the staff member or international visitor to maintain compliance with sponsorship obligations at all times.

Note: The lead researcher or supervisor must be a current staff member of the University. Honorary title holders or other affiliates may not invite or sponsor an international visitor.
- (3) **International candidates, staff members and visitors** are responsible for:
 - (a) applying for an appropriate Australian visa in a timely manner;
 - (b) providing the University with the visa grant notice issued by DHA prior to the commencement of activities or employment;
 - (c) complying with the conditions associated with the visa subclass which was granted;

- (d) notifying their supervisor and Human Resources of changes to activities or of any proposal to change activities during the period of association with the University;
- (e) notifying Human Resources immediately of any changes to their circumstances that affect the validity of their visa, for example:
 - (i) loss of employment, affiliation or association with the University;
 - (ii) breakdown in relationships between the primary visa holder and the secondary visa holder which may impact their work rights or the University's sponsorship obligation;
 - (iii) expiry of their visa or, if on a secondary visa, expiry of the primary visa holder's visa or employment; or
 - (iv) any other matter that may affect their work rights or legal entitlement to continue living in Australia such as visa cancellation;
- (f) providing updated details to Human Resources on receipt of their new passport or visa decision letter;
- (g) notifying their supervisor and Human Resources if unable to commence the activities at the agreed time or if the activities are completed earlier than expected;
- (h) working with Human Resources to comply with sponsorship obligations at all times; and
- (i) complying with the foreign interference laws of the [National Security Legislation Amendment \(Espionage and Foreign Interference\) Act 2018](#).

Note: See the [Foreign Interference article](#) in ServiceNow.

- (4) Human Resources is responsible for:
 - (a) providing information and advice to faculties, schools and organisational units in relation to:
 - (i) visas;
 - (ii) employer sponsorship; and
 - (iii) related compliance matters;
 - (b) preparing and lodging employer nomination applications with DHA on behalf of the University;
 - (c) liaising with visa applicants to provide information associated with the lodgement of visa applications; and
 - (d) working with the faculty, school or organisational unit and the staff member or international visitor to assist them to comply with sponsorship obligations and work rights at all times.

13 Rescissions and replacements

This document replaces the following, which are rescinded as from the date of commencement of this document:

- (a) Visa and Work Rights Policy, which commenced on 2 August 2011.

NOTES

Visa and Work Rights Policy 2022

Date commenced: 4 April 2022

Date amended: 20 April 2022

Administrator: Chief Human Resources Officer

Review date: 4 April 2027

Rescinded documents: Visa and Work Rights Policy adopted August 2011

Related documents: [Migration Act 1958](#)

[Migration Regulations 1994](#)

[Migration \(Skilling Australians Fund\) Charges Act 2018.](#)

[Migration Amendment \(Charging for a Migration Outcome\) Act 2015](#)

[National Security Legislation Amendment \(Espionage and Foreign Interference\) Act 2018](#)

[The University of Sydney Enterprise Agreement 2018-2021](#)

[University of Sydney \(Delegations of Authority - Administrative Functions\) Rule 2020](#)

[Affiliates Policy](#)

[Staff and Affiliates Code of Conduct 2021](#)

[Honorary Titles Policy 2013](#)

[Honorary Title Procedures 2013](#)

[Recruitment and Appointment Policy 2021](#)

[Travel Policy 2018](#)

[University of Sydney Staff Card Policy](#)

[Visa and Work Rights Procedures 2022](#)

AMENDMENT HISTORY

Provision	Amendment	Commencing
11(2)(b)	Addition of 'visa' to correct typographical error	20 April 2022
9(1)(b)	Addition of procedure clause for reference	20 April 2022