

VISA AND WORK RIGHTS PROCEDURES 2024

Issued by: Chief Human Resources Officer

Dated: 9 April 2024

Signature:

Name: Samantha Liston

PART 1 - GENERAL

1 Purpose and application

- (1) These procedures give effect to the <u>Visa and Work Rights Policy</u> ("the Policy") and apply to:
 - (a) staff and affiliates (including international visitors); and
 - (b) all activities conducted by and on behalf of the University.

2 Commencement

These procedures commence on 9 April 2024.

3 Interpretation

- (1) Words and phrases used in these procedures and not otherwise defined in this document have the meanings they have in the policy.
- (2) In these procedures:

Australian research project

a project that:

- is undertaken in an Australian institution in collaboration with Australian citizens or permanent residents;
- where any findings are provided to the Australian institution; and
- the University of Sydney is the lead research collaborator or benefactor of the research project.



de facto partner

a person who is in an unmarried relationship with the primary visa applicant, has a shared mutual commitment to the exclusion of all others and lives together as a couple (whether of the same sex or a different sex).

DHA

the Department of Home Affairs.

dependant

- dependent children who are aged under 18 years;
- dependent full-time students aged up to 23 years; or
- dependants who are elderly or over 18 years of age with a disability i.e. where the international candidate or international visitor is the primary care giver and the dependants normally reside with the international candidate or international visitor.

HEO

Higher Education Officer.

MLTSSL

the Medium and Long-term Strategic Skills List for an associated visa that can be granted for up to four years with unlimited renewal and pathway to a permanent resident visa, as determined by the relevant legislative instrument.

Principal Officer

has the meaning given in the <u>University of Sydney</u> (<u>Delegations of Authority</u>) <u>Rule</u>. At the date of these procedures, this is:

means any of:

- · Vice-Chancellor and President;
- Provost and Deputy Vice-Chancellor;
- Deputy Vice-Chancellor;
- · Vice-President;
- General Counsel;
- Chief Governance Officer.

recent graduate

a student who has graduated within 12 months from the date of submitting their visa application.

Skilled Occupation List

the list of occupations eligible for a visa sponsorship, as determined by the relevant legislative instrument.

STSOL

the Short-term Skilled occupations list where the maximum visa period granted is for two years with the possibility of a further two-year visa, as determined by the relevant legislative instrument.



4 Initiating visa activities

- (1) The faculty, school or organisational unit that seeks to employ an international candidate or invite an international visitor to the University must:
 - (a) determine the activities the person will undertake;
 - (b) determine the duration of the employment or visit;
 - (c) obtain all relevant supporting documents and approval from the relevant delegate(s);
 - (d) contact the <u>Immigration and Global Mobility Team</u> in Human Resources for advice about obtaining the correct visa;
 - (e) review the information:
 - (i) in the policy and in these procedures; and
 - (ii) on the <u>University website</u> for <u>affiliates</u> and <u>employment</u> of staff; and
 - (f) submit the request to Human Resources with a single package of complete, accurate and approved documents for processing.
- (2) A non-citizen who requires a visa cannot be employed by or affiliated with the University until the appropriate visa has been obtained.
- (3) When the visa holder receives the visa, the visa holder must:
 - (a) notify the supervisor and Human Resources; and
 - (b) provide a copy of the visa to Human Resources.
- (4) All visa holders, including staff members and visitors, must obtain a University card.
 - (a) Cards are issued by the Campus Card Centre.

PART 2 - SPONSORED VISAS

5 General

- (1) A faculty, school or organisational unit may nominate an international candidate or international visitor for a sponsored visa in accordance with the eligibility criteria set out in schedules one to five of these procedures.
- (2) A nomination may include the following dependants, where legislatively permitted:
 - (a) a spouse or de facto partner;
 - (b) dependent children of the primary visa holder; or
 - (c) dependent children of the main visa applicant's spouse or de facto partner.



6 Temporary Activity visa (subclass 408)

(1) Research stream

- (a) This visa is primarily used for international PhD-qualified academic researchers:
 - (i) who are known and respected international visitors;
 - (ii) with a significant record of research achievement; and
 - (iii) with expertise in the field of an Australian research project.
- (b) Academic researchers may be invited for the purpose of observing or participating in established Australian research projects but not to teach or present findings of research conducted overseas.
- (c) The faculty, school or organisational unit:
 - must consider the benefits the visitor will bring to the University prior to requesting sponsorship; and
 - (ii) may nominate the visitor under the Research Stream in accordance with the eligibility guidelines set out in **Schedule One**.

(2) Research student stream

- (a) Current or recently graduated students may be sponsored to visit the University to observe or participate in established Australian research projects but not to teach or present findings of research conducted overseas.
- (b) The faculty, school or organisational unit:
 - must consider the benefits the research student will bring to the University prior to requesting sponsorship; and
 - (ii) may nominate a visiting researcher under the research student stream in accordance with the eligibility guidelines set out in **Schedule Two**.

(3) Entertainment stream

- (a) An overseas visitor may apply for a visa to work in the entertainment industry in Australia as a performer in a theatre, film, television or radio production, concert, or recording.
- (b) If the overseas visitor applies for the visa outside Australia and the visit is for:
 - (i) less than three months, no sponsor is required; or
 - (ii) greater than three months, visa sponsorship is required.
- (c) If the visitor is already in Australia, visa sponsorship is required regardless of length of stay.
- (d) The faculty, school or organisational unit:
 - must consider the benefits the visitor will bring to the University prior to requesting visa sponsorship; and
 - (ii) must liaise with relevant unions, government, or non-government bodies to secure the relevant supporting documentation for the visa sponsorship.
- (e) The DHA generally grants this visa for the period of the event or nominated activity only.



7 Occupational Trainee Stream visa (subclass 407)

(1) A non-citizen may be sponsored to complete a structured and supervised training program or academic research training at the University.

Note: Often training at the University is undertaken as the technical or research component associated with the completion of a degree in the home country.

- (2) The faculty, school or organisational unit:
 - (a) must consider the benefits the trainee will bring to the University prior to requesting sponsorship; and
 - (b) may nominate a non-citizen in accordance with the eligibility guidelines set out in **Schedule Three**.

8 Temporary Skill Shortage visa (subclass 482)

- (1) International skilled workers may apply for a subclass 482 visa if they are offered full-time employment by the University in a specific nominated occupation. No minimum contractual period applies.
- (2) Part-time positions will only be considered for Academic Level E positions and under the following exceptional circumstances:
 - (a) where the nominated occupation allows multiple employers such as medical practitioners; or
 - (b) where the visa applicant is required to work only for the University while in Australia and maintain the legislative minimum salary known as Temporary Skilled Migration Income Threshold (TSMIT).
- (3) Subclass 482 visas are only available for occupations with a skill shortage in Australia and that are listed on the DHA's Skilled Occupation List:
 - (a) if an Australian citizen or permanent resident cannot be sourced for the position; and
 - (b) in accordance with the eligibility criteria set out in **Schedule Four**.
- (4) Subclass 482 visas are not available for an occupation with largely administrative tasks due to the availability of these skills in the Australian marketplace.
- (5) All academic levels are eligible for a subclass 482 visa nomination.
- (6) HEO level 8 is the minimum level that is eligible for a subclass 482 visa nomination.
- (7) The Chief Human Resources Officer, in consultation with the relevant Dean or equivalent, may approve the following HEO 6 or 7 positions for a subclass 482 visa nomination:
 - (a) Science, Technology, Engineering and Mathematics (STEM) related positions; or
 - (b) critical skills positions identified by DHA; and
 - (c) that are difficult to recruit in the local labour market.
- (8) The employment period for positions identified in the STSOL cannot exceed three and a half years or up to the period permitted under the legislation (whichever is the later date).



(9) The DHA may grant a subclass 482 visa for up to four years where a position is in the MLTSSL. The visa holder must apply for a subsequent subclass 482 visa where the employment period is greater than four years.

Note: See the <u>staff intranet</u> for further information.

(10) Labour market testing may be a mandatory component of the employer nomination in accordance with migration law.

Note: Labour market testing generally involves advertising the position in Australia. See the <u>DHA website</u> for more information.

- (11) To meet eligibility requirements, faculties, schools and organisational units may need to provide evidence of a recruitment campaign for a defined period of time, prior to lodging the employer nomination.
- (12) The hiring manager must provide a supporting statement, that has been endorsed by the relevant delegate, where an appointment or nomination is being considered for a subclass 482 visa sponsorship. The statement must address:
 - (a) a brief description of the position;
 - (b) the specialised and technical skills the nominated individual has specific to this position; and
 - (c) reasons an Australian citizen or permanent resident cannot be sourced.

Note: See **Schedule Four** for eligibility criteria for the subclass 482 visa.

9 Employee Nomination Scheme - Permanent Residency (subclass 186 visa)

- (1) A faculty, school or organisational unit may nominate a staff member for permanent residency at the University's discretion and in accordance with the eligibility criteria set out in **Schedule Five**.
- (2) HEO level 8 is the minimum level that is eligible for permanent residency support.
- (3) The **Temporary Resident Transition stream** is the University's preferred stream and may be offered if the staff member:
 - (a) has completed three years of full-time employment in their nominated position at the University within the previous four years under the Temporary Work (Skilled) subclass 457 or subclass 482 visa; and

Note: On 18 March 2018, the subclass 457 visa closed to new applicants.

- (b) is in the same occupation as would be used for the subclass 186 employer nomination.
- (4) The **Direct Entry stream** may be offered to staff or candidates on a case-by-case basis if the staff member does not meet the criteria for the Temporary Resident Transition stream.
- (5) The Chief Human Resources Officer, in consultation with the relevant Dean or equivalent, will determine if the University will nominate a staff member or international candidate for permanent residency where the individual does not meet the eligibility criteria set out in **Schedule Five.** This is subject to the staff member:
 - (a) meeting migration law eligibility criteria; and
 - (b) being successful in a competitive recruitment strategy; or



- (c) applying for a research grant or other external academic funding that requires permanent residency.
- (6) Eligible secondary visa dependent applicants must be included at the time of the University's nomination for permanent residency. Additional dependants cannot be added later.

Note: See subclause 5(2).

10 Nomination for exceptional talent visa

- (1) An individual may be sponsored for a visa on the basis of their exceptional talent and benefit to Australia, under pathways such as the:
 - (a) Global Talent Independent (GTI) program; or
 - (b) Global Talent Employer Sponsored (GTES) program.
- (2) To be considered for such sponsorship, an individual must:
 - (a) be offered at least a full time three-year fixed term position with the University in a STEM related role;
 - (b) meet the visa eligibility requirements;
 - (c) be supported by the relevant delegate who can attest, with a nominator statement in their visa application, to the individual's exceptional talent and benefit to Australia; and
 - (d) at the University's discretion, meet the eligibility criteria set out in Schedule Five.

PART 3 - NON-SPONSORED VISAS

11 Temporary Work (Short Stay Specialist) visa – subclass 400

- (1) Experts may be employed to participate in specialised work or cultural activities for less than three months to:
 - (a) deliver a presentation;
 - (b) collaborate in a research project;
 - (c) attend conferences;
 - (d) deliver master classes;
 - (e) give a keynote speech; or
 - (f) perform another similar activity.
- (2) The subclass 400 visa does not facilitate the short-term employment of academics to meet teaching or research requirements because a staff member is on paid or unpaid leave.
- (3) A faculty, school or organisational unit that seeks to engage a staff member under the Temporary Work (Short Stay Specialist) visa must contact Human Resources to discuss the eligibility of the potential visa holder before finalising any arrangements.



12 Visitor visas (subclasses 600, 601, 651)

- (1) The University may invite international visitors who require a temporary short stay visa to participate in:
 - (a) conferences or seminars;
 - (b) meetings; or
 - (c) job interviews.
- (2) An international visitor may be eligible for either the:
 - (a) Electronic Travel Authority (subclass 601);
 - (b) eVisitor (subclass 651); or
 - (c) visitor visa (subclass 600).
- (3) The nationality of the visitor will determine:
 - (a) which visa type they are eligible for; and
 - (b) how they will apply for the relevant visa.
- (4) The University will not:
 - (a) apply for a visa on behalf of an international visitor;
 - (b) allow a visitor visa holder to undertake any activity that does not comply with their visa condition; or
 - (c) pay a visitor visa holder for their participation in any activities performed for the University, other than a contribution to travel and living expenses.
- (5) The University may:
 - (a) contribute to a visitor visa holder's travel and living expenses whilst in Australia;
 - (b) provide an official letter of invitation that may be used to support the individual's visitor visa application.
 - Human Resources will prepare a support letter upon receipt of the appropriate approval and support documents from the relevant faculty, school or organisational unit.

Working holiday and work and holiday visa (subclasses 417 and 462)

- (1) Citizens of certain countries are eligible to obtain a working holiday visa or a work and holiday visa that allows an individual to combine a holiday in Australia with short periods of incidental employment.
- (2) Subclass 417 or 462 visas:
 - (a) limit the period of employment to a maximum of six months with each employer; and
 - (b) allow study or training for up to four months.
- (3) The University does not employ subclass 417 or 462 visa holders for more than six months:



- (a) this includes any period during that the individual was engaged by a recruitment or other agency to perform duties for the University; and
- (b) where a visa holder works part of one day (even if they worked for one hour only), they are deemed to have worked one day of work for the purposes of determining the six-month maximum work period.
- (4) The University does not allow occupational trainee appointments for more than four months. For training or study periods of greater than four months, the University requires an individual to obtain:
 - (a) a Training visa subclass 407; or
 - (b) Temporary Activity (Research Stream) subclass 408 visa.

14 Bridging visas and other miscellaneous visas

- (1) Staff may be employed on bridging visas or other miscellaneous visa subclasses if they can maintain work rights under the conditions of their visa.
- (2) The University is not obligated to sponsor a staff member to enable them to continue working. For example, the University will not sponsor a staff member who holds a bridging visa, but is unable to maintain their work rights because:
 - (a) their substantive visa application is denied; or
 - (b) the primary visa holder's visa or work right condition has expired.

PART 4 COMPLIANCE

15 Work rights

- (1) A person cannot commence a visiting appointment or any employment until they provide evidence of an appropriate visa, with the relevant right to work in Australia, to Human Resources.
- (2) Acceptable evidentiary documents to support the right to work in Australia includes any of:
 - (a) an Australian passport details page;
 - (b) a full Australian birth certificate (born before 20 August 1986);
 - (c) an Australian birth certificate (born after 20 August 1986), showing that at least one parent was born in Australia;
 - (d) an Australian citizenship certificate; or
 - (e) the visa grant notice including relevant conditions that allows the right to work in Australia.
- (3) In accordance with **subclause 11(2)(a)** of the policy, the University will only offer fixed term positions to staff members on temporary visas which extend beyond their visa expiry date, if they are eligible to be sponsored by the University for an employer sponsored visa in accordance with the **Schedules**.
- (4) In accordance with **subclause 11(2)(b)** of the policy, the University may only offer continuing positions to the following staff members:



- (a) Australian citizens; those who have applied for a visa in accordance with **Schedules Four and Five;** are holding an Australian permanent resident visa;
- (b) New Zealand citizens; individuals who are eligible to be sponsored by the University for an employer sponsored resident visa in accordance with Schedules Four and Five; or
- (c) individuals who meet the conversion criteria under the <u>National Employment</u> <u>Standards</u> of the *Fair Work Act* or <u>clauses 81 90</u> under the *Enterprise Agreement 2023 2026*.

Note: Contact your <u>HR Partner</u> for more information about the conversion provisions.

16 Employer obligations

- (1) The University must meet all obligations as a sponsor of visa subclasses.
- (2) **Temporary Skill Shortage visa (subclass 482).** The University's sponsoring faculty, school or organisational unit must:
 - (a) provide terms and conditions of employment to the sponsored staff member that are no less favourable than:
 - (i) the terms of the nominated position declared at the time of nomination; or
 - that of an Australian performing equivalent work in the same location e.g. in the same faculty, school or organisational unit or on the same campus;
 - (b) confirm that the sponsored 482 visa holder works only in the nominated activity and will not offer the visa holder any additional part-time or casual appointments;
 - (c) not recover, or seek to recover from the staff member any sponsorship cost;
 - (d) notify the University's <u>Immigration and Global Mobility team</u> before any changes or cessation of the activity occurs, such as, but not limited to:
 - (i) leave without pay;
 - (ii) reduction in salary or hours;
 - (iii) or change in position, within the specified period stated on the <u>University website;</u>

Note: Refer to section on Employer obligations on the <u>University website</u>.

- (e) if requested in writing either by the sponsored visa holder or DHA, within 30 days, arrange or pay economy class air travel, or the reasonable equivalent, to the sponsored visa holder and their accompanying family members to return them to their country of passport; and
- (f) if requested in writing by DHA, pay for costs incurred by the Commonwealth in locating and/or removing the sponsored staff member from Australia.
- (3) **Temporary Activity visa (subclass 408).** The University's sponsoring faculty, school or organisational unit must:
 - (a) provide terms and conditions of the nominated position that are no less favourable than:



- (i) the terms of the nominated position declared at the time of nomination; or
- (ii) that of an Australian performing equivalent work in the same location e.g. in the same faculty, school or organisational unit or on the same campus;
- (b) confirm that the visa holder works only in the nominated activity, therefore no part-time or casual appointment is permitted;
- (c) not recover, or seek to recover, from the visa holder any sponsorship cost;
- (d) inform the University's <u>Immigration and Global Mobility Team</u> at least 10 working days before any changes or cessation of the activity occurs; and
- (e) pay for costs incurred by the Commonwealth in locating and/or removing the sponsored staff member from Australia, if requested in writing by DHA.
- (4) **Training visa (subclass 407).** The University's sponsoring faculty, school or organisational unit must:
 - (a) not send an official invitation letter to the sponsored visitor, as this is provided by Human Resources;
 - (b) direct the sponsored visitor to only participate in the nominated program and activity;
 - (c) not recover, or seek to recover, from the sponsored visitor any sponsorship cost;
 - (d) notify the University's <u>Immigration and Global Mobility Team</u> at least 10 working days before any changes or cessation of the activity occurs;
 - (e) pay for costs incurred by the Commonwealth in locating and/or removing the sponsored visitor from Australia, if requested in writing by DHA; and
 - (f) offer assistance with sourcing and securing a reasonable standard of accommodation to visitors sponsored under the Occupational Trainee stream who will not be paid a salary for their training.

17 Rescissions and replacements

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

(1) Visa and Work Rights Procedures 2022, which commenced on 17 March 2022.



NOTES

Visa and Work Rights Procedures 2024

Date adopted: 9 April 2024

Date commenced: 9 April 2024

Administrator: Chief Human Resources Officer

Review date: 9 April 2029

Related documents:

Fair Work Act 2009

Migration Act 1958

Migration Regulations 1994

The University of Sydney Enterprise Agreement 2023-2026

University of Sydney (Delegations of Authority) Rule

Affiliates Policy

Staff and Affiliates Code of Conduct

Honorary Titles Policy

Honorary Titles Procedures

Recruitment and Appointment Policy

Travel Policy

Visa and Work Rights Policy

AMENDMENT HISTORY

Provision Amendment Commencing



SCHEDULE ONE

UNIVERSITY ELIGIBILITY CRITERIA - TEMPORARY ACTIVITY VISA

RESEARCH STREAM (SUBCLASS 408)

CRITERIA	Compulsory	Discretionary
The international candidate or visitor is invited to observe, collaborate or participate in an Australian research project (in Australia) no less than 20 hours per week	✓	
The international candidate or visitor must have a significant record of research publication and expertise in the area of research	✓	
The international candidate or visitor must be employed or have been employed as an academic at a tertiary or research institution and hold or have held a senior academic title	✓	
The international candidate or visitor must demonstrate the appropriate skills, English language proficiency, experience and qualifications necessary to undertake the position	✓	
The visit is approved by the relevant delegate or equivalent	✓	
The international candidate or visitor must not be paid a salary other than discretionary allowance if sponsored as an affiliate		✓
The appointment period may be up to 24 months		✓



SCHEDULE TWO

UNIVERSITY ELIGIBILITY CRITERIA - TEMPORARY ACTIVITY VISA

RESEARCH STUDENT STREAM (SUBCLASS 408)

CRITERIA	Compulsory	Discretionary
The international visitor is invited to observe, collaborate or participate in an Australian research project (in Australia)	✓	
The international visitor must either be: currently enrolled at an overseas institution in a PhD or master's by research program; or graduated within 12 months from an overseas institution	✓	
The international visitor must demonstrate the appropriate skills, English language proficiency, experience and qualifications necessary to undertake the position	✓	
The visit is approved by the delegated officer	✓	
The international visitor must not be paid a salary other than a discretionary allowance for research related affiliate appointments		√
The appointment period may be up to 24 months		✓



SCHEDULE THREE

UNIVERSITY ELIGIBILITY CRITERIA - TEMPORARY ACTIVITY VISA

OCCUPATIONAL TRAINEE STREAM (SUBCLASS 407)

CRITERIA	Compulsory	Discretionary
International visitors who have either: • completed their study within the previous 24 months and intend to undertake occupational training activities to develop and improve their skills in an eligible occupation:	✓	
Clinical students undertaking 16 weeks of clinical placement in the clinical schools within the University	✓	
The occupational trainee must demonstrate vocational level of English language skills (equal to IELTS 5 in each component of testing) unless exempted. Note: Countries exempted from meeting the English language requirement - Canada, New Zealand, Republic of Ireland, United Kingdom and the United States	√	
The visit is approved by the delegated officer	✓	
The occupational trainee must demonstrate the appropriate skills, experience and qualifications necessary to undertake the activities	✓	
The position is highly skilled and is on the eligible skilled occupation list	✓	
The trainee can be paid a salary which must be negotiated before the visa sponsorship is submitted. However, a visitor who is sponsored under this subclass as an affiliate cannot be paid a salary.		✓



SCHEDULE FOUR

UNIVERSITY ELIGIBILITY CRITERIA - TEMPORARY SKILL SHORTAGE

(SUBCLASS 482)

CRITERIA	ACADEMIC	PROFESSIONAL
The sponsored position must be full-time	,	,
Note: Exemptions may apply for Academic Level E positions that allow part time employment under exceptional circumstances set out in subclause 8(2).	✓	✓
The position must be available on the skilled occupation list	MI TSSI	MLTSSL
The position must be available on the <u>skilled occupation list</u>	WILTOOL	OR STSOL
The staff member must demonstrate vocational level of English language skills equal to IELTS 5 in each component of testing (unless otherwise set by the DHA) or hold a passport from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America.	✓	✓
The visa sponsorship is approved by the delegated officer.	✓	✓
The staff member demonstrates appropriate skills, experience and qualifications necessary to undertake the position	✓	✓
The roles must be advertised as part of a competitive recruitment campaign		✓
Appointment on nomination positions may be considered for 482 sponsorship in limited circumstances with the provision of a supporting statement	√	
Note: See subclause 8(9) for matters to be addressed in statement from hiring manager, endorsed by relevant delegate		



SCHEDULE FIVE

UNIVERSITY ELIGIBILITY CRITERIA - EMPLOYER SPONSORED PERMANENT RESIDENCY

(SUBCLASS 186)

CRITERIA	ACADEMIC	PROFESSIONAL
The staff member holds a full-time employment contract with at least three years employment remaining from the commencement of the sponsorship process.	√	√
Note: The employment period may increase to reflect the visa processing time by DHA. This will be advised on the University's website.	ŕ	
The staff member must demonstrate English language proficiency in accordance with the visa eligibility requirements and provide such as evidence to the University as part of the University's sponsorship assessment and support.	✓	✓
The position must be on the MLTSSL	✓	✓
A staff member who is seeking permanent visa sponsorship after commencing with the University must have completed an AP&D/PP&D Review (with at least a satisfactory rating).	✓	✓
A letter of recommendation from the supervisor must be supplied before the application is considered. This letter must be endorsed by an Executive Dean, Deputy Vice Chancellors or other Portfolio Heads of an operational area as appropriate.	✓	✓