



WORK IN PROGRESS

GUIDELINES TO WORKING IN AUSTRALIA



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HISTORY

NOMIT Inc. (Network of Melbourne & Italy) is a not-for-profit organisation based in Melbourne, dedicated to assisting the new generation of Italian immigration and promoting the renewal of Italian cultural representation in Melbourne and Australia.

Nomit is a social and cultural hub, creating a bridge between Australia and Italy.

With this in mind, Nomit activated Welcome Desk in June 2013. The service is aimed at newly arrived Italian migrants and, generally at people needing assistance integrating in Australia. Nomit offers free and individual assistance in areas like housing, Medicare, study in Australia, visas, working in farms and much more, trying to promote a healthy and conscious approach that is at a mutual benefit for both Italians and Australians.

Based at the Italian General Consulate, Nomit volunteers have assisted hundreds of fellow Italians, dedicating over 750 hours of one-on-one assistance and countless hours to online assistance.

From this experience and the stories we have been told, Nomit has decided to dedicate special attention to work related issues on workers' rights, labour market and career development in Australia as well as promoting awareness of the existing Australian institutions responsible for the protection of workers' rights.

This guide is to be considered the first step of a process that will facilitate accessing and understanding the current regulatory system in Australia. The ultimate goal is to bestow information to ensure a fair and informed participation in the Australian workforce.

This guide, realised with the support of the Victorian Multicultural Commission, celebrates the third edition of Nomit annual work forum "Work in Progress", and can be considered as a milestone with which we put our understanding at the service of the other communities in Melbourne and Victoria. Nomit believes that sharing awareness and correct information is the basis of a healthier multicultural society.

This paper contains general information applicable to the publication date (April 2017) and is not to be considered as advice for specific cases. For the latter, it is advisable to seek appropriate legal advice and assistance.

Ad Maiora,
Nomit Board

1.

TEMPORARY VISAS & WORK

1.1. WORKING HOLIDAY VISA

What are the possibilities & limitations?

The Working Holiday Visa allows young people of countries from which there is an agreement of reciprocity, who are at least 18 and not yet 31 years of age, to be able to travel in Australia whilst working to cover some of the travel expenses.

However, if one's intentions were to find a more stable and permanent job in Australia, then the Working Holiday Visa may not be ideal, given some of its limitations.

With the Working Holiday Visa there is the possibility to have temporary residence in Australia for a period of 12 months, with the possibility of extending the period of stay by a further 12 months, in which case the 'Working Holiday maker' must have completed a minimum of 88 days of working activities within nominated sectors (eg. Agricultural work, working in mines etc.) and within the so-called "Regional Areas."

With the Working Holiday Visa it is possible to work only for a maximum period of time of 6 months for the same employer. This limitation, which at first could appear irrelevant, can make it more difficult to find a job in some sectors.

Some work places could, in fact, not be interested in investing time in training an employee if they are only able to work for 6 months.

For updates it is advised to visit the relevant section of the Department of Immigration and Citizenship: www.immi.gov.au/Visas/Pages/417.aspx

1.2. INTERNATIONAL STUDENTS

What are the conditions of work?

If one is in Australia for study and wishes to work to support themselves at the same time, it is important to be aware that there are different types of student visas, which vary depending on the type of study to be undertaken.

Broadly speaking, an international student who decides to work can do so for a maximum of 40 hours every fortnight during the academic semester and for a limited number of hours in the period between semesters.

There are particular exceptions to the limit of hours of approved work in the context of a university course and the case of voluntary work.

The stated limitations do not apply in the case of university courses of an advanced level such as Master's or Doctoral degrees.

*For updates it is advised to visit the relevant section of the Department of Immigration & Citizenship:
http://www.immi.gov.au/students/students/working_while_studying/conditions.htm*

1.3. ABOLITION AND REPLACEMENT OF THE 457 VISA.

Government reforms to employer sponsored skilled migration visa

On 18 April 2017, the Government announced that the temporary (Skilled) visa (subclass 457 visa) will be abolished. This visa allowed (and will allow in the interim), at certain conditions, workers whose profession was included on certain list of qualified occupations, to be sponsored up to a maximum of 4 years.

Amongst the changes, many professions will be cut from the list.

In particular the so called "457 Visa" will be replaced with the new Temporary Skill Shortage (TSS) visa.

The TSS visa programme will be comprised of a Short-Term stream of up to two years and a Medium-Term stream of up to four years and will support business in addressing genuine skill shortages in the workforce and will contain a number of safeguards which prioritise Australian.

*It is advised to visit the relevant section of the Department of Immigration & Citizenship:
<http://www.immi.gov.au/Visas/Pages/457.aspx>*

2.

USEFUL INFORMATION TO COMMENCE WORKING

2.1 LOOKING FOR A JOB

What do I need?

It will be necessary to apply for a Tax File Number (TFN), the equivalent of the Italian 'codice fiscale,' at an Australian Taxation Office (ATO) or through the website:

<http://www.ato.gov.au/individuals/tax-file-number/applying-for-a-tfn/>, and open a bank account.

In the case in which the job entails of self-employment, it will be necessary to apply for an Australian Business Number (ABN), the equivalent of the Italian 'partita IVA,' also at an ATO or directly at the following website:

<http://www.ato.gov.au/business/australian-business-number/in-detail/registration/abn-registration-for-individuals---sole-traders/>

2.2 ****WARNING**** JOB HUNTING TRAPS

During the job search it is important to not allow oneself to be fooled into accepting a job that does not include any pay during the probation period.

According to a study conducted by Job Watch (independent entity for the protection of workers' rights in the state of Victoria, (see para 5.3) one of the most common traps is that of the Unpaid Trial Work.

Therefore, it is important to know that everyone has a right to adequate working conditions, even during the trial period, more specifically the right to:

- a healthy and safe work environment;
- the minimum terms and conditions of employment (see para 3.4);
- a salary in accordance to the minimum wage;
- payslips with regular tax deduction from the gross salary;
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- payment of contribution to superannuation (if applicable);
- trade union membership;
- work insurance cover for occupational illness or injury;
- a workplace environment devoid of discrimination.

3.

THE RIGHTS & OBLIGATIONS OF THE (FOREIGN) WORKER IN AUSTRALIA

3.1

How are workers' rights regulated in Australia?

The Australian workers' rights are currently regulated primarily through the relevant legislation in effect at federal level, except for certain matters, which continue to be under state jurisdiction not only by common law developed through the federal and state courts.

The current legislation on workers' rights at federal level is the Fair Work Act 2009. Of fundamental importance there are, in addition, the Modern Awards in the law force that apply to workers employed in a specific sector.

In the state of Victoria the following laws also apply: Occupational Health and Safety Act 2004 (Vic); Accident and Compensation Act 1985 (Vic); Workplace Injury Rehabilitation and Compensation Act 2013 (Vic); Equal Opportunity Act 2010 (Vic); Racial and Religious Tolerance Act 2001; Charter of Human Rights and Responsibilities 2006.

3.2

Who is identified as a foreign worker in Australia and what are their fundamental rights?

All those that are not Australian Citizens or permanent residents of Australia and have a temporary Visa for an extensive period of time, allowing them to partake in employment in Australia, are considered foreign workers.

Excluded in this category are tourists that usually don't have the permit to work but may instead can be included in other Visa categories such as that of the Working Holiday Visa for young people of and between 18 and 30 years of age (see para 1.1), the seasonal workers, or international students which in general are allowed to partake in part-time employment (see para 1.2).

As a matter of principle, all people that work in Australia benefit equally from the fundamental rights and fundamental protections of their employment regardless of their status of residency or citizenship. On the other hand, foreign works are required to comply to the particular conditions and limitation of the Visas.

Within the fundamental work rights, Australia recognises through legislation the international rights established by the International Labour Organization (Organizzazione Internazionale del lavoro) (OIL), including the freedom of association and enterprise agreement, the abolition of forced labour, the prohibition of all forms of discrimination and the respect of equal opportunities between men and women.

Lastly, in general, and subject to certain exceptions, each employer is required to contribute a minimum equivalent of 9.5% towards the worker's superannuation. In Australia the superannuation system of the worker's earned income is not provided by a governmental entity (like INPS in Italy) but from private funds.

3.3

What are the primary obligations of the employer and the employee?

In addition to being established explicitly through legislative provisions, there are some rights and privileges that apply in the work place environment and working relationship. These obligations implicated to workers and employers are the product of the judicial evolvement over the years.

In general, the employer is legally bound to: pay the salary; maintain workplace safety to prevent injury of the workers; and to treat the employee with loyalty and respect to maintain the integrity of the trust within workplace relations.

On the other hand, the employee is required to: complete their duties with diligence and professionalism; oblige to all instructions of the employer within reasonable and legitimate limits; and act in the best interest of the employer to avoid causing any damages to the enterprise.

3.4

What are the fundamental rights with respect to working conditions?

The workplace rights are, firstly, defined by 'National Employment Standards' (NES). These minimums can be, generally, improved through a 'Modern Award' or 'Enterprise Agreement,' as well as in regards to the individual contract 'Workplace agreement,' that can be in both written or verbal form.

There is also the possibility – under certain circumstances (workers with disabilities, parent of school-aged children, over 55 etc.) – to create other forms of agreement flexible to their individual needs.

The National Employment Standards require 10 minimum workplace rights:

- 1 A working week constitutes of a maximum of 38 hours of work for full-time employees plus a 'reasonable' number of additional work hours.
- 2 The right to request flexible working conditions.
- 3 Parental leave or for adoptive parents of 12 months (unpaid) with the right to request an additional 12 months.
- 4 Four weeks of annual leave paid yearly (proportional to the hours of work undertaken).
- 5 Ten days of paid leave for illness/ carers each year (proportional to the hours of work undertaken), and 2 days of paid leave for serious family reasons per permitted circumstances and 2 days unpaid leave for carers per permitted circumstances.
- 6 Leave for social contribution for jury duty service or for civil protection services in the case of emergencies or natural disasters. This leave is unpaid, with the exception of jury duty services.
- 7 Long service leave.
- 8 Public Holidays and the right to receive the pay that would normally be owed for a working day.
- 9 Prior notice of termination of employment and fair treatment.
- 10 The right for new employees to receive the Fair Work Information Statement.

Finally, according to the current system, the minimum wages are established within the above stated Modern Awards (see para. 3.1) and are regulated and adjourned by the appropriate organisation constituted within Fair Work Commission (see para. 5.3).

Each organisation/ workplace establishes internally the minimum salary/wage for the employees not covered by the above stated awards that, from July 2016, amounts to \$17.70.

For updates refer to the Fair Work Commission website: <http://www.fwc.gov.au/index.cfm>

Note:

There are conditions and/ or restrictions of entitlement to minimum employment standards depending on seniority of service, or in the case of workers who are not employed on a permanent or full-time basis. The NES and other important information on work relations included within the "Fair Work Information Statement" (document that provides information on the subject of Fair Work, in particular that of fairness in work relations) that each worker has the right to receive at the commencement of employment, together with other information available in Italian on the Fair Work Ombudman website (see para. 5.3)

<http://www.fairwork.gov.au/languages/Italian---Italiano/italian>

For further information, contact the Fair Work Infoline on 13 13 94 or visit the website www.fairwork.gov.au

4.

TYPES OF EMPLOYMENT CONTRACTS & THE DIFFERENCES BETWEEN INDEPENDENT CONTRACTORS & EMPLOYEES

What are the differences between full-time, part-time and casual employment?

The full time employee works 38 hours a week, generally with a permanent contract and benefits from all conditions set by standard national award and enterprise agreements.

The part-time employee works an average less than 38 hours a week, generally on a permanent contract with the same number of hours, benefitting from the same entitlements of a full-time worker in proportion to the hours of work undertaken.

The casual employee is paid according to the number of hours worked without guarantee of ongoing employment. Due to the irregular and flexible nature of employment, not all benefits and entitlements of the award apply to the casual employee. In particular, the casual employee is paid by the hour, and is not entitled to annual leave, sick leave or the right to prior notice of termination of employment.

To compensate for the above and other general benefits, casual employees are paid a higher hourly rate called 'casual loading.' In any case, enterprise agreements and awards could recognise certain rights that casual workers would not be usually entitled to like for example, long service leave, parental and/ or family leave, a minimum of work hours guaranteed, and the right to prior notice of termination of employment.

The casual worker is nevertheless guaranteed protection against injuries, discrimination and the general safeguard in case of dismissal and the right of freedom of association.

4.2

Who is an employee and who is an independent contractor? What is sham contracting?

An employee undertakes work tasks under the direction of the employer in exchange of a salary.

The work agreement is defined by enterprise contracts and/or individual contracts complying with national standards.

An independent contractor generally uses their own tools/equipment and defines their own working hours and ways to undertake work based on specific project contracts.

Sham Contracting in Australia, as also happens in Italy, occurs when employers disguise an employee contract with an independent contract to avoid financial obligations and legal responsibilities. This phenomenon is called "sham contracting" and is illegal. The Australian law (Fair Work Act 2009 Cth and relative legislation) protects employees even when not defined so in a contract.

5.

PROTECTIONS

5.1

What are the general protections?

The general protections cover employees against adverse action or coercion by an employer that can be taken against an employee in relation to their workplace rights such as:

- Conditions of work (including minimum award salary and the right to take leave)
- Freedom of association
- Freedom from any form of discrimination

Particularly prohibited are any form of discrimination for the following attributes: race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family carer responsibilities, pregnancy, religion, political opinion, national extraction, or social background.

Among the adverse actions are included: dismissal, non-recruitment and demotion.

5.2

What entitlements owed in the case of termination of employment?

The termination of employment relationship can happen for a variety of reasons including employee resignation, redundancy or dismissal.

At the termination of employment, each employee should receive the end of employment payment including any outstanding wages, severance pay entitlements if applicable and payment for accrued annual leaves.

In addition to the protection for unlawful termination under the Commonwealth Workplace Law an employee has protection from unlawful termination under the Fair Work Act (2009) provisions.

The law considers unlawful termination when the employee is dismissed for harsh, unjust or unreasonable reasons. In the event of unlawful termination, the employee can apply to the Fair Work Commission (see 5.3) to obtain to be reinstated in the workplace (rarely obtained) or to obtain compensation. The applications must be made within 21 days of the termination.

In general, the employees covered for unlawful termination by the legislation are employees of workplaces with more than 15 staff and more than 6 months of employment or employees of workplaces with less than 15 staff with more than 12 months of employment that receive an yearly salary of less than \$ 138,900 a year.

For updates it is advised to visit the relevant page of the Fair Work Commission website <http://www.fwc.gov.au/index.cfm?pagename=dismissalseligibility>

5.3

Which organisations work for the protection of workers' rights in Australia?

Within the organisations that work for the protection of workers' rights there are:

Fair Work Ombudsman: is an independent statutory office with jurisdiction set out in the Fair Work Act 2009 that provides educational services to employers and employees about workplace entitlements and obligations with the aim to guarantee compliance with workplace laws. Fair Work Ombudsman is also authorised, in some circumstances, to take actions against employers, employees and/or their representatives when workplace laws are breached.

For further information call 13 13 94 (Fair Work Info line) or the Telephone Interpreter Service (TIS) on 13 14 50 or visit the website www.fairwork.gov.au.

Fair Work Commission: is the national workplace relation tribunal covering the work relationships complying with the Fair Work Act 2009. The Fair Work Commission is an independent organisation that has the power to conduct initiatives to maintain workplace entitlements relating to minimum wages and employment conditions. The organisation also assists with bargaining, union disputes, workplace disputes, employment relationship resolutions and other workplace requests.

For further information visit the Fair Work Commission website www.fwc.gov.au or contact the Fair Work Commission Helpline on 1300 799 675.

Victorian Equal Opportunity and Human Rights Commission: The Commission for Equal Opportunity and Human Rights of the state of Victoria offers a variety of services including an Enquiry Line for information on cases of discrimination and sexual harassment in the workplace as well as dispute resolution services.

For further information visit the website www.humanrightscommission.vic.gov.au or call the following number: 1300 292 153 or (03) 9032 3583. Or email enquiries@veohrc.vic.gov.au

Victoria Legal Aids: depending on individual circumstances, this department provides general information or legal assistance in relation to certain specific matters concerning the protection of certain rights in the workplace.

For further information visit the website www.legalaid.vic.gov.au or call: 1300 792 387 or (03) 9269 0202 (for assistance in Italian).

Australian Human Rights Commission: an independent statutory organisation authorised to investigate discrimination and violation of human rights.

For further information visit the website www.humanrights.gov.au or call: (02) 9284 9600; Complaints Info line: 1300 656 419; General enquiries and publications: 1300 369 711.

For information about the Australian Unions please call the Unions Australia Helpline on 1300 486 466 or the ACTU Worker Information line on 1300 362 223.

Please also take note of the service of assistance for workers in the state of Victoria provided by Job Watch, who's website address www.jobwatch.org.au/, email address jobwatch@jobwatch.org.au and phone number is: 9662 1933 (for Melbourne Residents); 1800 331 617 (for Country Victorian residents).

Community Legal Services: Is a local free legal assistance service for people that live (or in some cases study and/ or work) in a particular area. For a list of Community Legal Services offered in the state of Victoria, visit the website of the Federation of Community Legal Centres www.fclc.org.au/find_a_clc.php:

In addition, please note the Community Legal Services with specific experience in the field of workers' rights: WEstjustice (<http://www.westjustice.org.au/about-us>)

For questions regarding superannuation, please call the Australian Tax Office's Superannuation Hotline on 131 020. For questions regarding independent contractors, please contact the Department of Industry on the following number: 1300 667 850. For questions regarding work safety please contact the following entities in each state or territory:

- New South Wales – WorkCover NSW 13 10 50
- Victoria – WorkSafe Victoria 1800 136 089
- Queensland – WorkCover Queensland 1300 362 128
- Western Australia – WorkCover Western Australia 1300 794 744
- South Australia – SafeWork SA 1300 365 255
- Tasmania – Workplace Standards Tasmania 1300 366 322
- Australian Capital Territory – WorkCover ACT (02) 6205 0200
- Northern Territory – NT WorkSafe 1800 019 115.

Finally, to get in contact with a law firm or lawyer, contact the Law Institute of Victoria (www.liv.asn.au/Referral) on (03) 9607 9550

THANK-YOU

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