



MMMIGRATION
SUITE 102, LEVEL 1, 22 MARKET ST
SYDNEY, NSW 2000 AUSTRALIA
TEL +61 2 92990203 FAX +61 2 92999214
INFO@MMMIGRATION.COM.AU
WWW.MMMIGRATION.COM.AU

Information for employers of overseas persons who hold a Training & Research Visa Occupational Trainee Stream (TRV) (Class TH Subclass 402)

What is an TRV?

The Department of Immigration and Citizenship (DIAC) permits overseas persons the opportunity to undertake a work-based training program in Australia on an Training & Research Visa (TRV).

The TRV is a temporary visa that usually allows the holder to remain in Australia for a period of up to 1 year. During this time the visa holder must partake in the approved training program and abide by all conditions placed upon the visa.

The TRV is frequently referred to as the “subclass 402” visa. All visas for Australia are detailed by a “class” (always 2 letters) and a “subclass” (always 3 numerals).

How Does the TRV operate in practise?

The TRV is a legally “sponsored work visa”, this means that:

- There are three stages to the application process
- There are obligations required of the approved sponsor
- DIAC has the power to monitor the approved sponsor and to impose sanctions if the approved sponsor is found NOT to be fulfilling its obligations. Generally speaking DIAC will help the approved sponsor rectify any short comings if there are found to be any.

The three stages of the application process:

1. An application to be an approved occupational trainee sponsor.

This application ensures that the business, organisation or government entity that wishes to sponsor an occupation trainee is legitimate and has the capacity to meet the sponsorship obligations. It's important to note that it is the approved occupational trainee sponsor who must abide by the sponsorship obligations

2. An application for nomination of an occupational training position.

This application requires identification of the occupation for which the work-based training program is constructed. DIAC has a list of approved occupations. The application also requires identification of the “training stream” and there are three of these:

- Stream 1: Occupational training required for registration
- Stream 2: Structured training to enhance skills in an eligible occupation
- Stream 3: Workplace-based training for capacity building overseas

DIAC will require evidence that a legitimate work-based training program is part of one of these streams. It is important to note that a work-based training program should not include less than 70% of the training program in the work place. DIAC



also does NOT like work-based training programs that also deliver a qualification per the AQF.

The entity that is also the occupational trainee sponsor will ALSO prepare and lodge the application for nomination.

A training program will generally always include an employer who provides the work place for the occupational trainee to undertaking the training program.

This employer will often not be the occupational trainee sponsor. Thus, this employer may not have direct obligations to DIAC however this employer will have the obligations of providing correct workplace conditions of employment or traineeship to the occupational trainee.

3. The third stage in the process is an application of an Occupational Trainee (Class TH Subclass 402 Visa).

This application is prepared and lodged by the actual person who is applying for the visa. It's important to note that DIAC will only approve the visa application if DIAC has also approved the applications for sponsorship and nomination.

Some examples of evidence that the visa applicant must show to DIAC include:

- Evidence that the visa applicant is a genuine applicant for the purposes of an TRV application
- Evidence that the visa applicant has adequate health insurance
- Evidence that the visa applicant meets health and character requirements
- Evidence that the visa applicant has substantially complied with the conditions of any previous visa held.

If DIAC decides to “grant” or approve the overseas person a visa, that person must comply with those conditions and take part in the occupational training program, failure to do so could lead to cancelation of the visa by DIAC.

What obligations or responsibilities does an employer have IF the employer is taking part in the occupational training program?

An employer who is providing the work place an occupational training program, such as a commercially run Early Child Care Centre which is providing the work place a training program for a Child Care Centre Coordinator, need NOT be the approved sponsor and therefore this employer does NOT have direct sponsorship obligations to DIAC.

The approved sponsor is the entity that maintains those obligations to DIAC, thus the approved sponsor is ultimately responsible for the correct roll-out of the occupational training program in the work place.

It is extremely important that the approved sponsor and the employer that is providing the work-based training program are in agreement with the training program and understand their responsibilities to each other and their responsibilities to the occupational trainee.

Neither the approved sponsor nor the employer providing the work-based training program should expect the visa holder to necessarily understand how the TRV program operates.

In many ways the employer that is providing the work place based training has the same responsibilities and statutory obligations as the employer would have to an Australian employee who may be entering the skilled work force or who is employed as a trainee or whose contract of employment includes a component of training.



The employer who is providing the workplace based training must ensure that the occupational trainee is receiving his or her correct entitlements per any relevant state or federal award and that the employer is compliant with any relevant section of the Fair Work Act and the National Employment Standards including providing a safe and non-discriminatory workplace

The employer should be aware that non-compliance with any of the above could lead to DIAC making a finding of “Adverse Information” about the employer which may impact any applications that the employer may wish to make in relation to sponsorship or nomination of an overseas skilled worker.

Overseas persons generally have full access to Australian agencies such as the Fair Work Ombudsman, Anti-discrimination authorities etc.

The occupational trainee also has the responsibilities to abide by the conditions indicated on the visa and take part in the occupational training program. The occupational trainee is NOT permitted employment outside of the program and must NOT change programs.

If the occupational trainee ceases to partake in the training program then the employer should notify the approved sponsor.

We reiterate that it is extremely important that the employer and the approved sponsor ensure that the occupational trainee understands his or her responsibilities, obligations and rights in relation to DIAC and to the employer.

The relationship between the approved sponsor and the employer must be transparent and permit flow of communication so that each entity understands the legal and regulatory requirements by which each is obligated.

The approved sponsor should clearly explain the training program to the employer and ensure that the employer understands that ultimately this is a work-based training program and not simply a way to get an overseas worker.

Given that the employer is actually taking on an occupational trainee through a training plan provided by an approved sponsor, the employer and the approved sponsor may need to negotiate where liability actually rests in terms of the contract of occupational training position/employment and liability in the workplace.

Ultimately employers who are able to provide a work-based training program for an occupational trainee are likely to be very satisfied by the enthusiasm and diligence of overseas trainees who have acquired a qualification in Australia. If an employer is particularly pleased with an occupational trainee there may be other visa available for that person to remain with that employer once the training program has been completed.