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LAWYERS

Sponsoring Workers & Visitors For Churches and Religious Charities

Simon Mason, Associate

Webinar

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CORNEY & LIND
LAWYERS

Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 19 lawyers + 40 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial Litigation

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care, attention and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



About Me



Name: Simon Mason

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Simon completed his combined Bachelor of Arts and Bachelor of Laws from the University of New England and upon completing his Graduate Diploma of Legal Practice, he was admitted to legal practice in 2016. He is currently pursuing a Master of Laws at the Australian National University.

Since his admission, Simon has worked in various areas of law, primarily focusing on complex immigration, citizenship and refugee law matters. He has worked as a part of the Claims Assistance Providers (CAPS) with the offshore refugee cohort in the Nauru jurisdiction and been involved with a wide range of immigration matters throughout the complexities of COVID19.

Simon regularly provides Community Legal Education seminars to culturally diverse groups in the Brisbane region.

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What this Webinar Will Cover

Options for Short-term Visitors, Speakers, Entertainers, Volunteers and/or Consultants

- There are a number of visa options for specific purpose visits.

Options for Medium-term Religious Workers

- The primary path here is the Religious worker stream of the Subclass 408.
- We also look at creative options for part-time workers under a student visa.

COVID-19 Specific Travel Restrictions

- There is a specific travel exemption currently available for highly skilled religious workers.

Options for Medium to Long-term Workers

- There is a specific pathway for Ministers of Religion and Religious Assistants.
- There are a number of visa pathways for occupations associated with the work performed by religious organisations that religious organisations may wish to consider.



Department of Home Affairs

Visa Application Assessment

- Visas are progressively more scrutinised the longer their visa stay period.
- Certain developing countries have a high non-return rate and consequentially are scrutinised more closely than others.
- Visa Applications are a check-listed processes but ALSO require you to craft a persuasive narrative.
- Refusals are not fatal to long term prospects as long as you are not refused on the basis of character, identity or fraud

Organisational Reputation

- Managing your organisational reputation (linked to your ABN) is critical. Adverse findings will affect all future visa applications.
- Becoming a Business Sponsor or Temporary Activities Sponsor entails a number of record keeping obligations. Ensure you have sufficient capacity before considering this responsibility.



Short Term Options

Volunteering and Short Courses

Visitor Visa (Subclass 600) (or ETA or eVisitor)

- Granted for up to 3 months (renewable to a further 9-12 months)
- Cost is Around AUD145 (Subject to annual increase)
- Strict no work condition. You must not be intending to work for or provide services to a business or organisation in Australia.
- You can study for courses of less than 3 months duration.

Circumstances where this may be appropriate

- Volunteering or missional trips to Australia
- Short term courses (accredited and/or un-accredited)



What is Volunteer Work?

Definition:

- The voluntary work must incidental to the main purpose of your visit to Australia as a tourist
- the work would not otherwise be undertaken in return for wages by an Australian resident
- the work is genuinely voluntary and you are not paid for it, other than for meals, accommodation or out of pocket living expenses
- The main benefit of the voluntary work is not to a commercial organisation
- The voluntary work is short term (generally 3 months) and of benefit to the community.

In Practice:

- An individual may have a 12-month visitor visa and volunteer for a few different organisations.
- The organization should be a registered charity



Short Term Options

Unpaid Speaker

Business Visitor Visa (Subclass 600)

- Granted for up to 3 months
- Cost is Around AUD145 (Subject to annual increase)
- You must not be intending to work for or provide services to a business or organisation in Australia.
- While you must not be paid by an organiser for your participation in the event, you may be reimbursed for reasonable expenses such as accommodation and meals.

Note

- An honorarium is not considered pay, but rather is an honorary payment made to someone without obligation in recognition of their professional service.
- If you are likely to make regular honorariums to a repeat speaker, the Business Visitor Visa is likely not appropriate.
- This may be an appropriate visa for a consultant without set fees who will be paid an honorarium by the church or charity.



Short Term Options

Paid Speaker

Temporary Activity visa (subclass 408) (Invited for other social and cultural activity (Invited Participant) Stream)

- Granted for up to 3 months (For the invited participant stream only).
- Costs AUD310
- You must provide a letter of invitation from the individual or organisation in Australia responsible for the event, which identifies: the event/s, activity or work you will be involved in, the duties in relation to event/s, activity or work you will be involved in, and the date/s, location/s of the event/s activity or work.

Circumstances where this may be appropriate

- If you have been invited to participate in the event by an Australia organisation and you are contributing to the event in a paid capacity, for example: as a speaker, presenter, or exhibitor.



Short Term Options

Worship Leaders/Entertainers

Temporary Activity visa (subclass 408) (Entertainment activities Stream)

- Granted for up to 3 months (For the Entertainment activities only).
- Costs AUD310
- you must provide a letter of invitation from the individual or organisation in Australia responsible for the event, which identifies: the event/s, activity or work you will be involved in, the duties in relation to event/s, activity or work you will be involved in, and the date/s, location/s of the event/s activity or work.

Circumstances where this may be appropriate

- This visa allows you to work in the Australian entertainment industry as a performer, or as support or production staff, and also applies to non-profit engagements.



Short Term Options

Religious Workers

Temporary Activity visa (subclass 408) (Religious Work Stream)(Under three Months)

- Granted for up to 3 months (For the Religious Work Stream (Under three Months))
- Costs AUD310
- You must provide a letter of invitation from the supporter in Australia responsible for overseeing the work the applicant will take do, what the applicant's duties will be, and when and where the applicant will be working.
- To support the applicant, your organisation must be a religious institution that operates lawfully in Australia endorsed as a charity by the Australian Tax Office AND the organisation's objectives and activities must promote a religious aim, and its members' beliefs and practices must constitute a religion

Circumstances where this may be appropriate

- Religious Workers who will be working for a single church throughout their stay and receiving a wage.
- For long-term contract or consultation work, this would be the appropriate visa.



Medium Term Options

Employees of a Religious Organisation

Temporary Activity visa (subclass 408) (Religious Work Stream)(Over three months)

- Granted for up to 2 years (For the Religious Work Stream (over three months) only).
- you must provide a letter of invitation from an approved sponsor in Australia responsible for the event, which identifies: the event/s, activity or work you will be involved in, the duties in relation to event/s, activity or work you will be involved in, and the date/s, location/s of the event/s activity or work.
- To support the applicant, your organisation must be a religious institution that operates lawfully in Australia endorsed as a charity by the Australian Tax Office AND the organisation's objectives and activities must promote a religious aim, and its members' beliefs and practices must constitute a religion
- This will require the organisation to obtain "Temporary Activities Sponsor" status.

Circumstances where this may be appropriate

- Religious Workers who will be working for a single church for up to two years and receiving a wage.
- Note that if the overall stay period exceeds four years (including previous visas, the Department will scrutinise these applications more carefully). If this stay period is exceeded you may need to consider an alternate visa.



Medium Term Options

Students/Part-time Workers

Student Visa (Subclass 600)

- Visa grant period can be up 3 years (renewable generally to around 8 years)
- Cost is AUD620
- You must be enrolled in a CRICOS Approved Course
- You must demonstrate you are a 'Genuine Temporary Entrant'
- You must demonstrate you have adequate funds for support
- There is a limit on the employed work performed by the visa holder. The visa holder can not exceed 20 hours of work a week during a study session but can engage in full-time work outside of the study session.

Circumstances where this may be appropriate

- Where the primary purpose is study, but a secondary purpose is employed work.
- Where the visa holder may consider upskilling in order to improve their eligibility for a longer-term visa.



What Courses Are CRICOS Approved?

<https://cricos.education.gov.au/>

Welcome to the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)

This is the official Australian Government website that lists all Australian education providers that offer courses to people studying in Australia on student visas and the courses offered.

Course Search

Use this search to find information about courses offered by Australian education institutions.



Institution Search

Use this search to find information about Australian educational institutions.

Additional information about registration of institutions and courses for overseas students



COVID 19 and Travel Exemptions

- Currently the Travel Ban affects all prospective entrants to Australia that are not Citizens or Permanent Residents.
- You do not need an exemption to the travel ban if the Visa Holder is
 - an immediate family member of an Australian citizen or permanent resident
 - a New Zealand citizen usually resident in Australia and their immediate family members
 - a person who has been in New Zealand or Australia for 14 days or more immediately prior to arrival by air in Australia
 - (Various other categories of diplomats, transit persons, or airline/maritime crew)
- You can apply for an exemption to the travel ban if the Visa Holder is (relevantly):
 - A foreign national whose entry into Australia would be in the national interest, supported by the Australian Government or a state or territory government authority
 - a foreign national with critical skills or working in a critical sector in Australia (relevantly, providing critical skills in religious or theology fields)
 - travelling for compassionate and compelling reasons.



What are “Critical skills in religious or theology fields”?

- The Australian Border Force Commissioner’s Report expands on this term:
 - *providing critical skills in religious or theology fields, including specialist skills within a school context, people holding a senior religious position such as a senior cleric or bishop within a diocese, where no Australian worker is available*
- This suggests that proving ‘critical’ requires considerations of:
 - Seniority of position or experience
 - Evidence the skills cannot be provided by an Australian worker
 - Likely an element of training or supervision should be provided
 - More persuasive applications will demonstrate the niche or specialisation of the critical worker



Medium to Long-Term Options Ministers of Religion and Religious Assistants

Currently the sole pathway for the occupations of Ministers of Religion and Religious Assistant is through a **Minister of Religion Labour Agreement**.

“There are more than 23,000 Ministers of Religion in Australia with this number set to grow over the next three years. The number of religious assistants who support the work of religious institutions is also expected to grow very strongly over the same period.” – Minister Coleman, early 2019

A Labour agreement is a more flexible arrangement that allows organisations to put their unique labour needs to the Department. The process trades simplicity for flexibility.

Generally, a Labour Agreement will allow an initial 3-4 year visa stay period followed by a path to PR.



Medium to Long-Term Options

Ministers of Religion and Religious Assistants

This is a particularly complex mechanism that requires the following elements to be demonstrated:

- The sponsor is a religious organisation and has charitable status
- The sponsor enters into a pre-drafted contract with the Department of Home Affairs
- Can explain why the position is unable to be filled by an Australian worker
- Can explain the reasons why the genuine position has arisen
- The worker meets the occupational requirement of skills and experience (as well as the required English)
- Worker is under 60

Costs for the first stage will generally sit at around AUD12-14,000.



What is a Religious Assistant (ANZSCO 451816)

Skills and Experience:

- possess the relevant qualifications equivalent to a relevant AQF Certificate II or III (ANZSCO Skill Level 4); or
- have at least two years of relevant experience as substitute for the formal qualification listed above.

Occupation Description:

- Supports Ministers of Religion or a religious community in performing a variety of religious functions associated with the practise of a religion, including worship, spiritual guidance, pastoral care and teaching.

NOTE: The Department is now refusing Labour Agreements where the role does not exclusively align with the occupation description. This means that positions that are too administrative in nature will not be approved.



What is a *Minister of Religion* (ANZSCO 272211)

Skills and Experience:

- have been 'ordained' or have 'professed to a religious life' as a Minister of Religion (or under an equivalent accreditation process within a religion); and
- possess the minimum qualifications equivalent to a relevant Australian Qualification Framework (AQF) bachelor degree, or
- have undertaken at least five years of relevant structured training or instruction. Experience does not substitute for this requirement.

Occupation Description:

- preparing and conducting services of public worship and acknowledgments of faith
- preparing and delivering sermons, homilies and special talks, and planning music for services
- participating in the social and welfare activities of communities, encouraging people to be aware of their responsibilities, and organising participation in community projects
- conducting classes of religious instruction, and supervising prayer and discussion groups, retreats and seminars
- conducting premarital and family counselling and referring people to professional service agencies where necessary
- performing marriages, funerals and special memorial services according to tradition and ecclesiastical and civil law
- visiting members of the community in their homes, hospitals and other institutions to provide advice and religious comfort
- keeping records as required by the church and civil law



Medium to Long-Term Options

Other Occupations

There are several other occupations that a Church or Religious NFP may consider employing their prospective employee through:

- Short Term List:
 - **Human Resource Manager**
 - **School Principal**
 - **Education managers (nec)**
 - **Conference and event organiser** (Sponsor must be earning over AUD1M annually)
 - **Facilities manager**
 - **family and marriage counsellor/ rehabilitation counsellor**
 - Range of media occupations including web designer, graphic designer, video producer, stage manager, photogpraher, film and video editor, sound technician, camera operator,
- The short-term list provides a two-year visa period under the TSS visa or a five year visa period in a regional area.
- These pathways will require the organisation to obtain a Standard Business Sponsor status.



Medium to Long-Term Options Other Occupations

There are several other occupations that a Church or Religious NFP may consider sponsoring their prospective employee through:

- Medium Term List:
 - **chief executive or managing director or corporate general manager** (Employee must be earning over AUD150,000 annually)
 - **musician (instrumental), music director, artistic director**
 - **Social worker**
- The medium-term list provides a four-year visa period under the TSS visa or a direct permanent visa for more experienced employees.
- These pathways will require the organisation to obtain a Standard Business Sponsor status.
- If you are unclear of the specific occupation for the proposed nominee, you should discuss this with an Immigration Lawyer.



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Next Webinar

TUESDAY

15th Of June 12:30pm

Governance considerations – in Not-For-Profit Structuring

<https://www.corneyandlind.com.au/webinar-governance-nfp-structuring/>

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