



COVID-19: Relaxation of Student Visa Work

Dear National Disability Insurance Scheme provider

As Australia takes steps to manage the global outbreak of COVID-19, protecting and supporting Australians receiving care under the National Disability Insurance Scheme (NDIS) is critical. NDIS providers are likely to face staffing challenges as existing staff are either subject to self-isolation requirements or due to exposure to COVID-19.

On 23 April, the acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon Alan Tudge MP, announced the Government is making further changes to student visa work conditions to help boost frontline health efforts to tackle coronavirus.

The Department understands the urgency of this need means there is insufficient time to engage and train new staff, so it may be necessary to extend working hours for existing staff as an initial step. In addition to your Australian staff, some of your workforce including current labour hire arrangements, is made up of student visa holders. Student visa holders are ordinarily subject to a visa condition that limits the amount of work they can undertake in a fortnight while their course of study is in session.

I can advise that in light of the exceptional circumstances and the need to ensure workforce continuity at this time, the Department of Home Affairs and the Australian Border Force will exercise discretion in relation to existing staff working for registered NDIS providers¹ in existing roles who are student visa holders working beyond their usual work limitations, including where those staff are engaged through a labour hire agreement with a third party, where that work assists registered NDIS providers to provide continuity of care.

This is a temporary measure that will be reviewed in the course of managing the COVID-19 outbreak. During this period, the Department of Home Affairs and the Australian Border Force officers will:

¹A provider is an individual or organisation delivering a support or a product to a participant of the NDIS. Organisations or individuals in all states and territories except Western Australia can apply to be a Registered NDIS Provider with the NDIS Commission

Organisations and individuals from Western Australia can apply to be a Registered Provider of Supports (RPOS) with the National Disability Insurance Agency (NDIA). Registered providers have met requirements regarding qualifications, approvals, experience and capacity for the approved supports.

- exercise their discretion under s116(1)(b) of the *Migration Act 1958* to **not** cancel the visas of students who work in excess of 40 hours each fortnight to support your organisation;
- **not** refer student visa holders for investigation of any potential offence under s235 of the *Migration Act 1958* that might relate to the hours worked by a student visa holder in breach of their visa conditions; and
- **not** refer you or relevant third-party labour hire companies, as an employer, for investigation of any potential offence under s245AC of the *Migration Act 1958* that might relate to allowing a student visa holder to work in breach of their visa conditions.

We will advise you in writing when these considerations no longer apply, and would appreciate your input regarding the continued utility of this approach as the COVID-19 situation in Australia develops.

The Department acknowledges the need to provide sufficient notice of a decision to discontinue this approach to enable employees and employers to comply with their respective obligations.

All employment must continue to occur strictly in accordance with Australian workplace law.

More information about this temporary measure is available at:

<https://covid19.homeaffairs.gov.au/>

Yours sincerely



Andrew Kefford PSM
Deputy Secretary
Immigration and Settlement Services

24 April 2020