

Webinar

Understanding Earnings & Market Rates for Sponsored Visa Holders

This webinar will start at 11:00 AM AEDT & is being recorded

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The information contained in this webinar & document is of a general nature and not intended as legal advice for any specific situation

Acknowledgement to Country

We acknowledge the Traditional Custodians of the land on which we meet today and their ongoing connections to land, sea and community.

We pay our respect to their Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples here today.

Introductions



Ron Kessels
Senior Partner



Lillian Ajuria
Senior Partner



Luis Izzo
Managing Director



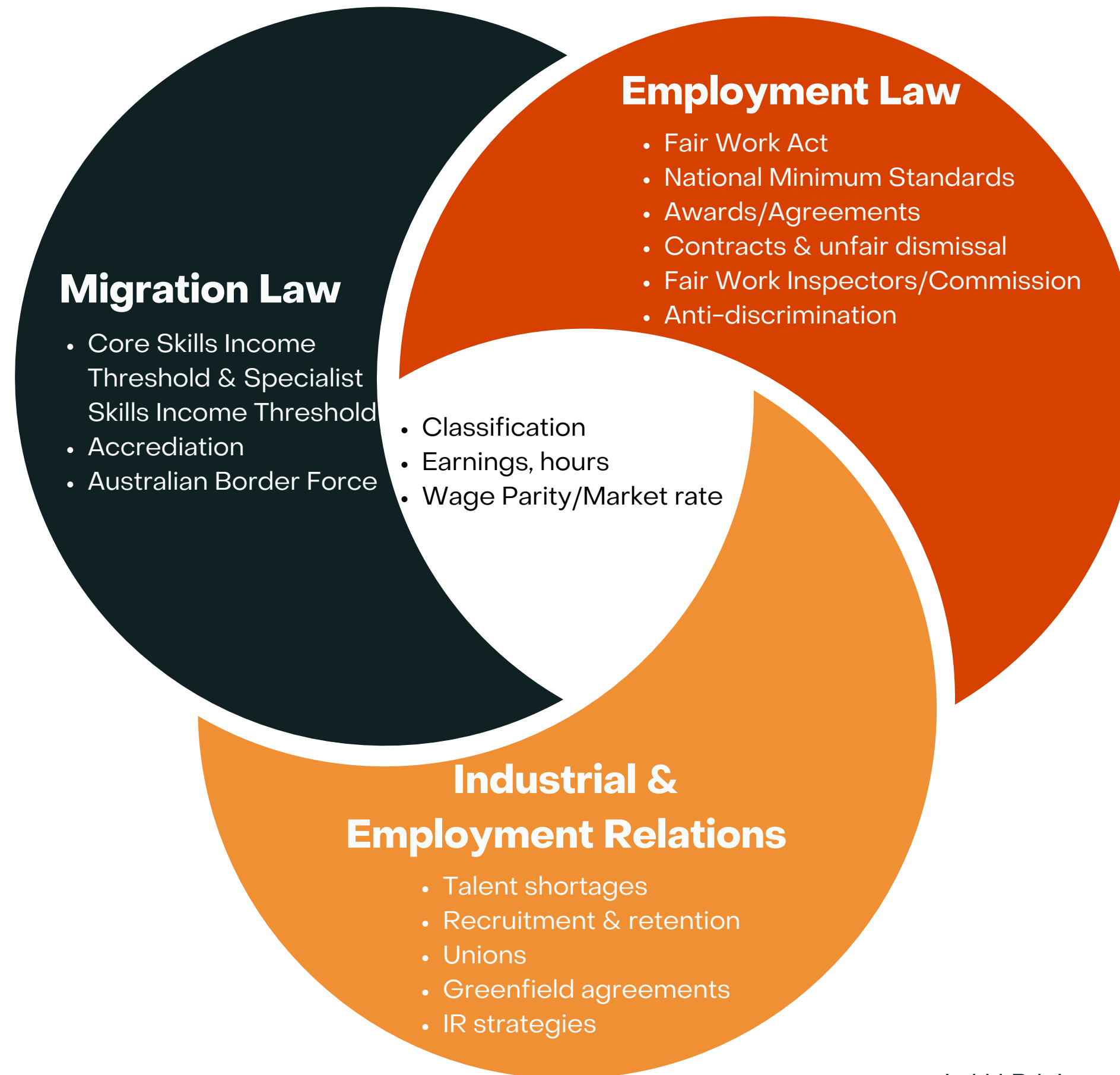
Kate Hemat-Siraky
Director

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Why this is complex



How an Employee's earnings impact visa eligibility

482 Skills In Demand visa

Now	From 1 July	
\$250,000 >	TBC	No market rate, no LMT
\$180,000 >	TBC	Mandatory Skills Assessment exemption if accredited
\$135,000 >	\$141,210 >	The minimum earnings to be eligible for the Specialist Stream
\$96,400 >	TBC	English exempt & no need to advertise salary in LMT (Intracompany transfers)
\$73,150 >	\$76,527 >	The minimum monetary component of the earnings for usual hours of work to be eligible to lodge a <u>nomination</u> for Core Skills Stream after 1 July 2025 – indexed annually Existing visa holders to be reviewed for market rate particularly if a new nomination lodged in the same occupation with a higher salary
< \$73,150	< 76,527	Only with a Labour Agreement that provides for a lower salary concession



What is the policy behind all this?

How the employee's earnings impact visa eligibility

494 – Regional Sponsored visas

Now	From 1 July	
\$250,000 >	TBC	No market rate
\$175,000 (FWHIT) >	TBC	Age exemption
\$73,150 >	TBC	The minimum monetary component of the earnings for usual hours of work to be eligible to lodge a new nomination for Core Skills Stream .

Employer Nomination Scheme visas – permanent residence

Now	From 1 July	
\$250,000 >	TBC	No market rate
\$175,000 (FWHIT) >	TBC	Age exemption
\$73,150 >	\$76,527	The minimum monetary component of the earnings for usual hours of work to be eligible to lodge a new nomination for ENS

What 'earnings' are relevant?

Earnings can include – Visas

- Wages or salary in AUD equivalent including allowances for hours specified in nomination
- Guaranteed additional hours (overtime)
- Guaranteed bonuses
- Amounts applied or dealt with in any way on the person's behalf or as the person directs
 - Payment of school fees
 - Payment of car lease
- The agreed money value of non-monetary benefits for which a reasonable money value has been agreed by the employee and the employer
 - Accommodation
 - Company car

Wages/ Earnings can include – FWA

- Wages or salary including allowances for hours specified in nomination
- Additional hours (overtime)
- Guaranteed bonuses
- Amounts applied or dealt with in any way on the person's behalf or as the person directs
 - Payment of school fees
 - Payment of car lease
- *Payments the amount of which cannot be determined in advance*
 - *Additional hours (overtime)*
 - *Discretionary bonuses*

Earnings cannot include – Visas

- Payments the amount of which cannot be determined in advance
 - Additional hours (overtime)
 - Discretionary bonuses
- Reimbursements
- Contributions to a superannuation fund

Wages/Earnings cannot include – FWA

- The agreed money value of non-monetary benefits for which a reasonable money value has been agreed by the employee and the employer
 - Accommodation
 - Company car
- Reimbursements
- Contributions to a superannuation fund

How the market rate impacts the salary of visa holders

An Australian doing equivalent work at same location		No Australian doing equivalent work at same location	
Under \$250,000	<ul style="list-style-type: none"> The award or industrial instrument 	Under \$250,000	<ul style="list-style-type: none"> The award or industrial instrument
<ul style="list-style-type: none"> Applicable award or industrial instrument 	<ul style="list-style-type: none"> No applicable award 	<ul style="list-style-type: none"> Applicable award or industrial instrument 	<ul style="list-style-type: none"> Australian Government's Jobs and Skills Australia, Occupation and Industry Profiles webpage Job advertisements Written advice from registered employer associations and/or unions Remuneration surveys generated across the relevant industry by a reputable organisation or body
<ul style="list-style-type: none"> No applicable award 	<ul style="list-style-type: none"> Contract and payslip of Australian 	<ul style="list-style-type: none"> No applicable award 	



For immigration **'equivalent work'** can include years of experience, qualifications or skill level – different pay scales

Nominations lodged after 1 July 2025 for the same role as existing visa holders could result in a new market rate for those existing visa holders

How would Australian or visa holders react to be working next to a person doing the same job for more?

Calculating earnings - occupational classification

What is the correct occupation?

- **Employment**

- When does an award apply?
- What does it mean if an award applies?
- What is the correct classification?
- Where employer may still be award covered, but there is no classification for an employee
- The role of the Miscellaneous Award with respect to employees who don't fit in an award classification structure
- What happens if you get it wrong?
 - Wage theft
 - Employment relations issues

- **Immigration**

- Alignment of tasks with ANZSCO (OSCA) - all 482, 494 and ENS (PR) visas
- Core Skills Stream Occupation List
- What happens if you get it wrong?
 - Work in breach - wrong occupation, wrong salary, underpayment, PR repercussions

Calculating earnings – hours, additional hours & annualising

- What is a standard work week?
 - National Employment Standards under the Fair Work Act – 38 hours per week
 - Exceptions to that rule for FWA purposes
 - Contract of employment
- What are additional hours and how are they viewed under Fair Work
- What is the difference between an annual salary and an ‘annualised wage arrangement’ and how does it work under Fair Work
- What are the usual hours of work for a nomination?
 - Can they be more than 38? Yes, if specified under industry award/agreement and is consistent with NES
 - Immigration – Anything over 45 hours per week and/or excessive over-time on a regular basis

Calculating earnings – rosters

Fair Work Act

- How do rosters work under awards and employment contracts
 - Taking into account penalty and overtime rates
 - Working ‘unsociable hours’
 - The role of time in lieu

Migration Act

- What is the effect of a standard roster on the earning for visa purposes
 - Department takes into account that there are a variety of prevailing work arrangements, including rosters but the penalties must be ‘guaranteed’ (ie a fixed roster) for that to be taken into account as earnings, otherwise it is not an amount that can be known in advance
 - Hours exceeding 45 hours per week or with ‘**excessive**’ overtime must be consistent with Australian labour market

Record Keeping

Fair Work Act

Mandatory employment records employers must keep for 7 years

Must be able to be inspected

Failure to keep proper records may result in penalties

Migration Act

Mandatory employment records employers must keep for 5 years

Must be able to be inspected

Failure to keep proper records may result in penalties

Record	Fair Work	Immigration
Written employment contract for each nominee (hours, superannuation, location, equivalent terms/conditions)	Yes	Yes
Pay (including non-monetary benefits)	Yes	Yes
Requests for travel costs	No	Yes
Reportable events (eg director appointment)	No	Yes
Position description of all nominees		Yes
Any money applied to/requested by nominee	Yes	Yes

Australian Border Force & Fair Work Investigations

- ABF and FW inspectors can work together or separately to investigate businesses
- Can and do access third party records – ATO, time keeping applications, HR systems
- Both have powers to request documents and investigate alleged breaches
- Administrative sanctions (warnings, compliance notices, enforceable undertakings, suspensions, cancellation, civil penalties etc) can be imposed by the ABF & FW
- Criminal allegations will be overseen by the Department of Public Prosecution and can involve the Australian Federal Police
- During an investigation visa processing may be suspended
- A sanction is ‘adverse information’ and can impact an employers ability to sponsor
- Publication of sanctioned sponsors

Should a business ‘self-report’ non-compliance?

Q & A

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