

Webinar – 1 May 2025

Understanding Earnings & Market Rates for Sponsored Visa Holders

This webinar will start at 15:00 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

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Luis Izzo

Managing Director

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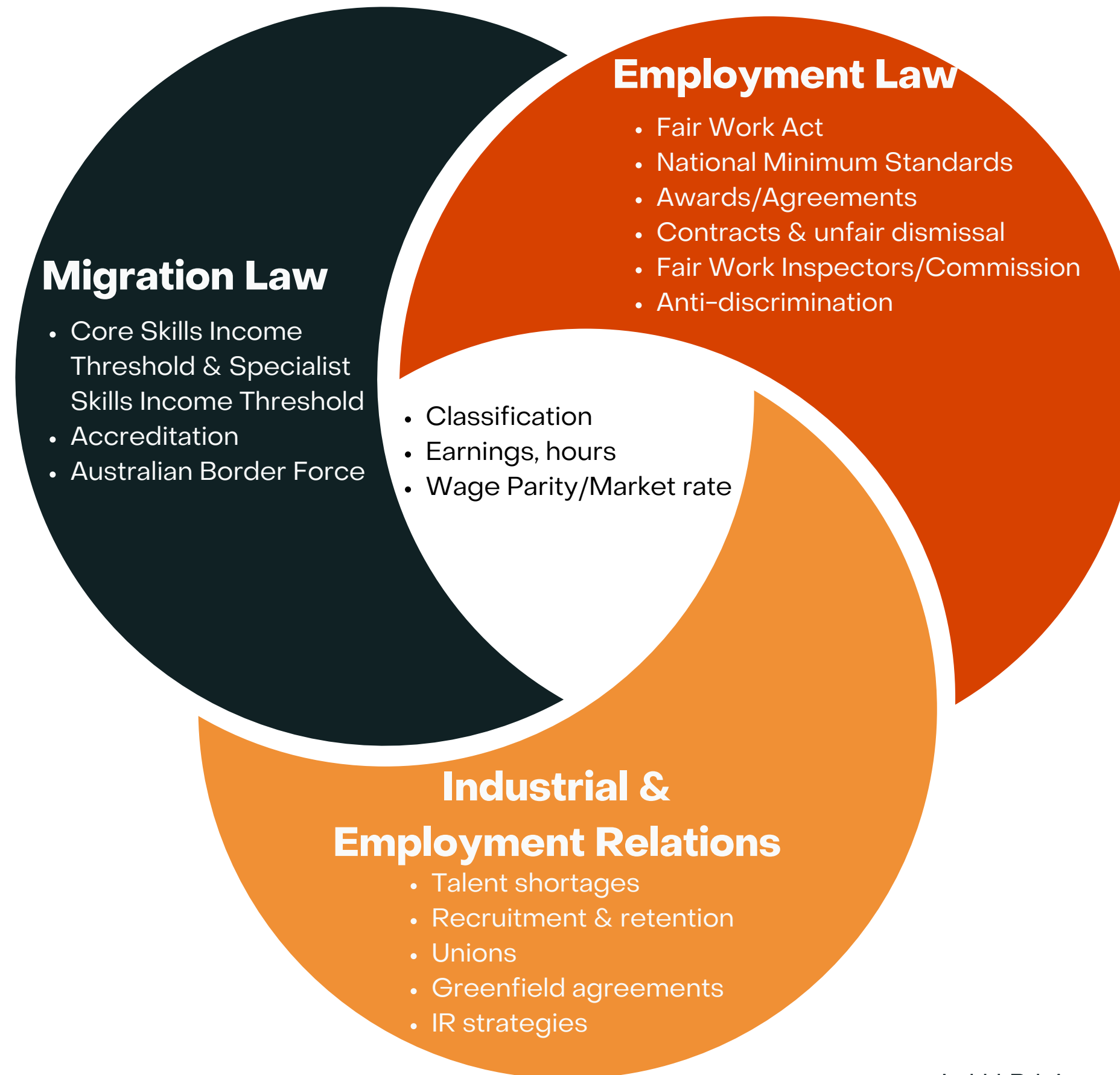


Kate Hemat-Siraky

Director

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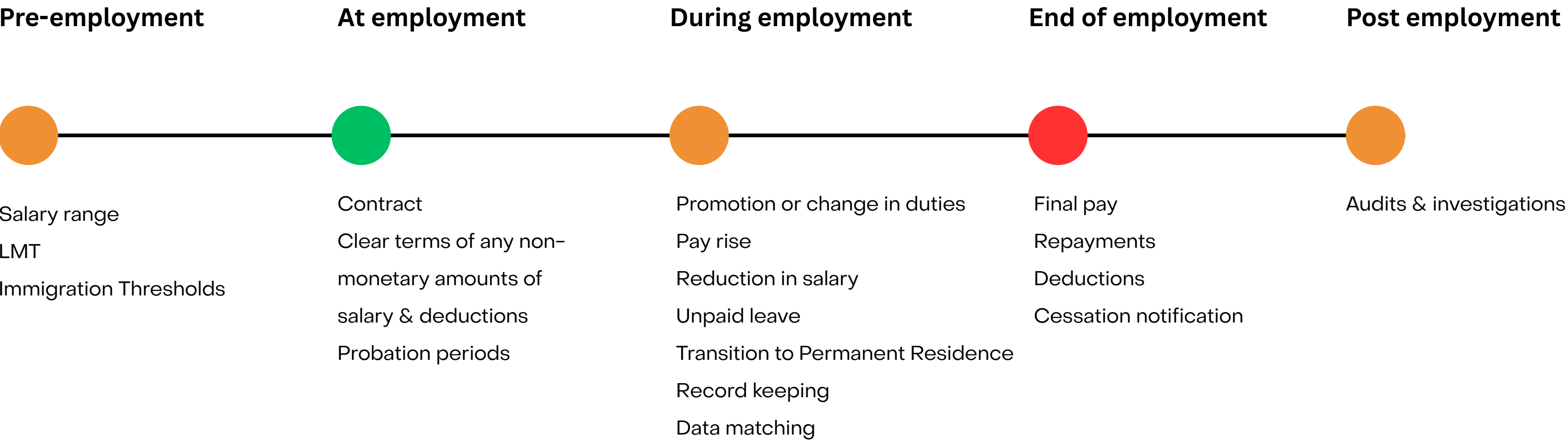
Why this is complex



The cost of getting it wrong

Employment Law	Immigration Law		
Companies – \$93,900 max per breach	Sanction Category	Maximum Penalty (Company)	Maximum Penalty (Individual)
Individuals – \$18,780 per breach	Illegal Worker Warning Notice	Administrative warning	Administrative warning
NB: Individuals can be prosecuted if they are involved in a contravention	Infringement Notice	AUD \$79,200	AUD \$15,840
Criminal fines (Companies) – \$8.25 million	Civil Penalty	AUD \$396,000	AUD \$79,200
Criminal fines (Individuals): \$1.65 million	Criminal Offence	AUD \$594,000	AUD \$118,800 and/or 2 years imprisonment
Imprisonment (Individuals): Up to 10 years	Aggravated Criminal Offence	AUD \$1,485,000	AUD \$297,000 and/or 5 years imprisonment

Not a one-time consideration



Hiring/Transferring an employee

Employment Law	Additional Requirements Under Immigration
<ul style="list-style-type: none">• What is the correct salary/wage for this role?<ul style="list-style-type: none">◦ National Minimum Wage◦ Awards & Industrial Agreements◦ Banding◦ Treatment of non-monetary benefits◦ Treatment of deductions• What is the correct salary/wage for this person?	<ul style="list-style-type: none">• Labour Market Testing may need to include a salary band• Does the salary meet the minimum <u>monetary component</u> of the earnings for usual hours of work to be eligible to lodge a nomination for Core Skills Stream? Treatment of:<ul style="list-style-type: none">◦ Non-monetary benefits◦ Deductions◦ Super◦ Exchange rates• Is this the market rate for an Australian performing the same work in the same location<ul style="list-style-type: none">◦ Award/Agreement◦ Internal salary bands (accredited employers)◦ Market survey information

Updated Salary Thresholds Effective 1 July 2025

Threshold	Current (AUD)	From 1 July 2025 (AUD)	Applicable Visa Streams
National Minimum Wage	\$47,621	TBC	All
Core Skills Income Threshold (CSIT)	\$73,150	\$76,515	Subclass 482 (Core Skills stream), Subclass 186
Specialist Skills Income Threshold (SSIT)	\$135,000	\$141,210	Subclass 482 (Specialist Skills stream)
Temporary Skilled Migration Income Threshold (TSMIT)	\$73,150	\$76,515	Subclass 494, Subclass 187 (pending legislative approval)
Fair Work High Income Threshold (FWHIT)	\$175,00	TBC	FWHIT for Age exemptions
English/LMT Exemption	\$96,400	TBC	English exempt & no need to advertise salary in LMT (Intracompany transfers)

- New nomination applications from 1 July 2025 must meet the new relevant income threshold or the annual market salary rate, whichever is higher.
- This change will not apply to existing visa holders and nominations lodged before 1 July 2025.

Managing visa holders – pay raises, promotion, leave etc

Employment Law	Additional Requirements Under Immigration
<ul style="list-style-type: none">• Does the contract of employment/letter of offer initially provided still apply? If not, need to reissue new contract or letter identifying terms that apply.• Unpaid leave in Australia relatively open ended – Prohibited to terminate employees due to temporary absences or illnesses that would qualify for personal/carer's leave of 3 months (regardless of whether leave accruals cover the period or not).• Paid leave (A/L, LSL, PL) all as per Australian employees.	<ul style="list-style-type: none">• Promotion or change in duties: May require a new nomination if ANZSCO code changes.• Pay rise: Generally acceptable, no new nomination required.• Reduction in salary: Not allowed if it goes below TSMIT or AMSR; <i>may</i> require notification or a new nomination & LMT.• Unpaid leave: Generally limited and must be consistent with Australian employees; certain types require notification to the Department. Implications on PR.• Permanent Residence TRT – salary at least CSIT and market rate

Non-Performing Visa Holders

Employment Law	Additional Requirements Under Immigration
<ul style="list-style-type: none">• Not ordinarily possible to reduce duties and pay at a lower band. This would in most cases involve demoting the employee to a lower position. Unless contract allows for this, this could constitute a 'repudiation' of their contract and give rise to dismissal claims.• Need to follow ordinary performance management processes before dismissing, unless employee has been employed for less than 6 months (business with >15 employees) or less than 12 months (businesses with < 15 employees)	<ul style="list-style-type: none">• Fundamentally treat them the same as you would an Australian employee• If duties will be changed permanently or for more than a few months a new nomination may be needed• If a change in duties results in a lower salary a new nomination is needed

Investigations

Employment Law - Fair Work Inspectors	Immigration - Australian Border Force
<ul style="list-style-type: none">• Fair Work Ombudsman is the typical regulator involved.• Usually the result of<ul style="list-style-type: none">◦ dob-in◦ random/targeted industry audit• Usually starts with email or telephone request but commonly can involve in-person visit (especially industry audits)• Initial request is for data and documents as well as calculations to identify whether employees are being paid above or below their industrial instrument.• Company will reply and then FWO can:<ul style="list-style-type: none">◦ take no action if satisfied with response◦ issue a compliance notice requiring rectification. If the employer does not rectify, this can result in greater enforcement activities (see below)◦ where the FWO believes non-compliance is serious or employer not cooperating, enforcement activities can be taken, including:<ul style="list-style-type: none">▪ prosecution for fines and compensation▪ criminal prosecutions where underpayments are considered intentional	<ul style="list-style-type: none">• Usually the result of<ul style="list-style-type: none">◦ dob-in◦ random/targeted industry audit◦ Referral from immigration as a result of processing concern or data analysis• Usually by email request but can be by in-person visit<ul style="list-style-type: none">◦ announced and agreed where 'educational'◦ unannounced where serious concerns• Initial request is for data and documents - typically they audit 5/6 visa holders including anyone they are specifically concerned about• Company will reply and then ABF will either issue a notice of Intention to Take Action or a warning letter or no action• If a Notice of Intention to Take Action then all processing stops while a full investigation is undertaken and any penalty imposed• There is a review process but in most cases this will be useless• Penalties are published on the ABF website

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	No	Yes
Any money applied to/requested by nominee	Yes	Yes

Q & A

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