WORLD TRADE

ORGANIZATION

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COMMUNICATION FROM AUSTRALIA

<u>Transparency Template - Australia's Revised Horizontal Mode 4 Offer</u>

The following communication, dated 30 June 2005, from the delegation of Australia is being circulated to the Members of the Council for Trade in Services.

- 1. Australia promotes greater transparency of horizontal mode 4 commitments through the use of a transparency template as proposed by Canada. The attached template provides electronic links to Australia's immigration laws, regulations, policies and administrative guidelines relevant to Australia's current horizontal commitments and revised offer covering mode 4.
- 2. The details collated and included in the template provides links to readily available information that will give a detailed understanding of the comprehensive nature of Australia's horizontal commitments and revised offer in mode 4 as well as details and an understanding of the processes involved in accessing Australia's temporary entry provisions applicable to foreign service suppliers. This information is provided for purposes of transparency and neither interprets nor forms part of Australia's specific commitments.
- 3. Australia encourages other Members with horizontal mode 4 commitments to consider completing the transparency template.

| Horizontal Mode 4 Commitments and Revised Offer | Law | Regulations | Administrative Guidelines | Other Public Information | |
|---|--|---|--|--|--|
| 4) Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories: 1 | | | | | |
| (a) Intra-corporate transferees as: (i) Executives and senior managers being natural persons who are employees of a company operating in Australia, and who will be responsible for the entire or a substantial part of the company's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business, including directing the company or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the company. Entry and stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements for this category include minimum skill levels in a gazetted occupation and sponsorship by a bona fide business operating lawfully and actively in Australia. Employer sponsorship requirements may change from time to time. Full details of employer sponsorship requirements, including the list of gazetted occupations, are available on the website of the Australian government department responsible for immigration matters. (As at May 2005, the address | Migration Act 1958 at http://www.comlaw.go v.au/ComLaw/Legislati on/ActCompilation1.ns f/current/bytitle/FA8C1 020B9E2BF26CA2570 0000126D38?OpenDoc ument&mostrecent=1 Volume 1 Section 29 (Authority to grant visas) and Section 140D (Employer Sponsorship approval) | Migration regulations at http://www.comlaw.gov.au/comlaw/legislation/legislativeinstrumentcompilation1.nsf/current/bytitle/7FBFD4E9EDC01805CA257026001EE4E0?OpenDocument&mostrecent=1Volume 4 Schedule 2 (subclass 457) Gazette notice specifying salary threshold and occupations for employer sponsored temporary entrants: See latest Gazette Notice entitled "Specification of Minimum Salary Level for the Purposes of Regulation 1.20b, and Occupations for the Purposes of Subregulation 1.20g(2) and Subparagraph 1.20GA(1)(a)(i) of the Migration Regulations 1994" http://www.immi.gov.au/legislation/gazettals/index.htm | Procedures Advice Manual 3. Available by subscription from http://www.immi.gov .au/legend/index.htm #x | Business Visits to Australia http://www.immi.gov .au/allforms/visiting business.htm Sponsoring a Temporary Overseas Employee to Australia (Booklet 11) http://www.immi.gov .au/allforms/books11. htm Working as a Business Person [in Australia] - Frequently Asked Questions http://www.immi.gov .au/faq/work/work01. htm | |
| of that website was www.immi.gov.au). | | | | | |

 $^{^{1}}$ These commitments do not apply in cases of labour/management dispute.

| Horizontal Mode 4 Commitments and Revised Offer | Law | Regulations | Administrative Guidelines | Other Public Information |
|---|-----|-------------|------------------------------|-----------------------------|
| Entry is for periods of stay up to four years, with provision for an extension. | | | | |
| (ii) Specialists, being natural persons with advanced trade, technical or professional skills who are employees of a bona fide business operating lawfully and actively in Australia and who have been employed by that company for not less than two years. | | | | |
| Entry and stay of such natural persons is subject to employer sponsorship by the employing company. Employer sponsorship requirements for this category include an assessment that the natural person seeking entry has the necessary qualifications, skills and work experience accepted by the relevant authority as meeting the Australian standards for his or her nominated occupation, which must fall within the list of gazetted occupations. Employer sponsorship requirements may change from time to time. Full details of employer sponsorship requirements, including the list of gazetted occupations, are available on the website of the Australian government department responsible for immigration matters. (As at May 2005, the address of that website was www.immi.gov.au.) | | | | |
| Entry is for periods of stay up to two years, with provision for an extension. | | | | |

| Horizontal Mode 4 Commitments and Revised Offer | Law | Regulations | Administrative Guidelines | Other Public Information |
|--|-------------------------|--|------------------------------|-----------------------------|
| (b) Independent executives being natural | Migration Act 1958 at | Migration regulations at | Procedures Advice | Business Visits to |
| persons whose work responsibilities match the | http://www.comlaw.go | http://www.comlaw.gov.au/c | Manual 3. Available | Australia |
| description set out below and who intend, or are | v.au/ComLaw/Legislati | omlaw/legislation/legislativei | by subscription from | http://www.immi.gov |
| responsible for, the establishment in Australia, of a | on/ActCompilation1.ns | nstrumentcompilation1.nsf/cu | http://www.immi.gov | .au/allforms/visiting |
| new business of a service supplier which has its | f/current/bytitle/FA8C1 | rrent/bytitle/7FBFD4E9EDC | .au/legend/index.htm | business.htm |
| head of operations in the territory of another | 020B9E2BF26CA2570 | 01805CA257026001EE4E0? | #x | <u>business.itm</u> |
| Member and which has no other representative, | 0000126D38?OpenDoc | OpenDocument&mostrecent= | #X | Spangaring a |
| branch or subsidiary in Australia. Independent | | OpenDocument&mostrecent_ | | Sponsoring a |
| executives will be responsible for the entire or a | ument&mostrecent=1 | $\frac{1}{N}$ | | Temporary Overseas |
| substantial part of the company's operations in | Volume 1 Section 29 | Volume 4 Schedule 2 | | Employee to |
| Australia, receiving general supervision or | (Authority to grant | (subclass 457) | | Australia (Booklet |
| direction principally from higher level executives, | visas) and Section | | | 11) |
| the board of directors or stockholders of the | 140D (Employer | Gazette notice specifying | | http://www.immi.gov |
| business, including directing the company or a | Sponsorship approval) | salary threshold and | | .au/allforms/books11. |
| department or subdivision of it; supervising and | | occupations for employer | | <u>htm</u> |
| controlling the work of other supervisory, | | sponsored temporary entrants: | | |
| professional or managerial employees; and having | | See latest Gazette Notice entitled | | Working as a |
| the authority to establish goals and policies of the department or subdivision of the company. | | "Specification of Minimum Salary Level for the Purposes of Regulation 1.20b, | | Business Person [in |
| department or subdivision of the company. | | and Occupations for the Purposes of | | Australia] - |
| Entry and stay of such natural persons is subject to | | Subregulation 1.20g(2) and | | Frequently Asked |
| employer sponsorship. Employer sponsorship | | Subparagraph 1.20GA(1)(a)(i) of the | | Questions |
| requirements for this category include minimum | | Migration Regulations 1994" | | http://www.immi.gov |
| skill levels in a gazetted occupation and | | http://www.immi.gov.au/legis | | .au/faq/work/work01. |
| sponsorship by a bona fide overseas business or by | | lation/gazettals/index.htm | | htm |
| a State or Territory Government of Australia. | | intron/gazettais/maex.ntm | | <u>IIIIII</u> |
| Employer sponsorship requirements may change | | | | |
| from time to time. Full details of employer | | | | |
| sponsorship requirements, including the list of | | | | |
| gazetted occupations, are available on the website | | | | |
| of the Australian government department | | | | |
| responsible for immigration matters. (As at May | | | | |
| 2005, the address of that website was | | | | |
| www.immi.gov.au.) | | | | |
| Entry is for periods of stay up to a maximum of two years. | | | | |

| Horizontal Mode 4 Commitments and Revised Offer | Law | Regulations | Administrative Guidelines | Other Public Information |
|---|-------------------------|--------------------------------|------------------------------|-----------------------------|
| (c) Business visitors being | Migration Act 1958 at | Migration regulations at | Procedures Advice | Business Visits to |
| natural persons seeking to travel to Australia for | http://www.comlaw.go | http://www.comlaw.gov.au/c | Manual 3. Available | Australia |
| business purposes whose remuneration and | v.au/ComLaw/Legislati | omlaw/legislation/legislativei | by subscription from | http://www.immi.gov |
| financial support for the duration of the visit must | on/ActCompilation1.ns | nstrumentcompilation1.nsf/cu | http://www.immi.gov | .au/allforms/visiting_ |
| be derived from sources outside Australia and who | f/current/bytitle/FA8C1 | rrent/bytitle/7FBFD4E9EDC | .au/legend/index.htm | business.htm |
| must not engage in making direct sales to the | 020B9E2BF26CA2570 | 01805CA257026001EE4E0? | #x | <u>susmess</u> |
| general public or in supplying the services | 0000126D38?OpenDoc | OpenDocument&mostrecent= | IIX | Sponsoring a |
| themselves. Business visitors comprise: | ument&mostrecent=1 | 1 | | Temporary Overseas |
| (1) (2) (3) (4) (4) | Volume 1 Section 29 | Volume 4 Schedule 2 | | Employee to |
| (i) Service sellers, as business visitors | | (subclass 456 or | | Australia (Booklet |
| being natural persons not based in Australia who | (Authority to grant | | | , |
| are (sales) representatives of a service supplier and | visas) | subclass 457) | | 11) |
| are seeking temporary entry for the purpose of negotiating for the sale of services or entering into | | | | http://www.immi.gov |
| agreements to sell services for that service supplier. | | | | .au/allforms/books11. |
| agreements to sen services for that service supplier. | | | | <u>htm</u> |
| Entry is for periods of stay up to six months, with | | | | *** 1. |
| provision for an extension. | | | | Working as a |
| F | | | | Business Person [in |
| (ii) Business visitors, being natural persons seeking | | | | Australia] - |
| to travel to Australia for the purpose of | | | | Frequently Asked |
| participating in business negotiations or meetings. | | | | Questions |
| | | | | http://www.immi.gov |
| Entry is for periods of stay up to a maximum of | | | | .au/faq/work/work01. |
| three months. | | | | htm |
| | | | | |

| Horizontal Mode 4 Commitments and | Law | Regulations | Administrative | Other Public |
|---|--|---|--|--|
| Revised Offer (d) Contractual service suppliers (including independent professionals/specialists). Contractual service suppliers (CSS) being natural persons with trade, technical or professional skills. Entry and stay of such natural persons is subject to employer sponsorship. Employer sponsorship | Migration Act 1958 at http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/FA8C1020B9E2BF26CA25700000126D38?OpenDoc | Regulations Migration regulations at http://www.comlaw.gov.au/comlaw/legislativeinstrumentcompilation1.nsf/current/bytitle/7FBFD4E9EDC01805CA257026001EE4E0? OpenDocument&mostrecent= | Administrative Guidelines Procedures Advice Manual 3. Available by subscription from http://www.immi.gov au/legend/index.htm #x | Information Business Visits to Australia http://www.immi.gov.au/allforms/visiting-business.htm Sponsoring a |
| requirements for this category include sponsorship by a bona fide overseas business or business operating lawfully and actively in Australia and a contract for the supply of a service within Australia. That business must have engaged the natural person seeking entry and must intend that person to assist in fulfilling its Australian services contract. The natural person seeking entry must be assessed as having the necessary qualifications, skills and work experience accepted as meeting the Australian standards for his or her nominated occupation, which must fall within the list of gazetted occupations. Employer sponsorship requirements may change from time to time. Full details of employer sponsorship requirements, including the list of gazetted occupations, are available on the website of the Australian government department responsible for immigration matters. (As at May 2005, the address of that website was www.immi.gov.au .) Entry is for periods of stay up to 12 months, with provision for an extension. | ument&mostrecent=1 Volume 1 Section 29 (Authority to grant visas) and Section 140D (Employer Sponsorship approval) | Volume 4 Schedule 2 (subclass 457) Gazette notice specifying salary threshold and occupations for employer sponsored temporary entrants: See latest Gazette Notice entitled "Specification of Minimum Salary Level for the Purposes of Regulation 1.20b, and Occupations for the Purposes of Subregulation 1.20g(2) and Subparagraph 1.20GA(1)(a)(i) of the Migration Regulations 1994" http://www.immi.gov.au/legis lation/gazettals/index.htm | | Temporary Overseas Employee to Australia (Booklet 11) http://www.immi.gov _au/allforms/books11. htm Working as a Business Person [in Australia] - Frequently Asked Questions http://www.immi.gov _au/faq/work/work01. htm |

| Horizontal Mode 4 Commitments and Revised Offer | Law | Regulations | Administrative Guidelines | Other Public Information |
|---|-------------------------|--------------------------------|------------------------------|-----------------------------|
| (e) Other: | Migration Act 1958 at | Migration regulations at | Procedures Advice | Business Visits to |
| Spouses of temporary entrants covered by (a), (b) | http://www.comlaw.go | http://www.comlaw.gov.au/c | Manual 3. Available | Australia |
| and (d) are accorded full working rights where stay | v.au/ComLaw/Legislati | omlaw/legislation/legislativei | by subscription from | http://www.immi.gov |
| of those temporary entrants is greater than 12 | on/ActCompilation1.ns | nstrumentcompilation1.nsf/cu | http://www.immi.gov | .au/allforms/visiting_ |
| months | f/current/bytitle/FA8C1 | rrent/bytitle/7FBFD4E9EDC | .au/legend/index.htm | business.htm |
| For such spouses, entry and stay is for the same | 020B9E2BF26CA2570 | 01805CA257026001EE4E0? | #x | |
| period as for the temporary entrant. | 0000126D38?OpenDoc | OpenDocument&mostrecent= | | Sponsoring a |
| period as for the temporary entrante | ument&mostrecent=1 | 1 | | Temporary Overseas |
| | Volume 1 Section 29 | Volume 4 Schedule 2 | | Employee to |
| | (Authority to grant | (subclass 457 - Secondary | | Australia (Booklet |
| | visas) | Criteria) | | 11) |
| | | | | http://www.immi.gov |
| | | | | .au/allforms/books11. |
| | | | | <u>htm</u> |
| | | | | |
| | | | | Working as a |
| | | | | Business Person [in |
| | | | | Australia] - |
| | | | | Frequently Asked |
| | | | | Questions |
| | | | | http://www.immi.gov |
| | | | | .au/faq/work/work01. |
| | | | | <u>htm</u> |