



Migration Newsflash

22 November 2017



Employer Sponsored Migration and Australian Citizenship Update

The Department of Immigration and Border Protection has provided updated guidelines in relation to the March 2018 changes impacting on permanent employer sponsored visas, which includes the much anticipated grandfathering arrangements for certain 457 visa holders. Proposed amendments to the Australian Citizenship legislation have also been announced.

The Department's updated guidelines are intended to provide clarity on the employer sponsored migration changes coming into effect from March 2018 while recent amendments to the Australian Citizenship legislation have been proposed to help secure its passage.

Permanent Employer Sponsored Migration

From March 2018, employers seeking to nominate prospective migrant employees for Australian permanent residence under the employer sponsored migration programs:

- can only nominate occupations which are on the Medium and Long-term Strategic Skills List (MLTSSL) if applying under the Direct Entry (DE) stream of the Employer Nomination Scheme (ENS);
- can only nominate occupations which are on the MTSSL or certain additional occupations if applying under the Direct Entry (DE) stream of the Regional Sponsored Migration Scheme (RSMS); and

- must ensure that the Australian market salary rate is offered to their nominee and that the Temporary Skilled Migration Income Threshold (TSMIT) (set at \$53,900 per annum since 12 April 2016) is met.

Prospective permanent employer sponsored visa applicants seeking to be nominated by their employers for Australian permanent residence:

- must be under 45 years of age at the time of application unless one of the specified age exemptions are met;
- must demonstrate at least three years' of work experience relevant to the particular occupation; and
- if applying under the Temporary Residence Transition (TRT) stream; must meet the eligibility period of three years in Australia on a Temporary Skill Shortage (TSS) visa under the Medium Term stream in order to transition to permanent residence.

Transitional arrangements

Transitional arrangements will exist for overseas employees who have held or applied for a Subclass 457 visa on 18 April 2017 to continue to access certain existing provisions under the Temporary Residence Transition Stream after March 2018.

Importantly, under these transitional arrangements:

- occupation requirements will remain the same as currently (i.e. there are no restrictions as long as the nominee continues to work in the same position for the same employer as approved for their subclass 457 visa);
- the age requirement will remain at less than 50 years of age unless one of the specified age exemptions are met; and
- the requirement to have worked at least two out of the three years on a subclass 457 visa prior to nomination, will remain unchanged at two years.

For overseas employees who did not hold or apply for a Subclass 457 on 18 April 2017 but who applied for and were granted a Subclass 457 visa after 18 April 2017:

- the age requirement to apply for permanent employer sponsored migration will be less than 45 years of age unless one of the specified age exemptions are met; and
- if applying under the Temporary Residence Transition Stream after March 2018, the requirement to have worked in their occupation on their subclass 457 / TSS* visa for a minimum period of three years, will apply.

** It should be noted that only TSS visa holders in the Medium-Term stream will have the option of applying for permanent residence.*

Training Levy

As advised in earlier *KPMG Newsflashes*, the immigration department will be introducing a 'Training Levy' for both the TSS visa and employer nominated permanent residence from March 2018. This is subject to the relevant Bill being passed, although expectations are that it will be passed.

Employers will be required to pay the new Training Levy in full at the time of nominating a prospective migrant employee for permanent residence. The new Training Levy will imposed by way of a contribution towards the Australian Government's 'Skilling Australians Fund' and equivalent to AUD 3,000 for businesses with annual revenue of up to AUD 10 million or AUD 5,000 for businesses with annual turnover in excess of AUD 10 million.

As is currently the case with the existing training expenditure obligations, the cost of the training levy cannot be passed on by employer sponsors to their overseas employees.

Proposed amendments to Australian Citizenship legislation

The Australian Government had proposed amendments to the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 on 18 October 2017.

Under the proposed amendments, applicants are required to demonstrate English language skills in listening, speaking, reading and writing at a lower 'modest' level only. The new general residence requirements will be retained under the proposed amendments hence applicants for Australian citizenship will need to have a minimum of four years of permanent residence immediately prior to applying for Australian citizenship (with no more than one year spent outside Australia during that period).

With the proposed introduction date of 1 July 2018, applications for Australian Citizenship by conferral can continue to be made before this date based on the current eligibility criteria.

Key considerations

Employers seeking to recruit employees from overseas will need to manage their expectations in terms of their ability to meet the new eligibility criteria for permanent employer sponsored migration from March 2018.

Nevertheless, the transitional arrangements announced will be a welcomed relief for employers and their current employees who have held or applied for a Subclass 457 visa on 18 April 2017 and who are seeking to apply for permanent residence under the TRT stream. In addition, employees who have applied for their subclass 457 visas after 18 April 2017 may also potentially qualify after they have worked in their nominated occupation on a subclass 457 visa for a minimum period of three years.

The costs of the training levy will need to be taken into consideration from March 2018 so employers may still consider bringing forward applications to lodge before March 2018 where possible.

In relation to the proposed amendments to Australian citizenship legislation, Australian permanent residents who qualify under the current eligibility criteria should consider making their application before 1 July 2018.

Finally, while the upcoming March 2018 changes to the subclass 457 and employer sponsored permanent categories are gaining the most attention, employers should also be prepared for the upcoming December 2017 changes (subject to legislation passing) relating to:

- the collection of Tax File Numbers (TFNs) for subclass 457 visa holders and other employer sponsored migrants to facilitate data matching with the ATO; and
- the publication of details relating to sponsors failing to meet their sponsorship obligations (referred to in our earlier Migration Newsflash as the 'Name and Shame' provisions).

Contact us

KPMG will issue further updates as they arise and we will work with you to help minimise the impact of these changes, therefore do not hesitate to contact us with any queries.

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