



# Migration Newsflash

**9 August 2017**



## Policy updates on employer sponsored visa reforms

The Department of Immigration and Border Protection has provided updated policy guidelines in relation to recent changes impacting employer sponsored visas.

The Department's policy guidelines are intended to provide clarity around the caveats imposed on occupations eligible for nomination under the 457 visa and Employer Nomination Scheme, the application of the revised training benchmarks in place from 1 July 2017 and labour market testing requirements.

### **Caveats on eligible occupations**

At the outset it should be noted that no exceptions can be made by the Department to the caveats imposed on the list of eligible occupations as specified in the relevant legislative instruments. However, there is some level of flexibility afforded in terms of how the caveats can be interpreted particularly in its application to overseas based businesses operating in Australia.

A summary of how certain caveats will apply is provided in the following table.

Type of sponsor	Type of Caveat	Application
Overseas business starting up in Australia	Turnover (Revenue)	The overseas parent company must satisfy any minimum turnover amounts and employee numbers, unless the sponsor can demonstrate special circumstances that warrant a flexible approach e.g. a project of particular importance or economic benefit to Australia, supports Australia's innovation agenda, parent company has a long history of successful business operations, support through state/territory/government.
	Employee Numbers	
Foreign registered companies operating in Australia (with an ARBN)	Turnover (Revenue)	Overseas business (with ARBN) needs to satisfy the relevant caveats as no separate legal entity is set up in Australia.
	Employee Numbers	
	Base Salary	
Australian or overseas based business sponsoring an intra-corporate transferee	Base Salary	Does not need to meet this caveat if the nominee is an intra-corporate transferee who has been working for an overseas business operating in a World Trade Organisation (WTO) member country where an international trade obligation applies.
The 'nominating employer' under the Employer Nomination Scheme	Turnover (Revenue)	Caveats must be met by the nominating employer lodging an employer nomination under the Direct Entry stream.  These caveats however do not apply under the Temporary Residence Transition (TRT) stream as the nominated occupations currently do not have to be listed on any of the eligible occupation lists (up until March 2018).
	Employee Numbers	
	Base Salary	

## Training Benchmarks

The tightening of the definition of acceptable training expenditure for the purpose of training benchmarks for the 457 visa and employer sponsored programs came into effect from 1 July 2017.

The Department has clarified the application of these revised training benchmarks which is summarised as follows:

Application Type	Date Lodged	Training Benchmark to be met
Standard Business Sponsorship	Pre 1 July 2017	Previous Training Benchmark
	On or after 1 July 2017	New Training Benchmark
Employer Nomination Scheme (Direct Entry stream) Nomination	Pre 1 July 2017	Previous Training Benchmark
	On or after 1 July 2017	New Training Benchmark
Existing approved Standard Business Sponsors approved pre-1 July 2017	Pre 1 July 2017	Flexible approach in considering whether an employer has met the intention of the legislation and is committed to training Australians. Due consideration afforded for employers to put in place new arrangements to meet updated training benchmark requirements.
Employer Nomination Scheme (Temporary Residence Transition stream) Nomination	On or after 1 July 2017	

Further clarification has been provided by the Department on what is deemed to be acceptable for the following types of training expenditure for the purpose of meeting Training Benchmark B.

Type of expenditure	Specification
Purchase of eLearning Platform	Content of eLearning platform must be related to the purpose of the prospective sponsor's business.
Formal course(s) of study	Course(s) of study must be conducted by trained educators; be a formal programme with learning outcomes and an assessment process; and not be otherwise excluded by 'inapplicable expenditure' as outlined in the relevant legislative instrument.
Graduate salaries	Expenditure on graduate salaries should involve payments to cover the salary of Australian employees who have completed an undergraduate or higher degree in a university within the last 2 years; and are participating in a formal, structured graduate program for up to 2 years, or completing a professional year following their graduation.

Importantly, the revised training benchmarks will be replaced by the new Skilling Australian Fund (SAF) levy which will be payable as part of the nomination application process under the new Temporary Skill Shortage (TSS) visa regime (as highlighted in our Migration Newsflash dated 10 May 2017).

A business sponsor must continue to meet their training obligations beyond implementation of the SAF levy and may still be required to prove compliance with this benchmark when lodging a sponsorship application under TSS or when audited by the Department as part of any pre-existing sponsorship obligations, post introduction of this levy.

## Labour Market Testing

Evidence of labour market testing (LMT) continues to be required where a nominated occupation is subject to LMT provisions and an employer needs to demonstrate that the nominated position cannot be filled from within the local labour market.

Due to changes to the mandatory field content of the Department's online Nomination eForm from 1 July 2017, the Domestic Recruitment Summary Table is no longer required.

Instead evidence that should accompany a nomination application (where the nominated occupation is subject to LMT provisions) should include a copy of the relevant advertisement(s) and if fees were paid, receipt of fees paid. The Domestic Recruitment Summary Table will no longer be accepted by the Department as evidence of LMT effective from 1 October 2017.

As highlighted in our Migration Newsflash dated 20 April 2017, LMT will apply to all occupations from March 2018, except where an international trade obligation applies. Details of evidentiary requirements have yet to be released, however it is expected that requirements will be more onerous than current requirements.

## 4-year visa grant under International Trade Obligations

From 1 July 2017, a 4-year grant period will be available for certain occupations that are listed on the Short Term Skilled Occupation List (STSOL) if it falls under Australia's international trade obligations.

Specifically, an employer can seek a 4-year visa grant for an 'Executive' or 'Senior Manager' where the nominee is an intra-corporate transferee who is already working in a WTO member country for the associated entity of an Australian business sponsor or who is an Independent Executive seeking to establish a new branch of the nominating business in Australia that is already operating in Thailand or China.

## Key considerations for business

Employers need to be aware that the caveats which are essentially 'inapplicability conditions' specifying the thresholds and circumstances in which an eligible occupation would be restricted from being nominated for employer sponsored roles. Attention to these caveats are critical in ensuring that a nomination application is not refused by the Department.

While the revised training benchmarks will apply to new Standard Business Sponsorship and ENS Direct Entry applications post 1 July 2017, these benchmarks will be replaced by the new training fund levy in March 2018. Therefore any business likely to be significantly impacted by the training levy may wish to consider bringing forward any applications that will likely to be progressed.

The phasing out of the Domestic Recruitment Summary Table means that evidence of job advertising and payment for such advertising must be duly recorded and retained for submission to the Department. The requirement for such evidence provides useful insight to what potentially could be specified by the Department as LMT evidence under the new TSS visa arrangements once introduced in March 2018.

## Contact us

KPMG will issue further updates on the changes 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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