

AMBER MIGRATION NEWSLETTER

4 July 2017

In this first Newsletter for the financial year, we outline the major measures in effect from 1 July as well as further, significant changes announced as part of the Government's ongoing reform of the Skilled Migration programme.

457/186/187 1 July Changes

Below are the key, previously announced changes that came into effect from [1 July 2017](#):

For 457 applications:

- **Occupation lists:** The revised MLTSSL and STSOL were released, with many previously restricted or removed managerial and professional occupations once again eligible for sponsorship. Of note was the return of University lecturers, senior corporate executive roles (e.g Corporate General Manager), retail buyers and occupations associated within the biotech and medical research sectors (e.g Life Scientist, Biochemist). The return of these occupations was largely as a result of high level lobbying from both the migration and affected industries. The MLTSSL will be reviewed annually with the STSOL being revised every 6 months.
- **English language requirements:** the English language salary exemption threshold of \$96,400 was removed for direct or lateral hires. Interestingly, the Government announced the salary exemption would remain in place for intra-company transfers.
- **Character:** Police clearance certificates and evidence of any military service (including compulsory military service) became mandatory – this could result in significant processing delays.

For 186/187 applications:

- **English language and skill requirements:** The level of English required for primary applicants across both Direct Entry and Temporary Residence Transition streams is now IELTS band 6 (or equivalent test) in each test component. What was *not* previously disclosed by DIBP however was the removal of the salary exemption threshold of \$180,001 for both English language and skills in the Direct Entry stream. This unexpected removal applies to applications lodged from 1 July 2017, as well as to applications that were pending a decision at DIBP before 1 July 2017.
- **Age:** a maximum age requirement of 44 at the time of application now applies to DE stream applicants. Until 1 March 2018, a maximum age requirement of 49 at the time of application will continue to apply to TRT stream applicants.
- **Caveats:** From 1 July 2017, the occupational caveats applicable under the Subclass 457 visa scheme are applied also to Subclass 186 applications lodged under the DE stream.

Training Benchmark overhaul

From March 2018, the **Skilling Australians Fund Levy** will replace the current **Training Benchmarks A and B** for employers sponsoring workers for a temporary or permanent skilled visa. In the interim, the Government has further tightened the existing Training Benchmark parameters, introducing new restrictions on acceptable types of expenditure for both Training Benchmarks A and B.

- **Training Benchmark A:** Recent expenditure, by the business, to the equivalent of at least 2% of the payroll of the business, in payments allocated to a training fund that operates in the same or a related industry of the business. Recent expenditure for Training Benchmark A is defined as expenditure made in the previous financial year or the previous 12 months, as evidenced by a receipt for the payment or a letter from the relevant fund.

Expenditure is **not** acceptable for the purposes of meeting this benchmark where payments are made to:

- training funds operated by Registered Training Organisations (RTOs) or private individuals; or
- funds that allocate a percentage or part of the contributions received to commissions or offer refunds for failed immigration applications.

Training funds that may be used to meet the requirement of this benchmark are:

- an industry training fund: that is, a statutory authority responsible for providing funding for training of eligible workers in certain industries;
 - a fund managed by a recognised industry body that provides training opportunities in their industry and quarantines contributions to the fund for training purposes only; or
 - a recognised scholarship fund operated by an Australian university or TAFE college only.
- **Training Benchmark B:** Recent expenditure, by the business, to the equivalent of at least 1% of the payroll of the business, in the provision of training of employees of the business who are Australian citizens and Australian permanent residents. The business is also required to show that the provision of training is related to the purpose of the business. Recent expenditure for Training Benchmark B is defined as expenditure made in the previous financial year or the previous 12 months, as evidenced by a receipt for the payment(s) or a contract for employment of the relevant individual for whom salary payments are being included within expenditure that can count towards the benchmark.

Expenditure that **can** count towards this benchmark includes:

- payments for Australian employees to undertake a formal course of study, including any reasonable and necessary associated costs (e.g. costs of travelling to the training venue or access an online training programme);
- **payments to RTOs to deliver face-to-face training to Australian employees that will contribute to an Australian Qualifications Framework qualification;**
- purchase of an eLearning platform or standalone training software;
- payments to cover the salary of Australian employees:
 - engaged by the business as apprentices or trainees under a formal training contract, or
 - 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;
- **the salary of a person whose sole role is to provide training to Australian employees;**
- expenditure to attend conferences for continuing professional development.

Expenditure that **cannot** count towards this benchmark includes:

- on the job training that is not otherwise identified above as applicable expenditure for Training Benchmark B;
- training that is not relevant to the industry in which the business operates;
- training undertaken by persons who are principals in the business or their family members;
- training that has a very low skill level having regard to the characteristics and size of the business;
- induction training;
- staff salaries apportioned to time spent undertaking online or other training courses;
- purchase of software for use in normal duties;
- **membership fees;**
- **purchase of books, journals or magazine subscriptions;**
- **attending conferences for purposes other than continuing professional development;** and
- hiring a booth at a trades show, conference or expo.

Expenditure types significantly different to those previously in place have been **bolded**. DIBP have indicated these changes will not be applied retrospectively or to those still pending a decision at DIPB. It does however remain to be seen how this will be applied to training expenditure in the 12 months immediately before a new sponsorship application. These measures will be repealed upon the introduction of the training levy in 2018.

Changes by December 2017 and from March 2018

As discussed in our previous Immigration Updates, the Government has lined up a series of changes that will be implemented by December 2017 and from March 2018.

We will remind you of these impending changes when we get close, or when associated legislative instruments are in place.

We have started discussing strategies/options with clients who are affected by this latest round of changes. If, for whatever reason, we have not yet had a discussion with you, please don't hesitate to contact us.

If you have any questions concerning the information provided in this newsletter, please contact:

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