

Mobility: Immigration alert

June 2023



Australia

Planning for 1 July 2023 and beyond

Executive summary

Several initial elements of the Australian government's immigration reform program, *A Migration System for Australia's Future*, will be implemented on 1 July 2023. Other elements of the reform program are also underway.

On 1 July 2023, the following will also commence:

- annual adjustments to charges and thresholds
- winding back of some COVID-19 pandemic immigration concessions
- more flexible working holiday arrangements for United Kingdom passport holders
- Migration Program planning levels for 2023 - 2024.

Annual adjustments to charges and thresholds

Temporary Skilled Migration Income Threshold (TSMIT)

The TSMIT will increase to AUD70,000 on 1 July 2023. It is expected that annual indexation of the TSMIT will also resume from July 2024.

For new employer sponsored nomination applications lodged on and after 1 July 2023 the 'annual earnings' (excluding superannuation guarantee contribution) to be paid to the visa holder and the Australian market salary rate for the nominated occupation must be at least AUD70,000.

Application charges

Immigration application charges typically increase on 1 July each year by between 2% and 4% aligned with the Consumer Price Index. On 1 July 2023, significant additional increases will apply:

- 6% for the majority of visas including Temporary Skill Shortage (TSS) visas and employer sponsored permanent residence visas

- 15% for visitor, working holiday, training, temporary activity and subclass 400 visas
- 40% for business innovation and investment visas.

Superannuation guarantee rate increase

On 1 July 2023, the superannuation guarantee rate will increase to 11% and 0.5% annually to 12% on 1 July 2025.

Where superannuation is calculated on top of employees' base salary there are no immigration considerations as base salary and 'annual earnings' will not be reduced.

Where the superannuation component of total remuneration packages is increased and the base salary is reduced, there is a risk that the sponsorship obligation not to reduce the 'annual earnings' of sponsored visa holders may be breached as superannuation guarantee contributions are excluded from annual earnings.

A breach may not occur if annual earnings have increased sufficiently since the nomination was approved. Other options to avoid a breach are:

- increasing the total remuneration package so annual earnings are not reduced
- lodging a new nomination with the reduced annual earnings. Skilling Australians Fund levy and nomination application charge would apply. Labour market testing should not be required if the nomination is lodged solely due to the change in annual earnings.

Fair Work High Income Threshold (FWHIT)

The current threshold of AUD162,000 will increase on 1 July 2023. The FWHIT is relevant to age exemptions for employer sponsored permanent residence and eligibility criteria for other visa categories.

Initial reforms in effect from 1 July 2023

Tapping into the pool of overseas student graduates

Overseas student graduates with qualifications in demand will be eligible for an extended period of stay on a Temporary Graduate subclass 485 visa. This visa has full work rights and does not require sponsorship. The visa period will be extended as follows:

- increase from two years to four years for graduates with a 'select' Bachelor degree
- increase from three years to five years for graduates with a 'select' Masters degree
- increase from four years to six years for all PhD graduates.

'Select' Bachelor and Master qualifications will be confirmed before 1 July 2023 and will include health, teaching, engineering, ICT and agriculture.

This extended period of stay on a Temporary Graduate subclass 485 visa will enable graduates to qualify for other skilled visas.

Streamlined pathway to citizenship for New Zealand citizens

Certain New Zealand citizens who hold a Special Category visa or a Skilled Independent (subclass 189) visa may apply for Australian citizenship under the new streamlined pathway from 1 July 2023.

Priority reforms underway

Addressing migrant worker exploitation

A Bill will be introduced to Parliament shortly to:

- make it a criminal offence to coerce someone into breaching their visa condition
- introduce prohibition notices to stop employers hiring additional temporary visa holders where they have exploited migrants
- increase penalties and new compliance tools to deter exploitation
- remove the criminal offence for breaching a work-related visa condition which discourages visa holders from reporting exploitative behaviour.

Additional reforms have been proposed to improve protections for migrant workers who report exploitation including:

- increasing the period a TSS visa holder may remain in Australia after ceasing employment with their sponsor from 60 to 180 days and permitting the visa holder to work during that period
- whistleblower protections for temporary visa holders such as a Workplace Justice visa and strengthening the firewall between the Fair Work Ombudsman and the Department of Home Affairs.

These initiatives will be supported by AUD50 million in funding to resource the Australian Border Force's enforcement and compliance activities.

EY will engage with government regarding the challenges that sponsors may face meeting their ongoing obligations during an extended period of stay in Australia after TSS visa holders cease employment.

Essential industries pathway for lower paid and lower skilled workers - Aged Care Industry Labour Agreement implemented

While the three-tiered risk-based temporary skilled visa framework was proposed for consultation, the essential industries pathway for the aged care sector has been implemented through the launch of the Aged Care Industry Labour Agreement.

Under this Agreement, aged care providers may sponsor nursing support workers, personal care assistants and aged or disabled carers. Providers must enter into a Memorandum of Understanding with the relevant unions and demonstrate that recent and genuine attempts to recruit Australian workers have been made and current workforce have been given additional hours if requested.

The Agreement provides streamlined and priority visa processing in addition to a number of concessions:

- minimum salary threshold of at least AUD51,222
- concessional English language and qualification requirements
- a pathway to permanent residence after two years.

Winding back COVID-19 concessions from 1 July 2023

- the work restriction for overseas students will recommence at a maximum of 48 hours a fortnight
- the relaxation of the 6-month work limitation for working holiday makers will end. However, work carried out before 1 July 2023 will not be counted towards the limitation meaning that working holiday makers may work for the same employer for a fresh period of 6 months from 1 July 2023.

The subclass 408 Pandemic visa is also likely to be repealed in the near future.

Working Holiday Makers from the United Kingdom

From 1 July 2023, the age limit for working holiday makers from the UK will increase from 30 to 35 years. This higher age limit is also in place for passport holders of Canada, Denmark, France, Ireland and Italy.

From 1 July 2024, UK passport holders will be eligible to apply for a further Working Holiday visa without meeting the 'specified work' requirement, generally work in a regional area, meaning that this group of skilled workers will be able to work in a metropolitan area from 1 July 2023 without impacting their eligibility to extend their stay as a working holiday maker.

Migration Program 2023 - 2024

The 2023-24 permanent Migration Program has been set at 190,000, with 5,000 fewer skilled migration places than the current year. The overall level for family visas will not change and Partner and Child visas will remain uncapped.

With the exception of a significant reduction in the allocation for business and investment visas, the planning level for each skilled migration category is similar to the current year including the Global Talent visa:

- Employer Sponsored 36,825
- Regional 32,300
- Business Innovation & Investment 1,900
- Skilled Independent 30,375
- State/Territory Nominated 30,40
- Global Talent 5,000 & Distinguished Talent 300

Next steps

Employers should consider:

- the impact of the superannuation guarantee rate increase and seek advice where a compliance breach may occur
- the impact of increases to application charges, TSMIT and the FWHIT
- overseas student graduates in workforce planning strategies
- the benefits of an immigration and workplace compliance health check.

If you wish to discuss participating in consultations regarding the proposed *Migration System for Australia's Future* or other issues discussed in this alert, contact your EY advisor.

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