

Mobility: Immigration alert

June 2022



Australia

Preparing for 1 July 2022

Executive summary

Australia's borders have now been open to fully vaccinated travelers for three months. However, visa application processing has not resumed its pre-pandemic pace and skill shortages continue across the Australian economy. While the newly elected government has a greater focus on protecting local employment opportunities and working conditions as well as protecting temporary workers, skilled migration to address Australia's skills shortages remains a key feature of immigration policy.

EY does not anticipate a significant shift in policy direction regarding employment related migration and recommends employers plan for the expected 1 July 2022 changes:

- ▶ annual adjustments to charges and thresholds
- ▶ superannuation guarantee rate increase
- ▶ additional pathways and concessions for employer sponsored permanent residence

This alert also covers other immigration measures to address workforce shortages and New Zealand immigration updates.

Annual adjustments to charges and thresholds

Temporary Skilled Migration Income Threshold (TSMIT)

The new government's policy is to increase the TSMIT which was to increase annually but has remained at AUD53,900 since 2013.

Application charges

Immigration application charges typically increase on 1 July annually by between two and four percent.

Fair Work High Income Threshold (FWHIT)

The current threshold of AUD158,500 will increase on 1 July 2022. The FWHIT is relevant to age exemptions for employer sponsored permanent residence and eligibility criteria for other visa categories.

Superannuation guarantee rate increase

On 1 July 2022, the superannuation guarantee rate will increase to 10.5% 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.

Employers should:

- ▶ review their sponsored visa holder population and consider the impact of the superannuation guarantee rate increase
- ▶ communicate the changes and potential impacts to employees
- ▶ contact your EY advisor to discuss a solution where there is a risk of a breach
- ▶ consider the impact of future annual increases in the superannuation guarantee rate until 1 July 2025 on remuneration budgets.

Employer sponsored permanent residence – additional pathways and concessions from 1 July 2022

EY welcomes the additional permanent residence pathways and concessions. However, the various announcements and pieces of legislation released to date provide a patchwork of amendments that are unnecessarily complex and, at the time of writing, incomplete. We will continue to lobby for simplification though the resumption of a single skilled occupation list with a secure pathway to permanent residence for all employer sponsored skilled temporary workers.

Recent announcements include:

- ▶ closure of the new permanent residence pathway after two years, excluding those not already holding a subclass 457 visa or a subclass 482 Temporary Skill Shortage (TSS) visa from accessing the new pathway
- ▶ review of the extension of the transitional provisions for certain subclass 457 visa holders ‘within two years’
- ▶ provisions enabling Short-term TSS visa holders to apply for a third TSS short-term visa in Australia to facilitate permanent residence under the new pathway to commence on 1 July 2022 and cease on 1 July 2023
- ▶ the new exemption from the age threshold under the Temporary Residence Transition (TRT) stream for a certain holders and former holders of subclass 457 visas to commence on 1 July 2022 and cease on 1 July 2024.

Summary of amendments to employer sponsored permanent residence -1 July 2022					
Change	Transitional provisions for certain subclass 457 visa holders extended	New PR pathway for employees in short-term occupations who worked in Australia during pandemic	Additional age exemption for ‘legacy 457 workers’	TSS short-term visa holders able to apply for third TSS short-term visa while in Australia	
Benefit	PR pathway under TRT regardless of occupation Higher age threshold 50 Reduced qualifying period to two years work in position	PR pathway under TRT regardless of occupation	Exempt from age threshold under TRT	Facilitate eligibility for PR under new TRT pathway	
Start date	18 March 2022	1 July 2022			
Cease date	To be reviewed within two years	1 July 2024	1 July 2024	1 July 2023	
Who benefits	Visa history	On 18 April 2017 held or had applied for a subclass 457 visa that was granted	Subclass 457 visa holders not covered by transitional provisions and TSS short-term visa holders	TSS or subclass 457 visa holders who on or after 18 April 2017 held a subclass 457 visa	TSS short-term visa holders
	Time in Australia	Not applicable	In Australia for at least 12 months between 1 February 2020 and 14 December 2021		In Australia for at least 12 months between 1 February 2020 and 14 December 2021 on a TSS short-term visa

Several inequities and complexities arise from the delay of the commencement of certain amendments to 1 July 2022 with no integrity or other policy benefit, in particular:

- ▶ short-term TSS visa holders whose second TSS ceases before 1 July 2022 cannot take advantage of the amendments enabling them to apply for a third TSS visa while they are in Australia. The subclass 408 ‘Pandemic event’ visa may be an appropriate interim visa that permits work in Australia. However, the legislative change that is required to enable a subclass 408 visa holder to be nominated for permanent residence has not yet been released
- ▶ the commencement of the new age exemption on 1 July 2022 means that a new visa application is required for employees who are over the age threshold and hold a TSS visa which ceases before 1 July 2022. In the absence of the legislative change referred to above to permit the holder of a visa other than a TSS, subclass 457 visa (or associated Bridging visa) to be nominated for permanent residence, employers have met the high costs associated with an otherwise unnecessary TSS visa to bridge the gap until 1 July 2022.

Pandemic work concessions recap

Several measures to assist employers meet their workforce demands remain in place and could be reviewed by the incoming government:

- ▶ the temporary removal of work restrictions for student visa holders which remains in place 'until further notice'
- ▶ Working holiday makers' 6-month work limitation with the same employer has been temporarily relaxed to 31 December 2022
- ▶ the subclass 408 Pandemic event visa continues to permit stay for 12 months for work in a critical sector (agriculture, food processing, health care, aged care, disability care, childcare, and tourism and hospitality) and six months for work in any other sector. Applicants must generally have been in Australia before 21 February 2022 and have an offer of employment. Concessions apply to Commonwealth funded aged care services. There is no visa application charge for this visa.

The working holiday visa program continues to expand with Brazil joining from 1 July 2022 and India joining within the next two years. The number of working holiday makers from these countries will be limited.

New Zealand border opening and employer accreditation

From 4 July 2022, all New Zealand employers must be accredited to hire migrants on Accredited Employer work visas (AEWV). The New Zealand government will seek to introduce mandatory accreditation for employers hiring migrants on all visa types in 2023.

EY welcomes the announcement that New Zealand will bring forward the border opening:

- ▶ 4 July 2022 open to all work visa categories including AEWV and applicants overseas
- ▶ 31 July 2022 open to all remaining visa categories including student visas and visitor visas for non-visa-waiver travellers from any location

Next steps

Employers should:

- ▶ consider the impact of the superannuation guarantee rate increase and seek advice where a compliance breach may occur
- ▶ continue to plan for longer visa application processing times, around five weeks for TSS applications on the Priority Migration Skilled Occupation List, longer for other TSS applications and up to six months or more for permanent residence
- ▶ contact your EY advisor for an assessment and advice on strategy for any cases impacted by the 1 July 2022 permanent residence changes.
- ▶ plan for increases to application charges, TMSIT and the FWHIT

EY will continue to keep you informed about developments in skilled migration. Contact your EY advisor to discuss any of the issues raised in this alert.

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