

## GES NewsFlash

# Australia — Changes to the Employer Nomination Scheme



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### Background

Currently, under Australian immigration legislation, the employer who nominates a position to be filled under the Employer Nomination Scheme (ENS) must be the standard business sponsor of the Temporary Work (Skilled) visa holder (Subclass 457). In circumstances where the Subclass 457 holder has been working with an entity other than their most recent standard business sponsor, this entity is not eligible to nominate the individual under the ENS Temporary Residence Transition stream.

### Changes effective 1 July 2014

Effective from 1 July 2014, work undertaken by a Subclass 457 visa holder with an entity other than the most recent standard business sponsor may still be counted towards the two-year employment requirement if the nominator can demonstrate that they have always been the employer of the nominee. This would be considered acceptable provided:

- The nominee is still working in the same position, performs the same duties, and has the same working conditions; and/or
- The nominee reports to the same management structures; and/or
- The nominator retains the same business name and operations, but is considered to be a new legal entity.

#### *Example:*

Visa applicant, Frank, was sponsored for a Subclass 457 visa in November 2012 by ABC Pty Limited. ABC Pty Limited was purchased by LMN Pty Limited in September 2013; the two companies are not related entities. LMN Pty Limited obtained standard business sponsorship and Frank's Subclass 457 visa was transferred to their sponsorship. Frank's role, duties, workplace, and reporting lines did not change. In November 2014, LMN Pty Limited plans to lodge a Temporary Residence Transition stream application for Frank. Under the revised arrangements, this application would be permissible.

#### *New validity requirements for skills assessments*

Effective from 1 July 2014, if a skills assessment is a mandatory requirement of a visa application, the assessment will only be valid for a period of three years from the date of issue, unless a shorter validity period is specified on the assessment. This will ensure consistency in the validity of skills assessments between the different skill assessing bodies.

A skills assessment must be valid at the time of lodgment for the following visas:

- Direct Entry stream of the Employer Nominated Scheme (Subclass 186) visa
- Direct Entry stream of the Regional Sponsored Migration Scheme (Subclass 187) visa
- Graduate work stream of the Temporary Graduate (Subclass 485) visa.

A skills assessment must be valid at the time of invitation to apply through SkillSelect for the following visas:

- Skilled — Independent (Subclass 189) visa
- Skilled — Nominated (Subclass 190) visa
- Skilled Regional (Provisional) (Subclass 489) visa.

#### *Visa Evidencing Charge will increase*

The Visa Evidencing Charge will increase from AUD 70 to AUD 150 from 1 July 2014. Individuals requesting a visa label to be affixed to their passports will be required to pay the increased fee from this date.

#### *Changes to Consolidated Sponsored Occupation List (CSOL)*

The CSOL is applicable for applications for:

- points-based skilled migrants who are nominated by a state or territory government agency under a State Migration Plan
- the ENS who must have been nominated by an Australian employer to fill a position in an occupation that appears in the CSOL
- the Temporary Work (Skilled) visa (Subclass 457)
- the Training and Research visa (Subclass 402).

The following occupations will be added to the CSOL from 1 July 2014:

- Hydrogeologist (ANZSCO 234413)
- Exercise physiologist (ANZSCO 234915)

#### *Alternative English language tests for visa applicants*

From November 2014, the Department of Immigration and Border Protection will accept English language test results from the Test of English as a Foreign Language Internet-based test and the Pearson Test of English Academic for the Temporary Graduate, Skilled, Former Resident, and Work and Holiday visa programs. It is anticipated that scores from the Cambridge English: Advanced test will also be accepted from early 2015.

These tests are alternative to the International English Language Testing System and Occupational English Test and have been accepted in the Student visa program since 2011.

#### *2014–15 Migration Program is announced*

The Minister for Immigration and Border Protection, the Honorable Scott Morrison, MP, announced the Migration Program for 2014–15 will be set at 190,000 places. This will be broken down as follows:

Stream	Places
Skilled	128,550
Family	60,885

The program is strongly focused on the skilled stream due to the economic benefits to Australia. In addition, places have been moved to the employer sponsored category away from the skilled independent visa category. This benefits employers who have been unable to fill jobs with local workers. It also reduces the number of migrants who enter Australia without a formal job offer.

#### Deloitte's view

- The changes to the ENS which will take effect from 1 July 2014 introduce some flexibility to the law and policy which recognize the mobile nature of labor and skills transfer. These changes will make it easier for Australian employers to retain skilled labor in Australia, which, in turn, has a wider benefit to the Australian economy. The changes also reduce unnecessary administrative burden on employers by avoiding the need for a further visa application in certain circumstances.
- The amendment related to a consistent validity period for skills assessments where it is a mandatory requirement of a visa application is a welcome change, removing some confusion surrounding skills assessments from certain assessing bodies where previously no validity period applied.
- Deloitte also welcomes the continuing emphasis on skilled migration announced as part of the 2014–15 Migration Program. In spite of the slowdown in certain areas of the Australian economy, skilled migration will continue to play an important part in the growth of the Australian economy and the targeted use of foreign talent remains an important element of the competitiveness of Australian business.

#### Contacts

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the GES professionals at our Deloitte offices as follows:

##### Sydney

Mark Wright

Tel: +61 2 9322 7454

[mawright@deloitte.com.au](mailto:mawright@deloitte.com.au)

Roshni Kapoor

Tel: +61 2 9322 7359

[rokapoor@deloitte.com.au](mailto:rokapoor@deloitte.com.au)

##### Melbourne

Fiona Webb

Tel: +61 3 9671 6334

[fwebb@deloitte.com.au](mailto:fwebb@deloitte.com.au)

##### Brisbane

Beth Fitzpatrick

Tel: +61 7 3308 7186

[bfitzpatrick@deloitte.com.au](mailto:bfitzpatrick@deloitte.com.au)

##### Perth

George Kyriakakis  
Tel: +61 8 9365 7112  
[gkyriakakis@deloitte.com.au](mailto:gkyriakakis@deloitte.com.au)

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Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia

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