



Immigration Law Update

The dynamic area of Immigration law is subject to constant change. Included in recent developments are the following:

1. Increase of the Temporary Skilled Migration Income Threshold

From 1 July 2010, the Temporary Skilled Migration Income Threshold (TSMIT) has increased from \$45,220 to \$47,480. This change applies to all nominations lodged on or after 1 July 2010.

Employers must remember that the TSMIT is the rate of pay (exclusive of superannuation) that is the minimum that can be paid to an overseas temporary worker. However, employers are still obliged to pay their overseas workers the "market salary rate" which in many cases will be far higher than the TSMIT. On the other hand, if an employer wishes to nominate for a position where the market rate is less than \$47,480, the application will be rejected.

Agreeing on a market rate for a particular position or occupation can be a difficult process, one of the biggest criticisms being that the assessment can be quite subjective and can vary considerably from case officer to case officer. It is therefore important when preparing submissions on market rates that a broad range of relevant material be submitted for consideration.

2. Living away from home allowance now clarified

The treatment of how to deal with living away from home reimbursement payments has always been a bone of contention with the Department. A significant part of the debate centred around whether reimbursements, as opposed to allowances, could be considered "guaranteed earnings" for S/C 457 purposes. For example, many employees might receive payments from their employer as reimbursement of rent paid by them. Previously this was regarded as not being part of guaranteed earnings. DIAC has now confirmed that living away from home reimbursements are to be treated as guaranteed earnings for S/C 457 purposes.

3. Employer Nomination Changes to Occur

The Department of Immigration has indicated that it is to conduct a review of the Employer Nomination Scheme.

Because of the raft of amendments that have been made to the Subclass 457 visa process in recent times, it is in many respects now a lot easier to obtain a Permanent visa for an overseas worker than a temporary one. It is understood that the Department will be reporting to

the Government with a range of suggestions on how to strengthen the ENS program with particular focus on areas such as:

- English language requirements.
- Exceptional circumstances.
- Applying a monitoring/ enforcement regime.
- Introduction of a regional occupation list for Regional Skilled Migration.
- Closer alignment with S/C 457 visas.

Any employer who is contemplating sponsoring an overseas worker for Permanent status under the Employer Nomination Scheme would be well advised to initiate that application as soon as possible, as the process will undoubtedly become more cumbersome once the results of the review are put into effect.

This document has been prepared by Nevett Ford Lawyers, a full service law firm which includes Immigration law amongst its specialised areas of practice.

Please feel free to contact David Stratton, Helen Zheng or Ryan Curtis-Griffiths, lawyers in our migration work group if you require further information in relation to this issue, or if you require legal advice regarding any other migration law matter.

Contact:

David Stratton Director T: 03 9614 7111	Helen Zheng Lawyer T: 03 9615 4325	Ryan Curtis-Griffiths Lawyer T: 03 9615 4309
email: dstratton@nevetford.com.au	email: hzheng@nevetford.com.au	email: rcurtisgriffiths@nevetford.com.au
Registered Migration Agent 58007	Registered Migration Agent 3327	Registered Migration Agent 741735

Melbourne office

Level 42 South Tower Rialto
525 Collins Street
Melbourne Victoria 3000

T 03 9614 7111

F 03 9614 3192

email:

melbourne@nevetford.com.au

Ballarat office

40 Armstrong Street North
Ballarat Victoria 3350

T 03 5331 4444

F 03 5333 2694

email:

ballarat@nevetford.com.au

Bacchus Marsh office

127 Main Street
Bacchus Marsh Victoria 3340

T 03 5367 1033

F 03 5367 4991

email:

bacchusmarsh@nevetford.com.au

"Building quality relationships with clients"

www.nevetford.com.au

Disclaimer

This document has been prepared for the purpose of providing information and is intended as a guide only and not legal advice.

If you have any queries in relation to this article please contact this office to seek legal advice. Accordingly, we accept no responsibility for the accuracy of the information provided nor any liability for any loss or damage suffered as a result of reliance upon this document.