

Hammond Taylor

Skilling Australia Fund Levy

What employers need to know

August 2018

Background

- Skilling Australians Fund Levy is a key reform to immigration & education policy for Federal government
- Replaces existing Training Benchmark system
 - Training Benchmark A – donate equivalent to 2% gross payroll
 - Training Benchmark B – spend 1% gross payroll on training staff
- **Goal of SAF levy is to simplify compliance & monitoring**
- Also corresponds with government intention to form new national partnership regarding training Australians
 - Up to 300,000 apprentices, trainees, pre-apprentices, etc.

Skilling Australians Fund (NTCC)

- Bill introduced 18 October 2017
- Intended to raise \$1.2 billion over forward estimates for skills training
- Part of April 2017 abolition of 457 program to ‘sharpen focus’ on employer sponsored skilled migration
- **Creation of a ‘Nomination Training Contribution Charge’, known as Skilling Australians Fund levy**
- Came into effect 12 August 2018

Skilling Australians Fund & Charges Bills 2017

Skilling Australians Fund Bill

- Bills function:
 - Require sponsors to pay charge for sponsoring employee
 - NTCC to offset expenditure from SAF training fund administered by Dep Education & Training
 - Establish further requirements for Labour Market Testing (LMT) and evidence to accompany application

Skilling Australians Charges Bill

- Sets the amount for the levy
- Establishes method of annual indexation / limits annual increase

SAF & Business Sponsorships

- **Business Sponsorships**
 - Enable business to sponsor skilled staff on 482 (previously 457)
 - Divided into ‘Standard Business Sponsorship’ & ‘Overseas Business Sponsorships’ & ‘Labour Agreements’
- **New Business Sponsors**
 - No Training Benchmark Obligations
- **Pre-12 August Sponsors**
 - No ongoing Training Benchmark obligations from 12 August*
 - But must maintain record of previous compliance with Training Benchmark System

* NB Sponsors may have obligations related to lodged 186 applications

482 Nominations

- Amount varies based on the size of the business
- Levy payable per application
- Levy payable in full at time of application
- **Levy cost must be met by employer**
 - Transfer of costs is breach of Sponsorship Obligations
 - Likely breach of ‘Charging for a Migration Outcome’ provisions of the *Migration Act 1958*

Visa Type	Turnover <\$10 million	Turnover >\$10 million
482	\$1,200.00 per year	\$1,800.00 per year

- **Nomination Transfer** – 1 year SAF payment only required
- **Limited refunds**

Employer Nomination Scheme 186 & Regional Skilled Migration Scheme 187

- Amount varies based on the size of the business
- Levy payable per application
- **Levy cost must be met by employer***
 - Transfer of costs is breach of Sponsorship Obligations
 - Likely breach of ‘Charging for a Migration Outcome’ provisions of the *Migration Act 1958*

* Possible exception for ‘Direct Entry’ applications where sponsor is not a current Business Sponsor

Visa Type	Turnover <\$10 million	Turnover >\$10 million
186 / 187	\$3,000.00 one off payment	\$5,000.00 one off payment

- **Limited refunds**

Past & Present 186 / 187 applications

- **Pre-12 August 2018 applications**
- Employer has obligation to continue to meet Training Benchmark obligation until decision
- If application appealed to AAT obligation continues
- **Post-12 August 2018 application**
 - ‘Direct Entry’ stream – SAF levy meets requirement, nothing further required
 - ‘Temporary Resident Transition’ stream – SAF levy required, employer must have met prior Training Benchmark Obligation*

* Home Affairs have indicated that past non-compliance will not consider previous non-compliance in context of 186 application but no formal confirmation of this position.

Refund Provisions

- **Withdrawal of Nomination**
 - Basis of incorrect period requested (482 visa)
 - Information used to determine contribution required (ie, turnover) was incorrect
 - Application made prior to Labour Agreement being approved
 - Application made prior to Business Sponsorship being approved and application refused
 - Incorrect occupation
 - Incorrect stream (186 / 187)

Refund Provisions

- **Visa refusals**
- Visa subsequently refused on the basis of health or character
- Visa is refused but the nominee fails to commence work
- From 17 November **refund available** if Nomination was for 4 years and visa holder ceases work within 12 months of commencing.
- **No general refund provision**
 - **Beware:** Standard nomination / visa refusal not subject to refund!

Labour Market Testing

- **Form**
 - 2 advertisements. Can be same / different media:
 - **Internet:** National job board (Seek, jobsearch.gov.au) or industry specific. No classified sites!
 - **Print:** Must be national distribution, only needs to run once
 - **Radio:** Must be national distribution, only needs to run once
- **Duration / Period**
 - Must be open 28 days
 - Nomination must be lodged within 4 months of start of advertising
- **Content**
 - Salary (if under \$96,400, employer / recruiter name, duties of role, skills experience, in English)
- **Evidence**
 - Copy of job advertisements / receipts for payment

LMT - Alternatives

- **‘Select occupations’**
 - ‘Internationally recognised record of exceptional and outstanding achievement in relevant profession / field’, including:
 - Sport
 - Academia
 - Chef
 - Intra-company transfer
 - Company restructure
 - Salary >\$250,000
 - Medical practitioners other than ‘General Medical Practitioner’, ‘Medical Practitioners NEC’, ‘Ambulance officers / Paramedics’

LMT - Alternatives

- **‘Select occupations’**
 - Must provide submission on why Australian not available
- **International Trade Obligations**
 - **WTO Obligation**
 - senior executives responsible for a substantial portion of Australian operations
 - **Free Trade Agreements**
 - citizen/national of China, Japan or Thailand, or is a citizen/national/permanent resident of Chile, South Korea, New Zealand or Singapore
 - a current employee of a business that is an associated entity of your business and the associated entity is located in an Association of South-East Asian Nations (ASEAN) country

Associated reforms

- **482 Nomination Expiry dates**
 - Nomination will not expire until visa ‘finally determined’
 - Refers to matter being decided by Home Affairs & not appealed; or
 - Appealed but not decided by Administrative Appeals Tribunal

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Conclusion

SAF Levy (NTCC) & Labour Market Testing Changes