

Bulletin

01 March 2003

Migration Regulation changes: with effect 1 March 2003: employers need to know

This message provides a snapshot of some of the more important changes to the Migration Regulations coming into effect on 1 March 2003. These changes will have widespread impact and clients are requested to become familiar with these changes. For further information or more detailed or specific advice please contact me.

1. Subclass 457 - visa application validity requirements - criteria to be satisfied at time of application and time of decision - requirements relating to the sponsoring employer

Amendment: Applicants for a Temporary Business (Long Stay) (subclass 457) visa will be required to show evidence at the time of visa application that their sponsor is an approved business sponsor, or has lodged an application for approval as a business sponsor. In addition, visa applicants must maintain the same sponsor throughout the formal visa application process; from lodgment through to time to decision.

Impact: This is a significant change to existing arrangements. Visa applicants will no longer be able to "swap" sponsor during the processing of their visa application. If the sponsoring employer withdraws its supporting Position Nomination after lodgment but before the visa is issued, the visa application will fail. Even where a new sponsor is or could be found, a new Position Nomination from another sponsor cannot be added to "save" the visa application from failing. Applications lodged prior to 1 March 2003, but not finalised as at 1 March 2003, will be processed under the regulations in force at the time of application.

These changes place increased pressure on employer sponsors to ensure that their *business sponsor* immigration status is (and will remain) valid throughout the formal visa application process, or their application for approval as a business sponsor (including renewals of current approvals) is capable of being lodged at least contemporaneously with any visa applications. Maintaining continuous approval as a *business sponsor* will ensure minimization of one failure risk arising from these changes.

For further details, go to: http://www.immi.gov.au/legislation/amendments/lc1032003_6.htm

2. Extended requirements for onshore visa applicants - must demonstrate they have complied substantially with visa conditions

Amendment: Enables immigration department decision makers to take into account a visa applicant's compliance with the conditions of their last held substantive visa together with the conditions of any intervening bridging visas. The amendments also cover secondary applicants.

Impact: Gives the immigration department greater certainty, capacity and opportunity to refuse a visa application (onshore) where the visa applicant or any of their family members (secondary applicants) have been in breach of visa conditions.

Sponsoring employers are reminded that they are obliged to promptly advise the immigration department about the cessation of employment of sponsored employees. AMIS can at a client's request provide to the immigration department cessation advice, notification and administration services in respect of sponsored employees.

For further details, go to: http://www.immi.gov.au/legislation/amendments/lc1032003_4.htm

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3. Changes to the Migration Agents Regulations 1998 - lodgment of complaints and additional Code of Conduct requirements

Amendment: Amongst other changes in respect of migration agents, the legislation is amended to:

- clarify that organisations, such as tribunals, courts, community organisations and the Department of Immigration and Multicultural Affairs, as well as individuals, are able to make complaints about migration agents to the Migration Agents Registration Authority;
- require agents to provide their clients with a booklet entitled "Information on the Regulation of the Migration Advice Profession" and retain evidence that they have done so;
- clarify situations in which a migration agent should not accept a person as a client due to the possibility of a conflict of interest arising and provide guidance to agents about their responsibilities if they become aware that such a conflict exists, following engagement of the agent by the client.

Impact: Seeks to establish a higher level of ethical behavior on the part of migration agents through increasing:

1. regulation of the industry generally,
2. prescription of specific responsibilities of migration agents, and
3. formal notification obligations

in connection with advising clients of their rights of complaint against the unprofessional behavior of migration agents.

For further details, go to: http://www.immi.gov.au/legislation/amendments/lc1032003_3.htm

4. Changes to Subclass 410 (Retirement) visa - limited work permitted

Amendment: Permit subclass 410 (Retirement) visa holders up to 20 hours work per week.

Impact: Subclass 410 has been amended to remove the mandatory "no work" (8101) condition and substitute a "limited work rights" (8104) condition. No changes have been made to the other 410 visa requirements. Existing Subclass 410 visa holders will be able to have their visa labels re-issued with the new visa condition. This change will permit employers to lawfully engage such mature age internationally experienced professionals for part-time employment or consulting.

For further details, go to: http://www.immi.gov.au/legislation/amendments/lc1032003_14.htm

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