



Migration (IMMI 18/017: Specification of Training Requirements for Regulation 2.87B) Instrument 2018

I, Alan Tudge, Minister for Citizenship and Multicultural Affairs, make the following instrument.

Dated 15 March 2018

Alan Tudge

The Hon Alan Tudge MP
Minister for Citizenship and Multicultural Affairs

Contents

Part 1 – Preliminary

| | | |
|---|--------------------|---|
| 1 | Name | 1 |
| 2 | Commencement | 1 |
| 3 | Authority | 1 |
| 4 | Definitions | 1 |
| 5 | Schedules | 2 |

Part 2 - Specified Training Benchmarks and Training Requirements 3

| | | |
|---|--|---|
| 6 | Benchmarks and requirements for training of Australian citizens and Australian permanent residents | 3 |
|---|--|---|

Schedule 1 - Training Benchmarks and Training Requirements

| | | |
|---|----------------------------|---|
| 1 | Training Benchmarks | 4 |
| 2 | Training Benchmark A | 4 |
| 3 | Training Benchmark B | 4 |

Schedule 2 - Repeals

| | | |
|--|--|---|
| | <i>IMMI 17/045: SPECIFICATION OF TRAINING BENCHMARKS AND TRAINING REQUIREMENTS (F2017L00796)</i> | 7 |
|--|--|---|

Part 1 – Preliminary

1 Name

- (1) This instrument is the *Migration (IMMI 18/017: Specification of Training Requirements for Regulation 2.87B) Instrument 2018*.
- (2) It may be cited as IMMI 18/017.

2 Commencement

This instrument commences on 18 March 2018.

3 Authority

This instrument is made under subregulations 2.87B(2), and 2.87B(3) of the Regulations.

4 Definitions

In this instrument:

Australian employee means an Australian citizen or Australian permanent resident who is an employee for the purposes of the *Fair Work Act 2009*.

Employee has the definition provided by section 15 of the *Fair Work Act 2009*.

Payroll means:

- (a) the total amount of the two payments specified below:
 - (i) any wages, remuneration, salary, commission, bonuses, allowances, superannuation contributions or eligible termination payments, defined as wages in payroll tax legislation for the relevant State/Territory, that the applicant has paid to their employees during the same period; and
 - (ii) payments made to contractors or subcontractors during the same period if work provided by the contractor is related to the service/product provided by the applicant; andregardless of whether such payments are included for payroll tax purposes or not; or
- (b) if the applicant does not pay either of the types of payments specified above:
 - (i) the total monetary values of the director's salaries, fees and drawn payments; or
 - (ii) the actual profit of the business.

Regulations means the *Migration Regulations 1994*.

Recent expenditure for Training Benchmark A means expenditure made in the previous financial year or the previous 12 months, as evidenced by a receipt for the payment or a letter from the relevant fund.

Recent expenditure for Training Benchmark B means expenditure made in the previous financial year or the previous 12 months, as evidenced by a receipt for the payment(s) or a contract for employment of the relevant individual for whom salary payments are being included within expenditure that can count towards the benchmark.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 – Specified Training Requirements

6 Requirements for training of Australian citizens and Australian permanent residents

- (1) For the purposes of subregulations 2.87B(2) and 2.87B(3) of the Regulations, the specified requirements relating to training are the requirements for training an Australian citizen or an Australian permanent resident, listed in Schedule 1 to this instrument.

Schedule 1 – Training and Requirements

(1) Training Benchmarks

- (a) The business is not required to demonstrate that it is an industry leader in training; and
- (b) The business must fulfil the requirements of one of the two training benchmarks applicable to an established business:
 - (i) *Training Benchmark A*; or
 - (ii) *Training Benchmark B*.

(2) Training Benchmark A

- (a) Recent expenditure, by the business, must be the equivalent of at least 2% of the payroll of the business, in payments allocated to a training fund that operates in the same or a related industry of the business; and

NOTE: Recent expenditure for Training Benchmark A is defined in section 4 of this instrument.

- (b) Recent Expenditure for Training Benchmark A excludes an expenditure that is:
 - (i) training funds operated by Registered Training Organisations (RTOs) or private individuals; or
 - (ii) funds that allocate a percentage or part of the contributions received to commissions or offer refunds for failed immigration applications.
- (c) Training funds that may contribute to meeting the requirements for Training Benchmark A include:
 - (i) an industry training fund: that is, a statutory authority responsible for providing funding for training of eligible workers in certain industries; or
 - (ii) a fund managed by a recognised industry body that provides training opportunities in their industry and quarantines contributions to the fund for training purposes only; or
 - (iii) a recognised scholarship fund operated by an Australian university or TAFE college only.

(3) Training Benchmark B

- (a) Recent expenditure, by the business, must be the equivalent of at least 1% of the payroll of the business, in the provision of training of employees of

the business who are Australian citizens and Australian permanent residents; and

NOTE: Recent expenditure for Training Benchmark B is defined at section 4 in this instrument.

- (b) The business seeking to meet Training Benchmark B is required to show that the provision of training is related to the purpose of the business.

Applicable expenditure

- (c) Expenditure that may contribute to meeting the requirements of Training Benchmark B include:
- (i) payments for an Australian employee to undertake a formal course of study, including any reasonable and necessary associated costs (e.g. costs of travelling to the training venue or access to an online training programme); or
 - (ii) payments to a Registered Training Organisation to deliver face-to-face training to an Australian employee that will contribute to an Australian Qualifications Framework qualification; or
 - (iii) purchase of an eLearning platform or standalone training software; or
 - (iv) payments to cover the salary of:
 - (A) an Australian employee engaged by the business as an apprentice or training under a formal training contract; or
 - (B) an Australian employee who has completed an undergraduate or higher degree in a university within the last 2 years and is participating in a formal, structured graduate program for up to 2 years, or is completing a professional year following their graduation; or
 - (v) the salary of a person whose sole role is to provide training to an Australian employee on a full time basis; or
 - (vi) expenditure to attend conferences for continuing professional development.

Inapplicable expenditure

- (d) Expenditure that cannot count towards this benchmark includes:
- (i) on the job training that is not otherwise identified above as applicable expenditure for Training Benchmark B; or

-
- (ii) training that is not relevant to the industry in which the business operates; or
 - (iii) training undertaken by persons who are principals in the business or their family members; or
 - (iv) training that has a very low skill level having regard to the characteristics and size of the business; or
 - (v) induction training; or
 - (vi) staff salaries apportioned to time spent undertaking online or other training courses; or
 - (vii) purchase of software for use in normal duties; or
 - (viii) membership fees; or
 - (ix) purchase of books, journals or magazine subscriptions; or
 - (x) attending conferences for purposes other than continuing professional development; or
 - (xi) hiring a booth at a trades show, conference or exposition (expo).

Schedule 2 – Repeals

SPECIFICATION OF TRAINING BENCHMARKS AND TRAINING REQUIREMENTS (IMMI 17/045)(F2017L00796).

1 The whole of the instrument

Repeal the instrument.