

THE 457 VISA: BEING REMOVED, REINVENTED OR REBORN?



On 18 April 2017, the Turnbull government announced that the 457 visa will be removed and replaced by a new scheme for skilled migrants. The changes are intended to “better meet Australia’s skills needs” and provide safeguards that prioritise Australian workers. The changes envisage a phasing out of the 457 visa by March 2018 and its replacement with the Temporary Skills Shortage (TSS) visa.

The TSS visa will consist of the following two streams:

1. The Short-Term stream – valid for up to two years and covers STSOL occupations. It can be renewed onshore once only.
2. The Medium-Term stream – valid for up to four years and covers MLTSSL occupations. It can be renewed and applicants can apply for permanent residency after three years.

The 457 visa will still be issued until March 2018, provided that the application relates to an occupation available on the list of eligible occupations.

From 19 April 2017, 216 occupations were removed from the list of eligible occupations. 59 of the remaining occupations are subject to caveats to limit their use and 24 occupations are restricted to regional areas. The occupations of Ship’s Master, Ship’s Officer and Ship’s Engineer are examples of occupations listed with a caveat. The caveat provides that these occupations can only be nominated for the subclass 189 (Skilled Independent); subclass 485 (Temporary Graduate); and subclass 489 (Skilled Regional) visas and are not available for the 457 visa programme.

The changes to the list of eligible occupations are reflected in two categories of eligible occupations: the Short-Term Skilled Occupations List (STSOL) and the Medium and Long-term Strategic Skills List (MLTSSL). From 1 July 2017, these lists will be further reviewed in consultation with the Department of Employment and Department of Education and Training, respectively.



Other notable changes include:

- Removal of the English language salary exemption threshold, which exempted applicants with a salary of AUS\$96,400 from meeting the English language requirement (applicable to both streams and to apply from 1 July 2017).
- Strengthened and clearer training requirements (applicable to both streams and to apply from 1 July 2017).
- Mandatory police clearances to be provided (applicable to both streams and to apply from 1 July 2017).
- A genuine temporary entrant requirement (applicable to the Short-Term Stream and to apply from March 2017).
- At least 2 years of work experience (applicable to both streams and to apply from March 2018).
- A non-discriminatory workforce test to ensure employers are not actively discriminating against Australian workers (applicable to both streams and to apply from March 2018).

Associated changes will also be made to the permanent employer sponsored program. These changes include:

- Applicants to be under 45 years old (applies to Direct Entry applicants from 1 July 2017 and to all applicants from March 2018).
- Applicants to have at least three years' relevant work experience (from March 2018).
- Extending the permanent residency eligibility period from two to three years (from March 2018).

The Department of Immigration and Border Protection (DIBP) will commence collecting TFN's for employer sponsored visa holders by 31 December 2017 for data matching

purposes to ensure they are being paid their nominated salaries. Also, by this date, Sponsors who have previously failed to meet their obligations under migration laws will have their details published by the DIBP.

Who is affected?

The implementation of the reforms a day after it was announced has caused great anxiety amongst visa applicants and businesses who seek to rely on foreign workers to address skill shortages.

The changes will mainly affect prospective 457 visa applicants and permanent employer sponsored (Employer Nomination and Regional Sponsored Migration Scheme) visa applicants and businesses.

As a result of the changes to the skilled occupations list, applicants for the following visas will also be affected:

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

Student graduates will not be eligible for temporary or permanent company sponsorship after March 2018 as they will require at least two years full time work experience first.

What about existing 457 visa holders?

Existing 457 visa holders will not be affected by these changes and will still be able to apply for permanent residency. However, whether or not these permanent residency applications are to be made under the current regime or whether a different process under the new regime will capture these applications is still to be clarified.

What about 457 visa applications not yet decided by the Department?

457 visa applicants and nominating businesses who applied before 18 April 2017 for occupations which have been removed and whose application has not yet been decided, will not be approved and may apply for a refund.

457 visas granted (in respect of an eligible occupation as at 19 April) before March 2018 will be valid for up to two years for STSOL occupations and up to four years for MLTSSL occupations.

What next?

Following the announcement by the Turnbull government, media reporting of the changes suggested that the reforms were a dramatic overhaul of Australia's skilled migration law; however, it seems that the changes are largely technical reformulations and tightening of pre-existing visa requirements, such as English language proficiency and training requirements.

Although implementation has commenced, details of what the 'strengthened' training requirements are and what the 'genuine temporary entrant requirement' and non discriminatory work force test will entail have not yet been provided. We are still awaiting the details of amended legislation and policies to provide clarity in respect of these 'tighter' requirements. These are anticipated to be finalised during the course of the implementation process.

Under the 457 visa scheme, labour market testing (which appears to now be referred to as workforce test) did not apply where it would be inconsistent with any international trade obligation of Australia. These circumstances include obligations which arise under the free trade agreements with China, South Korea



and Japan. While it appears that the new TSS visas will be scrutinised more than the 457 visas, the government has indicated that businesses nominating foreign workers from countries where a FTA exists, would still be exempt from the workforce test/labour market testing requirement under the new regime. This begs the

question of how effective these new reforms will actually be.

Furthermore, on 20 April 2017, the government announced changes to the citizenship process, which includes a higher standard English test, more meaningful questions, a two year ban to be imposed on applicants who fail

the citizenship test three times, and an increase of the eligibility period to four years as a permanent resident, from one year. The changes took immediate effect and will also impact on skilled workers who have chosen Australia as their permanent home by making the citizenship process longer.

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