



## IMMIGRATION UPDATE FOR 457 AND PERMANENT EMPLOYER SPONSORED VISAS

As previously announced, the Australian Department of Immigration and Border Protection (DIBP) will abolish the 457 visa and replace it with the new Temporary Skills Shortage (TSS) visa in March 2018. In addition, reforms have been made to the Employer Nomination Scheme (ENS) and Regional Sponsored Migration Scheme (RSMS) visas, restricting eligibility criteria for applicants. At the National Migration Conference on 8 - 10 November, the DIBP made new announcements on these changes.

# “The effect of occupations being placed on the STSOL will result in reduced periods of stay for certain applicants. The reduced pathways to permanent residency will likely decrease incentives for foreign workers to come to Australia.”

## What will the new TSS visa look like?

The DIBP have announced that the TSS visa will be introduced within the first two weeks of March 2018. The requirements are intended to be largely the same as the 457 visa.

- **Occupation lists:** The TSS visa will operate in two streams based on the Short-Term Skilled Occupations List (STSOL) and the Medium and Long-term Strategic Skills List (MLTSSL).

Some examples of occupations that are now included in the STSOL are Advertising Manager, Advertising Specialist, Sales and Marketing Manager, Research and Development Manager, Management Consultant, Finance Manager, Human Resource Manager.

The occupation lists will continue to be updated every 6 months by the Department of Employment, with the next review in January 2018.

Subject to consultations, the Department of Employment have indicated that for the January 2018 review there will be no changes to the MLTSSL. For the STSOL, it is proposed that five occupations will

be added and four occupations will be removed. The occupations flagged for possible removal include Accommodation and Hospitality Managers, Hair/Beauty Salon Manager, Recruitment Consultant and Building Associate.

The TSS visa is intended to allow flexibility for visa applicants to change employers during the course of their visa.

- **Visa length:** Occupations on the STSOL are eligible for a two year visa (unless international trade obligations apply), with only one onshore renewal available for a further two year period. The DIBP have indicated that the one-time restriction will not apply if you renew offshore. Occupations on the MLTSSL are eligible for a four year visa.
- **Pathway to permanent residency:** Only occupations on the MLTSSL will have a pathway to permanent residency after three years.
- **Training requirement:** From March 2018, employers will be required to pay a levy to the Skilling Australians Fund (subject to being passed by Parliament) per person per year. This will replace the requirement to satisfy training benchmarks.

Employers with annual turnover of less than AU\$10 million will be required to pay AU\$1,200 per year. All other employers will be required to pay AU\$1,800 per year. Therefore, if an employer is nominating someone for a four year visa, they must pay four times the yearly levy in full at the time of nomination.

Employers who will have held their Standard Business Sponsorship for less than a year in March 2018 when this comes into effect will only be required to pay the training levy. They will not have to provide proof of meeting the training requirements for a partial year.

The Skilling Australians Fund is a joint partnership between the states and the Commonwealth. It is intended to operate so that the states can put forward projects from industry bodies to the Commonwealth for funding.

- **English language:** For occupations on the STSOL, requirements are International English Language Testing System (IELTS) (or equivalent test) level 5, with a minimum of 4.5 in each component. For occupations on the MLTSSL, requirements are IELTS (or equivalent test) requirement of a minimum of 5 in each test component.

- **Work experience:** Applicants are required to have two years of work experience relevant to the particular occupation. The DIBP have indicated that they intend to apply this flexibly in assessing what is relevant.
- **Salary:** Employers must pay applicants the market salary rate and the Temporary Skilled Migration Income Threshold, which was set at AU\$53,900 in April 2016.
- **Workplace:** Employers will be subject to testing to ensure they are not discriminating against Australian workers.
- **Labour market testing:** Mandatory Labour Market Testing is required except if an international trade obligation applies. The occupation based exemptions that existed no longer apply. We still do not know the extent of evidence that will be required and for how long employers will need to advertise.

### Permanent residency transitional arrangements for existing 457 visa holders

The DIBP have announced the following transitional arrangements for people who held, or had applied for a 457 visa on 18 April 2017, who wish to apply for permanent residency through the Temporary Residence Transition stream.

- The age limit will remain at 50.
- There will be no restrictions on occupations, so long as applicants are in the same position and employed by the same employer as their 457.
- The work experience requirement will remain at two years.

### Changes to permanent ENS and RSMS visas

- **Occupation list:** From March 2018, only occupations on the MLTSSL will be eligible for the ENS Direct Entry stream.
- **Training:** From March 2018, employers will be required to pay

a levy to the Skilling Australians Fund. For businesses with annual turnover of less than AU\$10 million, employers will be required to pay AU\$3,000 per year. All other employers will be required to pay AU\$5,000 per year.

- **English language:** From 1 July 2017, English language requirements are IELTS (or equivalent test) score of 6 in each component. This is an increase from the previous requirement of 5 under the Temporary Residence Transition scheme. The exemption that existed for applicants with a salary over AU\$180,000 has been removed.
- **Work experience:** From March 2018, applicants are required to have three years of work experience relevant to the particular occupation.
- **Age:** Between 1 July 2017 and March 2018, the age limit for Direct Entry is 45 at the time of application. From March 2018, all applicants must be under 45 at the time of application.

### What does this mean for businesses?

The effect of occupations being placed on the STSOL will result in reduced periods of stay for certain applicants. The reduced pathways to permanent residency will likely decrease incentives for foreign workers to come to Australia.

It is important to note that several occupations have been placed back on the list after industry bodies lobbied the government. This is encouraged if the removal of an occupation will significantly impact your business.

The training levy will significantly increase businesses' training budgets. As the levy must be paid in full and per nominated employee, if a business is nominating multiple foreign workers at one time, this will dramatically increase their training expenditure. It is important for employers to review and revise their training budget to take this significant increase into consideration.

### Update on Citizenship changes

The proposed *Australian Citizenship Legislation Amendment Strengthening the Requirements for Australian Citizenship and Other Measures Bill 2017*, which strengthened citizenship requirements relating to residency and English language, was blocked by the Senate in late October.

This means that applications made up until 1 July 2018 will be processed under current laws. However, the DIBP have stated that they intend to re-draft and re-introduce the bill to take effect from 1 July 2018.

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