THE REFORM CONTINUES – AN UPDATE ON THE 1 JULY 2017 VISA CHANGES

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A further round of changes to the 457, employer nominated permanent residency and other migration programs came into effect on 1 July 2017 as part of the overall migration reform announced by the Australian Government on 18 April 2017.

Similar to the previous changes, this round includes changes to some key criteria of the relevant visas, which can significantly affect eligibility of applicants, including a number of applicants who lodged their applications before 1 July 2017. Employers who have 457 visa holders or applicants in their workforce should familiarise themselves with these changes.

The detailed changes that came into effect on 1 July 2017 are further outlined below. While changes were introduced to a range of visas, this alert focuses on the changes to the Temporary Work (Skilled) visa (subclass 457) and the Employer Nominated Scheme visa (subclass 186).

This alert is number 3 in our alert series on the 457 changes. Alerts number 1 and 2 can be found on our website or the following links:

- Alert No. 1
- Alert No.2.

CHANGES TO THE SKILLED OCCUPATION LISTS

Additional changes have been made to the Medium and Long-term Strategic Skills List (**MLTSSL**) and the Short-term Skilled Occupation List (**STSOL**), namely:

- 36 occupations were added to the lists and are now newly eligible for the 457 visa and the employer nominated permanent 186 visa
- Some occupations were moved between the MLTSSL and the STSOL
- 12 occupations were completely removed from both lists, 9 of which were previously eligible for the 457 visa
- The caveats on some occupations were revised (e.g. certain occupation-based caveats have now been extended to the 186 visa program).

A list of the 12 occupations removed in the July changes can be found on the Department of Immigration and Border Protection's website here.

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OTHER VISA-SPECIFIC CHANGES

In addition to the changes to the occupation lists, further changes to visa requirements were also introduced to a number of visa subclasses.

SUBCLASS 457 VISA

- Changes to the salary-based English language exemption:
  - the previous exemption that allows applicants with an annual base salary of AUD96,400 per annum or above to be exempt from having to undertake an English test to satisfy the English language requirement were removed for all but intra-company transferee applicants
  - intra-company transferees from the same company or an associated entity can continue to access the salary-based exemption
  - other education and nationality-based exemptions remain unchanged.
- Tightening of the current training benchmark requirements
  - further specifications on payments to the types of training funds that can and cannot be used to satisfy training benchmark A
  - further restriction on the types of training expenditure that can be used to satisfy training benchmark B (e.g. excludes training undertaken by principals of the business or their family members, excludes the practice of counting a portion of a person's salary whose role only consists partially of training employees
  - specification by legislative instrument that payments made to contractors and subcontractors are to be counted toward an organisation's payroll expenditure regardless of whether such payments are included for payroll tax purposes
  - definition of 'recent expenditure' to be expenditure incurred in the previous financial year or the 12-month period prior to the application.
- Making the provision of police clearances mandatory for all 457 visa applications.
- Extending mandatory skills assessment to more occupations and nationalities (detailed information on such occupations and nationalities can be found on the Trade Recognition Australia website here once it is updated).
- Expanding the pool of organisations eligible to be approved as an accredited sponsor to include sponsors who are low risk and submit a low volume of applications.
- Clarification of visa validity period for certain applicants granted visas on or after 1 July 2017. This change is only expected to affect a small cohort of applications only.

SUBCLASS 186 VISA

- Changes to the English language requirement:

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- 186 and 187 applications made under the Temporary Residence Transition (**TRT**) stream lodged on or after 1 July 2017 will require a minimum score of 6 in each component of the IELTS English test (or equivalent); and
- the previous exemption that allowed applicants with an annual earning of over AUD180,001 per annum to be exempt from having to undertake an English test to satisfy the English language requirement have been removed.

- Changes to the age requirement:
  - from 1 July 2017, 186 and 187 applicants under the Direct Entry (**DE**) stream will need to be less than 45 years of age, however current age exemptions remain available to eligible applicants
  - the age ceiling for the TRT stream will remain at less than 50 years of age until March 2018 when the new age ceiling of less than 45 years of age will be implemented.
- Extension of the 'genuine need' requirement to cover all 186 and 187 TRT and DE applications.
- Making nominee identification mandatory for 186 and 187 DE nominations.
- Tightening of the current training benchmark requirements (as outlined in the 457 visa section above).
- Removal of salary-based skills assessment exemption from 186 and 187 DE applications.

TRANSITIONAL ARRANGEMENTS

Most of the changes only affect applications lodged on or after 1 July 2017 with the exception of the following (which will impact upon pipeline applications that are lodged before 1 July 2017 but not yet finally determined):

- Changes to the eligible skilled occupations lists in relation to 457 visa applications
- Removal of the salary-based English language exemption for 186 and 187 applications
- Removal of the salary-based skills assessment exemption for 186 ad 187 applications.

Due to the number of changes that came into effect on 1 July 2017 and the amount of detailed information released by DIBP, this article is only a summary of the important changes and is not to be used as a comprehensive guide to all July 2017 changes or in place of formal legal advice. We recommend that organisations and individuals affected by the changes seek professional migration advice.

We continue to monitor the implementation of the changes including any clarifications released by DIBP in response to industry queries arising from the changes. We are ready to assist employers to understand the impact of these changes and how to strategise while remaining compliant when meeting their labour needs with overseas workers.

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