

CHANGES TO AUSTRALIA'S SKILLED MIGRATION VISA FRAMEWORK

Date: 12 April 2018

Australia Labour, Employment and Workplace Safety Alert

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On 18 March 2018, the new Temporary Skilled Shortage (TSS) visa framework commenced and replaced Australia's 457 (Temporary Short Stay) visa regime. The stated purpose of the TSS visa is to address labour shortages by bringing in genuinely skilled workers where skilled Australians cannot be sourced.

Compared to the 457 visa framework, there are significant legislative and policy changes. In particular, applicants are nominated under either the medium to long-term skilled shortage list (MLTSSL) or the short term skilled occupation list (STSOL). These lists will be updated every six months with the next update scheduled for June 2018.

Throughout the process of legislating and implementing these changes, the Department has also changed its name to the Department of Home Affairs (Home Affairs).

TRANSITIONAL ARRANGEMENTS

If you employ a current 457 visa holder who held or had applied for their 457 visa prior to 18 April 2017, they will be subject to transitional provisions to cover possible pathways to permanent residency. We recommend contacting us to confirm eligibility prior to making an application.

SKILLS ASSESSMENT

Under the TSS visa framework, Home Affairs has the discretion to request applicants to complete a skills assessment. This is a significant change compared to its powers under the 457 visa framework. Further, an additional number of occupations are required to complete mandatory skills assessments. If you are sponsoring an applicant who has no formal qualifications, a skills assessment may be difficult to satisfy. Accordingly, we recommend that you seek our advice before making any decisions concerning overseas recruitment.

GENUINE POSITION AND TEMPORARY ENTRANT

Home Affairs must be satisfied that the nominated occupation is a genuine position. We recommend completing a genuine position submission providing information regarding how the position falls within the scope of the sponsoring entity and that the position has not been created to secure a migration outcome.

	Previous 457	TSS (STSOL occupations)	TSS (MLTSSL occupations)
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	visa framework		
Visa Grant Period	Up to 4 years	Up to 2 years	Up to 4 years
Renewal	Unlimited	One onshore renewal permitted for up to an additional 2 years	Unlimited
Labour market testing (e.g. job advertising)	Only for certain occupations (limited)	<p>Legislation is yet to be passed. If your business is considering nominating an individual for a TSS visa, we recommend obtaining evidence that a suitably qualified and experienced Australian worker is unable to fill the position. Evidence could include:</p> <ul style="list-style-type: none"> ▪ copies of job advertisements; and ▪ notes regarding unsuccessful applicants. 	
Work experience required	Only occupation-specific requirements	2 years plus further occupation-specific requirements. Some occupations require up to 5 years' experience.	
English	Equivalent of IELTS 5 overall, with a minimum of 4.5 in each test component	No change	Equivalent of IELTS 5 overall, with a minimum of 5 in each test component
Training Requirement	Compliance with Training Benchmark A or B	The relevant legislation establishing the Skilling Australia (Fund) Levy (SAF) is currently being debated in Parliament with no updates expected until the end of May 2018. Currently, the training benchmarks continue to apply. Home Affairs has indicated that they will take a flexible approach for training compliance for the previous financial year.	
Permanent Residency (PR)	Transitional pathway to PR after 2 years	No transitional pathway to PR	Transitional pathway to PR after 3 years

WHAT YOU SHOULD DO

There have been significant changes to Australia's skilled migration visa framework. Australian businesses that employ any visa holders need to consider their obligations as Home Affairs is focusing on compliance.

K&L Gates can assist with the whole process of employing an overseas worker from commencing employment and completing required work entitlement checks to terminating the employment and subsequently notifying Home Affairs.

KEY CONTACTS



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