21 April 2017

Abolition of the 457 program and reform of the employer sponsored permanent visa categories

On 18 April 2017 the Australian Prime Minister announced a package of reforms impacting the temporary 457 visa program and permanent employer sponsored visa categories. Some of these reforms have immediate effect (the new occupation lists) and others will be introduced between 1 July 2017 and March 2018.

On 20 April 2017 the Australian Prime Minister also announced proposed changes to the Australian citizenship requirements, including an extension of the period in which an applicant must have been a permanent resident from 12 months to 4 years and introducing an English language test. No implementation date for the citizenship reforms has been announced as of yet.

Whilst the Department of Immigration & Border Protection (DIBP) has published some information regarding the reforms on its website, further guidance will not be available until the specific regulations and immigration policy guidelines have been released. Fragomen is monitoring the release of the regulations and policy guidelines and we will provide future updates as they become available on our new dedicated Australia 2017 immigration reforms microsite.

The Fragomen Australian Partners will be meeting with the DIBP next week regarding the Government’s recent announced changes. We will provide further updates immediately afterwards.

Below is a summary of the proposed reforms:

New Occupation lists with effect from 19 April 2017

With effect from 19 April 2017, two new occupation lists now apply to the Subclass 457 Visa and the ‘Direct Entry’ stream of the permanent Employer Nomination Scheme (subclass 186) Visa programs:

- The previous Consolidated Skilled Occupation list has been replaced with the new Short-term Skilled Occupations List (STSOL), which will be updated every six months based on advice from the Department of Employment. Importantly, from 19 April 2017 the maximum duration of Subclass 457 Visas issued for occupations that are on the STSOL will be two years.
- The previous Skilled Occupation List (which applies to the General Skilled Migration category) has been renamed as the new Medium and Long-term Strategic Skills List (MLTSSL). This list is comprised of occupations that have been assessed as being of high value to the Australian economy and aligning to the Government’s long-term training and workforce strategies. The maximum duration of Subclass 457 Visas issued for occupations that are on the MLTSSL will continue to be four years.

The occupation lists have been significantly shortened from 651 to 435 occupations, with 216 occupations removed and restricted access to 59 other occupations which are now subject to caveats based on factors including the occupation, location, size and nature of the business, proposed base salary and minimum level of experience that is required.

Abolition of the 457 visa program and introduction of the new Temporary Skill Shortage Visa - March 2018

The Prime Minister has proposed to replace the Subclass 457 Visa Program with a more restrictive visa program called the Temporary Skill Shortage Visa (TSS), effective March 2018. This new TSS visa will be comprised of two streams:
• Short-term stream of up to two years – a minimum English requirement of International English Language Testing System (IELTS) 5 will apply (with a minimum score of 4.5 in each component). Visas granted under this stream may be renewed once only; and
• Medium-term stream of up to four years – a minimum English requirement of IELTS 5 (or equivalent test) will apply (with a minimum score of 5 in each component). Visas granted under this stream may be renewed and may also provide a pathway to permanent residence after three years.

The new TSS will have the following features:
• Targeted occupation lists: The new Short-term Skilled Occupations List (STSOL) will apply to the Short-term stream and the new Medium and Long-term Strategic Skills List (MLTSSL) will apply to the Medium-term stream. Additional occupations will be available on both lists to support regional Australia
• Minimum two year work experience requirement;
• Requirement for employers to meet the minimum market salary rate;
• Mandatory labor market testing, unless an international trade agreement applies;
• A test to ensure employers are not actively discriminating against Australian workers; and
• Stricter requirement for employers to contribute to training Australian workers.

Changes to the permanent Employer Sponsored categories
The permanent employer sponsored Employer Nomination Scheme (subclass 186) and the Regional Sponsored Migration Scheme (subclass 187) visa categories will be tightened as follows:
• The maximum age limit will be reduced from 50 to 45 years;
• the English language proficiency requirements for the Temporary Residence Transition stream will be increased to a IELTS (or equivalent test) score of 6 in each component;
• A new minimum work experience requirement of at least three years will apply, regardless of the eligibility stream;
• The permanent residence eligibility period under the Temporary Residence Transition Stream will be extended from two to three years;
• The requirement for employers to contribute to training Australians will be strengthened; and
• Employers will be required to pay the Australian market salary rate and meet the Temporary Skilled Migration Income Threshold (TSMIT), currently set at AUD 53,900.

Proposed changes to the Australian citizenship requirements
The Prime Minister has announced that the proposed changes to the Australian citizenship requirements are intended to strengthen the integrity of the citizenship program and ensure that it is in Australia’s interests. Key changes to the program will include:
• Requiring all applicants to pass a stand-alone English test, involving reading, writing, listening and speaking;
• Requiring applicants to have lived in Australia as a permanent resident for at least four years (instead of one year at present);
• Strengthening the citizenship test itself with new and more meaningful questions that assess an applicant’s understanding of - and commitment to – Australians’ ‘shared values and responsibilities’;
• Requiring applicants to show the steps they have taken to integrate into and contribute to the Australian community. Examples would include evidence of employment, membership of community organisations and school enrolment for all eligible children.
• Limiting the number of times an applicant can fail the citizenship test to three (there is no limit at present); and
• Introducing an automatic fail for applicants who cheat during the citizenship test.

What is the timeline of proposed changes?
With effect from July 2017:
• The English language salary threshold exemption for 457 visa applicants with a salary above AUD96,400 will be removed;
• Both the STSOL and the MLTSSL will be further reviewed;
• Clearer policy guidance will be released regarding the current training benchmarks that apply to the 457 visa program;
• Police clearances will become mandatory for all 457 visa applications;
• The age limit for Direct entry stream applications for ENS and RSMS visas will be decreased from 50 to 45 years;
• The English language requirements will be increased for Temporary Residence Transition stream ENS and RSMS applications.

With effect from **December 2017**:  
• Collection of Tax File Numbers by the Department of Immigration and Border Protection (DIBP) will commence. This will facilitate matching of data with Australian Tax Office records to ensure that visa holders are not paid less than their nominated salary; and  
• DIBP will begin to publish details of sponsors who have been sanctioned for failing to meet their Subclass 457 Visa sponsorship obligations.

With effect from **March 2018**:  
• The new TSS visas will come into effect replacing the 457 visa program;  
• The maximum age limit of 45 will apply to all ENS and RSMS streams;  
• The permanent residence eligibility period under the ENS and RSMS will be increased from two to three years;  
• New training requirements will be introduced requiring greater contributions to training Australians; and  
• Australian market salary rate and the requirement to meet the TSMIT will apply to the ENS and RSMS programs.

At this stage, we do not have any specific detail as to whether there will be any exemptions available under the ENS/RSMS program for age, skill or English.

There is no implementation date for the proposed citizenship changes at this stage.

**How will this impact our business?**

The changes to the occupation lists will have an immediate impact on any pending 457 nomination and visa applications, whilst the broader changes will impact current 457 visa holders in respect of future 457 or ENS/RSMS applications.

**Impact on lodged and pending 457 nominations and visa applications**

The new occupations lists will impact all lodged 457 nominations and visas that are still being processed by the DIBP:

• Where the nominated occupation has been removed entirely from the STSOL or MLTSSL, DIBP has advised that the 457 nomination or visa cannot be approved. These applications will need to be withdrawn and an assessment made as to whether a new 457 application can be lodged based on a new occupation (we expect that this will only be an option in limited number of cases);  
• Where the nominated occupation is subject to a caveat – an assessment will need to be made as to whether the applicant can satisfy the additional work experience, regional location or occupation specific caveat.

**Impact for current 457 visa holders**

The amendments will also impact current 457 visa holders:

• where the nominated occupation has been removed from the occupation list – whilst the visa holder’s current subclass 457 visas will not be affected, they will be prevented from lodging any further 457 applications in that removed occupation;  
• where the nominated occupation is subject to a caveat – again, whilst the visa holder’s current subclass 457 visa will not be affected, they will be prevented from lodging any further 457 applications in that occupation unless they can meet the additional caveat requirements; or  
• who are aged 45 and above and wish to apply for permanent residence under the ENS/RSMS program.

For this cohort, assessments should be undertaken to determine if they may be eligible for permanent residence under the ENS/RSMS at this time. You may find the below checklist useful as an initial assessment as to whether your employee(s) should lodge an ENS/RSMS application *prior to* 1 July 2017:

1. Does the applicant hold a subclass 457 visa as sponsored? If yes, have they held this held their 457 visa for 2 years in their nominated occupation with the same sponsor?  
2. Is the applicant a citizen and passport holder of the United Kingdom, the USA, Canada, Ireland or New Zealand? OR Does he/she have an IELTS (or equivalent test) with score of 6.0 in each component in a test conducted less than 3 years ago or be likely to obtain such a score if such a test is taken?
3. Will the applicant be 45 years or older after 1 July 2017?

If you have answered YES to all questions within points 1 and 2 and NO to question 3, based on the information that the DIBP has released it is likely that the applicant will not be impacted by the changes which will come into effect on 1 July 2017. However please note that the reduced age limit of 45 will apply to all permanent employer sponsored visas from March 2018 so further advice will need to be sought to determine if the applicant should lodge an ENS/RSMS application prior to March 2018.

If you have answered NO questions 1 and 2 and YES to question 3, based on the information that the DIBP has released it is likely that the applicant WILL be impacted by the 1 July 2017 reforms. If the applicant is eligible, we would recommend that an ENS/RSMS application be lodged under the current ‘Direct Entry’ stream requirements and prior to 1 July 2017.

Please note that this checklist is not intended to be relied upon as a substitute for legal or other professional advice. Obviously there are a number of factors that would affect a decision to lodge an ENS/RSMS application and it must be made on a case by case basis in conjunction with our advice.

What is Fragomen doing?
Following the 18 April 2017 announcements, Fragomen has taken the following steps:

1. We have triaged all lodged and undecided subclass 457 nomination and visa applications for ‘removed’ occupations and occupations with caveats to determine who will be impacted. If they have not already, your Fragomen team will reach out to you shortly to discuss any impacted applications that are still pending with the DIBP;
2. We are generating reports of initiated 457 applications that are not yet lodged to determine if any will be affected. Your Fragomen team will reach out to you to discuss any impacted applications;
3. We are generating reports of your current 457 visa population to triage those employees who are aged 44 and above and/or with a nominated occupation that has been removed or is now subject to a caveat. We will reach out to you regarding any impacted employees. Based on these reports, and upon your instruction, we can then undertake further eligibility assessments to determine which of your employees may be eligible for permanent residence at this time;
4. We be holding information sessions on the proposed changes as more information becomes available, and have developed a dedicated microsite on our Fragomen website in which you will be able to access up to date information on the 2017 immigration reforms as it is released.

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