
Subclass 457 visa program – future changes

24 March 2015

In brief

The Department of Immigration and Border Protection (DIBP) has finally released its response to the recommendations provided in the *Robust New Foundations* report. This report was provided to the DIBP by an independent review panel in 2014, after completion of a comprehensive review of the 457 visa program. Once the full suite of changes has been implemented, users can expect a more streamlined and efficient program, which is able to respond quickly to changing business needs without compromising overall program integrity.

In detail

In place of speculation, the DIBP has now confirmed its support, or in some cases, in principle support for the various recommendations, and has also provided an indicative time frame as to when these changes may be implemented.

The DIBP has indicated it will seek to implement the following recommendations over the course of the next six months. While exact details relating to how each change will be implemented are not yet known, users of the 457 visa program should anticipate the following to occur during the course of this year:

- **Labour market testing** - will not be abolished however the DIBP will give consideration to how this may be changed to reduce the burden currently placed on employers to satisfy this requirement.
- **English language requirements** - the current country based exemptions will not be extended to additional nationalities however there will be an amendment to the English language scores required. The current proposal is to amend this to require an average IELTS score of 5 overall, with no less than 4.5 in any one band (currently a primary 457 visa applicant requires a score of at least 5 in each band). In addition, the introduction of additional test providers should be announced shortly.
- **English language exemption** - the current exemption available to individuals who have completed at least five years of continuous studies in English will be amended to allow five years of cumulative study to be relied upon.
- **Temporary Skilled Migration Income Threshold** - the DIBP has again confirmed that this will remain at A\$53,900 per annum for the next two years, after which it will be reviewed. Currently, there are no plans to remove this threshold requirement. The **market rate salary** requirements will also remain, however the salary level which offers an exemption from providing this evidence may be brought in line with the ATO top income bracket, currently A\$180,001 per annum.

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- **Standard Business Sponsorship approvals** - these will be extended from three to five years for an established business in Australia, and from 12 to 18 months for a start-up business. These extended periods will only apply to new or renewed agreements and will not impact on current agreements. The DIBP will also investigate a change to validity periods for overseas business sponsors with a view to aligning these with the standard business sponsorship approval period.
 - **Notification periods** - the DIBP supports the extension of time in which a sponsor has to notify the DIBP of certain events occurring, from 10 to 28 working days. This would include notifying the DIBP when a sponsored 457 visa holder ceases employment, changes position etc.

The *Robust New Foundations* report included a total of 23 recommendations, the majority of which the DIBP has supported. We have provided further detail on some of the additional changes below. Some of these may also be implemented this year however areas which require further stakeholder consultation or which are currently incorporated into the *Skilled Migration and 400 Visa Series Review* will likely not be amended until 2016.

Training Benchmarks

One of the proposed changes requiring further stakeholder consultation relates to amending the current Training Benchmark requirements, which can be problematic for business from both a practical and compliance perspective. In place of the existing benchmarks, and as previously anticipated, Training Benchmarks A and B would be replaced with an annual training fund contribution based on the number of sponsored 457 visa holders employed in the business. Contributions would also be scaled according to the size of the business, which in some cases may result in a cost reduction.

The intention would be to invest these funds into Government led training initiatives including job readiness, life skills and outreach programmes for disengaged groups, including youth. Additional use would be funding apprenticeship /trainee programs for target groups including Indigenous Australians, as well as offering mentoring programmes and training scholarships to target critical skills gaps. Once implemented, the Government would be required to report annually on how these monies have been spent by the Department of Industry.

Australian Tax Office - Memorandum of Understanding

Users of the 457 visa program would already be aware of an increase in information sharing between the DIBP and the Australian Tax Office (ATO), and also the Fair Work Ombudsman. This information sharing between the DIBP and the ATO has now been formalised through a Memorandum of Understanding (MOU) which will allow the DIBP to conduct salary compliance checks based on information held by the ATO. This will further be supported by a change to 457 visa conditions which will require sponsored 457 visa holders to provide their tax file numbers to the Department.

Given the ATO's audit programs will rely more and more heavily on future technology to match information on personal tax returns with information from other government sources, this will mean 457 visa holders will now be more visible than ever before. This means also that employers will be more easily subjected to hidden scrutiny by the ATO in relation to employment taxes and superannuation obligations. Split payrolls and offshore payrolls may be questioned and the use of shadow payrolls will become more beneficial.

Fee structure

While today's Departmental release did not include any proposed changes to the fee structure for 457 visas, the sometimes substantial cost increases which arose from the introduction of secondary applicant fees under this program is currently being considered under the *Skilled Migration and 400 Visa Series Review*. That review is currently in refinement stage and we will provide further details on any proposed changes to this area once known.

The takeaway

Full details on how these changes will be implemented is not yet available however it is expected that once in place, the majority of changes will support the DIBP's aim to provide a simplified framework which is easier for business and visa holders to navigate. The DIBP will however work to ensure that any simplification does not impact on the integrity of the 457 visa program, and compliance measures will continue to be a focus.

This will include continued collaboration not only with the ATO but also with the Fair Work Ombudsman to monitor decisions and determine whether sponsors have breached obligations or provided false or misleading information. In this regard, the DIBP has given support for an increase in dedicated resources to enable the investigation and prosecution of civil penalty applications and court orders.

As these changes are implemented, users of the 457 visa program need to ensure they maintain awareness of their continued sponsorship and compliance obligations. Today's announcement provides an opportunity for users of the program to conduct an internal compliance and program audit, with a view to implementing or updating internal compliance frameworks and policies. In certain compliance areas any changes to internal processes should only be made once full details of implementation become known.

PwC Australia's immigration practice will continue to provide stakeholder feedback to the DIBP in relation to these changes, as well as the new framework which will result from the Skilled Migration and 400 Visa Series Review. Through this, we will continue to monitor developments and provide further updates as they become available. If you would like to discuss any of the proposed changes outlined above, or provide feedback for the current review, please contact your PwC Australia immigration contact for further details, or email ausimmigration@au.pwc.com.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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