
Australia – Immigration Update

19 September 2014

Subclass 457 review – Robust New Foundations report released

The Department of Immigration has released details of the Robust New Foundations Report recently provided on completion of the Independent Review of the 457 visa program, announced in February this year.

The Review Panel engaged in extensive consultations with various industry groups, trade unions, government bodies as well as users of the 457 visa program. In addition, almost 200 submissions were received and reviewed by the panel. The final report has provided various recommendations aimed at deregulating and simplifying the program including proposed changes to the current English language, labour market testing and market salary rate criteria. In some cases, the proposed changes would see some criteria regain exemptions similar to those in place prior to the sweeping reforms implemented on 1 July 2013.

Immigration Minister Scott Morrison has indicated that the Department's formal response will be provided in the 'weeks or months ahead' and that it cannot guarantee that any or all of the changes it seeks to implement which require legislative changes will receive approval from Parliament. Minister Morrison has also acknowledged that the recommendations in the report appear to propose a balanced and measured set of reforms while keeping faith with the necessary requirements for a robust integrity framework to support the 457 visa program.

In anticipation of further announcements, we have provided an overview below of some of the recommendations outlined in the report.

Recommendations

- Labour market testing - the report recommends that this requirement be abolished.
- Consolidated Skilled Occupation List (CSOL) - that this be re-issued with occupations at Skills Level 3 and above with a view to other 'semi-skilled' occupations being accessed through the Labour Agreement scheme. This recommendation includes the creation of a new tripartite Ministerial Advisory Council, supported in turn by a government resource providing technical advice including in depth labour market analysis. The result of this would be a more transparent and responsive CSOL with the potential ability to define and include emerging occupations, where sufficient evidence supports this.
- Market rate requirements - a possible reduction of the minimum salary which provides an exemption to this requirement - back to the pre 1 July 2013 level of \$180,001 (in line the ATO top income bracket)
- Temporary Skilled Migration Income Threshold (TSMIT) - that this be retained and kept at the current level of \$53,900 for the next two years, after which time the structure and indexation methods which apply to the TSMIT should be reviewed. This review may consider the introduction of possible concessions to the threshold under Labour Agreements, Enterprise Migration Agreement and the

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- recently introduced Designated Area Migration Agreements. It has been recommended that TSMIT concessions for regional employers only be considered in limited circumstances.
- Training Benchmarks - retaining this requirement however simplifying the way in which business sponsors can satisfy this criteria with contributions required into a Government administered annual training fund. The intention behind this reform would be to allow the training benchmarks contributions to be used more effectively via targeted training programs, with an expectation of annual reporting on how the funds have been administered.
 - English language requirements - amendments to the current minimum score required under the International English Language Test System (IELTS) to allow an average score of 5 (as opposed to a minimum score of 5 in each component). It has also been recommended that occupational exemptions be reinstated, and that the exemption based on nationality be extended to include additional countries. The final recommendation is for the current requirement of five years consecutive study be amended to accept evidence of five years of cumulative study (with English as the medium of instruction).
 - Sponsorship approval periods - that these be extended to five years for an established business and 18 months for a start up business. It is also recommended that approval periods for overseas business sponsors and labour agreements be aligned with these periods. It is also recommended that access to Labour Agreements be extended to additional industries, with additional resources being allocated to enable a reduction in negotiation times.
 - Reporting requirements - that the prescribed period in which a sponsor must notify the Department of certain events be extended from 10 working days to 28 working days. This would include the requirement to notify the Department when a 457 visa holder has ceased employment with the business.
 - Fee structures - that the current fees structure be reviewed, with particular focus on the secondary and subsequent visa application fees.
 - Processing standards - the creation of streamlined processing based on risk factors such as business size, occupation, salary and sponsor behaviours (compliance history), similar to the existing accredited sponsorship program.
 - Intra-company transferees - that the Department consider the introduction of an intra-company transferee visa, recognising the emerging trend towards a more mobile and global workforce.

Compliance has also been a focus of the review, with various recommendations being made to ensure adequate investment in resources and education on compliance activities. The Panel has indicated that compliance and monitoring activities would benefit from greater collaboration between the Department of Immigration and Border Protection (DIBP) and the Australian Taxation Office (ATO), including a new requirement for 457 visa holders to provide their Tax File Numbers to DIBP.

This increased information sharing would provide the Department with the ability to detect potential non-compliance with greater ease while requiring less resources. The Panel has also recommended that the inspection powers granted to the Fair Work Ombudsman under the Migration Act last year remain in place, with the Department actively monitoring Fair Work Ombudsman decisions as an additional means to monitor ongoing sponsor compliance.

The DIBP has indicated that since the federal election in September 2013, there has been a 14% increase in compliance actions across the board, with field activities increasing by 27%, and location of illegal workers up to 18%. This would support recent views expressed by Senator Michaelia Cash concerning the DIBP's commitment to ensuring that any simplification of the program will not jeopardise its integrity. The increase in compliance activity and sanctions would in part result from the extension of inspection powers to Fair Work Ombudsman Inspectors in 2013, providing the DIBP with a tenfold increase in inspectors to investigate possible non-compliance with sponsorship obligations under the Migration Act.

While the majority of recommendations contained in the report have the overall intention of providing simplification to the 457 visa framework, users of the program should anticipate a continued increase in compliance activities as a means of maintaining integrity.

While permanent employer sponsored visas have been a subject of this review, the panel has recommended some changes to the Temporary Residence Transition Stream (TRTS) which allows a 457 visa holder to transition to permanent residence after two years of employment in Australia. One of the recommendations is to allow a 457 visa holder to once again apply for TRTS after completing one year of

work with their nominating employer (with two years in total). The report also recommends the Department consider a review of the current age restrictions as well as extending eligibility to secondary visa holders.

A copy of the full report can be located at <http://www.immi.gov.au/publications/Documents/reviews/streamlined-responsive-457-programme.pdf>.

The Takeaway

The report appears to take a balanced and measured approach to many of the existing 457 visa criteria and if adopted in full, would provide for a more transparent and streamlined program. While the Department is yet to confirm which of the recommendations, if any, it will seek to adopt Minister Morrison has confirmed in his address to the National Press Club that he supports changes to the English language requirements, a reduction to the market rate salary exemption as well as extending the reporting time frames.

The DIBP is also in favour of strengthening the existing compliance and monitoring frameworks so an increased focus on these areas should be expected.

We will continue to monitor developments and provide further updates as they become available.

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Let's talk

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

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