

AMBER MIGRATION NEWSLETTER
April 2016

Welcome to another edition of **Amber Migration's** Newsletter.

In this Immigration Update, we summarise the changes that have been made or are expected to be made by DIBP to the 457 and other visa categories. If you are an approved business sponsor, this newsletter also reminds you of the need to comply with DIBP's training requirements.

IMMIGRATION UPDATES

New: Non-discriminatory Recruitment Practices (commencing on 19/04/2016)

To address integrity concerns arising from the 2015 Independent Review into Integrity in the 457 programme, a new subclass 457 sponsorship obligation comes into effect on 19 April 2016. Standard Business Sponsors must declare that they will not engage in discriminatory recruitment practices, and must comply with a new obligation not to engage in discriminatory recruitment practices.

"Discriminatory recruitment practice" is defined as a recruitment practice that directly, or indirectly, discriminates against a person based on the immigration status or citizenship of the person.

DIBP says this new obligation seeks to address a "community concern that some employers may be relying on the 457 programme to employ foreign workers without having regard to the availability of local labour".

This new obligation applies to sponsors from 19 April 2016 onwards, or from the date they became an approved sponsor, whichever is later, up until the expiry of their standard business sponsorship.

Please note the existing requirement for an attestation in a 457 standard business sponsorship application that the applicant has a strong record of, or a demonstrated commitment to, employing local labour continues to be effective.

New: Simplification of English language exemptions (commencing on 19/04/2016)

From 19 April 2016 457 visa applicants are exempt from DIBP's English language testing requirements if they have already met the same, or better, English language requirements to gain an occupational registration or licence.

Reminder: the “Charging for a Migration Outcome” legislation (commenced on 14/12/2015)

On 14 December 2015, DIBP introduced new criminal and civil penalties and visa cancellation provisions that allow for sanctions to be imposed on a person who asks for, receives, offers or provides a benefit in return for a visa sponsorship or employment that requires a visa sponsorship.

Sponsors, nominators and visa applicants are now required to state in their respective sponsorship/nomination/visa applications whether or not they have actively participated in conduct that contravenes the new “Charging for a Migration Outcome” laws.

The visa subclasses affected by these new laws include: 401 Temporary (Long Stay Activity); 402 Training & Research (Research stream); 420 Temporary Work (Entertainment); 457 Temporary Work (Skilled); 488 Superyacht Crew; 186 Employer Nomination Scheme; 187 Regional Sponsored Migration Scheme.

To be introduced: Short-term Mobility Visa (possibly from 01/07/2016)

It’s expected a Short Term Mobility Visa will be introduced in July 2016. The visa would allow multiple entries over a maximum of 12 months to complete specialised work which may include intra-company transfers and foreign correspondents.

Applicants for this visa would not have to complete English language or skills requirements, and their employers would not be required to undertake labour market testing. Employers would only be subject to the Genuine Temporary Entry requirement and applicants would be subject to health, character and safety requirements.

To be introduced: Simplified Student Visa framework (from 01/07/2016)

From 1 July 2016, a simplified international student visa framework will be introduced. Under the new framework, there will be only two student visa subclasses, namely, subclass 500 (Student) and Subclass 590 (Student Guardian). It is expected application and processing requirements will be streamlined under the new framework.

To be introduced: Streamlined pathway to permanent residence and citizenship for NZ citizens (from 01/07/2017)

New Zealanders who arrived in Australia after 26 February 2001, but on or before 19 February 2016, have been living in Australia for the last five years, have been earning at least the equivalent of TSMIT (currently \$53,900 plus Super) and pass mandatory health, character and security checks are eligible for a new streamlined pathway to Australian permanent residence and citizenship. The pathway will be made available within the Skilled Independent category of the General Skilled Migration program from 1 July 2017.

FRIENDLY REMINDER: COMPLIANCE WITH TRAINING REQUIREMENTS

If you are an existing 457 business sponsor, unless you are a frequent user of the 457 or 186 program, it is quite easy to overlook your obligation to provide training to Australians after your business sponsorship is granted.

Please note that you **must** comply with DIBP's training requirements if you have at least one primary sponsored employee during all or part of the 12 months commencing on the day you are approved as a standard business sponsor; or during all or part a period of 12 months commencing on an anniversary of that day.

You may comply with your training obligation through meeting either of the following Training benchmarks:

- **Training benchmark A:** expenditure to the equivalent of at least 2% of the payroll expenditure of the business, in payments allocated to an industry training fund that operates in the same industry as the business;
- **Training benchmark B:** expenditure to the equivalent of at least 1% of the payroll expenditure of the business, in the provision of training to employees of the business who are Australian citizens or Australian permanent residents.

Payroll expenditure includes any wages, remuneration, salary, commission, bonuses, allowances, superannuation contributions (mandatory or otherwise), and eligible termination payments that are defined as wages in the Act relating to payroll tax in the relevant state or territory.

Payments to contractors or sub-contractors count as payroll if the contractor provides some labour services in fulfilling the requirements of the contract. For example, if your contractor is a bricklayer or a carpenter, any payments you make to them should be included as payroll expenditure.

If you have any questions concerning the information provided in this newsletter, please contact:

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