

## IMMIGRATION UPDATES

November 2013

### Labour Market Testing for Subclass 457 Nominations

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**SUMMARY:** The much talked about Labour Marketing Testing (LMT) requirement will commence on 23 November 2013 and apply to 457 Nomination applications concerning primarily Engineering, Nursing and Trade occupations.

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LMT will be introduced for 457 nominations from 23 November 2013. It will apply to nominations made by standard business sponsors (including accredited sponsors) and will not apply to nominations lodged under a labour agreement.

LMT will need to have been undertaken for the nominated position at any time within the 12 months prior to lodging the nomination application.

In the nomination application, sponsors will need to describe the attempts they have made to recruit Australian workers and how they have determined that there is not a suitably qualified and experienced Australian citizen, permanent resident or an eligible temporary visa holder who is available to fill the position.

This information is provided in a ***Domestic Recruitment Summary Table*** signed by an authorised officer of the sponsoring business.

LMT can be undertaken through a broad range of recruitment activity such as social media, internet advertising, news media, sponsor's own website and external recruitment agencies. Paid advertising will not be considered more favourably than free advertising for the purpose of evidencing LMT.

It should be noted there are a number ***exemptions*** to LMT, including:

1. LMT is not required where it would conflict with Australia's international trade obligations;
2. Occupation-based exemptions; and
3. Situations of major disaster.

### **International trade obligations**

LMT is not required where it would conflict with Australia's international trade obligations in any of the following situations:

- The worker has one of the below statuses:
  - Chilean citizenship;
  - Thai citizenship;
  - New Zealand citizenship or permanent residency.
- The worker is currently employed by an associated entity of the nominator's business that is located in an **ASEAN** country (e.g. Brunei, Myanmar, Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile or New Zealand;
- The worker is currently employed by an associated entity of the nominator's business in a country that is a member of the **WTO** and where the nominated occupation is an Executive or Senior Manager position. Please refer to **Attachment 1** for the current list of excluded occupations.
- The worker is a citizen of a WTO member country and has worked for the business in Australia on a full-time basis for the last two years.

### **Occupation based exemptions**

There are also some occupations which are exempt from LMT. In essence, with the exception of Engineering and Nursing occupations, ANZSCO Group 1 (Managers) and Group 2 (Professionals) are exempt from LMT. Also exempt are close to 100 other occupations from ANZSCO Groups 3, 4 and 5.

For ease of reference, DIBP has released a list of occupations which **will** require LMT (see **Attachment 2**). Please note this list may be subject to revision by DIBP and we will advise further in due course.

### **Major disasters**

The Minister may also grant an exemption in writing if a major disaster has occurred in Australia and workers are required to be nominated to assist with relief or recovery.

### **Redundancies or retrenchments**

Finally, it should be noted that LMT will also be required where there have been retrenchments or redundancies of Australian citizens or permanent residents where the retrenched/redundant occupations are the same or similar to the nominated occupation. However, this rule will not apply to voluntary redundancies.

If the retrenchments or redundancies have occurred in the company or an associated entity of the company within 4 months prior to lodging the nomination, evidence of LMT undertaken will need to be provided with the nomination application.

## **Amber Migration's approach**

We have incorporated LMT into our initial eligibility assessment process and advise you if your intended nomination requires LMT. Moving forward, based on your particular resourcing needs, we will work with you to identify the most efficient and effective way to address this new LMT requirement.

Amber Migration continues to remain a resource for our clients on communicating legislative changes. Our team is dedicated to the provision of accurate and timely service aligned with the latest requirements for best immigration outcomes.

Should you have any questions, please contact:

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**Important:** Clients should not act solely on the basis of the material contained in this Immigration Update. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. This Immigration Update is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

## **WE CARE AND WE DELIVER**

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