

AMBER MIGRATION NEWSLETTER

June 2016

Welcome to the last **Amber Migration** Newsletter for the 2016 financial year !

In this Immigration Update, we summarise a couple of major 457 initiatives to be introduced by DIBP on 1 July 2016. These include: (i) the new sponsorship accreditation arrangements; and (ii) the tiered processing arrangements. Also, we discuss DIBP's recent clarification of the genuineness requirement for a 457 nomination application.

IMMIGRATION UPDATES

New sponsorship accreditation arrangements

457 sponsoring employers with a long, compliant history of dealings with the DIBP are able to apply to become 'Accredited Sponsors'. An accredited 457 business sponsorship is valid for **six years** (compared to five years for a standard business sponsor) and will receive 457 visa priority processing.

The characteristics required of an accredited sponsor from 1 July 2016 will include:

- Meet all the requirements for a standard business sponsor (SBS);
- Be a government agency, a publicly-listed company or a private company with an annual turnover of at least A\$4 million for the last three years;
- Have been an active 457 sponsor for at least 3 years, with no adverse information (based on monitoring, including formal warnings and sanctions);
- Have sponsored at least 10 primary 457 visa holders in the 24 months prior to the accreditation application;
- Have lodged an agreed level of decision-ready applications over the previous two years;
- Have a non-approval rate of less than 3% for the previous three years;
- Have Australian workers comprising at least 75% of their workforce in Australia;
- Engage all 457 visa employees under a written employment contract that includes at least the minimum entitlements as per Fair Work's NES guidelines (unless from an exempt occupation);
- Have all Australian employees paid in accordance with an Enterprise Agreement or an internal salary table that reflects the current market salary rates for all occupations in their business;
- Have provided details of all business activities undertaken by their business to DIBP; and
- Have provided details of all Principals/Directors of their business to DIBP.

Tiered 457 Processing Arrangements

The benefits associated with sponsorship accreditation include:

- **Priority processing** for associated 457 nomination and visa applications;
- **Streamlined processing** of nominations with base salary that is equal to or greater than:
 - the Fair Work High Income Threshold, currently \$136,700; and
 - the occupation is classified as skill level 1 or 2 in the ANZSCO (ie Managers and Professionals);
or
 - \$75,000 and the occupation is classified as ANZSCO skill level 1 or 2 (ie Manager and Professionals, but with some exceptions).

We understand DIBP may take a light touch approach to applications eligible for streamlining and may consider auto-approving of these applications without manual assessment by a DIBP officer. Applications not eligible for priority or streamlined processing will be processed in the **regular** way.

Amber Migration will be reaching out to the clients who may be eligible for these arrangements once DIBP confirms the changes post 1 July 2016.

Regular 457 Processing

DIBP acknowledges that the 457 processing timeframes have become longer over the last 12 months. DIBP's most preferred way to contact the 457 section is via the dedicated 457 mailbox. We outline below the latest processing timeframes published by DIBP:

Processing function	Working days	Explanatory Comments
Initial Assessment	40 days	Decision ready application lodged are prioritised
Case related emails	5 days	DIBP places priority to responding to email enquiries however this does not include Request for Further Information (RFI) submitting documents (see below)
RFI responses Submitted via ImmiAccount	28 *days	DIBP states that reducing these time frames is not as high priority as 457 officers find responses are provided in a series of uploads over the 28 days request period
RFI responses Provided via email	28 - 56* days	DIBP allocates priority to RFI responses uploaded through ImmiAccount

* This timeframe may be reduced where DIBP identifies all outstanding provided can be assessed easily (e.g. health).

Clarification on Genuineness criterion

DIBP's new 457 nomination guidelines clarify that the 'genuineness' requirement does not equate to an assessment of whether or not the nominated position is 'needed', but whether the position associated with the nominated occupation is genuine. That is, the position **must exist** and also **be what it purports to be**.

Genuineness explanations are typically sought if the DIBP Officer believes that the nominated:

- position created to **secure a migration outcome** for the nominee and/or a family member/s;
- tasks of the position **do not align, or at least substantially align**, with the tasks of the occupation as described in the ANZSCO; or
- position does not appear to be **consistent with the nature of the business**.

FRIENDLY REMINDER

Training Compliance

If you are an existing 457 business sponsor, 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.

Use of labour agreements

Certain occupations genuinely required by the employers cannot be sponsored through a standard business sponsorship because they are not found in the ANZSCO dictionary or are not listed on the CSOL and so on. Employers may seek to sponsor these occupations under a Labour Agreement. Please feel free to contact us if you would like to know more about sponsoring under a Labour Agreement.

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

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***Important:** Clients should not act solely on the basis of the material contained in this Newsletter. 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 Newsletter 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.*

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