

AMBER MIGRATION NEWSLETTER *September 2014*

Welcome to **Amber Migration's** September 2014 Newsletter !

This Immigration Update outlines the 22 recommendations made on 10 September 2014 by an independent panel commissioned by the Assistant Immigration Minister to consider the integrity of, and potential improvements to the 457 programme.

The Immigration Minister supports some of the recommendations, including the lowering lower the existing earnings level (Rec 4), ease the English language requirement (Rec 7), and to relax business sponsorship renewal facility for compliant sponsors (Rec 10). We will write again when any of these recommendations are implemented.

IMMIGRATION UPDATES

Subclass 457 Review Recommendations

1 – Core solutions	That a new tripartite ministerial advisory council, supported by a dedicated labour market analysis resource, be established to report to government on skilled migration issues.
2 – Core solutions	That Employer-conducted labour market testing is not 'fully reliable' and proven ineffective hence current requirement for labour market testing be abolished.
3 – Core solutions	<ol style="list-style-type: none"> 1. Amendments to Consolidated Sponsored Occupations List CSOL: <ol style="list-style-type: none"> a) Addition of skilled occupations which can be shown to exist in the community but which may not be on the ANZSCO list; and b) Refining CSOL concerning occupations with concerns of integrity or appropriateness. 2. The ministerial advisory council provide advice and recommendation on occupations of concern such as additional requirements or limitations on occupations and/or regions.
4 – Market Salary Rate	That earnings threshold for exemption from the market rate criterion be aligned with the income level of top marginal tax rate of \$180,000.
5 – Temporary Skilled Migration Income Threshold (TSMIT)	<ol style="list-style-type: none"> 1. TSMIT be retained to allow for streamlining within the wider programme and that concessions to the TSMIT be afforded under Labour Agreements (LA), Enterprise Migration Agreements (EMA) and Designated Area Migration Agreements (DAMA);

	<ol style="list-style-type: none"> 2. Current TSMIT be retained at \$53,900 p.a. and to be reviewed within 2 years. 3. TSMIT purpose be: <ol style="list-style-type: none"> (a) determining eligibility of occupations for access to the scheme; and (b) as an income floor be more clearly articulated in the 457 programme, and that consideration be given to accepting the eligibility threshold as up to 10% lower than the TSMIT; 4. That the government give further consideration to a regional concession to the TSMIT, but only in limited circumstances where evidence clearly supports such concession. 5. That in circumstances where the base rate of pay is below the TSMIT, the current flexible approach adopted by DIBP taking into account guaranteed annual earnings to arrive at a rate that meets the minimum requirement of TSMIT be continued and made more visible to users of the programme and their professional advisors.
6 – Training benchmarks	<ol style="list-style-type: none"> 1. That the current training benchmarks be replaced by an annual training fund contribution based on each 457 visa holder sponsored, with the contributions scaled according to size of the business. 2. That any funding raised by way of a training contribution from sponsors of the 457 visa holders be invested in: <ol style="list-style-type: none"> a) Training and support initiatives, including job readiness, life skills and outreach programmes for disengaged groups, particularly youth who have fallen out of the school system; b) Programmes allowing employers to take apprentices/trainees from target groups including Indigenous Australian and those in rural and regional areas; c) Mentoring programmes and training scholarships aimed at providing upskilling opportunities within the vocational training and higher education sectors that address critical skills gaps in the current Australian workforce. Target sectors include those industries, such as nursing and the IT sector, that rely heavily on 457 workers; and d) Training and support initiatives for sectors of critical national priority. Target sectors include industries experiencing significant increase in labour demands, such as the aged care and disability care sectors. 3. That funds raised through the training contribution be dedicated to this training role and that the government reports annually on how these monies are spent by the Department of Industry. 4. That there is an additional sponsorship obligation that the cost of the training contribution cannot be passed onto the 457 visa holder or third party.
7 – English Language requirement	<ol style="list-style-type: none"> 1. That the English language requirement be amended to an average score, eg in the International English Language Testing System, the 457 visa applicant obtains an average score of 5 rather than 5 in each of the four competencies. 2. That greater flexibility be provided for industries or businesses to seek concessions to the English language requirement for certain occupations on a case by case basis, or under a LA, EMA or DAMA as appropriate. 3. That consideration be given to alternate English language test providers.

	<ol style="list-style-type: none"> 4. That consideration be given to expanding the list of nationalities that are exempt from the need to demonstrate they meet the English language requirement; 5. That instead of the current exemption which requires five years continuous study, five years cumulative study be accepted.
8 – Genuine position requirement	<ol style="list-style-type: none"> 1. That there be a targeted training for decision-makers in relation to the assessment of the genuine position requirement; 2. That before decision-makers refuse a nomination on the basis of the genuine position requirement, the sponsor be invited to provide further information to the decision-maker.
9 – Skills assessment	That the government should explore how skills assessments could more appropriately recognise a visa applicant’s experience.
10 - Sponsorship	<ol style="list-style-type: none"> 1. That Standard Business Sponsors (SBS) be approved for 5 years and start-up business sponsors for 18 months. 2. That a simplified process for sponsorship renewal be developed. 3. That the DIBP consider combining as many sponsorship classes as possible. 4. That when more detailed information is available, the department should investigate the alignment of overseas business and LA periods with the general SBS approval period. 5. That the timeframe for the sponsor to notify the DIBP of notifiable events as set out in legislation be extended to 28 days after the event has occurred. 6. That the DIBP should explore options that would enable the enforcement of the attestation relating to non-discriminatory employment practices. 7. That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework.
11 - Fees	That the existing fee structure, especially for secondary visa applicants and visa renewal applications, be reviewed.
12 – Information provision	<ol style="list-style-type: none"> 1. That sponsors be required to include as part of the signed employment contract: <ol style="list-style-type: none"> a) A summary of visa holder rights prepared by the department; and b) The Fair Work Ombudsman’s Fair Work Information Statement. 2. That improvements be made to both the accessibility and content on the department’s website specific to 457 visa holder rights and obligations, and utilising the department’s significant online presence more effectively to educate 457 visa holders on their rights in Australia.
13 – A streamlined approach	<ol style="list-style-type: none"> 1. That consideration be given to creating streamlined processing within the existing 457 programme as a deregulatory measure. To maintain programme integrity, streamlining should be built around risk factors including business size, occupation, salary and sponsor behaviour.

	<ol style="list-style-type: none"> That if the recommended nomination and visa streamlining outlined in this report be implemented, the DIBP should investigate a redefined accredited sponsor system. Current accredited sponsors should retain their priority processing benefits until their sponsorship ceases; however, no further sponsors should be afforded accredited status until a new system is implemented.
14 – Labour Agreements	<ol style="list-style-type: none"> That Labour agreement negotiation times be significantly improved to enable a demand-driven and responsive pathway for temporary migration, where the standard 457 programme arrangements are not suitable. That to enable the LA pathway to be more open and accessible for additional industry sectors, consideration be given to the development of other template agreements that will address temporary local labour shortages in industries of need.
15 – Pathways to permanent residence	<ol style="list-style-type: none"> That 457 visa holders be required to work for at least two years in Australia before transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme, and that consideration be given to the amount of time required with a nominating employer being at least one year. That consideration be given to reviewing the age restriction on those 457 visa holders transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme. That consideration be given to facilitating access for partners of primary sponsored 457 visa holders to secure permanent residence under the Temporary Residence Transition Stream.
16 – Role of education	That consideration be given to the allocation of more resources to programmes aimed at helping sponsors understand and comply with their obligations, whether those programmes are delivered directly to sponsors or through the migration advice profession.
17 - Monitoring	That greater priority be given to monitoring, and that the DIBP continue to enhance its compliance model to ensure those resources are applied efficiently and effectively.
18 – Inter-agency cooperation	<ol style="list-style-type: none"> That there be greater collaboration between the DIBP and the Australian Tax Office to uphold integrity within the 457 programme and minimise the burden on employers. That a change to 457 visa conditions be introduced to place an obligation visa holder to provide the department with the Australian tax file number.
19 – Fair Work Ombudsman	<ol style="list-style-type: none"> That the Fair Work Ombudsman’s current complementary role in monitoring compliance and referral of findings to the DIBP for action should continue. That the DIBP should provide information in real time that is both current and in a format compatible with that of the Fair Work Ombudsman.
20. Fair Work Commission	<ol style="list-style-type: none"> That the DIBP monitor decisions of the Fair Work Commission, so as to determine if sponsors have breached obligations or provide false and misleading information.

	2. That the department require sponsors, when lodging a new nomination application to certify that there has been no change to the information provided to the department in relation to whether the business or an associated entity has been subject to “adverse information” as that term is defined in the legislation.
21. - Sanctions	<ol style="list-style-type: none"> 1. That dedicated resourcing be made available to the DIBP to enable the investigation and prosecution of civil penalty applications and court orders. 2. That the department disclose greater information on its sanctions actions and communicate this directly to all sponsors and the migration advice profession as well as placing information on the website.
22 – Systems enhancements	That the DIBP investigate the feasibility of system improvements that facilitate greater linkages with information held by other government agencies.

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Important: Clients should not act 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. As changes in legislation may occur quickly, we recommend you to seek our formal advice before acting in any of the areas. This Immigration 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.

Should you have any questions, please contact your Amber consultant or:

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