

ABOLITION OF 457 VISA

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The 457 visa is no more. For the time being its replacement, the Temporary Skills Shortage (TSS) visa, costs the same for employers and is reasonably similar. We consider key changes and impacts in this update.

Introducing the Temporary Skill Shortage Visa

The TSS Visa has now replaced the subclass 457 visa. Applications for 457 applications of all kinds closed on 18 March 2018.

Many of the subclass 457 visa requirements are replicated for the TSS visa.

Key changes include:

- Labour market testing (demonstrating local labour is unavailable) is required to sponsor all temporary workers.
- Only full-time positions can be sponsored.
- Nominees require 2 years' full-time work experience in the nominated occupation or a related field.
- Visas will be granted for the duration requested by the employer.
- The list of occupations you can support will change every 6 months or so. The list is divided into two streams- short term and medium to long-term.
- Nominees with occupations on the Short Term Skills in Demand list will only be able to obtain a 2 year visa, renewable once onshore. They will need to satisfy DHA they genuinely intend a temporary stay in Australia.
- Nominees with occupations on the Medium to Long Term Skills Shortage List may apply for a renewable 4-year visa. They will also need to show higher English competency.
- Annual market salary rate - which is benchmarked to similar Australian employees if applicable - must be no less than Australian labour laws require and no less than \$53,900 plus superannuation. This

excludes the agreed value of non-monetary benefits.

- More nominees will require a formal skills assessment at the time of lodgement of their visa application.
- TSS visa applications are now linked to one nomination. This means that the ability to 'rescue' a pending visa application by lodging a further new nomination is no longer possible. Both nomination and visa applications will need to be resubmitted (where possible to do so).
- Police checks will no longer be required from *nominees of accredited sponsors, where the sponsor writes a reference stating the person is of good character (special formats apply)*. This will facilitate speedier visa approvals in many cases.
- However, more care will need to be taken to submit decision-ready applications. DHA have announced they will refuse applications where supporting evidence is not submitted within 2 days after lodgement.

Higher visa application fees

Although employers' costs to nominate staff for temporary work permits remains the same for the time being, visa application fees have gone up:

	Previous fees	Short Stream	MLT Stream
Adult applicant	1070	1150	2400
Children	270	290	600

Snapshot of impacts

Pending 457 visa applications: Employees with pending 457 visa applications before the Department of Home Affairs will still have their applications processed, and approved in due course.

Nominees who have not yet lodged their 457 visa applications: Prospective employees who have been nominated for a 457 visa but have not yet lodged their associated visa application will need to be nominated again, for a 482 visa (assuming they are eligible). The 457 nomination can no longer be used to submit a 457 visa, or the new TSS visa. Refunds for nomination fees paid will be available in due course.

Families of 457 visa holders: Will be able to obtain the new 482 visa to join their family members in Australia.

Taking over sponsorship of an existing 457 visa holder (primary): Employers will achieve this by lodging a Subclass 482 nomination. Note: if the applicant has 3 years' remaining on their visa and you nominate them for 1 year, and pay the levy for 1 year, you will still be able to employ them for the remaining term on their visa.

Existing 457 visa holders planning to apply for Permanent Residence: Will need to comply with the new rules unless, on 18 April 2017, they held a 457 visa or had applied for a 457 visa that has subsequently been granted. For these 'transitional' applicants the existing rules will continue to apply until 18 March 2022. I.e. they can apply for PR up to the age of 50, and in the occupation their most recent 457 or 482 visa was granted, regardless of its inclusion on the MLTSSL.

Compliance and Integrity - extension of adverse information definition

Large sponsors should beware that a seemingly minor change that will prove to have teeth. Businesses are required to disclose 'adverse information' about them or a person *associated with* them whenever lodging sponsorship or nomination applications. But are the managers who tick 'no' to this question really capable of doing so?

Adverse information includes breaches of all laws - tax, WorkCover, employment law, corporations law etc. as well as being currently under investigation or going through a legal process in relation to such matters. A manager with overall responsibility for the business should be answering this question. Otherwise there is a risk that the HR Manager - usually relegated migration responsibility - will not know about potential adverse information being dealt with by other areas in the business.

Even the Managing Director will have trouble answering this question correctly. Businesses now have to disclose 'adverse information' of not only their related bodies corporate but that officers, employees, consultants, advisers, partners or any corporation or other body in which these people are involved.

DHA are increasingly sharing information with Fair Work, ASIC, the ATO and will have access to public databases other organisations in Australia and may impose harsher penalties on businesses seen not to have been forthright in their disclosure. Considering how best to answer these little questions on forms in future may pay off in the longer-term.

Permanent Employer Nominated Visas

Visa applicants will be interested to note that as of 18 March 2018:

- Age limit for all applicants has been reduced to 45

- Only nominees with an occupation on the MLTSSL can be put forward for Permanent Residence
- Applicants will need to have at least 3 years' full-time work experience prior to application;
- If mandatory licensing or registration applies to an occupation evidence will be required at the time their employer lodges a nomination application
- Applicants in the Temporary Residence Transition stream may be requested to undergo a skills assessment or provide further evidence of their skills

The amendments commencing on 18 March 2018 do not affect nominations lodged before 18 March 2018 and also do not affect related subclass 186 or subclass 187 visa applications, lodged before or after 18 March 2018.

Global Talent Scheme Pilot

Publicly listed companies or those with a turnover of more than \$4 million may be interested in a proposed talent scheme pilot, expected to commence as of 1 July 2018.

This will allow sponsorship of up to 20 highly skilled nominees with salaries of at least \$180,000 to be sponsored for Permanent Residence (initially they will be issued a 4 year TSS visa) even if their occupation is not on the Medium to Long-Term shortage list, and even if older than 45.

Employers will need to show labour market testing and that the nominee will be able to pass on skills/develop Australians with their special skills. This visa is expected to be particularly interesting to STEM related fields.

We will provide more details regarding this visa as they become available.

Suggestions and commentary

If planning to sponsor employees for temporary or permanent residency employers may wish to do so now, before additional training levies apply. The direction of recent legal changes serves as a reminder to businesses to review their policies; do you need all your employees on temporary work permits? Compliance obligations have increased and it may be prudent to avoid taking on sponsorship obligations by nominating eligible onshore staff for Permanent Residence directly in future. Our office can assist you with advice on strategies which will work and encourage staff retention.

Further information:

For further information, please contact:

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We can provide expert advice on:

- How you can comply with immigration law obligations
- Prevention & risk management
- Acting on your behalf in relation to DHA monitoring audits
- Advice & advocacy if you find you have breached the sponsorship obligations framework
- Training sessions for your management team.