

## **DIBP FAQs on the 457 and ENS/RSMS changes announced from 19<sup>th</sup> April**

### **19 April 2017 changes**

Q1. What has already changed?

A. As of 19 April 2017:

- the Consolidated Sponsored Occupation List (CSOL) has been replaced with the new Short-term Skilled Occupation List (STSOL);
- the Skilled Occupation List (SOL) has been replaced with the new Medium and Long-term Strategic Skills List (MLTSSL);
- there has been a reduction of 216 occupations available for subclass 457 visa programme applications;
- 59 caveats now apply to specified occupations - these either relate to work experience, regional location or are occupation specific; and
- new visa validity periods also apply under the standard subclass 457 programme with a maximum 2 year period available for occupations that are eligible for the subclass 457 programme but not on the new MLTSSL.

Q2. Can people still apply for subclass 457 visas?

A. Yes. The subclass 457 programme remains open until the new TSS visa comes into effect in March 2018. The occupation list has been restricted (19 April 2017) and integrity settings will be further tightened.

Q3. Where can I find a list of removed occupations?

A. This is available on the Department's website.

Q4. Why were occupations removed?

A. They were removed due to a wide range of factors including: immigration integrity concerns, low usage over the last five years, being reserved for Australian citizens (e.g. magistrate) and based on advice from the Department of Employment.

Q5. Where can I find information about the caveats?

A. This is available on the Department's website. Agents have also been provided with interim guidelines on these caveats until the 457

Nominations Procedural Instructions (PI) are updated for 1 July 2017. We will continue to expand this advice in the future based on feedback from agents and staff.

Note: Additional FAQs specifically on caveats is also provided below.

Q6. Do the above changes have any impacts on existing subclass 457 visa holders?

A. No – unless they wish to change employers or positions, in which case a new nomination will need to be approved under the new arrangements.

Note:

- This will include situations where due to business structure changes, an employer is required to lodge a new sponsorship application and is required to lodge new nomination applications to accommodate existing subclass 457 visa holders (unless they continue to work for an associated entity of an Australian sponsor).
- A new nomination approval for an occupation listed on the STSOL will not result in reduction of the visa period already held by the visa holder.

Q7. My client has a pending application where the occupation has been removed from the list - what happens now?

A. Once the application has reached the assessment stage, you will be contacted by the Department and given the opportunity to withdraw your application in writing. The letter will specify a period for required response (i.e. 14 days for nomination applications and 28 days for visa applications).

Alternatively, you can request a withdrawal in writing at any time and your client will then be entitled to a refund of the application fee. If you do not withdraw your application, it will be refused.

Note:

- If seeking to withdraw a visa application, we ask that you complete and attach Form 1446 to ImmiAccount where possible to facilitate faster processing.
- If seeking to withdraw a nomination application, we ask that you attach a written request to this effect to ImmiAccount where possible to facilitate faster processing.
- Once a withdrawal has been actioned, the

process to facilitate a refund will be initiated. Applications which do not meet the requirements and are not withdrawn within the prescribed timeframes will be refused. No refund will be provided in such circumstances.

Q8. What about situations where my client has a pending application but a caveat now applies?

A. Once the application has reached the assessment stage, an officer will assess whether or not the caveat applies. If it does, the same withdrawal and refund options as noted above (Q7) will be made available to the client - as the occupation is no longer 'on the list' in the circumstances specified.

Note: where a caveat may apply, but the nomination has already been approved and it is only the visa application that is outstanding, the Department will assess caveats for visa applicants based on information already available on Departmental systems. We will not seek further information if there is no clear indication that a caveat applies.

Q9. Can I get a refund for an approved nomination if a related visa application now cannot be approved?

A. Yes, if, a subclass 457 visa application is unable to be granted where the approved nomination is for an occupation that has been removed from the list, the sponsoring business can request that the nomination be withdrawn and request a refund of the nomination fee.

Note:

- If seeking to withdraw your approved nomination, we ask that you utilise Form 1446 where possible to facilitate faster processing.

The completed form should be emailed through to 457@border.gov.au.

- Once a withdrawal has been actioned, the process to facilitate a refund will be initiated.

457 agent news May 2017 | 3

Q10. Can I get a refund of my sponsorship fee if my sponsorship application has been lodged and/or approved but I no longer wish to use the subclass 457 programme due to the changes in occupation lists?

A. No – a refund is not available under the legislative framework.

Q11. Can I change the nominated occupation?

A. No – but you can withdraw and lodge a new nomination with a new occupation specified for the nominee. This may, however, raise concerns about the genuineness of the position – particularly if the new occupation is substantially different.

Q12. Can I change the nominated base salary for a position post lodgement of the nomination?

A. Yes – you can provide updated information to the Department via ImmiAccount, but you must also provide an updated contract of employment reflecting the new salary rate. This may, however, raise concerns about the genuineness of the position and whether the local labour market has been effectively tested.

Q13. What is the impact of 19 April 2017 changes on the subsequent dependant applications?

A. Nil – if the primary visa application has been granted, then subsequent dependant applicants can still be granted for the same period as the primary (subject to any 457 MOFU extension restrictions).

Q14. Do the changes impact cases that have a review application pending?

A. Yes – the AAT must make a decision based on the current framework – i.e. they are required to take into account recent occupation removals and caveats.

Q15. Will the reforms affect visa processing times?

A. Processing times are expected to slow down in the short term as staff become familiar with the new arrangements. Additional concurrent measures are, however, being considered for 1 July 2017 to streamline processing for lower risk sponsors – including possible further expansion of 457 accredited sponsor arrangements.

Applying the caveats

Q16. What are caveats?

A. Occupational caveats are additional requirements for certain

occupations to demonstrate that the position you have nominated is appropriate for a skilled visa programme. Caveats do not prevent lodgement of all applications for that particular occupation. They limit use of the occupation in certain circumstances. These caveats will be subject to regular review and may be added, altered or removed in future.

Q17. Where the caveat requires a business to have a turnover of at least \$1M, what is the period in which \$1M turnover is considered?

A. From 1 July 2017, the subclass 457 nomination form will collect information regarding the turnover of the business for the last financial year, which will be used to determine whether or not this caveat applies. Up until this time, the Department will use existing information available on our systems if they indicate that this element of a caveat is met. Where such information is not available in Departmental systems, additional information will be sought from the sponsoring company. If this occurs, it is recommended that agents provide financial information to cover the last financial year. Independently verifiable information should be provided where possible.

Q18. Can the \$1M include turnover from related entities?

A. No – this relates to the sponsoring business only.

Q19. Can the \$1M turnover figure include GST?

A. No.

Q20. Will occupational caveats apply to businesses that have traded for less than 12 months? If so, will projected turnover suffice where relevant?

A. Yes – they apply. In general, projected turnover will not suffice. As above, the turnover needs to be at least \$1M for the last financial year. However, the Department will consider exceptional circumstances on a case by case basis.

Q21. Where the caveat requires a business to have a minimum of five employees, are there any restrictions on the type of employee

(e.g. do they have to be full time, Australian)?

A. No – not at this stage. If the business declares that they have five employees and this is consistent with other information provided (e.g. structure chart for business etc.), then this will be accepted unless the Department has concerns that this is not the case. From 1 July 2017, the subclass 457 nomination form will ask companies to declare their total number of employees and how many are Australian/overseas workers, as per the current subclass 457 sponsorship form.

Q22. Where the caveats require at least two years of work experience, what does this mean?

A. This means that a successful candidate for the nominated position would be expected to have completed at least two years full time (as per the industry standard) work experience in the relevant occupation post qualification.

The Department recognises that work experience may take different forms for different occupations. For example, relevant experience for a University lecturer could include conducting research in a particular field of knowledge and/or teaching experience.

Additional permanent visa questions

Q23. Is the Regional Sponsored Migration Scheme impacted by the 19 April 2017 changes?

A. No – this is because you can nominate any occupation that is ANZSCO skill level 1 to 3 for this programme (i.e. you are not restricted to the MLTSSL and the STSOL at this stage).

Q24. How do the above changes impact other permanent visa programmes?

A. The above changes do not impact on hand ('pipeline') applications for other skilled permanent visa programmes.

The removal of occupations from the list will, however, impact clients who lodge an application for one of the following on or after 19 April 2017:

- Employer Nominated Scheme (subclass 186) – Direct Entry Stream
- Skilled Nominated visa (subclass 190)
- Skilled Regional (Provisional) visa (subclass 489)

That is, any applications already lodged before 19 April 2017 for the above visa subclasses (other than a 457 visa) will not be impacted (even if the occupation was removed for these visas on 19 April 2017).

Q25. Do the caveats impact permanent visa applications?

A. No – the new caveats only impact subclass 457 applications. Caveats existing prior to 19 April 2017 that impacted other visas remain unchanged.

Q26. Can you still apply for ENS if your occupation is on the STSOL but not the MTSSL?

A. Yes – currently, if your occupation is on the STSOL or an eligible occupation on the MLTSSL you can apply for the ENS Direct Entry stream. Current holders of subclass 457 visas continue to be eligible to apply for permanent residency through the Temporary Residence Transition (TRT) stream of the ENS visa. Access to the TRT stream is not based on the occupation lists and is therefore unaffected by these changes.

Other temporary visa questions

Q27. Do the above changes impact on hand ('pipeline') applications for other temporary visa programmes that utilise the MLTSSL and/or the STSOL?

A. The above changes do not impact on hand ('pipeline') applications for other temporary visa programmes that utilise the MLTSSL and/or the STSOL. The removal of occupations from the list will, however, impact clients who lodge an application on or after 19 April 2017 for the Training visa (subclass 407).

### 1 July 2017 changes

Q28. What reforms are being implemented on 1 July 2017?

A. Key reforms that will be implemented from July 2017 for subclass 457 visas include:

- expanding mandatory skills assessments;
- introducing mandatory penal clearance checks consistent with other visas;
- tightening existing training benchmarks; and

- removing English language exemptions based on a skilled migrant's salary (e.g. if their salary is higher than \$96,400).

Q29. Will there be further changes to the occupation lists for 1 July 2017?

A. Yes – it is expected that the occupation lists will be regularly updated, based on a range of factors including advice from the Department of Employment and the Department of Education and Training.

Q30. Why are mandatory skills assessment requirements being expanded?

A. The skills assessment requirements are being considered for expansion to cover a small number of new cohorts of concern. For example, where particular combinations of occupation and nationality have been identified as an integrity risk.

Q31. What nationalities/occupations will be impacted?

A. A final decision has not been made in this space. Registered migration agents will be informed of the specific changes proposed via an agents newsletter prior to 1 July 2017.

Q32. What changes are being made to character requirements and why?

A. As of 1 July 2017, all subclass 457 applicants aged 17 years or older will be required to provide penal clearance certificates for countries in which they have lived for a significant period. This measure will strengthen current character and integrity measures and will bring subclass 457 visas into line with other longer stay temporary visa products.

Q33. What changes are being made to the training benchmarks?

A, Policy settings for training benchmark requirements are being clarified and tightened, by setting out:

- the types of training funds eligible for training benchmark A; and
- setting out the types of expenditure on training that are acceptable for training benchmark B.

The Department also intends to provide agents



with additional guidelines around documentation required to demonstrate that an applicant has met the relevant training benchmarks via a later edition of this newsletter.

Additional permanent visa questions

Q34. What reforms will be implemented on 1 July 2017 for ENS and RSMS?

A. On 1 July 2017, the additional changes below will be implemented for ENS and RSMS:

- raising English language requirements to “competent” for all applicants (IELTS 6) – with TRT and Direct Entry requirements to be consistent;
- upper age limit of 45 for Direct Entry applicants;
- 3 years skill and experience for Direct Entry applicants; and
- further changes to the occupations lists and their application to relevant visas.

Note: This above looks like an error in that the RSMS (direct entry) change that 3 years work experience is needed is scheduled for March 2018. We are trying to confirm this

### March 2018 changes

Q35. What is the Temporary Skill Shortage (TSS) visa?

A. The new TSS visa will replace the 457 visa. It will have two distinct streams: a Short-term stream of up to two years and a Medium-term stream of up to four years.

Q36. How much will the TSS visa cost?

A. There will be different Visa Application Charges (VAC) for the TSS visa. The base VAC for:

- the Short-term stream is \$1150; and
- the Medium-term stream is \$2400.

Q37. What are the changes to the English language requirements?

A. The English requirements for the Short-term stream of the new TSS visa will be the same as the current 457 visa, with a minimum IELTS result (or equivalent) of 4.5 in each test component required, and an overall score of 5.

There will be a higher standard required for the

Medium-term stream with a score of 5 required in each test component.

Q38. Will holders of the TSS visa have a pathway to become Australian permanent residents?

A. Yes - under the Medium-term stream only.

Q39. Will the Temporary Income Skilled Migration Threshold (TSMIT) be indexed?

A. No - in considering options for the abolition of the subclass 457 visa and its replacement with a new TSS visa, the Government decided not to index the TSMIT at this time.

Q40. What will change in terms of labour market testing?

A. Labour market testing will be a mandatory requirement for the TSS visa, unless international trade obligations apply.

Q41. How will the TSS visa require employers to assist with training Australian workers?

A. The TSS visa will require employers nominating skilled overseas workers to contribute to training Australian workers. Details of the revised training requirement will be provided in a subsequent edition of this newsletter.

Additional permanent visa questions

Q42. What reforms will be implemented for ENS and RSMS in March 2018?

A. From March 2018, new eligibility criteria for ENS and RSMS will include:

- an upper age limit of 45 (from 50) for most applicants;
- occupation must be on the MLTSSL (unless an additional occupation approved for regional areas);
- a minimum market rate salary: all visa holders must earn at least a minimum salary of \$53,900 – that is the TSMIT;
- at least three years' relevant work experience; and
- a pathway to permanent residence through TRT requires 3 years on Medium-term TSS visa.

More information will be provided about these changes to registered migration agents closer to 2018.

Q43. What transitional or 'grandfathering'

arrangements will be in place for those who already hold a subclass 457 visa before March 2018?

A. More information concerning the legislative details of future changes will be available closer to their implementation date. This will include information about transitional arrangements for visa applicants and visa holders.

Labour agreements

Q. Do these changes have any impact on labour agreements?

A. No – the subclass 457 visa abolition and replacement changes have no immediate impact on the labour

agreement programme with:

- existing labour agreements remaining in effect;
- existing visa holders not impacted unless they apply for another visa impacted by the changes outside of the labour agreement programme; or
- new nominations that labour agreement sponsors intend to lodge and related visa applications are not

impacted – including applications for occupations which are specified in the relevant labour agreement, but

have were 'removed' from the standard programme on 19 April 2017.

The Department will amend all existing labour agreements at some time prior to March 2018 to reflect the

abolition of the subclass 457 visa – with no further applications for subclass 457s accepted after the introduction of the TSS visa in March 2018.

Q. Will the Designated Area Migration Agreement (DAMA) remain in place?

A. The DAMA with the Northern Territory will remain in place.

Q. Has anything else changed in the labour agreement programme?

A. The Department continues to review labour agreement arrangements to ensure that:

- they reflect current economic and employment conditions
- the local labour market is not undercut
- Australian workers are given priority.