



# Skilled Visa eNews – December 2018

## Legislative changes

### TSS / 457 visa applicant review rights

Changes to s338(2)(d) of the *Migration Act* made by *The Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018*, commenced by proclamation on 13 December 2018, along with associated changes made by *The Migration Amendment (Enhanced Integrity) Regulations 2018*.

For specific details of the Act, Proclamation and Regulations, see:

[www.legislation.gov.au/Details/C2018A00090](http://www.legislation.gov.au/Details/C2018A00090)

[www.legislation.gov.au/Details/F2018N00174](http://www.legislation.gov.au/Details/F2018N00174)

[www.legislation.gov.au/Details/F2018L01707](http://www.legislation.gov.au/Details/F2018L01707)

The combined practical effect of these changes for applicants for either a TSS or 457 visa is detailed below.

**Note:** the changes also apply to subclass 407 visa applications, however the advice below only applies to TSS and 457 visa applications.

#### ***Onshore primary TSS / 457 visa applications***

A decision to refuse an onshore primary TSS / 457 visa application (i.e. applicant was onshore at the time of application and was seeking to satisfy the primary criteria) is only reviewable if, at the time the decision to refuse to grant the visa is made:

- the visa applicant is the subject of an approved nomination that has not ceased; or
- there is an application to review the decision not to approve the sponsor (i.e. the sponsorship application was refused) pending; or
- there is an application to review the decision not to approve the nomination (i.e. the nomination was refused) pending.

#### ***Offshore primary TSS / 457 visa applications***

A decision to refuse an offshore primary TSS / 457 visa application (i.e. applicant was offshore at the time of application and was seeking to satisfy the primary criteria) is only reviewable if, at the time the decision to refuse to grant the visa is made:

- the person that nominated the visa applicant is an Australian business;

and

- the visa applicant is the subject of an approved nomination that has not ceased; or
- there is an application to review the decision not to approve the sponsor (i.e. the sponsorship application was refused) pending; or
- there is an application to review the decision not to approve the nomination (i.e. the nomination was refused) pending.

If the sponsor is an overseas business, the decision is not reviewable.

#### ***Secondary TSS visa applications***

A decision to refuse a secondary TSS visa application (i.e. applicant was seeking to satisfy the secondary criteria rather than the primary criteria) is reviewable irrespective of the nomination status of the primary applicant. The restrictions that apply in relation to primary applicants do not apply in relation to secondary applicants.

#### ***Who can make the application for review?***

An application for review of an onshore application can be made by the applicant.

An application for review of an offshore application can only be made by the Australian business who applied to become the sponsor or who nominated the visa applicant. That is, an offshore visa applicant is not eligible to lodge the application for review.

## Other Enhanced Integrity Act measures

In addition to the changes to review rights provisions, other measures of the Act that commenced on 13 December 2018 were:

- to allow the public disclosure of sponsor sanctions
- to allow the Department to collect, record, store and use the tax file numbers of skilled migrants for compliance and research purposes
- to allow the Department to enter into an enforceable undertaking with a sponsor who has breached their obligations.

## International trade obligations

### TSS Nomination form

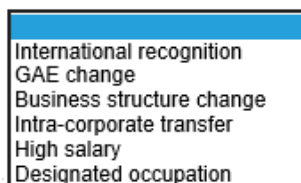
As advised in the *Skilled Visa eNews – November 2018* edition that was emailed to all Agents on 17 November (copy attached to this newsletter), the LMT section of the TSS Nomination form now caters for the alternative evidence provisions relating to select occupations and select positions.

The ‘workaround’ advised in previous editions of the *Skilled Visa eNews* should not be used. Where a relevant submission is not attached prior to lodgement the nomination may be refused.

Completing the alternative evidence section will prompt you to attach the required LMT submission at the end of the form. There is a new document type available for this purpose: **Alternative LMT evidence submission**.



The alternative evidence reasons list has been updated to include ‘Designated occupation’, to cater for the medical occupations specified in the legislative instrument.

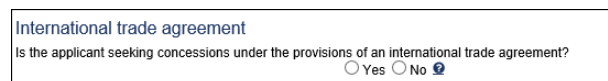


The *TSS Nomination Form – Guide for applicants* has been updated to include the change and is attached to this newsletter for your reference.

The Department acknowledges that there has been some inconsistent decision making relating to the LMT requirement, causing confusion amongst agents. ESPM is currently reviewing affected applications, however agents should be aware that this will only apply to applications lodged prior to the circulation of this newsletter.

The following reminder was contained in the last edition of the *Skilled Visa eNews*:

**Reminder:** As advised in roadshows prior to TSS implementation and in previous editions of the *Skilled Visa eNews*, the Department assesses whether international trade obligations apply to a nomination in relation to either LMT or visa period, based on whether the applicant indicates that they are seeking concessions under the provisions of an international trade agreement. To access such concessions you must answer ‘Yes’ to the following question on the first page of the nomination form.



You will then be required to answer additional questions that will enable us to determine whether any ITOs are applicable.

If you do not indicate that you are seeking concessions under an international trade agreement in this question, it will be deemed that you are not seeking any concessions in relation to either Visa period or Labour Market Testing and standard requirements will apply (irrespective of whether you complete the Intra-corporate Transfer question in the next section or not). This cannot be changed post-lodgement.

Indicating that LMT is not required due to an international trade obligation relating to an Intra-corporate transfer on the LMT page later in the form will not change this.

Our systems runs some basic checks to determine whether an ITO may apply based on the answers you provided in *International trade agreement* section on the *Application context* page of the form. If these checks do not indicate that an ITO applies to your nomination, a warning message will appear.

These checks do not cover every specific scenario and some subjective assessment may still be required to determine whether an ITO applies or not. However, if you click *Confirm* and continue to lodge the nomination without providing LMT evidence, and it is subsequently determined that an ITO does not apply, your nomination will be refused.

**Do not ignore the warning message on the LMT page** – if you are seeking LMT concessions due to an international trade obligation and see a warning message, go back to the first page and make sure you have completed the *International trade agreement* section, including indicating that you are seeking concessions under the provisions of an international trade agreement.

## Trans-Pacific Partnership 11

The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership 11* will enter into force on 30 December 2018 for the following countries: Australia, Canada, Japan, Mexico, New Zealand and Singapore.

As a result, from 30 December 2018, Labour Market Testing will not be required where:

- the worker you nominate is a citizen/national of China, Japan, Mexico or Thailand, or is a citizen/national/permanent resident of Canada, Chile, South Korea, New Zealand or Singapore
- the worker you nominate is a current employee of a business that is an associated entity of your business and the associated entity is located in an Association of South-East Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand or Vietnam), Canada, Chile, China, Japan, Mexico, South Korea or New Zealand

The LMT page on the Department's website will be updated to reflect this information once the TPP 11 has entered into force, other details on this page are unaffected.

<https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing>

No changes to settings relating to visa period will be made as a result of the TPP 11.

Current visa period information can be found on the Department's website under the heading *'How long you can stay'* at:

<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-skill-shortage-482/short-term-stream#aboutVisa-index-3>

# Labour Agreement news

## Online labour agreement requests

A further two applicant guides have been developed to assist you in navigating through and completing the new online labour agreement request form.

The *'Labour Agreement Request Form – Guide for applicants'* documents for *GTS – Start-up* and *DAMA* requests are attached to this newsletter.

Guides for other Labour Agreement types will be available in the near future.

## Website

ESPM is working with the Department's web team to have previous editions of the Skilled Visa newsletters published on the new website.

In the meantime, Agents can use the following link to the previous page:

<https://archive.homeaffairs.gov.au/trav/work/newsletters>

For SAF levy information:

<https://archive.homeaffairs.gov.au/trav/work/empl/skilling-australia-fund>

To ensure adequate health insurance is held by applicants that covers the purpose of stay, new information is available on our website:

<https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/adequate-health-insurance>

Encouragement of clients to use the online visa Entitlement Verification Online (VEVO), will allow visa holders and employers to check or confirm visa details.

<https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions>

As we have previously advised, if you are experiencing lodgement problems, please complete the *ImmiAccount Technical Support Form*.

[www.immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/immiaccount-technical-support-form](http://www.immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/immiaccount-technical-support-form)