

## RECENT REFORMS TO AUSTRALIA'S EMPLOYMENT AND SKILLED MIGRATION PROGRAM

Over the past 12 months there have been significant changes made to Australia's skilled/ employment migration program. This culminated in the termination of the 457 visa program in March 2018 and the introduction of a new Temporary Skill Shortage (TSS) visa, subclass 482 in place of the 457 visa category. In structure, the new 482 TSS visa is the same as the old 457 visa category in that it still has 3 parts being:

- Standard Business Sponsorship
- Business Nomination
- 482 TSS visa application

The real impact of this change is in the detail and the additional requirements that have been introduced. There have also been changes made to The Employer Nomination category, subclass 186 which is the category available to sponsor employees for permanent residence. These changes are referred to later in this paper.

There are a number of transitional arrangements that have been introduced to ensure that an employee that held a 457 visa before 18 April 2017 or had lodged a 457 application prior to this date that was subsequently approved will not be affected by these changes for the next 4 years ie eligible overseas workers will need to lodge an application for permanent residence before March 2022.

The following requirements apply to applications lodged under the TSS visa category, subclass 482 after March 2018.

### 1. Eligible occupations

There are now 3 occupations lists, as follows:

- Medium and Long Term Strategic Skills List (MLTSSL)

Applicants with occupations on this list may be nominated for 4 years. This stream will also provide visa holders with a pathway to permanent residence after being employed in the nominated position with the sponsor for 3 years.

- Short term Skilled Occupation List (STSOL)

Applicants with occupations on this short term list will be granted a TSS visa for an initial period of 2 years. This stream will however allow one onshore renewal for a further 2 years but there is no pathway to permanent residence.

- Regional Occupation List (ROL)

The Combined current list of eligible skilled occupations can be found at the following website:

<https://www.homeaffairs.gov.au/trav/work/work/skills-assessment-and-assessing-authorities/skilled-occupations-lists/combined-stsol-mltssl>

## 2. Minimum English language requirements

The following tests are accepted to determine level of English language proficiency:

- International English Language Testing System (IELTS)
- Occupational English Test (OET)
- Test of English as a Foreign Language internet-based test (TOEFL iBT)
- Pearson Test of English (PTE) Academic test
- Cambridge English: Advanced (CAE) test

The test must have been completed within **three** years from the date of lodging a valid visa application and the required test scores outlined below must have been met.

### Required test scores

The required test scores that primary applicants must meet are summarised below.

### Short term stream

For the *short term stream*, the required results are as follows:

- IELTS overall band score of at least 5.0 with a score of at least 4.5 in each of the test components.
- OET score of at least 'B' in each of the four components
- TOEFL iBT total score of at least 35 with a score of at least 3 for each of the test components of listening and reading, and a score of at least 12 for each of the test components of speaking and writing
- PTE Academic overall test score of at least 36 with a score of at least 30 in each of the test components
- CAE overall test score of at least 154 with a score of at least 147 in each of the test components.

### Medium term stream

For the *medium term stream*, the required results are as follows:

- IELTS overall band score of at least 5.0 with a score of at least 5 in each of the test components.
- OET score of at least 'B' in each of the four components
- TOEFL iBT total score of at least 35 with a score of at least 4 for each of the test components of listening and reading, and a score of at least 14 for each of the test components of speaking and writing
- PTE Academic overall test score of at least 36 with a score of at least 36 in each of the test components
- CAE overall test score of at least 154 with a score of at least 154 in each of the test components.

## Exemptions from English language proficiency

It is not required to demonstrate English language proficiency if visa applicants fall into one of the following categories of exempted persons:

- you are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America
- you have completed at least five years of full-time study in a secondary or higher education institution where instruction was conducted in English.  
you are nominated for an occupation which will be performed at a diplomatic or consular mission of another country or an Office of the Authorities of Taiwan located in Australia
- the person is an employee of an overseas business who is coming to Australia to work for that company, or their associated entity, and the position has guaranteed annual earnings of at least AUD96,400
- your occupation requires you to hold a licence, registration or membership and:
  - to be granted the licence, registration or membership you must demonstrate a level of English language proficiency that is equivalent to or better than the level described above, and
  - you have been granted the licence, registration or membership.

### 3. Evidence of Market Salary

The minimum salary threshold which applied to the previous 457 visa category has been included in the new TSS requirements. The minimum base salary required is \$ 53,900.00 excluding superannuation, however the salary must also be consistent with the market salary in Australia for the particular occupation. Where a sponsor employs an Australian citizen or permanent residence in the same occupation, it is a requirement that the temporary resident be employed within the same salary bands and on the same terms and conditions.

### 4. Mandatory Labour Market Testing

Unless International trade obligations apply, it is now a mandatory requirement that the position in which the proposed TSS applicant will be employed first be advertised to evidence that the position cannot be filled from the Australian Labour Market. The requirements in this regard are as follows:

#### Period in which LMT must have been undertaken

LMT must have been undertaken:

- if the nomination application was lodged **before** 18 June 2018 - within the previous 12 months prior to lodging a nomination application
- if the nomination application was lodged **on or after** 18 June 2018 - within the previous six months prior to lodging a nomination application
- if within four months of lodging the nomination application, the sponsor or an associated entity has made any Australian citizen or permanent resident workers redundant or retrenched them from positions in the nominated occupation - since the date that these events occurred. **Note:** when this occurs, information about these redundancies or retrenchments must also be provided.

## Evidence of LMT for standard business sponsors

If you are not exempt from the LMT requirement due to an international trade obligation, you must provide evidence of your attempts to recruit Australians.

This includes a copy of the advertisement(s) and receipt(s) for any fees paid. If this evidence does **not** accompany your nomination application it will be refused.

No suitably qualified/experienced Australian

For a nomination to be approved, the Department must be satisfied that a suitable qualified and experienced Australian worker is not available to fill the nominated position.

Under policy, the Department would generally be satisfied that this requirement is met provided the advertising meets **all** of the below:

- the nominated position has been advertised in **Australia**
- the advertisement was in **English** and included the following information:
  - the title, or a description, of the position
  - the name of the approved sponsor or the name of the recruitment agency being used by the sponsor and
  - the annual earnings for the position (unless the annual earnings will be greater than the [Fair Work High Income Threshold](#))
- at least two advertisements were published:
  - on a national recruitment website (for example [jobactive.gov.au](http://jobactive.gov.au)). Note: a general classifieds website is not an acceptable method
  - in national print media
  - on national radio or
  - *if the sponsor is accredited* – on the businesses' website.

Note:

- if the advertisement is published on a website, it is expected that the advertisement would have 'remained live' for at least 21 consecutive calendar days
- if the advertisement is published in print media or on radio, it is expected that applications or expressions of interest for the advertised position were accepted for at least 21 consecutive calendar days
- advertising may have been undertaken by a third party if authorised to do so by the sponsor (for example, an associated entity or a contracted party, such as a recruitment agency) - there is no requirement that the sponsor placed the advertisement themselves.

Under policy, alternative evidence can be considered sufficient to demonstrate that 'a suitably qualified and experienced Australian worker is not available to fill the nominated position', where the nominated position is a position:

- in relation to which the nominee has an internationally recognised record of exceptional and outstanding achievement in a profession, a sport, the arts or academia and research
- held by an existing TSS or subclass 457 visa holder for which a new nomination has been lodged **solely** because:
  - the annual earnings that will apply to the nominee have changed or
  - a change in business structure has resulted in the nominee's employer lodging a new application to be approved as a standard business sponsor.

## 5. Mandatory Criminal History check

A police certificate must be provided from each country in which applicants have lived for 12 months or more during the previous 10 years after 16 years of age. This applies to the main applicant and all members of the family unit listed in the application.

Where the sponsor is an **accredited sponsor**, it will not be necessary to provide police clearances provided a reference is provided confirming that all the applicants are of good character and have not been convicted of any criminal offences. Applicants must still however, provide any required Australian police clearances where applicable or when requested to do so.

## 6. Contributions to the Skilling Australians Fund (not legislated as yet)

It is the Government's intention to replace the current training benchmarks with a new arrangement whereby a levy will be payable in full at the time an employee is nominated. The amount payable will depend on the annual turnover of the business and will be as follows:

<u>Business Size</u> <u>Nomination (186 visa)</u>	<u>TSS visa</u>	<u>Employer</u>
Turnover less than \$ 10 million per annum	\$ 1,200.00 <u>per year</u>	\$ 3,000.00 <u>one off</u>
Turnover over \$ 10 million per annum	\$ 1,800.00 <u>per year</u>	\$ 5,000.00 <u>one off</u>

When the required legislation is passed, these contributions will replace the current requirement for Sponsors to spend at least 1 % of annual payroll on training related expenditure.

## 7. Minimum work experience requirement

Applicants for a TSS visa must have at least 2 years relevant post qualification experience in nominated occupation

## Changes to Permanent Employer Sponsored visa program (subclass 186)

It is important to note as mentioned above that these changes do not apply to employees that were on 457 visas or had applied for 457 visas before 18 April 2017. There are transitional arrangements that are available to these visa holders in order to ensure that they are not affected by these changes provided they apply for permanent residence before March 2022. For new applicants, the changes are as follows:

- Maximum age reduced from 50 to 45 ( Limited exceptions are available to medical practitioners, university lecturers, and people earning over Fair work high income threshold (currently \$ 142,000)
- Only occupations on the MLTSSL occupation list are eligible
- For transitional stream , applicants must have been employed in nominated occupation on TSS visa or 457 visa for 2 years ( previously 2 years)