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**Australia – Regulations  
Bring Clarity to 457  
Program, Announcement  
on Health Checks**

by KPMG, Australia (a KPMG  
International member firm)

## flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

The Australian government has introduced new immigration regulations to implement a number of clarifications to the 457 program, and to introduce greater transparency to work agreements.<sup>1</sup> The changes are a response to the recent negotiations around the implementation of “ChAFTA,” the China-Australia Free Trade Agreement. The changes take effect from 1 December 2015.

### Why This Matters

The changes introduced by the new regulations generally codify and clarify policy, making it easier for the government to identify workers who do not comply with mandatory registration and licencing requirements.

Visa holders working in registered and licenced occupations, such as electricians, plumbers, or real estate agents, will need to continue to meet mandatory licencing obligations within strict timeframes, and must also notify the Department of Immigration and Border Protection if that licence or registration ceases.

The changes also clarify for employers that the market salary rates that must be paid in work-places operating under enterprise agreements are those defined in the enterprise agreement, not general market rates.

### Highlights of Changes and Codifications under the New Regulations

- If an employer employs Australian citizens or permanent residents under an enterprise agreement under the *Fair Work Act 2009*, the terms and conditions of employment of subclass 457 visa holders employed by the business are to be equal to those in the enterprise agreement.
- Among the changes is an amendment to the visa conditions that apply to subclass 457 visas clarifying the obligations to obtain and hold mandatory licences or registration.
  - The regulation clarifies that subclass 457 visa holders must obtain the mandatory licencing or registration within 90 days of arriving in Australia, or within 90 days of visa grant if they were already in Australia at the time of grant.
  - More broadly, subclass 457 visa holders must commence work within 90 days after arriving in Australia or within 90 days after being granted the visa, if onshore at the time of grant.
- With respect to work or project agreements, the changes codify the present policy requirements that the Commonwealth cannot enter into a work agreement in relation to the employment of subclass 457 visa holders unless the business (or other negotiating party) has made recent and genuine efforts around recruiting suitable Australian citizens or permanent residents.

- The regulations will also require the Minister for Immigration and Border Protection to publish policy guidelines on work agreements and project agreements on the Departmental Web site.

### Health Check Changes

The Department of immigration and Border Protection has also announced changes to the processes for health checks required as part of visa applications.<sup>2</sup> The new processes apply to applications lodged after 20 November 2015, or health checks undertaken after that date. Many temporary visas require health checks only where 'special circumstances' apply. These circumstances have been amended, so that (for example) a shorter stay may trigger health checks, and checks may no longer be triggered by the intention to be in a classroom situation. Where checks are triggered, however, they will generally be more comprehensive. Health check instructions appropriate to your circumstances will be available from your migration professional at the time of visa lodgement.

#### Footnotes:

1 The legislative instruments can be found at:

<https://www.comlaw.gov.au/Details/F2015L01810/Download> .

2 See: <https://www.comlaw.gov.au/Details/F2015L01747/Explanatory%20Statement/Text> .

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*For further information or assistance, please contact your local GMS or People Services professional\*, or one of the following professionals with the KPMG International member firm in Australia:*

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\* Please note: KPMG LLP (U.S.) does not provide immigration services.

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