

GMS Flash Alert

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Australia - Highlights of Key 457 Visa Changes and New TSS Visa

As reported in GMS [Flash Alert 2017-076](#) (25 April 2017), changes to Australia's Temporary work (Skilled) Subclass 457 visa program will take place progressively (effective from 19 April 2017) ahead of the 457 visa being abolished and replaced altogether with the introduction of a new Temporary Skill Shortage (TSS) visa in March 2018.¹

WHY THIS MATTERS

While the current visa status of existing Subclass 457 visa holders in Australia remains unaffected by these changes, employers will need to be aware of how these changes impact all new (and unfinalised) Subclass 457 visa applications going forward up until the TSS visa is introduced in March 2018. These changes are significant and are expected to impact the majority of businesses that currently access the subclass 457 visa program. Of course, the impact will vary depending on the nature of each business and specifically, the skills the business normally accesses through the 457 visa program.

(Note: All unfinalised applications (i.e., lodged with the Department of Immigration and Border Protection (DIBP) but not decided on or before 18 April 2017) which do not meet the new eligible occupation requirements will not be approved. A refund of the DIBP lodgment fees may be available.)

Importantly, employers will also need to consider their 457 visa holders' eligibility to qualify for the new TSS visa as well as eligibility for a permanent migration pathway, given these changes affect both temporary and permanent visa pathways.

Summary in Table Format of the Changes

In the tables on the next two pages, we provide a summary of the changes by date of implementation (including the immediate removal and restriction of occupations by the DIBP).

Date of change	Change	Impact
19 April 2017	<p>All new 457 visas will be granted with either a 2- or 4-year validity period.</p> <p>To qualify for a 4-year grant, nominated occupation must be on the Medium and Long term Strategic Skilled List (MLTSSL)</p> <p>To qualify for a 2-year grant, nominated occupation is not listed on the MLTSSL but on the Short-term Skilled Occupation List (STSOL).</p> <p>Caveats apply to certain occupations to limit the breadth of the occupation specified. For example, 'Accountants' is caveated to exclude any of the following:</p> <ul style="list-style-type: none"> (a) Clerical, book-keeper, and accounting clerk positions; (b) positions in a business that have an annual turnover of less than AUD 1 million; (c) positions in a business that have fewer than five employees. 	<p>The list of the removed occupations shows 200 occupations have been removed altogether.</p> <p>In addition to the removed occupations list, the following 16 occupations are 'restricted' to other visa programs (i.e., Skilled Independent Subclass 189, Temporary Graduate Subclass 485, and Skilled Regional Provisional Subclass 489) and effectively no longer eligible for nomination for the Subclass 457 visa:</p> <p>Occupation (ANZSCO)</p> <ul style="list-style-type: none"> Chemical Engineer (233111) Civil Engineering Technician (312212) Electrical Linesworker (342211) Electronics Engineer (233411) Industrial Engineer (233511) Materials Engineer (233112) Medical Administrator (134211) Pressure Welder (322312) Production Manager (Mining) (133513) Production or Plant Engineer (233513) Project Builder (133112) Ship's Engineer (231212) Ship's Master (231213) Ship's Officer (231214) Stonemason (331112) Telecommunications Network Planner (313213)
1 July 2017	<p>The STSOL will be further reviewed based on advice from the Department of Employment. The MLTSSL will be revised based on outcomes from the Department of Education and Training's 2017-18 Skilled Occupation List (SOL) review.</p> <p>English language salary exemption threshold which exempts applicants whose salary is over \$96,400 from the English language requirement, will be removed.</p> <p>Policy settings about the training benchmark requirement will be made clearer in legislative instruments.</p> <p>Provision of penal clearance certificates will become mandatory.</p>	<p>Greater scrutiny and changes to occupation lists will be anticipated from these ongoing reviews.</p> <p>The removal of the English language exemption will be significant particularly for senior executives of foreign companies from non-English speaking countries who need to be based in Australia.</p> <p>This would provide a more definitive way in which the training benchmarks can be met by established and start-up standard business sponsors.</p>

		This requirement will have the potential to further add to the lead time for the lodgement of 457 visa applications.
31 December 2017	<p>TFN Collection: Collection of Tax File Numbers for 457 visa holders (and other employer sponsored migrants) by DIBP will commence.</p> <p>'Name and Shame': Publication of details relating to sponsors sanctioned for failing to meet their obligations under the Migration Regulation 1994 and related legislation by DIBP will commence.</p>	<p>The data collected by DIBP will be matched against Australian Tax Office's records to ensure visa holders are not under-paid.</p> <p>This measure is intended to enforce greater adherence and compliance by standard business sponsors of the obligations they have in respect to their sponsored Subclass 457 visa holders.</p>
March 2018	The Subclass 457 visa abolished and replaced with a new TSS visa with specified Short- and Medium-term streams (refer to summary of qualifying criteria below).	<p>The Short-Term stream is designed for Australian businesses to fill skill gaps with foreign workers on a temporary basis, where a suitably skilled Australian worker cannot be sourced.</p> <p>The Medium-Term stream will allow employers to source foreign workers to address shortages in a narrower range of 'high skill' and 'critical need' occupations, where a suitably skilled Australian worker cannot be sourced.</p>

Below is a summary of the criteria for the new TSS visa to be introduced in March 2018:

TSS Visa Stream	Renewal	Occupation List	English	Work Experience	Minimum Market Salary Rate (MSR)	Other
Short-term*	One onshore renewal only	STSOL (with additional occupations specified for regional Australia)	IELTS 5 (or equivalent test) with minimum of 4.5 in each test component	At least 2 years of relevant experience	Australian MSR and meet the Temporary Skilled Migration Income Threshold (TSMIT)	Mandatory Labour Market Testing (LMT) unless international trade obligations apply; Mandatory penal clearances; Non-discriminatory workforce test; Strengthened training requirements for employers.
Medium-term	Renewal onshore or PR pathway after 3 years	MLTSSL (with additional occupations specified for regional Australia)	IELTS 5 (or equivalent test) with minimum of 5 in each test component			

* Must also meet a Genuine Temporary Entrant (GTE) requirement

Changes to Employer-Sponsored Permanent Migration

In alignment with the above-mentioned raft of 457 visa changes, significant changes will also progressively come into effect for employer-sponsored permanent migration.

Effective from 19 April 2017, the eligible occupations for nomination under the Direct entry stream of the Employer Nomination Scheme (Subclass 186 visa), will be that specified with the STSOL and MLTSSL.

From 1 July 2017, a requirement of an International English Language Testing System (IELTS) (or equivalent test) score of 6 in each component will apply.

A maximum age requirement of below 45 at the time of application will apply to Direct Entry stream applicants, while a maximum age requirement of below 50 at the time of application will continue to apply to Temporary Residence Transition stream applicants.

Other changes from 31 December 2017, in relation to TFN collection and “name and shame” measures will mirror that of the 457 visa program as set out above.

Importantly, effective from March 2018, it is understood that the following criteria will apply:

- Only the MLTSSL will apply to all employer-sponsored permanent migration nominations with additional occupations available to support regional employers under the Regional Sponsored Migration Scheme.
- The residency eligibility period will be extended from two to three years.
- All applicant must have at least three years’ relevant work experience.
- All applicants must be under the maximum age requirement of below 45 at the time of application.
- A strengthened training requirement will be imposed on employers to contribute towards training Australian workers.

KPMG NOTE: Key Considerations

Given certain changes are immediate, employers should be reviewing their current 457 visa population as a priority, including any 457 applications currently in process (including lodged applications) or soon to be initiated. This should also be extended to any company-sponsored permanent residence applications not yet lodged.

In anticipation of further changes in the coming months (as detailed above) employers should also consider what actions they can take now to mitigate the potential negative impact of these changes going forward. As an example, where there is a possibility to bring forward certain temporary or permanent visa applications, then it may be worthwhile considering this.

FOOTNOTE:

1 For an announcement on the Department of Immigration and Border Protection Web site, [click here](#).

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This article is excerpted, with permission, from “[Understanding changes to the 457 Visa and the introduction of the new TSS visa](#)” in *Migration Newsflash* (20 April 2017), a publication of the KPMG International member firm in Australia.

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