



## Appendix D: Ministerial announcements on temporary business visa program

### **New Changes to Skilled Temporary Visa Laws<sup>1</sup>**

Thursday, 26 April 2007

The Australian Government today announced new changes to the Skilled Temporary Visa Laws.

The changes include new civil penalties for employers who breach the law, greater powers for the Department of Immigration and Citizenship, and the Office of Workplace Services, to investigate employers, faster processing of applications for some employers and a higher English language requirement to be eligible for a Skilled Temporary Visa.

The Migration Act will be amended to ensure employers of skilled temporary overseas workers (457 visas) face tougher penalties if they breach their sponsorship obligations.

New civil penalties will apply for those employers who commit the most serious offences. Offences will relate to such matters as failure to pay the minimum salary level and using workers in unskilled jobs.

The Department of Immigration and Citizenship will also be given stronger powers to enforce employer compliance with the 457 visa programme,

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<sup>1</sup> Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New changes to the skilled temporary visa laws', 26 April 2007, <http://www.minister.immi.gov.au/media/media-releases/2007/ka07030.htm>.

including the power to conduct unannounced audits of employers and their premises.

This will be complemented with greater powers for the Office of Workplace Services to investigate breaches of the Minimum Salary Level.

The Australian Government will put in place formal arrangements for the fast-tracking of applications from those employers who have a strong and demonstrated record of complying with the 457 visa programme.

Applications lodged by fast-tracked employers and their overseas personnel will be priority processed, helping to streamline access to skilled workers.

These changes will be introduced this year.

From 1 July 2007, employers will be required to ensure that overseas workers they sponsor have English language skills equivalent to an average score of 4.5 in an International English Language Testing System (IELTS) test, or a higher level where required as part of licensing or registration.

Applicants will be required to detail their English language skills and on a targeted basis, may be required to complete an IELTS test.

The manner in which this requirement would be implemented will continue to be discussed with key industry groups.

Due to a strong economy and unemployment at a 30 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Employers must recognise that access to skilled temporary migrants is a privilege, not a right, and if they abuse this privilege, then they will face strong penalties.

The changes that have been announced today will ensure that further obligations are put in place to protect and strengthen the integrity of the 457 visa scheme.

## **New tough penalties strengthen the integrity of the Temporary Skilled Migration Programme<sup>2</sup>**

Thursday, 21 June 2007

The Minister for Immigration and Citizenship, Kevin Andrews, today introduced legislation into the Australian Parliament to strengthen the obligations of sponsors who employ 457 visa workers.

The legislation will impose sanctions and penalties on those employers who fail to comply with their obligations.

Employer obligations under the legislation will include:

- Payment of the Minimum Salary Level (MSL);
- Payment of all costs associated with recruitment of the sponsored worker and migration agent fees for the worker and their family;
- Payment of fees for mandatory licence, registration or membership required for the sponsored worker to work;
- The payment of a number of other costs, such as recruitment, medical and travel costs,
- Employing skilled workers in skilled positions, as opposed to semi or unskilled work.

Sponsors will also be required to keep records of all of these payments.

Sponsors will be obliged to produce documents on request. Failure to do so could result in six months imprisonment.

Failure to comply with these obligations could result in a civil penalty being imposed together with the cancellation of a sponsor's access to the 457 visa programme.

The bill attaches civil penalties to breaches of obligations with a maximum of \$6 600 for an individual and \$33 000 for a body corporate for each identified breach.

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2 Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New tough penalties strengthen the integrity of the Temporary Skilled Migration Programme', 21 June 2007, <http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm>.

The bill also gives a court the power to order money owed under any of the obligations including payments to employees, be paid in addition to the civil penalty.

The bill also authorises disclosure of personal information regarding sponsors and visa holders to relevant Commonwealth government agencies and government agencies in states and territories. For example, where a workplace appears to fall short of basic occupational health and safety standards, an inspector can make this known to the Commonwealth, state or territory body responsible for monitoring such standards.

To help enforce these provisions, trained officers will have the power to enter unannounced, without force, any place which they believe contains information or documentation relevant to monitoring the sponsor's compliance.

It is widely acknowledged by all levels of government, the business community and the union movement that there is a shortage of skilled labour.

Due to a strong economy and unemployment at a 32 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Employers must recognise that access to skilled temporary migrants is a privilege, not a right, and if they abuse this privilege, then they will face strong penalties.

The large majority of employers who are doing the right thing will not be impacted.

I intend for the full force of the law to be applied to those rogue employers who are not.

## **New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July<sup>3</sup>**

Tuesday, 26 June 2007

From 1 July 2007, overseas workers must have English language skills equivalent to an average band score of 4.5 in an International English Language Testing System (IELTS) test, unless exempted in certain special circumstances.

Applicants must have higher English language skills where this is required for licensing, registration, or membership of a professional association in their nominated occupation.

Sponsors must still ensure that their employees meet the appropriate skill and English language requirements for licensing and registration and professional association membership in relevant occupations. This is an existing requirement and has not changed.

All applicants will need to detail their English language skills on their visa application form. In addition, applicants may be asked to undertake an IELTS test to demonstrate their English language skills.

Applicants will not be required to meet the English language requirement if;

- their first language is English and they are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America; or
- their nominated occupation is within the highly skilled major groups 1-3 of the Australian Standard Classification of Occupations (ASCO), comprising managers, administrators, professionals and associate professionals; or
- they have completed at least five years of continuous full time secondary and/or tertiary education at an institution where at least 80 percent of instruction was conducted in English or

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3 Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July, 21 June 2007', 26 June 2007, <http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm>.

- they are to be paid at least a salary specified in a legislative instrument (initially a gross base salary of \$75 000 excluding all allowances and deductions).

These exemptions will not apply to applicants who have been nominated for a position that requires English language for licensing, registration or professional association membership.

In every case, sponsors must ensure that overseas workers they employ have sufficient English language skills to complete the tasks of the occupation and to meet their obligations under occupational health and safety and workplace relations laws.

Applications made before 1 July 2007 will not be affected by the change.

The English language requirement will help to ensure workers are able to respond to occupational health and safety risks and raise any concerns about their welfare with appropriate authorities.

Due to a strong economy and unemployment at a 32 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Access to skilled temporary migrants is a privilege, not a right, any sponsor who abuses this privilege, will face strong penalties.

These changes will further protect and strengthen the integrity of the 457 visa scheme.