



ARRIVALS

Migration Alert
May 2009

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:: TIP

Build DIAC's MSL increase in your next salary review

:: TIP

If retrenching 457 visa holders include in your outplacement services a consultation with us to explore visa options to remain in, or return to, Australia

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To bring to an end 457 visa sponsorship obligations consider nominating your 457 visa holders for permanent residence under the prioritised and fast track Employer Nomination scheme

PRIORITY TO JOB READY MIGRANTS AND REDUCED RELIANCE ON 457 VISAS

In response to the global economic downturn, the Minister for Immigration and Citizenship, Senator Chris Evans, has announced a number of measures designed to protect local jobs while at the same time ensuring that employers can access skilled workers in industries that are still experiencing skills shortages.

The changes:

- give priority to employer nominated and State/Territory sponsored permanent residence visas
- cut the annual migration program by 14% to 115,000
- revise the Critical Skills List (CSL) to just 42 occupations – mostly in the health and engineering sectors
- require sponsors of 457 visas to address the benefit to Australia test, advise about redundancies, efforts to fill a nominated position locally and remuneration packages of other workers employed in the same position in the business
- provide for a 4.1% increase in the minimum salary level (MSL) from 1 July 2009 for all **new and existing** 457 visa holders – this will bring the MSL for most IT professionals to \$61,918.68 p.a. and for others \$45,221.04 p.a. based on a 38 hour week. From mid-September 2009 the MSL for all new and existing 457 visa holders will be set by reference to **market rates** – details are yet to be announced
- suspend processing of all Skilled Independent points tested visa applications not on the CSL

NEW POLICY ON HEALTH

DIAC has revised the health matrix for temporary residents. The changes:

- remove the need for most 457 applicants to have x-rays or medical examinations even if entering a classroom
- redefine "special significance" so that all intending doctors, dentists and nurses need to have additional health tests
- permit re-use of some (old) health clearances.

UK SKILLS EXPO

In recognition of the ongoing critical skills shortages in some occupations, DIAC is hosting a Skills Expo in London over the last weekend in June 2009. Employers of occupations on the CSL and the Employer Nomination Scheme Occupation List are encouraged to register interest in attending.

Clients who have attended past Expos confirm this is a great way to interview dozens of job ready migrants. Contact Solicitor Sanja Janjic of our office for further details or follow the links on DIAC's website.

CONGRATULATIONS KATIE

Katie has been named in *The International Who's Who of Corporate Immigration Lawyers*.

For Katie, inclusion in this prestigious international publication of a newly established, small but growing law firm "recognizes our excellence in client services and our professionalism – we genuinely care about our clients. It is what makes us stand out from our competitors".



Staff member Sanja Janjic giving blood for the Victorian bush fire victims - all Firm staff are on a roster of blood donors.

DRAFT NEW SPONSORSHIP OBLIGATIONS RELEASED

Minister Evans has released draft regulations that will replace the current undertakings imposed on sponsors of 457 visas. The draft regulations clarify when obligations commence and cease, change and remove certain undertakings that currently exist and set out the consequences for failure to comply with an obligation.

Drafted following the Visa Subclass 457 Integrity Review conducted by Barbara Deegan last year, the regulations are now being examined by the Skilled Migration Consultative Panel prior to implementation and, consequently, may be subject to further changes. They are expected to be in force in mid-September 2009.

Key features of the draft regulations:

- remove the obligation to meet public hospital costs for sponsored employees and family members - the Minister's Press Release indicates 457 visa holders will be required to take out private insurance at their own expense
- create an obligation to co-operate with inspectors
- clarify that the obligation to pay the MSL commences on the date of employment and ends on the earlier of either the grant of a further substantive visa, or cessation of employment
- the MSL is to be paid in a manner specified by the Minister in a legislative instrument
- clarify that the obligation to meet the cost of a visa holder's return travel

exists if a sponsored person makes a written request within a reasonable time whilst holding a 457 visa.

The obligation ends on the earlier of approval of a nomination by another sponsor, grant of a further substantive visa or 30 days after permanent departure from Australia

- restrict the obligation to pay costs incurred by the Commonwealth in locating and removing a person from Australia to \$10,000
- require a sponsor to create records (to be specified by legislative instrument) in an auditable and reproducible form and to maintain such records for a specified period but not longer than 7 years
- require a sponsor to report certain events to DIAC within 10 working days including cessation of employment of a sponsored person.

Missing from the proposed new obligations are the current undertakings to comply with workplace relations laws, make tax payments and superannuation contributions. However, the possibility of cancelling an existing sponsorship or a bar on future sponsorships where a court has found that a sponsor has contravened a Commonwealth or State law will ensure these undertakings continue.

A sanction may be imposed if a sponsor has attempted to recover from the visa holder costs associated with their recruitment or of becoming approved as a sponsor.

It is also proposed the Minister will have the power to impose a sanction where:

- any one of the obligations has not been met
- false or misleading information has been provided

- requirements for approval as a sponsor are no longer met
- a sponsor has not obtained the appropriate license or registration for a sponsored employee
- a sponsor fails to employ a person in the nominated occupation.

Under the *Worker Protection Act 2008*, employers who fail to satisfy sponsorship obligations face not only administrative sanctions but also pecuniary penalties of up to \$33,000.

VISA LABEL - TO BE OR NOT TO BE IN A PASSPORT

Most visas do not need to be evidenced in a passport. DIAC encourages use of its on-line Visa Entitlement Verification On-line VEVO to check work rights. However, VEVO does not include the visa expiry date or information about visa conditions other than those that relate to work.

Many clients wish to have their visa evidenced for a multitude of reasons: certainty regarding expiry date and to show other agencies such as banks, schools or prospective employers. If you wish to have your visa evidenced in your passport, please contact our office.

CONTACT US

For further details contact
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INTRODUCING NEW SENIOR ASSOCIATE

We are very pleased to welcome new Senior Associate, Philip Summerbell. Philip is a highly experienced immigration lawyer having practised in this area since 1998.

Philip has significant experience in providing corporate immigration advice and global mobility assistance. He has a particular interest in assisting clients with employment related visas and health related issues as well as clients seeking to develop immigration related internal policies and procedures. Philip holds multiple degrees including a Bachelor of Laws and is MARN 9896806.



Senior Associate Philip Summerbell.

Under Australian law, anyone who uses knowledge of immigration law or procedures to offer advice or assistance to a person wishing to sponsor or nominate an expatriate for residence or to obtain a visa to enter or remain in Australia must be registered with the Migration Agents Registration Authority.

Disclaimer: This material is produced by Katie Malyn & Associates, Lawyers. It is intended to provide general information in summary form on legal topics, current at the time of first publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters.

