



APPETALS

Migration Alert
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❖ TIP

If your business requires foreign workers for less than 3 months on a regular basis consider applying for approval as a Gazetted Sponsor of 459 visas.

FIXING SKILLS SHORTAGES: NEW IMMIGRATION PACKAGE

New Minister for Immigration and Citizenship Senator Chris Evans has recognised that 'Australia currently has a skills crisis'. In response, he has introduced a package of migration measures to address Australia's current skills and labour shortages:

- PR – 6,000 extra places in 2007-08 migration program for employer nominated and points tested permanent residence visas
- WHV – Working Holiday visa holders can extend their 12 month visa for a further 12 months if they spend at least 3 months working in the construction sector in regional Australia – previously an extension was only possible if work had been undertaken in the primary sector
- Students – all Student visas granted after 26 April 2008 automatically include work rights without the need for a separate work rights application
- 457 – establish an External Reference Group to provide advice by the end of April 2008 to streamline visa processing times and improve flexibility in the program for employers.

On the agenda will be:

- accreditation system to fast track processing for low risk employers who have a good track record of sponsoring 457 visa holders
- possible use of labour from the Pacific Islands – an experiment that has worked well for New Zealand in its agricultural sector
- removing age restrictions for Working Holiday visa holders currently set at 30
- a special visa scheme for workers in the housing industry.

Minister Evans has also appointed an Australian Industrial Relations Commissioner to examine (with the assistance of a working party of industry and trade union leaders) the integrity of the 457 visa program including exploitation of migrant workers, salary levels and English language requirements. A report to the Government is due October 2008.

The package of immigration measures complements the fast-track establishment of Skills Australia, a statutory body to be set up to advise the Government on workforce development and future skills.

BUSINESS ETA AND BUSINESS VISITOR 456 VISA WORK RIGHTS

A reminder that under new policy introduced in March 2008, Business ETA and Business Visitor 456 visa holders may now undertake work in Australia for "generally no more than 6 weeks" provided the work is urgent, highly specialised and not ongoing.

See our Visa Alert of 18 March 2008 at malyonlaw.com/images/visa_alert_March.pdf for further details.

GRANT OF ETA VISAS MAY BE DELAYED

DIAC has announced that from 21 April 2008, applicants seeking an online Electronic Travel Authority (ETA) visa may experience a delay in grant of their Visitor ETA or Business ETA. No explanation has been given: it is presumed delays will permit integrity checks.

If an ETA is not immediately issued, applicants should check back in 12 hours to confirm visa status.

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:: TIP

Sponsors who do not pay for sponsored employees' health insurance should consider varying contracts of employment to ensure that sponsored employees have an obligation to provide, on request, evidence of treatment in a public hospital and how payment was made. This information is specifically requested in the new Audit Form 1287.

:: TIPS

Register online with DIAC to check work rights of employees and avoid employing someone in breach of visa conditions. All offers of employment to expatriates should be made subject to immigration approval.

Before giving a reference or statement of service, check your records for an employee's work rights.

RIGOUR IN NEW AUDIT REGIME FOR SPONSORS

DIAC is auditing selected sponsors of employees holding 457 visas to confirm undertakings given by the business in the sponsorship application are being complied with.

The increased focus on monitoring of sponsors has resulted in sanctions for more than 150 sponsors in just the first 3 months of 2008.

Under the new audit regime some businesses merely receive the new Business Audit Form 1287 for completion and return within 14 days. Others can expect a site visit, announced or unannounced, with a request that the Form also be completed.

Failure to respond to a DIAC audit or failure to facilitate access could have serious implications including:

- bar for up to 5 years from nominating a person or activity
- cancel approval as a sponsor
- cancel visas of all persons sponsored by the business
- take any failure to comply with a sponsor's obligations into account in assessing any future sponsorship applications made by the business – or by any other business operated by the same principals.

The new Form 1287 is not yet available on DIAC's website and is being distributed to sponsors who have employees at, or close to, the minimum gazetted salary.

Are you prepared for a site visit?

ENTITLEMENT VERIFICATION ON LINE (EVO)

DIAC urges employers to use the Entitlement Verification Online to check the work rights of foreign workers before making job offers.

This follows introduction of legislation in August 2007 imposing criminal sanctions for employers who employ an illegal worker: \$66,000 for companies and \$13,200 or 2 years imprisonment for individuals. Administrative sanctions may also apply.

Increasingly, the Government has been moving away from the need to have visa labels placed in passports to confirm grant of a visa. Most visas now do not need to be evidenced in a passport.

Employers can either contact us to initiate a check of prospective employees' work rights or register for EVO checks on DIAC's website at immi.gov.au/e_visa/evo. Alternatively, phone to register at (08) 8237 6729.

457 VISA APPLICANTS FROM THE PHILIPPINES

Before prospective 457 visa holders from the Philippines can be employed in Australia approval must be obtained from the Philippines Overseas Employment Agency (POEA).

Tightened requirements by the POEA follow a number of incidents which resulted in serious injuries to, and the deaths of, several workers from the Philippines.

Philippine Consular offices require authentication of various documents from Australia's Department of Foreign Affairs including DIAC's nomination approval and an original contract of employment that provides for:

- guaranteed wages for regular hours and overtime pay
- repatriation of remains in case of death.

INTRODUCING NEW SENIOR ADVOCATE

We are very pleased to welcome Sal Imanian, new Senior Advocate and Registered Migration Agent, to the Firm. Sal holds degrees in both Law and International Relations from Bond University in Queensland.

Sal has significant experience with DIAC, mainly on the Gold Coast. She has worked as Team Leader in DIAC's Business Centre, Manager of the Citizenship Section and Executive Officer to the Queensland State Director.

She has a special interest in employment related visas and employer compliance with immigration law.

Sal is MARN 0747742



Senior Advocate Sal Imanian

CONTACT US

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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.

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