

Immigration Law Update

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Present and potential clients will find the information about certain developments in immigration law useful and noteworthy. Our immigration lawyers are happy to field further questions on these or other issues relating to immigration law.

SKILLED MIGRATION

In September 2007, the Australian government implemented major changes to the skilled migration program.

The changes benefit those who have strong English skills and work experience in a skilled occupation. Additional points are rewarded to those who have proficient English (a score of 7,7,7,7 in the IELTS exam) and applicants who have worked in Australia.

Therefore, applicants who have generalist occupations such as sale representatives, auditors, management consultants, marketing specialist etc. may qualify for an Independent Skilled visa.

In addition, older applicants who have extensive work experience may also be eligible for the Independent Skilled visa.

Previously, applicants in the situations described above would not be eligible for skilled migration unless they had an Australian relative sponsor or state sponsorship.

The changes to the skilled migration program include:

- New names and subclasses for skilled visas
- New passmarks for skilled visas. These are:
 - Independent skilled visa 120 points
 - Australian Sponsored skilled visa 100 points
 - Regional Sponsored visa 100 points
- A new 18 month graduate temporary visa for students currently in Australia to allow them additional time to gain further skilled work experience or improve their English skills. Applicants will have unlimited work rights on the Skilled Graduate visa.

- Extra 10 points awarded to applicants who have proficient English.
- Requirement of 12 months work experience for applicants who wish to claim extra points for occupations in demand.
- Interdependent (same sex) partners can now be included as Spouses on skilled visa applications.

EMPLOYER SPONSORED VISAS

Australia is currently suffering a skills shortage and many businesses require the services of overseas workers. There are two common types of visas available to overseas workers:

1. Subclass 457 Business Long Stay visa. This visa will allow an employee and their family to live and work in Australia for up to 4 years and the visa may be extended if required.

This visa is of benefit to employers as it is a condition of the visa that the employee must work for the Sponsor business and cannot work for another employer.

However, this visa is subject to ongoing monitoring requirements and the business is required to sign sponsorship undertakings.

2. Permanent employer nominated visa. This visa is a permanent visa and will allow the employee and their family to remain in Australia indefinitely.

There are no conditions on the visa that prohibit the employee from obtaining employment with another employer once the visa is granted.

.. continued page 2

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Recent Changes

Due to negative press surrounding the treatment of overseas workers in Australia, the Department of Immigration has introduced tighter requirements on employers who wish to sponsor overseas workers to Australia.

In the past few months many changes have been introduced including:

- Requirement that trade employees must have functional English and may be requested to sit an English exam.
- A new method of calculating the minimum wage payable to overseas workers. The current minimum base salary is \$43,440.00 for a standard 38 hour week for most occupations. For IT occupations the minimum base salary is \$53,530.00.

For employees sponsored by regional business, the minimum salary level is \$39,100.00.

- Recruitment and labour hire companies are no longer able to provide sponsorships for overseas workers. The employee will need to be sponsored by the direct employer.

However, these prohibitions may be overcome if the labour hire company/ multi-national corporation has a "Labour Agreement" with the Australian Government.

- Heavy fines for employers who knowingly or recklessly employ unlawful immigrants.

The Department of Immigration has indicated that it will expedite processing for employer sponsored visas where:

- the employee will be paid over \$70,000.00 per annum; or
- the employer sponsors more than 5 overseas workers each year; and
- the business sponsor has a good record with immigration law compliance.

At present the current processing time for a subclass 457 business long stay visa is approximately 4 – 8 weeks.

The current processing time for the permanent employer nominated visa is approximately 3 – 6 months.

AUSTRALIAN CITIZENSHIP CHANGES

The new citizenship rules came into effect on 1 July 2007. The residency requirements have now changed and affect those who have obtained permanent residency on or after 1 July 2007.

The changes benefit applicants who have lived in Australia as temporary residents eg. overseas students and sponsored employees.

Applicants for Australian Citizenship must now show:

1. Legal residency (either temporary or permanent) in Australia for at least 4 years prior to the date of application; and
2. Permanent residency in Australia for a least 1 year prior to the date of application.

Citizenship Test

Most applicants who wish to apply for Australian Citizenship must now pass the Australian Citizenship Test prior to lodging their citizenship application.

The test is computer based and consists of 20 multiple choice questions about Australian values, history, culture, geography, responsibilities and privileges of becoming an Australian Citizen.

Applicants will need to achieve a score of at least 12/20 to pass the exam.

Further information about the exam and sample questions can be downloaded at: www.citizenship.com.au.

Further Information

Carroll & O'Dea Lawyers are experienced in all immigration law areas.

We are able to provide you with advice and services in relation to your visa application and migration issues.

Please contact our office on 1800 816 559 for a consultation



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