



# 457 agent news April 2017

## Welcome

Welcome to the seventh edition of the Department of Immigration and Border Protection's 457 agent newsletter, which focuses on the Australian Government's recent announcement regarding some substantial upcoming changes that will impact the Temporary Work (Skilled) visa (Subclass 457) programme.

It provides you with more detailed information regarding changes that will come into effect as of **19 April 2017** that you need to be aware of.

We will then continue to use this newsletter to help you prepare for the broader changes that are to come in 2017-18, with the next edition to focus on changes that will be implemented on 1 July 2017.

I know you will have a lot of questions about these changes and the new visa product that will be released in March 2018, but I would encourage you to refer any questions through your professional body so that we can handle them in a streamlined fashion and ensure that all agents get the benefit of the answers.

Cathy Milfull  
Economic and Skilled Visa Programme Branch  
18 April 2017

## 457 update

This newsletter is not a substitute for formal policy. The relevant document should always be consulted via [LEGENDcom](#) to ensure that you have considered the most up to date information from the Department when advising your clients.

## Recent Government Announcement

On 18 April 2017, the Government announced a number of changes in relation to the temporary and permanent skilled migration programmes. Information about these changes is available on the [Department's website](#). More detailed information about the first group of changes to be implemented is also provided below.

## What has already changed?

**Important:** Agents should be aware that the changes referred to below are in effect as of **19 April 2017**. This means that your clients will be unable to avoid the changes to the list of eligible skilled occupations and/or visa validity periods by quickly lodging new subclass 457 nomination or visa applications.

We recommend that at this time you focus on considering whether:

- withdrawing and seeking a refund may be appropriate for some of your clients with on hand applications impacted by the changes; and
- caveats may impact any subclass 457 applications that you had planned to lodge for your clients.

## Changes to the approved occupation list - phase 1

The first phase of a number of intended changes to the approved occupation list for the subclass 457 programme has already been implemented – with amendments made to the existing legislative instrument that specifies approved occupations for the programme.

As you would be aware, this instrument has two schedules, and lists the occupations that are approved for the purposes of the subclass 457 programme.

As of **19 April 2017**, the lists contained in these schedules have been re-named:

- the Skilled Occupation List (SOL) as the **Medium and Long-term Strategic Skills List (MLTSSL)**; and
- the Consolidated Sponsored Occupation List (CSOL) as the **Short-term Skilled Occupation List (STSOL)**.

In addition, some significant changes have been made to occupations eligible for temporary and permanent skilled migration. From a subclass 457 perspective this includes:

- 216 occupations **removed** from the list of eligible occupations; and
- **caveats** added to 59 other occupations

Occupation lists are already available on the Department's [website](#).

#### Understanding the caveats

Caveats are included 'as a note' in the relevant legislative instrument for certain occupations to limit their use in the context of the subclass 457 programme.

Such caveats aim to ensure that the subclass 457 programme is, as intended, focused on filling 'skilled' vacancies, with less risk of subclass 457 visa holders being hired to complete semi-skilled or low-skilled tasks, at the expense of the Australian workforce. In addition, we intend that these caveats will:

- provide much clearer guidance to migration agents in terms of what occupations are considered skilled and fit within the programme;
- lead to processing efficiencies in the longer term;
- reduce reliance on the more subjective 'genuineness' requirement to address trends of concerns within this programme.

The *457 nominations Procedural Instruction (PI)* will be updated on LEGEND.com to provide policy guidance regarding the Department's interpretation of these caveats. **In the interim, we have circulated [draft guidelines](#) together with this [newsletter](#) to assist you advising your clients as to whether a caveat applies in their circumstances.**

#### Managing transitional cases

Clients who lodged subclass 457 nomination and visa applications prior to the Government's announcement for occupations now no longer approved for the purposes of the programme, which remain on hand, will be given the opportunity to withdraw their applications and a refund provided.

Nomination applications lodged post the revised legislative instrument coming into effect can be refused, but at this stage, the Department will continue to offer withdrawal/refund of fees under policy. This 'grace period' is designed to reduce the impact on clients who lodged applications that can't be approved because they were unaware of the changes to the list of eligible skilled occupations.

#### Changes to visa validity

As you would be aware, subclass 457 visas were generally granted for four years unless:

- a shorter period of employment was requested by the sponsor in the nomination;
- the sponsor was a 'start up' business with an approved sponsorship agreement for only 18 months;
- the sponsor's contractual obligation covers a shorter period – if the visa is associated with an overseas business sponsor who was approved on the basis of Regulation **2.59(h)(ii)**; or
- a shorter period is appropriate for a MOFU extension visa applicant – see *Member of the Family Unit visa grant periods* below.



**For subclass 457 visas granted on or after 19 April 2017, under policy, the maximum four year visa period will, however, only be available where the primary applicant's occupation is on the MLTSSL.**

For all other applicants where their occupation is **not** on the MLTSSL, **a maximum visa period of two years** will be available. This includes primary visa applications, lodged, which are still pending a decision on 19 April 2017.

**Note:** Subsequent entrants (i.e. secondary visa applicants) wanting to join a primary subclass 457 visa holder will not be impacted by this new policy. That is, subsequent entrants can still have their subclass 457 visa 'match' the visa period of the primary visa holder – even if this is longer than two years (unless MOFU extension limits apply).

## What is changing for 1 July 2017?

Further changes to the subclass 457 programme are planned for 1 July 2017. These include:

- possible further adjustments to eligible occupation lists;
- an expansion of client cohorts for whom mandatory skills assessments are required;
- minor changes to the training benchmarks for subclass 457 sponsors; and
- subclass 457 programme no longer excluded from standard policy around penal checks – with police certificates required to be provided from countries a visa applicant has lived in as per current policy for other visa subclasses.

## Clarification regarding Member of the Family Unit (MOFU) provisions

As previously advised, changes to the MOFU provisions for subclass 457 visa were made on 19 November 2016. This included changes to the so-called “MOFU extension” arrangements. These arrangements still provide for children, who:

- were dependent/s on a previous 457 but who are no longer financially dependent; **and**
- held a secondary 457 visa at the time a new 457 application is lodged

to be granted a further 457 visa. But **as of 19 November 2016**, they can only be granted a visa valid until **the day before their 23rd birthday** or the date granted to the 457 primary visa holder, whichever occurs first – see clause **457.511(d)**.

The Department has identified that this provision can, however, have a negative impact on secondary visa holders who are **over the age of 23** at the time their new visa application is decided – with their new visa only able to be granted for 1 day and then ceasing immediately.

While reform options are considered, the Department will now provide secondary applicants with the opportunity to withdraw their application in these circumstances. This will ensure that they have sufficient time to apply for another type of visa or alternatively make arrangements to depart Australia, due to the more beneficial ceasing provisions that apply to associated bridging visas in relation to a withdrawn substantive visa application.

## 1 July 2017 system changes

As previously advised, significant IT changes will also be implemented on 1 July 2017 – with the Department’s online subclass 457 application forms being migrated from the Department’s old eVisa system to the newer ‘eLodgment Plus’ system that is already used for student, subclass 400 and subclass 600 applications.

We will begin to use the newsletter to explain the impact of these changes – and share communications and training material on how to complete the new forms from 1 July 2017.

The new forms offer dynamic document checklist functionality that will provide agents with greater guidance regarding required supporting documentation – hence, we are keen to use this as an opportunity to work closely with agents to ensure that complete applications are lodged from 1 July 2017 onwards, which would improve processing times for everyone.

The new forms will also collect additional information to assist the Department to process applications more efficiently and improve the integrity of the programme. This includes the following information:

- summary information about the business
- business website/URL
- multiple franchise details
- company secretary details
- projected payroll for the next 12 months
- full details of nominated person’s position/location
- reasons why Labour Market Testing (LMT) was not completed
- improved LMT details
- improved skills assessment information
- relationship details
- legal status of the visa applicant
- National ID card details
- additional identity document details
- child custody information



## Identified agent issues

This section of this newsletter is designed to provide you with feedback about concerns that the Department has identified with the performance of **some** agents and/or to clarify issues that the agents have specifically raised.

### Withdrawal requests without *Form 1446*

The Department is seeing an increase in withdrawal requests (under *Section 49 – Withdrawal of visa application*) where **Form 1446 - Withdrawal of a visa application** is not being attached.

To avoid processing delays, the Department encourages you to use this form and attach it to *IMMIAccount* where a withdrawal is being requested. Form 1446 is available on the [Department's website](#). For more information about section 49 – see *PAM3: Generic Guidelines A: all visas, at Withdrawal of applications*.

### Using the correct sponsorship PI

The old and redundant **PAM3: Sponsorship applicable to Division 3A of Part 2 of the Act – Sponsorship** is scheduled to be de-commissioned from *LEGENDcom* in the 12 May 2017 stack. Please ensure that you continue using the current/correct **Procedural Instruction: Temporary Work (Skilled) visa (subclass 457) – sponsorships** for guidance regarding 457 Sponsorships.

## Understanding 457 processing matters



### Processing times update

Processing times continue to improve with initial assessments now generally occurring 24 days after lodgement for the majority of the caseload – and still within 2 days for accredited sponsors.

The Department continues to implement additional initiatives to reduce processing times.

## Changes to priority processing

The Department has been receiving a large number of requests for priority processing and hence has reviewed its arrangements for assessing such requests.

Agents will be advised by [457@border.gov.au](mailto:457@border.gov.au) if their request for priority processing has been approved or refused.

Circumstances in which a request for priority processing is likely to be successful:

- nominations where the nominee is already a subclass 457 visa holder (i.e. change of employer nominations);
- claims of large-scale contracts/projects with imminent deadlines – where documentary evidence is provided;
- claims of financial duress – where documentary evidence is provided;
- applications from sponsors/positions in a remote location.

Please do **not** email or “cc;” [457Management@border.gov.au](mailto:457Management@border.gov.au) in relation to generic priority processing requests already sent to [457@border.gov.au](mailto:457@border.gov.au).

## Changes to the 457 web pages

As you may have recently noticed, the 457 web-pages are being reviewed and gradually improved - where possible. The “**Nominate**” tab in <http://www.border.gov.au/Trav/Visa-1/457-> has been recently re-vamped. In particular:

- the WTO countries table has been removed with clients being re-directed to [WTO website](#) for complete / correct list. The [WTO membership](#) tab contains the required list of these countries
- a separate new table has been created for [Executive or Senior manager occupations for the purposes of international trade obligations](#)
- a separate new [table](#) has been created for occupations (generally) which are **not** exempt from LMT.



## ImmiAccount hints and tips

There have been a few recent cases where some agents have been entering departmental identifiers on sponsorship applications that are not associated with the applicant. This error then results in client records being corrupted and significant IT remediation work is required to rectify the situation which causes delays to processing the actual application and any associated applications. Common examples of this scenario:

- Entering a departmental identifier associated with the business owner's personal visa rather than that of the actual business (organisation record)
- Entering a departmental identifier associated with a previous sponsorship when the previous sponsorship was related to a different business (previous sponsor was Fred & John Smith, but they have changed the structure of the business and they now operate as FJS Pty Ltd)
- Entering a departmental identifier or ABN associated with a completely different client (working on multiple applications at once)

Agents are reminded to exercise extra vigilance when entering departmental identifiers into an application and to always check the acknowledgment letter to ensure that the applicant's name has been correctly recorded. If the acknowledgment letter does not have the correct name for the applicant, then it is a good indicator that there has been incorrect information provided in the application form and departmental systems have selected the wrong client record to associate the application to. If you receive an acknowledgment letter with an incorrect applicant name, please email the details to [457Management@border.gov.au](mailto:457Management@border.gov.au) immediately.



## Where do I go for assistance?

If you are having **problems with ImmiAccount or an eVisa form** (including application lodgement), contact the Department in the first instance using the *ImmiAccount Technical Support Form* so that the relevant systems helpdesk can assist you. **See:** <http://www.border.gov.au/Trav/Visa/Immi/immiaccount-technical-support-form>

If you have **questions about an already lodged application which is being processed by the Department**, contact [457@border.gov.au](mailto:457@border.gov.au) in the first instance, which is managed by the Department's 457 processing teams.

If you have any **labour agreement queries or wish to request an agreement information package**, email us at [labour.agreement.section@border.gov.au](mailto:labour.agreement.section@border.gov.au)

If you have a **complex policy query**, contact 457 programme management via the Agents Gateway (**note:** advice below and don't forget a separate option is available for you to select on the gateway if you have a query related to sponsorship obligations). **See:** <http://www.border.gov.au/Busi/Migr/Agem/Contacts/Enquiry-and-feedback>

If you have questions about an application which has already been finalised, please forward the query to [457Management@border.gov.au](mailto:457Management@border.gov.au) with subject title: "**Post-decision enquiry**". **Note:** emails that do not provide supporting evidence and/or raise a specified concern regarding the application of law/policy will not be answered.

## Reminder regarding use of the Agents Gateway

An increasing number of agents are sending through very simple queries via the agent's gateway. Please be reminded that this service is for **complex** policy queries only and 457 Programme Management is unable to:

- assist regarding progress of a case. Please contact the subclass 457 processing network via [457@border.gov.au](mailto:457@border.gov.au) where appropriate, taking note of relevant instructions in their auto-reply message;
- pre-empt the decision of a visa delegate or answer hypothetical eligibility queries;
- answer hypothetical queries relating to whether or not particular companies are 'associated entities'. This cannot be assessed upfront. Where your client wishes to place a nominee with an associated entity, this should be explained and a case put forward as part of the nomination application;
- respond to queries where agents simply indicate they are 'not happy' with a decision.