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Changes to 457, 186, 187 and Skilled Migration Programme announced on 18 April 2017 What does it mean and how does it affect you?

Australian Prime Minister Malcolm Turnbull announced on 18 April 2017 a significant reform to the employer sponsored skilled migration visas programme as well as the abolishment and replacement of the current subclass 457 visa.

While the abolishment of the subclass 457 Temporary Work (Skilled) visa and its replacement, a new Temporary Skill Shortage (TSS) visa will not happen until March 2018, there are many significant staged changes that will be implemented from 19 April 2017 until March 2018 which would affect existing and future visa applicants and holders of the affected visa subclasses.

Firstly, on 19 April 2017, a new set of skilled occupation list was introduced:

Old Skilled Occupation List	New (current) Skilled Occupation List
Skilled Occupation List (SOL)	Medium and Long Term Strategic Skills List (MLTSSL)
Consolidated Sponsored Occupation list (CSOL)	MLTSSL and Short-term Skilled Occupations List (STSOL) (also known as Combined list of eligible skilled occupations)

If you apply for any of the following visas, you must nominate an occupation on the MLTSSL:

- Subclass Independent visa (subclass 189)
- Skilled Regional (Provisional) visa (subclass 489) – Family nominated
- Temporary Graduate visa (subclass 485) – Graduate Work Stream
- Employer Nominated Scheme (subclass 186) (after March 2018)
- Regional Sponsored Migration Scheme (subclass 187) (after March 2018)
- Temporary Skill Shortage visa – Medium-Term visa (when introduced in March 2018)

If you apply for any of the following visas, you must nominate an occupation that is on the Combined list of eligible occupations (i.e either on the MLTSSL or STSOL):

- Employer Nominated Scheme (subclass 186) – Direct Entry stream (until March 2018 only)
- Skilled Nominated visa (subclass 190)
- Skilled Regional (Provisional) visa (subclass 489)

- Temporary Work (Skilled) visa (subclass 457) (until March 2018 only)
- Training visa (subclass 407)
- Temporary Skill Shortage visa – Short-Term visa (when introduced in March 2018)

The occupation list changes do not affect invitation-based visas such as 189 and 190 whereby invitation to apply for the visa has been received prior to 19 April 2017.

As result of the announcement, we have received many queries concerning the implications on current 457 holders as well intended applicants of 457, 186, and 187 visas. This information pack summarises the changes that will occur and include a list of frequently asked questions (FAQs).

Information published by the Department of Immigration and Border Protection about the reform can be found at <http://www.minister.border.gov.au/peterdutton/2017/Pages/putting-australian-workers-first.aspx>.

Changes affecting the 457 visa

Date of Change	Nature of Changes	Pre-19 April 2017
From 19 April 2017	<ul style="list-style-type: none"> • Changes to occupations that can be nominated for 457 visa. Introducing Medium and Long-term Strategic Skills List (MLTSSL) and Short-term Skilled Occupations List (STSOL): <ul style="list-style-type: none"> ○ 216 occupations removed ○ 59 occupations will have nomination restriction (caveats) (applies to 457 visa only) ○ 24 occupations will have nomination restricted to regional Australia (caveats) • 457 visa grant period of 2 years if nominated occupation is not on the MLTSSL. Otherwise, 4 years. 	<ul style="list-style-type: none"> • Nominate an occupation that is on the Consolidated Sponsored Occupation List. No occupation specific nomination restriction. • 457 visa grant period of 4 years if business operated for more than 12 months, otherwise 1.5 years.
From 01 July 2017	<ul style="list-style-type: none"> • English salary exemption \$96,400 removed. • Change to training benchmarks requirements. • Mandatory penal clearance certificate. 	<ul style="list-style-type: none"> • English requirement exempt if salary is at least \$96,400. • Generally, no requirement for penal clearance certificate.
Before 31 December 2017	<ul style="list-style-type: none"> • Collection of TFN for 457 visa holders and other employer sponsored migrants for data matching with ATO. • Publication of sanctioned sponsors. 	<ul style="list-style-type: none"> • No collection of TFN. • No publication of sanctioned sponsor.
From March 2018	<ul style="list-style-type: none"> • 457 visa will be abolished and replaced with TSS visa. • TSS visa will have two streams: <ul style="list-style-type: none"> ○ Short-Term stream – 2 years visa ○ Medium-Term stream – 4 years visa 	

Changes affecting 186 ENS and 187 RSMS visa

Date of Change	Nature of Change and Effect	Pre-19 April 2017
From 19 April 2017	<ul style="list-style-type: none"> Changes to occupations that can be nominated for 186 ENS (Direct Entry stream) visa – Direct Entry stream) (does not affect 187 RSMS visa or 186 RSMS (Temporary Residence Transitional stream) visa. Introducing Medium and Long-term Strategic Skills List (MLTSSL) and Short-term Skilled Occupations List (STSOL): <ul style="list-style-type: none"> 216 occupations removed 24 occupations will have nomination restricted to regional Australia (caveats) 	<ul style="list-style-type: none"> Nominate an occupation that is on the Consolidated Sponsored Occupation List. No occupation specific nomination restriction.
From 01 July 2017	<ul style="list-style-type: none"> English language requirement: IELTS of 6 required in each component. Maximum age of 45 at the time of application for Direct Entry stream. Maximum age of 50 at the time of application for Temporary Residence Transitional stream (current requirement). 	<ul style="list-style-type: none"> Only the Direct Entry stream requires competent English (for IELTS, 6 in each component). Vocational English (for IELTS, 5 in each component) is required for Temporary Residence Transitional stream. Maximum age of 50 at the time of application both Direct Entry and Temporary Residence Transitional stream.
Before 31 December 2017	<ul style="list-style-type: none"> Collection of Tax File Number (TFN) for 457 visa holders and other employer sponsored migrants for data matching with ATO. Publication of sanctioned sponsors. 	<ul style="list-style-type: none"> No collection of TFN. No publication of sanctioned sponsor.
From March 2018	<ul style="list-style-type: none"> MLTSSL will apply for both 186 (ENS) and 187 (RSMS) visas with additional occupation available for 187 RSMS. Employer must pay the Australian market salary and meet the Temporary Skilled Migration Income Threshold (TSMIT) which is currently \$53,900. The period before eligible to apply for permanent residence through the Temporary Residence Transitional stream extends from 2 years to 3 years. At least 3 years' relevant work experience. Maximum age of 45 at the time of application for all applicants. Strengthened training requirement. 	<ul style="list-style-type: none"> For 186 ENS, nominate an occupation that is on the Consolidated Sponsored Occupation List. For 187 RSMS, nominate an occupation that is at ANZSCO skill level 1 to 3. Employer must pay the Australian market salary but do not need to meet TSMIT. The period before eligible to apply for permanent residence through the Temporary Residence Transitional stream is 2 years. No need for work experience for 187 RSMS. Maximum age of 45 at the time of application with certain exemptions. No training requirement for 187 RSMS. For 186 ENS, training requirement same as 457.

Key Difference: The to be abolished 457 visa and Future TSS visa

	457	TSS: Short-Term visa	TSS: Medium-Term Stream visa
Ability to renew visa onshore	Unlimited	Once only	Unlimited
Pathway to 186 ENS/187 RSMS visa	After 2 years	Not possible	After 3 years
Occupation	STSOL	STSOL*	MLTSSL*
English language requirement IELTS of 5, min. 4.5 in each testing component IELTS of 5 in each testing component	✓	✓	✓
Genuine temporary entrant requirement	Not applicable	✓	Not applicable
2 years' work experience	Limited occupations	✓	✓
Labour marketing testing (LMT)	Limited occupations [^]	✓ [^]	✓ [^]
Minimum market salary rate and meet TSMIT	✓	✓	✓
Non-discriminatory workforce test	Not applicable	✓	✓
Strengthened training requirement	✓	✓	✓

* Additional occupation available to 187 RSMS

[^] Not required where international obligations applies (such as Free Trade Agreement)

Frequently Asked Questions (FAQs)

It is important to note that apart for the Medium and Long-term Strategic Skills List (MLTSSL) and Short-term Skilled Occupations List (STSOL) that came into effect on 19 April 2017, none of the other announced reform has been legislated into law. Therefore, the FAQs are only based upon analysis of currently available information.

Q1: I am currently holding a 4 years subclass 457 visa granted before 19 April 2017, am I still eligible to apply for subclass 186 ENS visa under the Temporary Residence Transitional stream (commonly known as 457 transition to 186) after having worked for 2 years?

A: Based on the currently available information, you will not be affected by the change. Specifically, in relation to nomination of occupation, the current 186 ENS and 187 RSMS Temporary Residence Transitional stream only requires an applicant to have worked in the nominated occupation on subclass 457 visa(s) for at least 2 years in the 3 years immediately before the nomination application. It does not require the nominated occupation under the Temporary Residence Transition stream to be on any skilled occupation list.

Q2: I am currently holding a 1 year/1.5 years subclass 457 visa granted before 19 April 2017, can I apply for a further subclass 457 visa to accumulate 2 years working requirement and be eligible to apply for subclass 186 ENS/187 RSMS visa under the Temporary Residence Transitional stream after March 2018?

A: As long the nominated occupation is on the STSOL when you want to apply for a further 457 visa, you can apply before the 457 visa is abolished in March 2018. At this stage, it is not entirely clear whether the current 186 ENS and 187 RSMS Temporary Residence Transitional stream will be available to 457 visa granted on or after 19 April 2017 for occupation that is not on the MLTSSL. However, there was no legislative change on 19 April 2017 to the 2 years transition period from 457 to 186 ENS/187 RSMS so to

restrict it to 457 visa granted before 19 April 2017. For that reason, we believe it is highly likely you will continue to be eligible to apply for the subclass 186 ENS or 187 RSMS visa under the Temporary Residence Transitional stream after March 2018 when you have worked in the nominated occupation on subclass 457 visa(s) for at least 2 years.

Q3: I am planning to apply for the subclass 186 ENS/187 RSMS visa under the Temporary Residence Transitional stream after 1 July 2017. What is the English requirement?

A: Based on the currently available information, it appears you may need to meet IELTS scores of 6 in each four testing component even if applying through the Temporary Residence Transitional stream.

Q4: I have already lodged a 186 ENS nomination and visa application under the Direct Entry Stream before 19 April 2017 but is still in processing and the nominated occupation has been removed. Would it affect my application?

A: No, the changes to the occupation list will not affect already lodged 186 ENS applications.

Q5: I have already lodged 457 nomination and visa applications before 19 April 2017 but is still in processing, the nominated occupation is on the STSOL but not on the MLTSSL. This is my first 457 application with my current/prospective employer. If the 457 visa is granted how long would it be valid for? Can I apply for the subclass 186 ENS or subclass 187 RSMS visa under the Temporary Residence Transitional Stream after 2 years?

A: If the nominated occupation is not on the MLTSSL, any 457 visa granted on and after 19 April 2017 will be for only 2 years. Due to the Temporary Residence Transitional stream under the 186 ENS and 187 requiring an applicant to have worked in the nominated occupation on subclass 457 visa(s) for at least 2 years in the 3 years immediately before the nomination application, it is therefore not possible to apply under the Temporary Residence Transitional stream with a 457 visa of only 2 years validity. This is because the earliest time to meet the 2 years eligibility period to apply under the Temporary Residence Transitional stream will be 2 years and 1 day after the date of 457 visa grant and that you must hold a valid 457 visa at the time of the 186 ENS/187 RSMS application. Thus, a 2 years 457 visa is not sufficient time.

Q6: I am not currently holding a 457 visa but I am planning to lodge a 457 nomination and visa application. The nominated occupation is on the STSOL but not on the MLTSSL. If the 457 visa is granted how long would it be valid for? Can I apply for the subclass 186 ENS or subclass 187 RSMS visa under the Temporary Residence Transitional Stream after 2 years?

A: Same as answer to Q5.

Q6: I have already lodged 457 nomination and visa applications before 19 April 2017 but is still in processing, the nominated occupation has been removed on 19 April 2017. That is, the occupation is not on the STSOL or the MLTSSL. How would this affect the applications?

A: Due to the nominated occupations being removed, the nomination and visa applications cannot be approved and granted. The Department of Immigration have indicated that in these situations, applicants should consider withdrawing the application and seek for refund of the application fees paid.

List of removed occupation can be found at <https://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/removed-skilled-occupations>.

Q7: Which occupations are subject to nomination restrictions (caveats) and what are the restrictions?

A: Please see attached list titled “457 Nomination Occupation Specific Caveats” for details.

Q8: I have already lodged 457 nomination and visa applications before 19 April 2017 but is still in processing, the nominated occupation is subject to nomination restrictions (caveats). How would this affect the applications?

A: Based on the current available information, if the circumstances of your case fall within the nomination restrictions (caveats), then the nomination and visa applicants may not be approved and granted. We are however in the process of analysing these nominations restrictions (caveats) further to consider whether it is legally valid. If you fall into this situation, you may wish to contact us to discuss your situation further.

Q9: Is there any possible that I can apply for 186 ENS or 187 RSMS visa after March 2018 if I am not currently holding 457 visa granted before 19 April 2017 and my occupation is not on the MTSSL?

A: It does not appear to be possible unless the occupation is an additional occupation specified for regional Australia. At this stage, it is not yet known what these occupations will be. Based on the currently available information, all 186 ENS and 187 RSMS applications after March 2018, with the exception of 457 visa holder’s applying under the existing Temporary Residence Transitional stream, will have to nominate an occupation on the MTSSL.

Q10: Will the occupations on the STSOL and MTSSL change in the future?

A: The occupation list can and will be revised from time to time. The Department of Immigration and Border Protection have indicated that the STSOL and MTSSL will be further reviewed on 1 July 2017.

For further information please contact us.

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457 Nomination Occupation Specific Caveats

Group A – No 2 years Work Experience Required

The following occupation are excluded from 457 nomination if the position that do **not** require a minimum of two relevant work experience.

ANZSCO	Occupation	ANZSCO	Occupation
225111	Advertising Specialist	263212	ICT Support Engineer
511111	Contract Administrator	263213	ICT System Test Engineer
132211	Finance Manager	224999	Information and Organisation Professional nec
242411	Graphic Designer		
391111	Hairdresser	261314	Software Tester
135112	ICT Project Manager	242111	University Lecturer

Group B – Regional Australia location only

ANZSCO	Occupation	ANZSCO	Occupation
311111	Agricultural Technician	121399	Livestock Farmers nec
121311	Apiarist	121411	Mixed Crop and Livestock Farmer
121111	Aquaculture Farmer	121216	Mixed Crop Farmer
121312	Beef Cattle Farmer	121317	Mixed Livestock Farmer
121211	Cotton Grower	121318	Pig Farmer
121299	Crop Farmers nec	121321	Poultry Farmer
121313	Dairy Cattle Farmer	311399	Primary Products Inspectors nec
121212	Flower Grower	133511	Production Manager (Forestry)
121213	Fruit or Nut Grower	121322	Sheep Farmer
121214	Grain, Oilseed or Pasture Grower (Aus) / Field Crop Grower (NZ)	121217	Sugar Cane Grower
		121221	Vegetable Grower (Aus) / Market Gardener (NZ)
121215	Grape Grower		
121316	Horse Breeder	234213	Wine Maker

Group C – Occupation specific

ANZSCO	Occupation
221111	Accountant (General)
excludes any one of the following:	
<ol style="list-style-type: none"> clerical, book keeper and accounting clerk positions; positions in a business that have an annual turnover of less than AUD 1 million; positions in a business that have fewer than five employees. 	

ANZSCO	Occupation
351411	Cook
351311	Chef
Excludes positions in involved in mass production in a factory setting and positions in a limited service restaurant. A limited service restaurant includes, but is not limited to, any of the following:	
<ol style="list-style-type: none"> fast food or takeaway food services; fast casual restaurants; drinking establishments that offer only a limited food service; limited service cafes including, but not limited to, coffee shops or mall cafes; limited service pizza restaurants. 	

ANZSCO	Occupation
111111	Chief Executive or Managing Director
111211	Corporate General Manager
Excludes any one of the following:	
4. positions in a business that have an annual turnover of less than AUD 1 million	
5. positions in a business that have fewer than five employees	
6. positions that have a nominated base salary of less than AUD 90,000.	

ANZSCO	Occupation
121111	Aquaculture Farmer
121211	Cotton Crower
121212	Flower Grower
121213	Fruit or Nut Grower
121214	Grain, Oilseed or Pasture Grower (Aus) / Field Crop Grower (NZ)
121215	Grape Grower
121216	Mixed Crop Farmer
121217	Sugar Cane Grower
121221	Vegetable Grower (Aus) / Market Gardener (NZ)
121299	Crop Farmers (nec)
121311	Apiarist
121312	Beef Cattle Farmer
121313	Dairy Cattle Farmer
121316	Horse Breeder
121317	Mixed Livestock Farmer
121318	Pig Farmer
121321	Poultry Farmer
121322	Sheep Farmer
121399	Livestock Farmers (nec)
121411	Mixed Crop & Livestock Farmer
Excludes positions that predominantly involve low-skilled tasks. <i>Examples: fruit picking or packing, feeding of livestock or animals</i>	

ANZSCO	Occupation
131112	Sales & Marketing Manager
149212	Customer Service Manager
225113	Marketing Specialist
Excludes any one of the following:	
1. positions based in a front-line retail setting;	
2. positions that predominately involve direct client transactional interaction on a regular basis;	
3. positions in a business that have an annual turnover of less than AUD 1 million;	
4. positions that have a nominated base salary of less than AUD 65,000.	

ANZSCO	Occupation
132111	Corporate Services Manager
Excludes any one of the following:	
1. positions in a business that have an annual turnover of less than AUD 1 million;	
2. positions in a business that have fewer than five employees;	
3. positions that have a nominated base salary of less than AUD 80,000.	

ANZSCO	Occupation
133611	Supply and Distribution Manager
223112	Recruitment Consultant
Excludes any one of the following:	
<ol style="list-style-type: none"> positions in a business with an annual turnover of less than AUD 1 million; positions in a business with fewer than five employees; positions that have a nominated base salary of less than AUD 65,000. 	

ANZSCO	Occupation
141111	Cafe or Restaurant Manager
Excludes positions in a limited service restaurant. A limited service restaurant includes, but is not limited to, any of the following:	
<ol style="list-style-type: none"> fast food or takeaway food services; fast casual restaurants; drinking establishments that offer only a limited food service; limited service cafes including, but not limited to, coffee shops or mall cafes; limited service pizza restaurants. 	

ANZSCO	Occupation
141311	Hotel or Motel Manager
Excludes positions that predominately involve responsibility for managing hotel or motel staff. The specification does not exclude positions that predominately involve responsibility for organising and controlling the operations of a hotel or motel that may have limited duties requiring management of hotel or motel staff but is not the main function of the position.	

ANZSCO	Occupation
142114	Hair or Beauty Salon Manager
Excludes any of the following:	
<ol style="list-style-type: none"> positions that predominately involve hair dressing and/or beauty therapy related non-managerial tasks; or positions in a business that employ fewer than five employees. 	

ANZSCO	Occupation
149311	Conference & Event Organiser
Excludes any of the following:	
<ol style="list-style-type: none"> positions in a business that have an annual turnover of less than AUD 1 million; positions that have a nominated base salary of less than AUD 65,000. 	

ANZSCO	Occupation
149413	Transport Company Manager
Excludes any of the following:	
<ol style="list-style-type: none"> truck driver positions; fleet manager positions; container controller positions; positions in a business that have an annual turnover of less than AUD 1 million; positions in a business that have fewer than five employees. 	

ANZSCO	Occupation
149913	Facilities Manager
Excludes any of the following:	
<ol style="list-style-type: none"> positions that are not located in a commercial building or shopping centre environment; positions that predominately involve the management of the provision of only one particular service to a facility or managing one particular relationship. 	
<i>Example: a position that manages the cleaning contract for a facility but not other contracts relevant to the facility.</i>	

ANZSCO	Occupation
224711	Management Consultant
Excludes any of the following:	
<ol style="list-style-type: none"> positions in a business that have an annual turnover of less than AUD 1 million; positions in a business that have fewer than five employees. 	

ANZSCO	Occupation
225499	Technical Sales Representatives (nec) including, but not limited to, education sales representatives
Excludes any of the following:	
<ol style="list-style-type: none"> positions that are based in a front-line retail setting; positions that are based in a call centre and do not require a significant technical knowledge of products; positions that predominantly involve selling educational courses to individual students; positions that have a nominated base salary of less than AUD 65,000. 	

ANZSCO	Occupation
312512	Mechanical Engineering Technician
Excludes positions relating to mobile phone repairs.	

ANZSCO	Occupation
351111	Baker
351112	Pastrycook
Excludes positions related to mass or standardised production, including positions based in a franchise or factory, as opposed to specialist production. Positions excluded, but not limited to the following exclusions, are any of the following:	
<ol style="list-style-type: none"> positions that involve full or partial production of food product for distribution to another location; positions that predominantly involve the use of pre-prepared food product from another location. 	

ANZSCO	Occupation
361199	Animal Attendants & Trainers (nec)
Excludes positions related to animal husbandry including, but not limited to, caring for livestock on a farm setting.	

ANZSCO	Occupation
411611	Massage Therapist
Excludes any of the following:	
<ol style="list-style-type: none"> non full-time positions; positions that are not based in a therapeutic setting; positions involving the provision of non-medical relaxation massage. 	