

aml News – Migration Update

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1. Top Migrant Source Countries

Did you know the top source countries in 2011 for Australian migrants are: China (29,397 migrants), New Zealand (25,787), India (21,932), the UK (20,581), and the Philippines (11,075)?

Northeast Asia remains the region from which the greatest numbers of migrants come, followed closely by Southeast Asia, and then Oceania.

2. Review of ENS, RSMS and Labour Agreements

In August 2011, DIAC announced a review of the employer sponsored visa classes: Employer Nomination Scheme (ENS), Regional Sponsored Migration Scheme (RSMS) and Labour Agreements. The Review invited submissions on a number of issues including;

- the possibility of integrating visa subclasses for workers to provide a clear pathway from temporary to permanent residency;
- the required English language proficiency for the different visas;
- what the age limit should be; and
- the discretion permitted in the consideration of 'exceptional circumstances' in waiving certain requirements for a visa grant.

All employers proposing to nominate workers from overseas should move quickly as it is expected that changes will be made to the requirements for these visas by 1 June 2012, including a likely increase in the English language requirements.

3. Changes to Student Visas

Overseas students will be pleased with the Government's 22 September 2011 response to the Strategic Review of the Student Visa program (the Knight Review). A vast number of changes will take place, including:

- Evidence of English language ability;
- Streamlined processing
- Post-study Work Visas.

The reforms will be made possible through a new 'genuine temporary entrant' (GTE) assessment for all Student Visa applicants. DIAC will look at a number of factors in determining a student's genuine intention to stay temporarily in Australia. These include: circumstances in the student's home country, their potential circumstances in Australia, student's immigration history, and the relevance of the course to the student's future career.

Some of the changes proposed:

a) English Language

Changes to the English language requirements are being introduced as early as 5 November 2011. Other than IELTS, DIAC will also accept evidence of English language competency from;

- Test of English as a Foreign Language (TOEFL);
- Pearson Test of English (PTE) Academic; or
- Cambridge English: Advanced (CAE) test (also known as Certificate in Advanced English).

For students proposing to study under English Language Intensive Courses for Overseas Students (ELICOS), there will no longer be a requirement to demonstrate their English language ability.

b) Processing

The government will introduce faster, more streamlined processing for university students in time for Semester 2, 2012. Students enrolling in a Bachelor or higher degree will, regardless of nationality, be subject to an Assessment Level similar to the current Assessment Level 1. This is because university students have traditionally been a lower migration risk than students enrolled in other sectors. This means a reduced evidentiary requirement for university students. However, they must still satisfy DIAC of their English language ability, their financial resources, and health & character requirements.

c) New Post-Study Work Visas

From the beginning of 2013 university graduates will be eligible for post-study work visas of up to four years. These visas will be granted irrespective of a student's field of study, and will not lock them into working in any particular occupation based on their studies.

Other changes have also been proposed:

- Students on Assessment Levels 3 and 4 will have less onerous financial requirements. Assessment Level 3 students will have to demonstrate evidence of funds for 24 months. Assessment Level 4 students will have to demonstrate evidence of funds of 18 months. Potentially, this could be a difference of between AUD 18,000 and AUD 36,000 that students must show they have access to. The change will particularly benefit those applying for Vocational Education and Training (VET) visas.
- The period for Postgraduate (subclass 574) visas is being extended by 6 months to allow these students to remain in Australia while their thesis is being marked.
- The government also plans to do away with the automatic cancellation and mandatory cancellation mechanisms for breaches of student visas. Instead, DIAC decision-makers will focus on all of a student's circumstances in determining if visa cancellation is appropriate. This should result in fairer outcomes for students facing visa cancellation.
- From 2012, students will be able to work 40 hours a fortnight, instead of 20 a week, allowing students and employers greater flexibility.

4. Complementary Protection Laws

On 14 October 2011 a new law on Complementary Protection was enacted. The new law will protect people who do not qualify as refugees but run the risk of significant harm (e.g. torture, possible death, or life imprisonment) if they were returned to their country. The new law is consistent with Australia's international obligations to protect people who would suffer torture, or cruel and inhumane treatment, if they were returned to their country of origin.

The law broadens the criteria for asylum seekers beyond the narrow definition of the Refugee Convention. It also removes the need for the Immigration Minister to intervene personally in such cases.

5. MARA Annual Report

In the recent Migration Agents Registration Authority (MARA) 2011 annual report, the following facts about migration agents were disclosed:

- there are 4465 registered migration agents, only 20% are lawyers;

- there were 519 complaints received, relating to 308 current or former agents;
- eight agents received formal sanctions from MARA;
- the majority of complaints (66.5%) came from individuals. DIAC also made a number of complaints to MARA about agents, representing 14.3% of total complaints; and
- most complaints related to agents not meeting the standards of professional conduct, with the most commonly raised complaints being agents' competence (59.7%) and integrity (10.2%).

Clearly, care needs to be taken when selecting who to advise and represent you on migration matters.

Why use Australian Migration Lawyers?

As lawyers, and as part of a full service law firm, our professional integrity and service standards are just a part of what distinguishes us from others. Our real expertise is what makes us unique and your first choice.

Our Head of Migration services Peter Lee has over 25 years of experience in migration law. Peter spent more than 24 years as a professional Immigration Officer in the Department of Immigration and Citizenship. During his time in DIAC (1979-2003), he worked as a senior officer in operational, policy and secretariat areas, gaining valuable insights in how the department functioned. He has had six overseas postings with DIAC, completing service in Malaysia (Kuala Lumpur), Sri Lanka (Colombo), China (Beijing and Shanghai) and the USA (San Francisco). He served as the head of the Immigration Section in his last five postings with DIAC. While still with the department, he was awarded the department's 1991 Australia Day Medallion.

Peter also holds teaching positions in migration law at the Australian National University (ANU) and at Griffith University. At ANU he teaches the Graduate Certificate in Migration Law. This is a national program that is taught to candidates who wish to work as registered migration agents.

Given the depth of his departmental experience, his legal training and his teaching positions, Peter is clearly more than well equipped to assist clients with their visa inquiries.

For assistance with all your migration needs, email us at info@migrationlawyers.com.au or visit our website www.migrationlawyers.com.au. Alternatively, contact our specialised professional team at either our Gold Coast or Brisbane office.



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