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**Australia – More Details
Released on Labour
Market Testing for
Subclass 457 Visas**

by KPMG, Australia (a KPMG
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flash International Executive Alert

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Further details to support the commencement of Labour Market Testing (LMT) for the subclass 457 visa program have been issued by the Australian Department of Immigration and Border Protection.¹ This came into effect for all nomination applications lodged from 23 November 2013.²

Why This Matters

From this date, all standard business sponsors (including those with Accredited Status) wishing to utilize the subclass 457 visa program are required to provide evidence of LMT for each nomination application, unless otherwise exempted. Businesses that are party to a Labour Agreement are not subject to these LMT requirements.

The new rules concerning LMT could mean increased administration, cost, and time for employers.

Who Is Exempt from LMT?

As referenced in the Migration Amendment (Temporary Sponsored Visas) Act 2013, there are certain occupation-based exemptions and certain occupations groups that are specifically targeted for LMT. The majority of the Skill Level One and Two occupations (generally occupations requiring a degree or diploma qualification) are to be exempt from LMT. The notable inclusions are the occupations specified in the Act as requiring LMT, i.e., engineers, nurses, and trades; however, there are other occupations included.

A full list of occupations that require evidence of LMT is available.³

Where an occupation is on the list⁴, there are still possible exemptions in recognition of Australia's international trade obligations, as follows:

- The nominee is a citizen of Chile or Thailand, or a citizen or permanent resident of New Zealand;
- The nominee is currently employed by an associated entity of your business located in an Association of South-East Asian Nations (ASEAN) country, Chile, or New Zealand;

The nominee is currently employed by an associated entity of the company located in a World Trade Organisation (WTO) country, where the nominated occupation is listed as an "Executive or Senior Manager"⁵ and the nominee will be responsible for the entire or substantial part of the company's operations in Australia:

- An associated entity of your business is located in a WTO country and is looking to commence operations in Australia, where the nominated occupation is listed as an "Executive or Senior Manager"⁶; or

- The nominee is a citizen of a WTO country and has worked for the company in Australia for at least the last two years on a full-time basis. (This means that subclass 57 visa renewals for employees who have worked for the company in Australia for at least two years will not be subject to LMT.)

Given the above, please note that intra-company transfers in themselves do not exempt occupations from LMT unless it comes under the specific exemptions listed above.

In addition, LMT will not be required where additional labor resources are required in the event of a major disaster. This exemption can only be granted in writing by the Minister for Immigration and Border Protection.

What Evidence of LMT Does the Business Need to Provide?

If the nominee is not exempt from LMT, evidence must be provided to show that the business has tested the Australian labor market within the last 12 months of lodging the nomination application. Evidence such as advertising and recruitment efforts relating to the nominated occupation must be provided with the nomination application. Specific details regarding the outcome of the advertising campaign, including the number of applications received, number of applicants hired (if applicable) and a general explanation as to why the other candidates were unsuccessful must also be provided.

Advertising on the company's Web page, advertising through social media, and use of recruitment agencies can be acceptable forms of LMT, provided specific details of the recruitment outcome can be provided.

KPMG Note

The Immigration Department has provided a sample "Domestic Recruitment Table," which can be completed and submitted as part of evidencing your recruitment activities. A copy of this document can be located at: www.immi.gov.au/Visas/Documents/domestic-recruitment-summary-template.docx. Should your company have a similar document which can be generated from your recruitment systems, this can be used as long as the core information is provided.

Redundancies and Retrenchments

Evidence of LMT is required where the business or an associated entity has made employees redundant or retrenched in the same or a similar occupation that is being nominated within the previous four months of lodging the nomination application. The LMT must have been undertaken after the redundancies and retrenchments have taken place. Information regarding the redundancies and retrenchments must also be provided with the nomination application.

KPMG Note: What Does This Mean for Employers?

Employers should review the occupation lists and all exemptions available carefully to identify the impact the implementation of LMT will have to their business. This should be completed on a case-by-case basis given that different occupations, source countries, and nationalities will bring out different results. Where affected, employers should conduct a review of the company's current recruitment and advertising record-keeping practices to help ensure they are able to provide sufficient information to meet the LMT evidentiary requirements.

KPMG Note (*cont'd*)

As with any change in immigration legislation and particularly as significant a change as this, communications with all the key stakeholders are vital, given the increased administration, cost, and time that LMT potentially will mean to your business.

Finally, there are certain areas of the guidelines which we see as requiring further clarification and we expect to be able to provide further commentary in due course.

Footnotes:

- 1 For more information on this development, see the Web site for the Australian Department of Immigration and Border Protection at: <http://www.immi.gov.au/skilled/whats-new-esw.htm> .
 - 2 The KPMG International member firm in Australia understands that nomination applications lodged before this date will be unaffected.
 - 3 The full list is provided in Appendix A and Appendix B of the *Migration Newsflash* dated 20 November 2013 (“Labour Market Testing (LMT) for the Subclass 457 Visa Program”), a publication of the KPMG International member firm in Australia at:
<http://www.kpmg.com/AU/en/IssuesAndInsights/ArticlesPublications/Migration-Newsflash/Documents/migration-newsflash-20-november-2013.pdf> .
- Please note that we understand the Immigration Department has published an incomplete occupation list. The Appendices referred to above of occupations listings are therefore subject to change.
- 4 Appendix A of the publication cited in footnote 2.
 - 5 Refer to Appendix B of the publication cited in footnote 2.
 - 6 Ibid.

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This article is adapted, with permission, from “[Labour Market Testing \(LMT\) for the Subclass 457 Visa Program](#),” in *Migration Newsflash* (20 November 2013), published by the KPMG International member firm in Australia.

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