

Table of Content

- ❖ **Migration Legislation Amendment 2016 (2016 Measure No1) Regulation 2016**
- ❖ **SA needs migrant workers to keep economy working reports**
- ❖ **Some Visa holders precluded from lodging Student Visa onshore**
- ❖ **Student Visas – Immigration Risk Framework**
- ❖ **SOL and CSOI 2016 – After 1 July 2016**
- ❖ **State of Israel – Subclass 462 Work and Holiday Visas**
- ❖ **Singapore – Work and Holiday & Long Validity Visitor Visa announced**
- ❖ **Backpacker tax delay expected, will effectively ‘kill it’, Liberal MP says**
- ❖ **Backpackers Stung by the apple orchard that doesn’t exist**
- ❖ **Refugee Passes test but wait for citizenship**
- ❖ **Fair Work ombudsman hands down its 7-Eleven inquiry report**
- ❖ **7-Eleven dumps independent panel checking back pay claims**
- ❖ **7-Eleven morality fails when the dollars mount up**
- ❖ **Election 2016: the campaign trail begins**
- ❖ **Streamlined Pathway to Permanent Residence for New Zealand Citizens**
- ❖ **Working with New Zealand to end child detention**

Migration Legislation Amendment 2016 (2016 Measure No1) Regulation 2016

The Migration Legislation Amendment 2016 (2016 Measures No1) Regulation 2016 - F2016L00523ES -makes multiple amendments to the Migrations. These amendments affect **Subclass 457, Student visas and Global Special Humanitarian Subclass 202 visas.**

Subclass 457

- A new Subclass 457 obligation on standard business sponsors that they not engage in discriminatory recruitment practices, on the grounds of immigration status or citizenship is introduced. The sponsor will be required to declare in writing that they will not engage in discriminatory recruitment practices.
- Amends the Internet application process so that visa applicants are required to enter the nomination details in their application to streamline processes.
- Remove the requirement for English language testing where this is already required for occupational licencing or registration.
Commences 19 April 2016

Student visas

From 1 July 2016 introduce a simplified international student visa framework. The Schedule 1 & 2 Regulations are included in this amendment visa and available [HERE](#)

The new framework will:

- there will be two only student visa subclasses: Subclass 500 (Student) and Subclass 590 (Student Guardian)
- streamline application and processing requirements for student visa applicants, with common criteria and genuineness of application for entry and stay as a student
- simplify a range of requirements including enrolment, financial and other requirements relating to visas previously held if the application is made in Australia
- the current regulatory assessment level framework and streamlined processing provisions will be repealed and new requirements introduced to strengthen the integrity of the programme, by providing a larger range of factors for decision makers to assess genuineness and the need for individuals to provide evidence of financial and English proficiency
- clarify for student visa holders the conditions on the courses they are permitted to undertake and when a change of course would require them to apply for a new student visa
- make other amendments to repeal duplicate and redundant provisions and clarify the operation of the relevant provisions

The policies applicable to the new student visa regime have yet to be published by DIBP

Commences 1 July 2016

MIA Notice 2016 No30: April 2015

SA needs migrant workers to keep economy working reports

The South Australia Centre for Economic Studies, at University of Adelaide, has found that the state may need to rely more heavily on overseas workers to boost skill levels in an ageing population and to maintain population levels which often decrease as working families and young people move interstate.

The report says that South Australia is still feeling the effect of interstate migration and skills loss following the combination of the State Bank collapse and the restructure of the manufacturing sector in 1980's and 90's. This was a time in which a number of headquarters of companies and major offices of other companies were shut down, and a wave of manufacturing enterprises also closed their doors.

As a result of this there has been a sharp decline in population growth over the following decades in South Australia. Most notably young people and young families left the state from 1993-2002, adding to other states younger populations while depleting South Australia's. In the 33 years from 1981-2014, South, Australia's population grew by 350,000 or almost 27%, far less than Victoria's growth rate of 46% and less than half the national rate of 55%.

The report also found that the absolute number of young people who are potentially economically active and contributing to the state is less than it was in the early 1980's and their share of the South Australian population has declined.

MIA Newsletter 15 April 2016

Some Visa holders precluded from lodging Student Visa onshore

Legislative Instrument – IMMI 16/016 – F2016L00638 – Migration regulations 1994 – Specification of categories of Visas that preclude a Person from Lodging a Student Visa Application in Australia 2016/016, specifies that persons who hold the following visas are unable to apply for a Student Class TU visa application in Australia

- Subclass 426 Domestic Worker (Temporary) – Diplomatic or Consular Visa whole subclass
- Subclass 403 temporary work (International relations) visa – domestic Workers (Diplomatic/Consular) stream Only
- Subclass 995 diplomatic Visa – Granted to a Primary Applicant
- Subclass 771 transit visa – Whole Subclass
- Subclass 600 Visitor Visa – Sponsored Family stream and Approved Destination Status stream

This Instrument Commences on 1 July 2016

SOL and CSOL 2016 – After 1 July 2016

Occupations moved from SOL to CSOL

- 233611 Mining Engineers (excluding Petroleum)
- 233612 Petroleum Engineers
- 234912 Metallurgists
- 251311 Environmental Health Officers
- 251312 Occupational Health & Safety Advisers
- 411211 Dental Hygienists
- 411212 Dental Prosthetists
- 411213 Dental Technicians
- 411213 Dental Therapists

Occupation added to the SOL

- 251912 Orthotists or Prosthetists
- 252711 Audiologists

These changes relate to the following visa subclasses and for invitations issued on or after 1 July 2016:

- Subclass 186
- Subclass 189
- Subclass 190
- Subclass 402
- Subclass 457
- Subclass 485
- Subclass 489

This instrument revokes IMMI 15/092 and IMMI 15/1085 and commences 1 July 2016

Source: MIA notice 2016 No 40: May 18

Student Visas – Immigration Risk Framework

Australian education providers have been provided with the following information on the introduction and operation of the new simplified student visa framework (SSVF). The benefits of the new SSVF to Australia's international education sector will include a reduction in red-tape, simpler navigation of the student visa framework and a more targeted approach to immigration integrity.

Immigration Risk framework

The single immigration risk framework will be used to guide the evidence of financial capacity and English language proficiency that a student is required to provide with their visa application. It will be based on two factors – the immigration risk outcomes associated with the student's education provider and country of citizenship.

General information regarding the intended operation of the SSVF is available on <http://www.mia.org.au/documents/item/889>.

Immigration risk under the SSVF

Under the SSVF, all CRICOS registered education providers have been allocated an immigration risk rating based on Immigration risk outcomes of their international student over a 12 month period. The same approach has also been used to allocate an immigration risk rating to each country.

Individual education providers risk ratings will not be released to agents or the public.

A detailed explanation of the immigration risk methodology is available on <http://www.mia.org.au/documents/item/890>

Managing immigration risk

The SSVF, all CRICOS registered education providers have been allocated an immigration risk. Some education providers may however decide that there are significant benefits associated with obtaining or maintaining a lower immigration risk rating.

To assist with this process, an overview of strategies that education providers may wish to consider in effectively managing immigration risk and recruiting genuine students is available on <http://www.mia.org.au/documents/item/891>.

Source: MIA NOTICE 2016 No35: May 5

SOL and CSOL – On or after 1 July 2015 but before 1 July 2016

Legislative Instrument – IMMI 16/060 – F2016L00801- Migration Regulations 1994-Specification of Occupations, a Person or Body, a Country or Countries specifies changes to the occupations on the SOL and CSOL for invitation and applications made **on or after 1 July 2015 but before 1 July 2016**.

This is an enabling Instrument to allow applications made during this period to still use occupations on the lists that were current at the time of application.

Source: MIA notice 2016 No 40: May 18

State of Israel – Subclass 462 Work and Holiday Visas

This Instrument specifies:

The state of Israel as an eligible Work and Holiday (subclass 462) visa country that a holder of a state of Israel passport does not need to provide evidence of Government support for grant of this visa.

The educational qualifications relevant to applicants from the state of Israel the following addresses for making a valid application.

Source: MIA Notice 2016 No 37: May 10

Singapore – Work and Holiday & Long Validity Visitor Visa announced

Minister of Immigration and Border Protection, Peter Dutton, announced that Singapore will be added to the list of Work and Holiday Subclass 462 visa eligible countries.

The Minister also announced that the option of a long validity, multiple-entry visitor visa for Singaporean Nationals to visit Australia will be introduced.

Source: MIA Notice 2016 No 37: May 10

Backpacker tax delay expected, will effectively ‘kill it’, Liberal MP says

The Federal Government will delay the introduction of its controversial backpacker tax, but some Liberal sources say the measure “is dead”.

The change would have seen backpackers taxed at a rate of 32.5 per cent tax on all earnings from July 1.

Working holidaymakers currently only pay tax on money earned above the \$18,200 tax threshold.

The ABC understands Deputy Prime Minister Barnaby Joyce will announce within the next fortnight that the introduction of the tax will be delayed for at least six months.

But one Liberal MP said it is more likely to be a year-long delay, which would effectively "kill it".

The agriculture and tourism sectors, and backpackers themselves, have all expressed concern that higher taxes will see working holidaymakers choose countries like New Zealand or Canada for their travels.

Farmers and tourism operators accept that backpackers should pay some tax, but say the 32.5 per cent rate renders them unable to compete with other countries.

A delay would allow the Government time to consider introducing a new class of visa, specifically for backpackers who work.

The new or reformed visa would likely include some rate of tax.

Prime Minister Malcolm Turnbull indicated the Government may reconsider its decision to impose the higher tax rate on backpackers.

"We have been listening very carefully to the concerns expressed in regional communities about that change... and we'll have more to say about that in the future," he said.

Source: <http://www.abc.net.au/news/2016-05-14/anticipated-delay-of-backpacker-tax-will-effectively-'kill-it'/7414624>

Backpackers Stung by the apple orchard that doesn't exist

Overseas backpackers have been stung by an employment scam, losing money by responding to a fake online advertisement for jobs and accommodation in Collie, Western Australia.

The victims have been contacting the Collie Visitors Centre and the Shire of Collie after arriving in the town expecting to start work at an orchard. They responded to a Gumtree advertisement looking for apple pickers at "Bluestone Fruits" – an orchard that doesn't exist. The address given is vacant land in Collie.

The backpackers are believed to have paid \$200 each by direct bank transfer to the scammer calling himself "Oscar Pankhurst", the farm manager. Consumer protection urges job seekers to only use licensed employment agents whose details can be found on the Consumer protection website, via licence search function. They can only charge the employer for their services.

Job scams or unlicensed employment agents should be reported to Consumer Protection by email consumer@commerce.wa.gov.au or by phone 1300 30 40 54. More information on job scams is available at www.scamnet.wa.gov.au.

Source: MIA Newsletter April 2016

Refugee Passes test but waits for citizenship

It has been 18 months since Sayed passed the Australian citizenship test, successfully answering questions such as why we celebrate Anzac day and the colours of the aboriginal flag. But the Afghanistan-born man is not yet an Australian Citizen.

Sayed has not been invited to make his citizenship pledge, and his application to bring his wife and three children to Australia is languishing, unprocessed, somewhere inside the Department of Immigration.

He is one of hundreds of refugees in Australia who say their citizenship applications have been ignored by the federal government, in what one migration agent described as a “deliberate ploy” to punish people who arrived in Australia without a valid visa. The department denies this, saying there has been a flood of applications to process.

The Refugee Council of Australia says the delays deny refugees a sense of belonging, and in effect, stop them from sponsoring family members to Australia. “Two times I complained to immigration, they said ‘process, processes. Still I’m waiting,’” Sayed, who “fled persecution and torture by the Taliban in Afghanistan” said. He travelled to Australia in 2010. After six months in a detention centre Sayed was granted a permanent protection visa.

He said he successfully passed a citizenship test in October 2014 and was now “waiting for the [citizenship] ceremony”.

Refugee Council Chief Executive Paul Power said without citizenship, refugees found it difficult to travel to visit family overseas, and were all but prevented from bringing their family to Australia after years of separation. “They are technically able to apply [for family reunion visas] ... but they have no hope at all of family reunion while they are... not citizens,” he said.

The department’s website states that from early 2014, “lowest priority” has been given to applications by people on protection visas to bring family to Australia.

The government claims that more than 80 percent of citizenship applications are decided within 80 days. However a Refugee Council report last October found that survey respondents from refugee backgrounds had been waiting an average 215 days.

A department spokesman said the number of people applying for Australia citizenship increased from about 87,000 to 192,000 in the four years to mid 2015.

In addition, DIBP is enforcing more strictly till character test, which on anecdotal evidence has remitted in a significantly increased number of Citizenship character refusals. For more information on complex citizenship cases people should contact Mr David Bitel.

SOURCE: Sydney Morning Herald 6/4/2016

Fair Work ombudsman hands down its 7-Eleven inquiry report

The Fair Work Ombudsman has ended down its report into the operations of retail giant 7-Eleven, recommending that the organisation review its opening model, implement effective governance measure and accept that it has a moral and ethical responsibility to ensure its stores meet community and social expectations regarding how it treat its staff.

In a lengthy and detailed statement handed down by the fair work ombudsman, Natalie James, it paid particular focus to the exploitation in Australia of migrant workers with Ms James saying “We have minimum pay rates in Australia, they apply to everyone and they are not negotiable.”

As part of FWO's work inquiry, it found that there was a general understanding across the 7-Eleven network that visa-holders can work hours in excess of what is allowable and this will not be reported, in fact, it will be disguised by the franchisee.

As a result of the Fairfax-4 Corners investigation into the exploitation of migrant workers at 7-Eleven last August, the FWO received reports of a new scam appearing in the network. This was a cash-back scam where employees were paid the correct wage but then taken to an ATM to withdraw and handback some of that wage payment back to franchisee

The FWO also stated that the exploitation of migrant workers has long been a priority for the FWO. So far this year 70 percent of matters that it has placed before the courts have involved alleged under-payment of migrant workers. The FWO concedes however that the vast majority of migrant workers are reluctant to come to them for help, and risk losing their visa or getting into trouble for breaking their visa conditions.

The FWO also acknowledge the real and significant steps taken by 7-Eleven to begin to rectify the situation.

MIA Newsletter 15 April 2016

7-Eleven dumps independent panel checking back pay claims

Billionaire Russ Withers' scandal-ridden 7-Eleven chain has dumped its independent compensation panel after it refused to accept terms that would "emasculate" the independence of the panel and also threaten workers.

A furious Allan Fels, who headed the panel and is a former chairman of the Australian Competition and Consumer Commission, described the new proposed panel as "bogus" and a "triumph" for dodgy franchisees.

"I am appalled at the situation and alarmed at the likely poor outcome for underpaid workers," Professor Fels said.

Contrary to the company's press release, Professor Fels said the panel did not agree to a "transition" to an internal unit within 7-Eleven that will now process and decide the claims. "This is no longer an independent process. It is being done by self-interested people with the aim of minimising the payout." he said.

Thousands of claims have yet to be processed by the panel that was set up after a major wage fraud scandal involving international students on working visas, some of whom were paid less than \$5 an hour.

The independent panel was set up last September in response to a joint Fairfax Media and Four Corners investigation that uncovered systemic roting of workers and falsification of payroll records.

The dismantling of the Fels panel follows increasing tensions between head office and the panel, which reached fever pitch after the appointment of a new chief executive, Angus McKay. Head office and the panel met on Tuesday to discuss a new set of proposals outlined by Mr MaKay.

Part of the original panel agreement was that 7-Eleven would have no staff involvement in the panel or the panel's assessments and all panel assessments could not be contested by head office. "Already 7-Eleven has in recent times under its new CEO broken its commitment to accept panel decisions without question," Prof Fels said.

"There were quite a few other proposals that also would have emasculated the panel's independence and this is unacceptable to the panel and we advised 7-Eleven of this. Clearly the action by 7-Eleven would destroy trust by claimants and defer claims from being made and even pursued"

Professor Fels said he did not believe they were serious.

“7-Eleven also proposed an impossible standard of proof from now. Originally the standard was what the panel assisted by Deloitte thought was reasonable in the circumstances of very bad and dishonest record keeping by franchisees abetted by 7-Eleven, “he said.

“Now a court standard was proposed by Deloitte being asked to report to 7-Eleven as well as the panel. Besides being a complete repudiation of 7-Eleven commitments – obviously a public relations exercise partly intended to ward off a Senate inquiry- the outcome is a triumph for franchisees.”

Mr McKay denied Professor Fels’ statements, saying the company brought the panel in-house to expedite claims and was not about minimising the amount paid out to staff.

In a distributing twist, 7- Eleven which was savagely criticised in two separate reports by a Senate inquiry and Fair Work- said it would “fund” the regulator if the regulator wanted to take an oversight role in the new process.

The panel, led by Professor Fels and the highly regarded David Cousins in conjunction with a team of forensic accountants, has already processed hundreds of claims that have so far delivered more than \$12 million in back pay to current and former staff.

The final payout was expected to be close to \$100 million, making it the largest pay-back claim in Australia’s corporate history.

7-Eleven said it will instead introduce an internal “secretariat” that will use “enhanced investigative protocols and evidentiary standards”.

The Fels Panel will cease deliberations from this Friday.

A press release from head office says a new panel will operate inside 7-Eleven and any recommendations will be made to 7- Eleven and each recommendation must be validated.

Source: Sydney Morning Herald dated 12/05/2016.

7-Eleven morality fails when the dollars mount up

Michael Smith, the 7-Eleven chair, has promised a new approach. “You cannot outsource morality,” he said.

Be under no illusions. This is code for 7-Eleven taking over the handling of claims after systematic underpayment of wages to minimise the company’s costs.

In my view, a company cannot “insource” morality:

- When there is a conflict of interest between treating underpaid claimants justly and pursuing profit;
- When to do so is a breach of commitments made to claimants that neither 7-Eleven nor franchisees would know their identities;
- When the company has a track record for neglecting moral issues over the years and the same board and shareholders continue to call the shots.

Take the current board. The chair has been a member of the board for 16 years. During that time there were Fair Work Ombudsman raids in 2008-2009, 2009-2010 and 2014 all identifying serious, systematic wage under payment practices. Unite, an employee group, met with chief operating officer of 7-Eleven as far back as 2008 with evidence of the problems. The Fair Work Ombudsman has since taken six court cases against franchisees.

The Company conducted a review of 225 stores in 2015 and found 69 percent of stores had payroll compliance issues, including falsification of records and rosters.

The board knew all this. Nothing was done until exposure by Fairfax Media/Four Corners last year.

What were the board discussing at board meetings and why did they not confront the issue each time evidence was presented? Why should 7-Eleven be trusted to fix the problems internally now?

More generally, in a matter of this kind when the data is poor and there are many claims, there are two risks with claims for redress.

The first risk is that some false or exaggerated claims will be accepted. The second, far greater, risk is that the data being very poor due to false, destroyed or non-existent records – valid claims are rejected due to lack of evidence.

The new chief executive officer has been preoccupied with the first type of risk (as if the experienced panel of professor David Cousins and me, aided by forensic accountant firm Deloitte, were unprepared for that problem). 7-Eleven has shown no concerns about the second risk.

The biggest problem, however, arises from the fact that so few (about 2500) of workforce of about 20,000, most of whom were underpaid, have even come forward with claims. This has principally been because of a campaign of intimidation by franchisees. 7-Eleven has done virtually nothing to prevent this.

SOURCE – Sydney Morning Herald (18 May 2016)

<http://www.smh.com.au/comment/7-eleven-board-has-questions-to-answer-20160517-gox2w6>

Election 2016: the campaign trail begins

On 8th May, Malcolm Turnbull announced that a double dissolution election will be held on 2 July 2016, as had been widely expected. Over the last week, campaigning has begun in earnest. Already, refugee and asylum policy have been at the forefront of the debate.

In particular, questions around the legitimacy and legality of offshore detention regimes have featured prominently. Following the recent announcement by the PNG Supreme Court decision, the future of the Pacific ‘solution’ hangs in the balance. The need for an alternative has become more urgent still as the inadequate medical facilities on Nauru have led to a mounting death toll. More and more Australians are calling for a fairer, more humane approach to processing people who come to Australia seeking asylum.

Despite professed bipartisan support for the issue, several MPs have broken ranks and acted on their conscience, speaking out against current detention policy. Over the weeks that follow, the refugee Council of Australia (RCOA) will be providing background information to assist voters, including a guide to the refugee policies of the three main parties. We will also be asking the public to support for a fairer alternative.

Source: Refugee Council of Australia Bulletin 18 May 2016

Streamlined Pathway to Permanent Residence for New Zealand Citizens

From 1 July 2017, New Zealand citizens will be eligible for this pathway, currently announced requirements are that, if they were RESIDENT IN Australia on 19 February 2016 and, at the time of application, have lived

here for at least five years and earned income of at least Temporary Skilled Migration Income Threshold (currently \$53,000 p.a) over the qualifying period.

Source: MIA 2016 Federal Budget Bulletin 3 May 2016

Working with New Zealand to end child detention

RCOA chief executive Paul Power joined the Asia Pacific Refugee Rights Network (APRRN) and the International Detention Coalition (IDC) last week in pushing the case for New Zealand to lobby for an end to the detention of children.

In a five-day visit to Auckland and Wellington, Paul, Julia Mayerhofer of APRRN and Dr Robyn Sampson of IDC met MPs, government officials and NGO leaders to promote the need for New Zealand to play a stronger role in regional discussions about immigration detention and the protection of refugees.

The 16 MPs who met at the delegation were drawn from National, labour, Green and NZ First parties and included the Leader and Deputy of the Opposition Labour Party. The delegation also met officials of the Department of Prime Minister and Cabinet, Ministry of Foreign Affairs, Immigration NZ, Ombudsman's Office and NZ Human Rights Commission.

Source: Refugee Council of Australia Bulletin 18 May 2016

A.P.B. Education

Specialist IELTS Test Training and Coaching

Passing an IELTS test is now an essential requirement for all applicant for General Skilled Migration, student visas, and for many employer sponsored applicants. Adrian Bitel provides individual lessons to assist applicants achieve proficiency to the required levels in:

- Reading
- Speaking
- Writing
- Listening

He gives comprehensive ONE to ONE Personalised Coaching in any or all of the above areas at very competitive rates.

Contact: Adrian Bitel on (02) 9286 8700 or Mobile: 0412 656 026

Parish Patience Immigration

Lawyers
Level 1, 338 Pitt Street
Sydney NSW 2000
Australia

Tel: +61 2 9286 8700

Fax: +61 2 9283 3323

Email: ppmail@ppilaw.com.au
www.ppilaw.com.au

