



Migration News

ISSUE 53

JULY-AUGUST 2009

This newsletter comes at a time where there have been a number of changes in migration legislation. Some of the changes reflect a further tightening of Australian immigration policy at a time of global recession. It is interesting that at Hitchcock and Associates demand for our firm's services has not changed at all in the past few months. This leads us to a view that people make migration decisions in tough times as well as good times. Our task in servicing our clients is to assist them through a more complex and demanding legislative framework for visa applications, and fortunately we have the depth and breadth of knowledge, developed over many years to do just that.

DIAC APPLICATION FEES

Each year DIAC adjusts the fees it charges to lodge and process visa and citizenship applications.

For many years now these fees have been adjusted to take account of movements in the rate of inflation (as per the Consumer Price Index) in Australia.

Readers would know that Australia has had a sustained period of low inflation over the past decade and this remains the case today.

It is surprising to see therefore the schedule of new application fees which take effect from 1 July 2009.

Most of the mainstream application fees have increased by 20%. Some less common fees have increased by 10%.



A permanent resident visa application based on the Points Test for skilled migrant applicants has increased to AUD\$2525.

Having qualified for conferral of Australian citizenship it will cost \$AUD260 to lodge an application for same.

Australia's rate of inflation is currently just below 4%.

Perhaps these major fee increases are occurring because DIAC wishes to increase the rate at which it recovers its operating costs from visa applicants.

Perhaps ordinary visa applicants are being asked to pay more to cover the costs of immigration detention because there are more asylum seekers arriving by boat.

We cannot see any commentary as to the reason for such a large increase. If it were a case of increased cost recovery, that is hard to reconcile with an announcement in the last budget that DIAC is required to cut its total staffing level by 10% meaning less people to process applications.

Since application fees for visas began many years ago, there has not been a single year we can recall when application fees were reduced.

There is a possibility that one day the cost of applying will be so great that people with skills we need will be deterred from applying. Perhaps that is the case to some extent right now.

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CONSULTING TRIPS

Don't delay—make your decision today

Despite the changes in legislation and some tightening of the Australian immigration policy, the best time to make a decision to migrate to Australia is **now**.

Delays in making informed choices can be unintentionally costly in terms of reducing the number of visa pathways available to you (and your family).

Australia has not “shut up shop”

Trust the experts to give you the **right advice**, not rumours and hearsay. Australia has not closed its doors to migrants, merely redefined some of its policies and focused its intake.

In tougher times it may take a little longer to secure your visa, but we strongly recommend that you make the right informed decisions today, without delay.

SOUTH AFRICA

Our Managing Director, **Cecil Bass**, will be consulting in South Africa from **31 August to 8 September 2009**.

To arrange a consultation with Cecil, please contact our South African Marketing Team as follows:

Durban (Sandra Krysztofciak)

sandra@hitchcock.co.za

+27 31 312 5038

Johannesburg and Pretoria (Valerie Small)

val@hitchcock.co.za

+27 11 787 8349

Cape Town (Gail Durr)

gail@hitchcock.co.za

+27 21 785 5685

LONDON

Our Managing Director, **Cecil Bass**, will be consulting in London from **9 September to 11 September 2009**.

To arrange a consultation with Cecil, please contact our UK / Europe Marketing Manager, **Anna Geor**.

ageor@hitchcock-immigration.co.uk

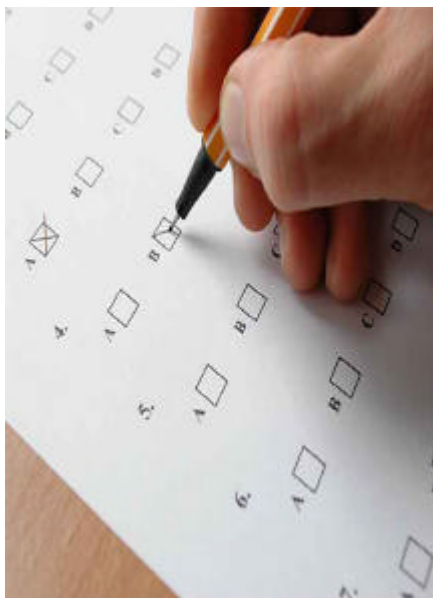
+ 44 782 553 8606



SAME SEX PARTNERS

Earlier this year the DIAC announced the removal of the last vestiges of discrimination in the way same sex partners are treated in visa and citizenship applications.

Steady progress had been made over the years in addressing this issue and now there is a level playing field in all visa categories and in citizenship legislation as well, as from 1 July 2009



Interestingly, the term “interdependent” primarily used in earlier legislation to describe same sex relationships has been removed. Same sex partners in the changed legislation from 1 July are simply referred to as *de-facto* partners, and there is no distinction as to whether partners are of the same or opposite sex. There has also been an amendment in the way children of same sex partners are treated in migration legislation. For example, the way children born of a surrogate parent or in-vitro are now formally included in the definition of step children, irrespective of whether they

are the dependant children of same sex or opposite sex partners.

These positive and welcome changes operate across the board from 1 July.

This does not mean any diminution in the degree to which DIAC will carefully assess the extent to which claimed relationships are genuine and ongoing. There is no change to the requirements concerning the duration of relationship and the extent to which partner (*de-facto* or spouse), relationships are evidenced and publicly recognised.

CITIZENSHIP TEST

We have seen some interesting statistics on the birth place and pass/fail rates of people sitting the test before applying for conferral of Australian citizenship.

The overall pass rate is **97%**, so not many people fail out of the 107,000 who sat for the test from when it began up to April this year.

However on a country-by-country basis there is significant variety.

Some examples for people from countries where English is the main language:

New Zealand: 1 out of every 82 fail

United Kingdom: 1 out of every 217 fail

South Africa: 1 out of every 364 fail

Why is this so?

DIAC LEGISLATIVE CHANGES 1 JULY

Apart from the increased fees and partner migration changes mentioned earlier, there are a number of other immigration legislative changes which come into effect on 1 July. We have itemised the changes which are likely to be of interest to our readership as follows:

1) In **parent migration** it has been possible for only one of a parent couple to apply and receive their migrant visa and hence only one parent pays the hefty fees and bonds totaling more than \$AUD 46,000. Later, when they have had their migrant visa for a period (usually 2 years), they then sponsor their spouse under the partner migration provisions (application fee \$2500 only). That loophole is removed from 1 July 2009.

2) For **parent and remaining relative** categories it is now possible to change the sponsor in Australia if needed without having to start all over again with a new application and associated costs. For example, there are two readily available sponsors, and the original sponsor cannot continue to meet

sponsorship requirements. The other sponsor can take over, provided they can meet requirements.

3) There is an important change in the **Balance of Family Test** for parent migration. The Test is now only required to be met at the time of application and no longer has to continue to be met at the time of decision.

4) **Ministerial Intervention:** Where requests are made to the Minister for his intervention to consider granting a visa in the public interest (post-Migration Review Tribunal decision), there has been an easing of the permission to work requirements on 1 July 2009 while the Minister considers the request. This is only the case for people who were lawfully in Australia up until the time of the request, and who had permission to work in their initial visas.

5) There has been an across-the-board increase in the standard of **English language competency** for people applying

for skilled migration and being assessed under the points test arrangements. There has also been a shift upwards to proficient English (IELTS) Level 7 for people in occupations for priority processing (State Sponsored or on the Critical Skills or Occupations in Demand list).

6) There are significant increases in the **Minimum Salary Levels (MSL)** for employer sponsored permanent and temporary residents. For example the minimum salary for a 457 (4-year) temporary visa holder is now **\$45,220** and more than **\$81,000** where the employer claims an exemption from English language criterion. The minimum salary level for employer sponsored permanent residents has moved upwards in similar terms.

Please check with one of our consultants if you require more detailed information about any of the above legislative changes which came into effect in 1 July 2009.

MIGRATION ISSUES FOR HR MANAGERS:

Visas and Industrial Labour Laws

With Australian immigration and workplace relations policies changing so much in recent weeks, it is important that our corporate clients and contacts are kept abreast of these developments and we recommend that they attend this important and timely seminar.

The system for overseas skilled recruitment is continuing despite the global slowdown, and as such the seminar will cover **changes**

in migration legislation which critically affect employer sponsored migration with effect from July and September 2009 and a detailed examination of the new **Fair Work Bill**.

Guest speakers will discuss **changes to Industrial Labour Laws** and relocation, and our team will advise on migration legislation changes.

Attendance is free but seating is limited.

Please contact Matthew Lee at mlee@hitchcock.com.au or call 61 2 8440 8330 to secure your place at the forthcoming seminar.

The deadline for an RSVP to this function is Monday, August 3, 2009.

BILL CUMMINS RETIRES

The migration advice profession in Australia is young historically. Most Registered Migration Agents are sole practitioners and there is a significant entry and exit from the profession in the short-to-medium term.

It is not often at all that a practitioner actually retires, and that is the case with our Senior Consultant, **Bill Cummins**, who retired on 1 July from Hitchcock and Associates at the age of 69 after 15 years service with our firm.

Prior to his time with us, Bill, who qualified as a chemical engineer, had substantial career periods with the NSW Government and

Westpac Bank.

After some initial training, Bill became an important member of our consulting team. In later years he has specialised in Resident Return Visa casework and it is for this area that he is best known to a great many clients.

In a firm like Hitchcock and Associates, we all have to work closely together, often sharing client and casework responsibilities. Bill has been a very important part of this teamwork approach. He has also played an important role in marketing the services of Hitchcock and Associates to new corporate and business

clients and we have arranged with him that he continue on in this marketing role for some years yet.

Bill has been, and always will remain a close and good friend of ours in his retired years. He will occupy himself with his sailing, tennis, golf, cooking, entertaining, and every now and then he will find time to undertake some marketing assignments for the firm. Now that's a good life.

We wish you well Bill, and thank you for being an integral part of Hitchcocks for so many years.

IMPORTANT NEWS FOR SPONSORING EMPLOYERS

We have many corporate and business clients who sponsor skilled staff from overseas under the 457 Temporary Resident Program. As mentioned in previous newsletters, the criteria and obligations for both sponsors and visa applicants in this program have undergone a tightening as labour market conditions have declined significantly, with the onset of global recession.

Further changes in **mid-September 2009** will see the emphasis more on taking steps to remove exploitation of employees and to ensure sponsoring employers can show evidence that they are good corporate citizens. **All employers who sponsor staff from overseas must be made aware of these changes.** DIAC has written directly to all existing employer sponsors, and our firm is in the process of contacting our existing clients. These changes are just as important for employers who have not yet sponsored and may do so in the future.

The changes are not aimed at employers who use the scheme in a legitimate and non-exploitative manner. They are aimed at those who have been using it as a form of importing and exploiting cheap labour and to avoid the social responsibility they have to employ and train Australians. **Any employer who is doing the right thing will not be greatly affected by these changes.** It is not possible in a newsletter of this nature to go into major detail about the September 09 changes, and we expect that our employer clients will spend time talking with us to canvass the impact of these changes as they approach.

In summary, the changes include:

1) Making it legally possible for DIAC to routinely access **information about sponsoring employers** from other agencies, such as the Australian Taxation Office;

2) Making more specific the **obligations of employers** who access the Program;

3) Expanding the powers that DIAC currently exercise in **monitoring and investigating employers** who participate in the program;

4) Introduction of **civil penalties** (fines and possible imprisonment) for those employers who are found to be in serious breach of sponsorship obligations;

5) Implementation of a **"market-based" Minimum Salary Level** from mid-September to effectively remove the prospect that employers will be able to recruit from overseas more cheaply than if they were to hire available local staff;

6) Introduction of a **higher English language (IELTS) standard** for trades occupations (and chefs) to align more closely with the standard required for permanent skilled visa applicants;

7) Also for trades occupations and chefs there will be the introduction (supposedly from 1 July 2009) of **skilled migration standard formal skills assessments for 457 visa applicants from "high risk" countries.** We think this means those countries where there has been evidence of fraudulent documentation and dishonest claims as to visa applicants' claimed level and evidence of skills;

8) Introduction of a mandatory requirement that sponsoring employers have a "strong" record of, or (in the case of new employers) a "demonstrated commitment" to **employing local staff** and that they **do not discriminate against local applicants** for vacancies;

9) The introduction of **clear, local training benchmarks** to clarify and specify levels of commitment to training of Australian employees;

10) **Extending the training and local employment** for major employers entering into Labour Agreements (large-scale 457 arrangements) to a wider range of occupations.

It is interesting to note recent media releases by DIAC commenting that in December last year 457 visa applications were being lodged at the rate of **700 per week**, and that by March 2009 that rate had slowed to **430 per week.**

It would be reasonable to suppose that a major factor in the downturn was the developing global recession and employers withdrawing in significant terms from the 457 program.

What might happen if the further summarised changes cause most legitimate and well-intentioned employers to withdraw completely, and the rate of weekly applications drops to near zero?

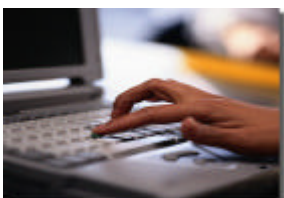
Has the major and rapid change in the 457 Program gone too far?

Those in DIAC who monitor these matters need to watch very carefully indeed that they have not gone too far in the interests of maintaining the integrity of this program.

A too heavy-handed approach may only badly damage those legitimate employers who need skills from overseas right now and especially as we begin to see signs of recovery and growth in demand for skilled staff.

Fortunately, we have a dedicated team at Hitchcock and Associates who remain committed to guiding and assisting our corporate clients through this ever-changing area of immigration legislation and procedure.

Those clients have remained with our firm over many years and have accessed an excellent standard of service and professional guidance across that time.



MIGRATION QUEUES

As we mentioned in recent newsletters, queues for processing of visa applications are going to be longer in the current migration program year.

One reason is DIAC having to undertake a reduction in its overall staffing. That will have a broad impact across all visa classes. In addition some types of visas are receiving more priority than others. For example employer sponsored permanent residence receives high priority followed by skilled applicants in the points test with occupations in critical shortage.

Following these groups are applicants with occupations in general shortage (MODL occupations), and then applicants in non MODL occupations. Having said that, queues are there and we have to accept them.

Fortunately Australia's queues are significantly shorter than most other migrant receiving countries such as Canada, USA, and the UK. Our view is that a person with an approvable application needs to be in the queue for their case to be finalised at some time in the future. For example, a case that took 1 year to process last year, is now likely to take 18 months this year.



A DISCUSSION ON DEPENDENCY

Whether a person is dependent or otherwise is often a critical factor in families making decisions to migrate to Australia.

We regularly encounter cases where there may be a debate about whether a person (normally a child but not always so) to be included in an application is "dependent" on the main applicant. This often arises where there is an older child (over 18 and below 25), perhaps at University and working part-time to earn some "pocket" money to supplement any monies they receive from their parents, who are also paying their maintenance (food clothing and accommodation). On the other hand it could be a single parent (not married) living in the household and dependent on the person applying for migration.

Australian migration legislation concerning the definition of a "dependent" appears to be quite clear. A person must be wholly or "substantially" reliant on another person for financial support for their basic needs (that is food shelter and clothing). That is the only basis on which DIAC can assess whether one person is dependent on another. There is a more flexible definition of dependency concerning applications for refugee of humanitarian visas, however we shall concern ourselves with the general definition in this discussion.

A person being wholly or totally financially dependant on another person is a straightforward concept. However, when a person is not wholly but "substantially" financially dependent the issues become less so. DIAC relies on the dictionary definition of the word "substantial" as "*in great degree in respect of matters of real importance and value*". They do not cite the dictionary from which they obtained this meaning. Which dictionary meanings are acceptable?

We have discovered a variety of meanings. The UK version of the Encarta Dictionary has the meaning of "substantially" as: "*considerable in amount, extent, value, or importance*"; the Australian Macquarie Dictionary as: "*of ample or considerable amount, quantity or size*"; and the Oxford Dictionary as: "*considerably, for the most part, mainly*". These are from mainstream dictionaries. We don't know where DIAC obtained the meaning it cites. Unless directed otherwise, all meanings are acceptable. As can be seen, there is quite some variety in the wording of each definition.

Using the example of the university student earning the pocket money, it can be submitted that the student is mainly (substantially) dependent on their parents, so long as they could not survive financially on the pocket money and that the amount paid out in total each year by the parents is greater than the pocket money earned. This would be the case if the amount of pocket money earned is quite significant but not as significant as the funds provided by the parents. Remember also that dependency only relates to food clothing and shelter. Funds provide for university fees are not included.

Similarly, if there is a dependant parent being included in an adult child's migration application, a small pension which is "mainly" or "considerably" outweighed by the adult child's financial support of that parent would appear acceptable.

So, when it comes to consideration as to whether to include a dependant, every case is different. In marginal cases, care needs to be taken in how to present and provide documentary evidence as to dependency.