**Executive summary**

Negotiations on foreign worker issues in the closing session of Australia’s Parliament for 2016 demonstrate the significant influence of the minor parties and cross bench Senators.

The so called “backpacker tax” debate resulted in the government compromising on a 15% tax rate. The introduction of this new tax rate may also require employers of affected employees to take additional steps to withhold at this rate by mandating an additional registration.

Debate on the subclass 457 visa program has also been reignited by the Federal Opposition Labor Party Leader who has tabled the *Migration Amendment (Putting Local Workers First) Bill 2016*, proposing:

- stronger labour market testing requirements
- tighter licensing requirements
- tougher rules on Work Agreements including a new Australian Jobs Test

The Minister for Immigration and Border Protection has also announced that the list of occupations for subclass 457 visas is under review and may be reduced.

In the meantime:

- the government has not responded to the 2016 review of the Temporary Skilled Migration Income Threshold (TSMIT)
- a number of key recommendations of other reviews into the subclass 457 visa program that were accepted by government remain to be implemented
- restrictions have been placed on family members who can now be included in a visa application

**Migration Amendment (Putting Local Workers First) Bill 2016**

The measures in this Bill are consistent with the Labor Party policy released earlier this year and reflects particular concern with Work Agreements, including Labour Agreements and employers with large numbers of subclass 457 visa holder employees.

Key specific measures are:

- **Labour market testing**
  - advertisements for a minimum of four weeks and no more than four months before the nomination
  - advertising must not target overseas workers
  - advertising must specify appropriate skills and experience and not be designed to exclude locals

- **Occupational licensing**
  - individuals must hold any mandatory licensing or undertake a formal skills assessment to show they meet licensing requirements before a subclass 457 visa is granted
  - reduce from 90 days to 60 days the time within which a mandatory license must be obtained within following arrival in Australia or visa grant

- **Percentage of subclass 457 visa holders**
  Under the provisions of the bill, if the number of subclass 457 visa holders employed by sponsors in ‘prescribed sectors of the economy’ exceeds a certain percentage, the sponsorship will automatically cease. Employers must then apply for a Labour Agreement to sponsor overseas workers. The percentage and the sectors of the economy to be specified by regulations.
Labour Agreements and Work Agreements
The bill proposes significant amendments:
 policy guidelines for agreement approval to be published
 public register of agreements
 Australian Jobs Test: employers to demonstrate how the agreement supports or creates Australian jobs and contributes to local skills development
 statement of labour market need demonstrating need for temporary skilled migration
 training plan to improve skills of local workers
 how foreign workers will transfer skills to Australian workers
 overseas worker support plan including information about workplace entitlements and community services

EY does not consider that the Bill will be passed or lead to any immediate change in the subclass 457 visa program. However, it is reigniting a fiery debate on the topic of overseas workers. Some further legislative and policy changes would seem inevitable given the composition of the Parliament and the protectionist views of some of the cross bench Senators.

Family members
Children under 22 years of age and other dependent family members such as parents may no longer be eligible for a visa even if they are dependent on the primary applicant with some exceptions, including:

 children of any age who are physically or mentally incapacitated for work
 family members who already hold a subclass 457 visa who may be included in a family’s application for an employer sponsored permanent visa or a new subclass 457 visa. If applying for a subclass 457 visa, children may be granted a subclass 457 visa valid until their 23rd birthday only.

For some families in Australia on subclass 457 visas it may be preferable to apply for an employer sponsored permanent visa rather than a new subclass 457 visa.

Next steps
Employers of backpackers on working holiday visas should continue to monitor these updates to understand any additional registration requirements to be able to apply tax at the new rate to the relevant PAYG tax withholding.

Sponsors should anticipate:
 an increase in the TSMIT
 ongoing debate on the subclass 457 visa program which may result in tougher rules

EY continues to actively engage with immigration portfolio reviews. To discuss how we can support your business and ensure your views are clearly