



**Australian Government**  
**Department of Employment**

Ms Julia Agostino  
Inquiry Secretary  
Senate Standing Committee on Education and Employment References Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Agostino

**Inquiry into the Impact of Australia's temporary work visa program on the Australian labour market and on temporary work visa holders**

On 24 March 2015, the Senate referred the Inquiry into the Impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders to the Education and Employment References Committee for inquiry and report.

Attached is a joint submission to this Senate Inquiry from the Department of Employment, the Department of Immigration and Border Protection (DIBP); the Department of Education and Training (DET), the Department of Industry and Science, the Department of Social Services (DSS), the Fair Work Ombudsman (FWO) and Safe Work Australia.

The departments and agencies are available to discuss this submission, and other issues within their portfolio responsibilities which have been identified in submissions to and public hearings for this Inquiry, with the Committee.

The Department of Employment can provide the Committee Secretariat with contact details for each department and agency which contributed to the joint submission. Please contact [REDACTED], Workforce Strategies Branch on [REDACTED] or [REDACTED].

Yours sincerely

[REDACTED]  
15 July 2015



## AUSTRALIAN GOVERNMENT DEPARTMENT SUBMISSION

### EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE

#### Senate Inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders

## 1. Introduction

This joint submission to the Inquiry is from the Department of Employment, the Department of Immigration and Border Protection (DIBP); the Department of Education and Training (DET), the Department of Industry and Science, the Department of Social Services (DSS), the Fair Work Ombudsman (FWO) and Safe Work Australia. While the focus of this submission is on the Temporary Work (Skilled) (Subclass 457) programme, information on other temporary visas which allow either partial or full work rights is provided in attachments (including **Attachment C** and **Attachment F**).

In relation to the Terms of Reference for this Inquiry (see **Attachment A**), the Department of Employment provides labour market and workplace relations legal and policy advice; DIBP is responsible for the temporary migration policy and visa programmes; DET manages skills assessments for trade and technical occupations and is responsible for international student policy; the Department of Industry and Science is interested in temporary migration to support economic development and growth of Australian industries; DSS has responsibility for Australia's social security policy; the FWO has key responsibilities under the *Fair Work Act 2009* and a limited monitoring role under the *Migration Act 1958*; and Safe Work Australia has responsibility for leading national work health and safety policies and standards.

## 2. Overview of the Temporary Work (Skilled) (Subclass 457) Programme

The subclass 457 programme enables employers to address short to medium term workforce needs by sponsoring skilled overseas workers on a temporary basis to fill positions where suitably skilled Australian citizens or permanent residents cannot be found. The programme, which was introduced in 1996, is employer demand-driven and uncapped. The flexibility of the programme is beneficial to the Australian economy, contributing to productivity by responding to skills gaps in the Australian labour market.<sup>1</sup>

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<sup>1</sup> A genuineness criterion applies to subclass 457 nominations whereby a sponsor is required to certify that the tasks of the position correspond to an occupation eligible under the subclass 457 programme. A sponsor could be asked to provide evidence supporting the certification.

### 3. Terms of Reference A

*The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, with particular reference to:*

- a. *the wages, conditions, safety and entitlements of Australian workers and temporary work visa holders, including:*
  - i. *whether the programs 'carve out' groups of employees from Australian labour and safety laws and, if so, to what extent this threatens the integrity of such laws.*

The subclass 457 programme settings support the integrity of Australian workplace relations and work health and safety laws by ensuring that visa holders are subject to the same protections as Australian workers. Australian workplace laws (including awards, agreements, workers' compensation and work health and safety) apply to subclass 457 and other temporary visa holders in the same manner that they do to Australian employees.

A key requirement of employers seeking to sponsor subclass 457 visa holders is that they must guarantee that the nominated terms and conditions of employment, including pay and hours of work, are no less favourable than the terms and conditions that are, or would be provided to an Australian performing equivalent work in the same location. The pay provided according to these terms and conditions is then considered in the migration legislation to be the 'market salary rate' for that occupation in that location.

DIBP must be satisfied that an overseas worker will be paid at least the market salary rate before approving the sponsor's nomination. This requirement serves to ensure that Australian workers are protected from any adverse impact on wages and to protect skilled overseas workers from exploitation by ensuring they are not paid under the market salary rate.

The market salary rate requirement is enforced by a sponsor obligation which requires sponsors to provide these equivalent terms and conditions for the period of the subclass 457 visa, or until the visa holder ceases employment with the sponsor. DIBP and the FWO monitor sponsors to ensure that they are meeting this obligation. If a visa holder has not been paid at least the market salary rate, including adjustments in line with the salary progression of an equivalent worker, the sponsor will be in breach of their obligations. Further explanation about the operation of the sponsor obligation framework is covered under **Section 5—Terms of Reference C**.

In addition to the market salary rate, the Temporary Skilled Migration Income Threshold (TSMIT) requirement ensures that subclass 457 visa holders earn sufficient money to be self-reliant in Australia. The TSMIT, currently set at \$53,900 per annum, provides an income floor for subclass 457 visa holders, in recognition that visa holders are temporary residents and are not usually eligible for the same income support benefits as Australian citizens and permanent residents.

The TSMIT represents an entry level salary point for the subclass 457 programme. The underlying premise of the TSMIT is that visa holders should be able to reside in Australia without government support and not find themselves in difficult financial circumstances that could make them vulnerable to exploitation or encourage them to breach their visa conditions.

An exemption to the market salary rate and TSMIT requirements exists for high income earners whose guaranteed annual earnings are equal to, or greater than, the exemption level, which is currently set at AUD \$180,000 per annum. The purpose of this provision is to reduce the administrative burden for the sponsor and DIBP in situations where the guaranteed earnings of

the subclass 457 visa holder are high and the likely risk of exploitation, non-compliance and integrity concerns are low.

To ensure visa holders remain employed in the occupation for which their visa was granted and continue to receive the applicable employment terms and conditions, visa holders are subject to visa condition 8107. This condition requires the visa holder to work in the occupation for which they were nominated. If a visa holder changes occupation before DIBP approves a new nomination for them, their visa may be cancelled. This visa condition is supported by an obligation on the sponsor to ensure the subclass 457 visa holder only works in their nominated occupation otherwise the sponsor will be breaching their sponsor obligations and may be subject to sanction actions by DIBP.

To help ensure subclass 457 visa holders comply with applicable Australian workplace relations and work health and safety laws, subclass 457 visa holders must also hold any relevant registration, licensing, certification or professional membership necessary to perform the duties of their nominated occupation in that specific location in Australia. This requirement ensures that subclass 457 visa holders are subject to the same standards as Australian employees and supports the integrity of Australian workplace and safety laws. To comply with visa condition 8107, this requirement must be met before a subclass 457 visa holder can perform work in that occupation.

The work health and safety laws in the Commonwealth and all Australian states and territories apply to all employers and all employees are afforded the same protection under these laws, irrespective of their status as Australian citizens, permanent residents or temporary visa holders. Compliance is through Commonwealth, state and territory work health and safety regulators.

Workers' compensation laws in the Commonwealth and all Australian states and territories apply equally to all employers and all employees have the right to access compensation under the laws, irrespective of their status as Australian citizens, permanent residents or temporary work visa holders and irrespective of whether they are employed on a casual basis or under labour hire arrangements.

**ii. *the employment opportunities for Australians, including:***

- A. *the effectiveness of the labour market testing provisions (the provisions) of the Migration Act 1958 in protecting employment opportunities for Australian citizens and permanent residents, and***
- B. *whether the provisions need to be strengthened to improve the protection of employment opportunities for Australian citizens and permanent residents and, if so, how this could be achieved.***

The employment opportunities for Australian citizens and permanent residents are primarily protected through the legislative requirements discussed in **Terms of Reference a(i)** above which ensure there is no financial advantage to an employer through sponsoring subclass 457 visa holders rather than recruiting and employing Australian workers.

The intent of the subclass 457 programme has always been that employers should look to the local labour market prior to sourcing overseas workers to fill vacancies. To support this intent, the labour market testing requirement was re-introduced for the programme on 23 November 2013.

Labour market testing currently applies to skill level 3 occupations (Technicians and Trades Workers) on the Australian and New Zealand Standard Classification of Occupations (ANZSCO)

which are not otherwise 'exempt' from labour market testing on the basis of an international trade obligation. It also applies to occupations in the fields of nursing and engineering.

To meet the labour market testing requirement, standard business sponsors must provide evidence to DIBP that they have tested the local labour market in the 12 months prior to nominating an overseas worker for a subclass 457 visa. This may include providing evidence of their attempts to recruit Australian workers, such as advertising details and information on how they determined, on the basis of these attempts, that there were no suitably qualified and experienced Australian citizens, permanent residents or eligible temporary visa holders available to fill the position. Where there are integrity concerns with the provided information, further inquiries may be undertaken to validate the labour market testing process.

Where labour market testing applies, sponsors are required to provide DIBP with information on retrenchments and redundancies in their business or an associated entity that occurred within the four months prior to lodging a subclass 457 nomination. In this case, sponsors must provide information on labour market testing since the redundancies have occurred.

The labour market testing requirement is aimed at assisting the protection of employment opportunities for Australian citizens and permanent residents by providing them with the chance to apply for vacancies first. Its effectiveness has been debated by stakeholders.<sup>2</sup>

Other policies in the subclass 457 programme that discourage the employment of overseas workers in preference to Australians include the requirement to pay overseas workers at least the market salary rate, together with other costs such as paying sponsorship and nomination fees, paying return airfares for the subclass 457 visa holder and any dependents upon request and maintaining a financial commitment to training levels. These settings, combined with the recruitment costs for overseas workers, send a price signal to sponsors that if a suitably qualified Australian worker is readily available and acceptable, they will be a preferred option.

The 23 November 2013 introduction of labour market testing has not resulted in any significant change to the average percentage of employed persons accounted for by primary subclass 457 visa holders.<sup>3</sup>

As noted by the 2014 Subclass 457 Integrity Review, the Organisation for Economic Co-operation and Development (OECD) has observed that historically, employer-conducted labour market testing has not been considered "fully reliable" and notes its application in certain OECD countries has rarely resulted in work permit requests being refused.<sup>4</sup> The OECD has also noted that occupation shortage lists, which can be based at least in part on objective data, have more advantages than employment tests which can be subject to manipulation.<sup>5</sup> The 457 Integrity Review observed that it would be "more reassuring for the public if there existed a transparent,

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<sup>2</sup> Labour market testing was removed for the Subclass 457 programme on 1 July 2011 following an External Reference Group Review report *In Australia's Interests: A Review of Temporary Residence Program* which recommended it be replaced with a skills threshold. Labour market testing reintroduced for the programme on 23 November 2013 as a result of the *Migration Amendment (Temporary Sponsored Visas) Act 2013*. In 2014, the Independent Review into Integrity in the Subclass 457 Programme recommended its removal.

<sup>3</sup> Data shows that on average across all industries and occupations, primary subclass 457 visa holders accounted for 0.88 per cent of employed persons in February/March 2013 (which preceded the 23 November 2013 reintroduction of labour market testing), 0.97 per cent of employed persons in February/March 2014 and 0.93 per cent of employed persons in February/March 2015.

<sup>4</sup> *Ibid.*, p.134-6.

<sup>5</sup> *Ibid.*

responsive, and evidence-based approach to determining skilled occupations eligible for the 457 programme.”<sup>6</sup> Government has supported the recommendation of the 2014 Subclass 457 Integrity Review to reinstate the Ministerial Advisory Council on Skilled Migration (MACSM) to report to government on skilled migration issues and the composition of the Consolidated Sponsored Occupation List (CSOL) used by the subclass 457 programme since July 2012. (It should be noted that the COL is not a skill shortage list and rather is a list of occupations available for sponsorship between ANZSCO skill levels 1 and 3.) The MACSM will be supported by a specialised labour market analysis resource which will provide technical advice on the current state of the labour market.

### Contribution of the Subclass 457 Programme to the Australian Labour Market

Analysis of Australian Bureau of Statistics' Labour Force Survey data and DIBP visa data shows that on average across all industries and occupations, primary subclass 457 visa holders represent less than 1 per cent of employed persons. There are some occupations and industries where the proportion is higher, but this can usually be explained by economic and labour market factors. See **Attachment B** for data on visa grants, **Attachment E** for analysis of the contribution of primary subclass 457 visa holders to the Australian labour market at the industry and occupation level and **Attachment G** for case studies.

In most states and territories, primary subclass 457 visa holders comprise a low proportion of the employed workforce in skilled (managerial, professional, trade and technical) occupations.

Department of Employment analysis supports an association between subclass 457 visas and skill shortages. The use of subclass 457 visas has fallen in recent years in occupations such as nursing and engineers where the Department's research and analysis show skill shortages are no longer evident. For example:

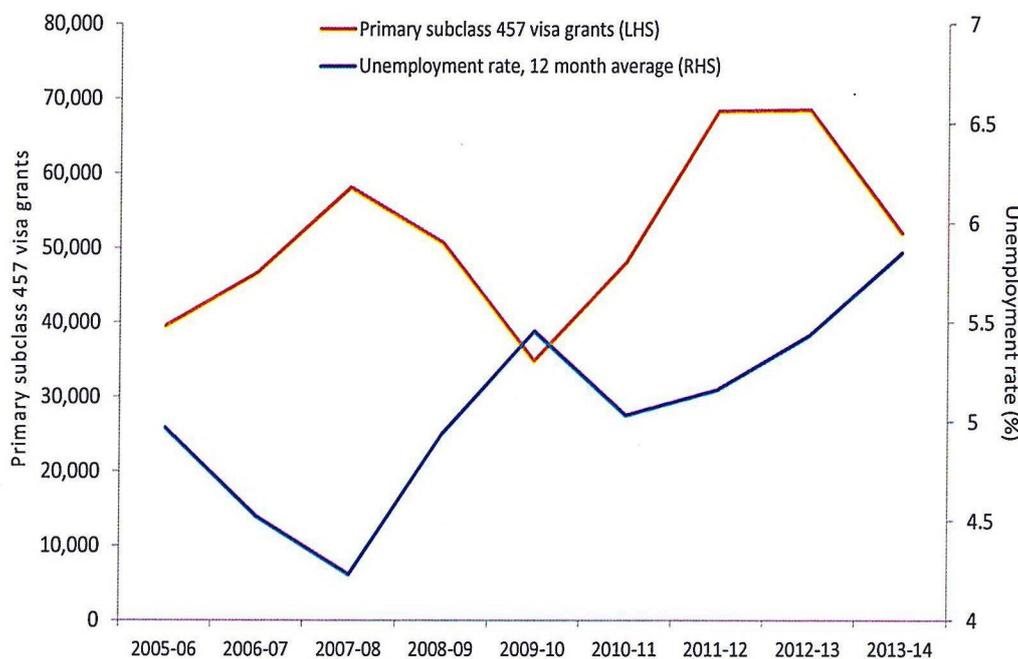
- The number of primary subclass 457 visas granted for Midwifery and Nursing Professionals (ANZSCO minor group) and Enrolled Nurse declined from 3,239 in 2011-12 to 2,999 in 2012-13 to 1,597 in 2013-14 (and 832 for the 9 months to 31 March 2015). Department of Employment research shows that Registered Nurse has not been in national shortage since 2011.
- The number of primary subclass 457 visas granted in the Engineering Professionals (ANZSCO minor group) and Building and Engineering Technicians (minor group, excluding Architecture, Building and Surveying Technicians) declined from 7,795 in 2011-12 to 5,943 in 2012-13 to 3,586 in 2013-14 (and 2,349 for the 9 months to 31 March 2015). Most engineering professions ceased to be classified as in shortage on the Department of Employment's national Skill Shortage List in 2013.

The following graph<sup>7</sup> shows that visa grants are sensitive to the rise and fall in unemployment rates. For example, the number of primary subclass 457 visas granted tends to decline during times when the unemployment rate is increasing.

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<sup>6</sup> 'Robust New Foundations: A Streamlined, Transparent and Response System for the 457 Programme' [www.immi.gov.au/pub-res/Documents/reviews/streamlined-responsive-457-programme.pdf](http://www.immi.gov.au/pub-res/Documents/reviews/streamlined-responsive-457-programme.pdf), page 8.

<sup>7</sup> Department of Immigration and Border Protection, Subclass 457 Temporary Work (Skilled) visa statistics, primary visa grants and ABS Labour Force, Australia (Cat. no. 6202.0), 12 month average of original data.



**iii. the adequacy of publicly available information about the operation of the provisions**

Several sources of information on the operation of the labour market testing provisions are publicly available including:

- DIBP website: [www.immi.gov.au/Visas/Pages/457.aspx](http://www.immi.gov.au/Visas/Pages/457.aspx) and *Booklet 9 – Temporary Work (Skilled)(subclass 457) visa*: [www.immi.gov.au/Visas/Pages/457.aspx](http://www.immi.gov.au/Visas/Pages/457.aspx).
- Procedures Advice Manual 3—Schedule 2 Visa 457—Temporary Work (Skilled)—Nominations and visa applications.

These sources provide information on the:

- Process for conducting labour market testing,
- Period in which labour market testing must be undertaken,
- Evidence required,
- Occupations which require labour market testing, and
- Exemptions from labour market testing

**iv. the nature of current exemptions from the provisions and what effect these exemptions have on the reach and coverage of labour market testing obligations and laws regarding wages, conditions and entitlements of Australian workers and temporary work visa holders.**

Subclass 457 visa holders sponsored by Australian businesses must be engaged in accordance with applicable Australian workplace law.

Exemptions to the labour market testing requirement apply where:

- Its application would be inconsistent with Australia's international trade obligations under the World Trade Organisation General Agreement on Trade in Services, and under Free Trade Agreements,

- There is a major disaster in Australia that has such a significant impact on individuals that a government response is required, and the exemption is necessary or desirable in order to assist disaster relief or recovery, and/or
- The nomination is for an occupation at ANZSCO skill level 1 (Managers) or skill level 2 (Professionals), with the exception of the 'protected' occupational categories of nurses and engineers.

It is important to note that sponsors and visa applicants are required to meet other subclass 457 programme requirements including the market salary rate, TSMIT and sponsorship obligations which ensure subclass 457 visa holders receive equivalent terms and conditions of employment as Australian employees. The market salary must also satisfy applicable Australian workplace law.

#### **4. Terms of Reference B**

***b. the impact of Australia's temporary work visa programs on training and skills development in Australia, including:***

***i. the adequacy of current obligations on 457 visa sponsoring employers to provide training opportunities for Australian citizens and permanent residents.***

The subclass 457 programme aims to support and complement existing domestic education, training and skills development by allowing businesses to sponsor individual overseas workers for up to four years to address workforce needs, while they invest in training and skills development of Australian citizens or permanent residents to meet their longer-term needs. The programme is not intended to address long-term workforce needs.

To support this intent, training benchmark requirements were introduced for the subclass 457 programme in 2009 to ensure that employers are working to reduce their future reliance on the programme through the provision of training and skills development to Australian citizens and permanent residents.

The current training benchmarks require subclass 457 sponsors operating in Australia for 12 months or more to demonstrate:

- Recent expenditure, by the business, to the equivalent of at least 2 per cent of the payroll of the business, in payments allocated to an industry training fund that operates in the same industry as the business; or
- Recent expenditure, by the business, to the equivalent of at least 1 per cent of the payroll of the business, in the provision of training to Australian citizens or permanent residents employed by the business.

Where a business has traded in Australia for less than 12 months, it must have an auditable plan to meet the training benchmarks.

Once approved as a sponsor, a business has an obligation to continue to meet these training requirements for every year (or part thereof) in which it employs a subclass 457 visa holder. Sponsors are also required to keep records of their training expenditure. This obligation is subject to monitoring and enforcement by DIBP and is assessable on an annual basis provided the sponsor has engaged a subclass 457 visa holder during that twelve month period.

The 457 Integrity Review identified opportunities to introduce a less complex training contribution scheme that could provide the desired training outcomes while being more robust and easier to monitor.

**ii. *how these obligations could be strengthened and improved, and***

The Government is consulting on replacing the current training benchmark provisions with a new national training fund, subject to further consultation. The proposed new national training fund will address concerns raised by some stakeholders, including that: expenditure under the current training benchmarks is quite broad; does not need to align to the occupations for which subclass 457 visas are granted; does not differentiate between the size of the business or the number of sponsored subclass 457 visa holders; and does not require training to be undertaken within the national training system.

**iii. *the effect on the skills base of the permanent Australian workforce;***

While the training of Australian citizens and permanent residents is not the principal objective of the subclass 457 programme, the positive effect of the programme on the skills base of the permanent Australian workforce is an important benefit. Specifically, sponsors using the programme must invest in training Australian employees.

While subclass 457 visa holders are not required to train Australians, in a survey commissioned by DIBP in 2014, 73 per cent of employers indicated that subclass 457 visa holders helped the training and development of Australian co-workers. An important outcome of the subclass 457 programme is skills transfer by which specific technical skills are imported to the Australian workforce. As noted by the Migration Council of Australia, this process helps to address Australia's skills deficit and plays an important role in building human capital.<sup>8</sup>

## **5. Terms of Reference C**

- c. *whether temporary work visa holders receive the same wages, conditions, safety and other entitlements as their Australian counterparts or in accordance with the law, including:***
- i. *the extent of any exploitation and mistreatment of temporary work visa holders, such as sham contracting or debt bondage with exorbitant interest rate payments.***

The **Terms of Reference A** section of this submission notes that subclass 457 visa holders must receive the same wages, conditions, safety and other employment entitlements as their Australian counterparts in accordance with applicable Australian workplace law. Further, requirements exist within the subclass 457 programme which specifically aim to prevent exploitation of subclass 457 visa holders.

Sham contracting arrangements involve an employer attempting to disguise an employment relationship as an independent contracting arrangement, usually to avoid responsibility for the employee's entitlements. As such arrangements are prohibited under the *Fair Work Act 2009*, DIBP requires sponsors and visa holders to abide by the following requirements:

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<sup>8</sup> Migration Council of Australia, '457 visa program is more than temporary' [www.migrationcouncil.org.au/news/media-releases/457-visa-program-is-more-than-temporary](http://www.migrationcouncil.org.au/news/media-releases/457-visa-program-is-more-than-temporary).

- Subclass 457 visa holder be engaged only as an employee under a written contract of employment, unless exempt,
- Ensure the subclass 457 visa holder does not work for a business other than the sponsor, and only in the skilled occupation in which they were nominated, and
- Market salary rate applies, as well as the requirement to pay the subclass 457 visa holder the nominated salary or guaranteed annual earnings indicated at the time of nomination.

DIBP's capacity to prevent and investigate cases where subclass 457 visa holders are not receiving the same wages, conditions, safety and other entitlements as their Australian counterparts has improved since major reforms were made to improve the integrity of the programme. These reforms, introduced from 2009, included the introduction of:

- Requirement for a subclass 457 visa applicant to undergo a formal skills assessment where they are nominated in a generalist occupation,
- Requirement for sponsors to demonstrate that there is a genuine position that needs to be filled by a subclass 457 visa holder. This allows DIBP to consider a range of factors in relation to a nominated position including whether it is an existing or new position within the business, and whether the occupation fits within the scope, scale and size of the business,
- Enforceable sponsorship obligations for employers (replacing the sponsorship undertakings that were in place prior to 14 September 2009), civil penalty provisions (infringement notices and civil action) and enforceable undertakings for sponsorship obligation breaches, and
- Formally trained and supported Inspector network and the extension of sponsor monitoring investigation powers to Fair Work Inspectors.

The Government has announced it will further strengthen the sponsor monitoring regime to more effectively support the integrity of the subclass 457 programme by:

- Increasing resourcing for monitoring of employers sponsoring subclass 457 visa holders,
- Increasing focus on ensuring compliance by employers with their obligations,
- Introducing a new penalty making it unlawful for sponsors to receive payment in return for sponsoring a person seeking a subclass 457 visa,
- Improving transparency around DIBP's sanctions process, including prosecuting and naming and shaming offenders who have exploited overseas workers and misused the programme,
- Improving information sharing between key government agencies.

***ii. the role of recruitment agents,***

Under the standard subclass 457 programme, overseas workers cannot be on-hired to unrelated companies. Subclass 457 visa holders must only work for the sponsoring employer which ensures the sponsor maintains direct oversight of the overseas worker's day-to-day employment and responsibility for their welfare.

While an exemption to this applies for certain highly-skilled visa holders working in specific occupations that require a degree of mobility between employers (such as medical professionals working as locums at various hospital clinics), in these circumstances the original sponsor who nominated the overseas worker will continue to be subject to the sponsorship obligations in relation to that visa holder.

A labour agreement is a formal arrangement negotiated between an employer and the Australian Government. It aims to provide a migration pathway for businesses and industries that need semi-skilled and skilled workers for occupations that are not covered by the standard subclass 457 programme. The labour agreement document defines employer obligations such as the training requirements for Australian employees.

In recognition that many Australian companies do not directly recruit or employ all their own staff but instead use the legitimate business services of companies in the On-hire sector (which includes recruitment agents, labour hire and contract management firms), the On-hire Template Labour Agreement was introduced in 2007. The template allows for labour agreements to be entered into without negotiation on the conditions of the labour agreement. Beyond the ability to on-hire workers to other employers, there are no additional concessions under the template and all nominations must meet the same minimum requirements of the standard subclass 457 programme. Only occupations that are eligible for the standard subclass 457 programme and that are listed on the Consolidated Sponsored Occupation List (CSOL) may be sponsored.

**iii. the adequacy of information provided to temporary work visa holders on their rights and obligations in their workplace and community, and how it can be improved;**

Subclass 457 visa holders who understand their rights and obligations in the workplace and community are less vulnerable to exploitation and are more likely to come forward to the authorities if they are not receiving their entitlements. DIBP sources of information available to subclass 457 visa holders about their rights, obligations and protections include:

- Information booklet—*Your Rights and Obligations—Immigration Facts for Workers* available in English, Chinese, Hindi, Indonesian, Korean, Malay and Tagalog: [www.immi.gov.au/skilled/rights-obligations-workers.htm](http://www.immi.gov.au/skilled/rights-obligations-workers.htm),
- *Booklet 9 – Temporary Work (Skilled)(subclass 457) visa*: [www.immi.gov.au/Visas/Pages/457.aspx](http://www.immi.gov.au/Visas/Pages/457.aspx),
- Regular Migration Blog posts on subclass 457 Visas and Sponsor Obligations: <http://migrationblog.immi.gov.au/>,
- A targeted campaign 'Work Visa Scams – Don't Pay the Price' on the DIBP website and social media (including the Migration Blog and DIBP Facebook) which is designed to help subclass 457 visa holders and their sponsors better understand their responsibilities and obligations: [www.immi.gov.au/Work/Pages/work-visa-scams.aspx](http://www.immi.gov.au/Work/Pages/work-visa-scams.aspx),
- Life in Australia Booklet, translated into 29 languages: [www.immi.gov.au/living-in-australia/values/book/](http://www.immi.gov.au/living-in-australia/values/book/), and
- DIBP website: [www.immi.gov.au/Pages/Welcome.aspx](http://www.immi.gov.au/Pages/Welcome.aspx)

The Government is improving the provision of information to subclass 457 visa holders and sponsors on visa holder rights and sponsor obligations under the subclass 457 programme. Improvements will be made to DIBP's website, making information about workplace rights more readily available and accessible for visa holders and the businesses that employ them.

The FWO encourages subclass 457 visa holders and other overseas workers who have concerns that their workplace rights are being compromised to contact the Agency. The FWO has a free interpreter service (13 14 50) and materials translated into 27 different languages on its website ([www.fairwork.gov.au](http://www.fairwork.gov.au)). FWO has also produced videos in 14 different languages (posted on YouTube), runs workplace rights presentations and seminars with relevant groups, distributes in-

language posters and brochures to migrant resource centres and community groups, and proactively engage with ethnic media.

Australia's states and territories and the Commonwealth regulate workplace health and safety within their jurisdictions. All have comprehensive websites that include information on the rights and responsibilities of employers, employees and workers.

## 6. Terms of Reference D

***d. whether temporary work visa holders have access to the same benefits and entitlements available to Australian citizens and permanent residents, and whether any differences are justified and consistent with international conventions relating to migrant workers;***

Australia's social security system is different from the contributory systems that operate in many countries. Entitlement to Australian social security payment is not based on contributions or taxes paid in Australia. Rather, Australia's social security system is based on the concepts of residence and need, and payments are made from general revenue paid by current taxpayers.

Under the *Social Security Act 1991*, access to social security payments is generally restricted to people who reside in Australia and are Australian citizens or permanent visa holders. There are a very small number of temporary visas that have been determined by the Minister for Social Services visa legislative instruments, which allow access to limited social security assistance. These temporary visas are generally for humanitarian purposes.

Most income support payments have a two-year newly arrived resident's waiting period and some pensions, such as the Age Pension and the Disability Support Pension, have a 10 year qualifying residence requirement. This 10 year qualifying residence requirement aims to ensure that only people who have established a long-term connection with Australia are able to access these payments. Under the *Social Security Act 1991*, the qualifying residence period begins from the date the person starts residing in Australia as a permanent visa holder. Time spent in Australia on a temporary visa is not counted towards the two-year and 10 year qualifying periods for social security payments.

Once a person meets the resident eligibility, they are also subject to meeting specific criteria for different payments such as Newstart Allowance, Youth Allowance and Sickness Allowance.

Temporary work visa holders do not have access to the same social security payments available to Australian citizens and permanent residents as they do not meet the residence eligibility criteria under the *Social Security Act 1991*. This is consistent with Articles 27 and 43 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, which specify that migrant workers shall be treated as equal to the nationals of the country of employment in respect of social security benefits and social services, provided that they meet the requirements under the applicable legislation or schemes of that country.

It is reasonable to expect that persons who are not permanently migrating to Australia (that is, temporary work visa holders), would be aware of the need to take out appropriate insurance, and that they are not entitled to the same social welfare and health services as an Australian citizen or permanent resident.

To be eligible for assistance under the Fair Entitlements Guarantee<sup>9</sup>, a claimant must, among other things, be an Australian citizen or the holder of a permanent visa or Special Category Visa (SCV) under the *Migration Act 1958*.

The residency eligibility requirements for the Fair Entitlements Guarantee continue long standing eligibility arrangements that were in place under the predecessor General Employee Entitlements and Redundancy Scheme.

This residency condition is consistent with the general policy approach of the Australian Government in relation to the provision of social security and government-funded health insurance benefits.

The residency eligibility requirements were considered carefully during the development of the *Fair Entitlements Guarantee Act 2012*. The *Parliamentary Joint Committee on Human Rights* accepted that the residency eligibility requirements were unlikely to be incompatible with Australia's human rights obligations under Article 26 of the *International Covenant on Civil and Political Rights* because they were necessary to maintain consistency with broader social security legislation and the restriction was appropriate and proportionate to that objective.

The *Fair Entitlements Guarantee Act 2012* does not provide the discretion for the residency requirement to be waived.

The eligibility conditions for the Fair Entitlements Guarantee in no way affect an ineligible person's right to independently recover unpaid entitlements from their former employer in the liquidation or bankruptcy process applicable to that employer.

## 7. Terms of Reference E

- e. the adequacy of the monitoring and enforcement of the temporary work visa programs and their integrity, including:***
  - i. the wages, conditions and entitlements of temporary work visa holders, and***
  - ii. cases of 457 visa fraud, such as workers performing duties outside or below the job classification of the visa;***

DIBP takes all allegations of migration fraud very seriously. If a sponsor is found to have failed an obligation, DIBP institutes appropriate action, which may take the form of imposing administrative sanctions, issuing infringement notices, executing an enforceable undertaking or applying to the Federal Court for a civil penalty order.

As a result of a targeted risk-based approach to sponsor monitoring, the establishment of the new Investigations Division (a key component of the integration of DIBP and Australian Customs and Border Protection) and the complementary efforts by the FWO, DIBP is increasingly able to detect non-compliance by sponsors and visa holders and act appropriately. In the last two programme years, to 31 March 2015, DIBP monitored nearly 4,000 temporary work sponsors, the majority of which were subclass 457 sponsors. These cases include those referred by the FWO.

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<sup>9</sup> The Fair Entitlements Guarantee is a legislative safety net scheme of last resort which provides financial assistance to cover certain unpaid employment entitlements to eligible employees who lose their job due to the liquidation or bankruptcy of their employer. To be eligible for Fair Entitlements Guarantee assistance, former employees must meet all of the eligibility requirements outlined in the *Fair Entitlements Guarantee Act 2012*.

In this period, more than two-thirds (2,323) of sponsors monitored under the targeted risk-based approach were considered to have satisfactorily met their obligations and just under one-third (1,184) of the sponsors monitored were found to be in breach of their obligations. Of the unsatisfactory cases, a total of 609 sponsors were sanctioned (cancelling and/or barring the sponsor from using the subclass 457 programme), 575 received a formal warning and 40 were issued with infringement notices. DIBP is currently considering seeking penalty orders for a small number of cases, and one case has been successfully prosecuted.

In addition to the 40 Immigration Inspectors that work to directly monitor sponsors' compliance with their obligations, Fair Work Inspectors are also authorised as Immigration Inspectors under the *Migration Act 1958*. In addition, DIBP provides and receives a range of information from various state-based workplace health and safety (WHS) agencies and the Australian Taxation Office, with each agency assisting the other to enforce employers and visa holders' compliance with workplace, workplace safety, taxation and immigration laws.

While there has always been cooperation between DIBP, the FWO and various state-based work health and safety agencies, formal arrangements were put in place with the FWO on 1 July 2013 and with some work health and safety agencies from 2008. This better assists officers to make referrals to the relevant agencies when they identify issues involving overseas workers that appear to be breaking a commonwealth or state or territory law that is outside their direct sphere of responsibility.

As noted in the response for Terms of Reference C(i), the Government is currently in the process of strengthening the sponsor monitoring regime to more effectively support the integrity of the subclass 457 programme.

#### Role of the Fair Work Ombudsman

The FWO is responsible for providing education, assistance and advice to workplace participants and for ensuring compliance with the *Fair Work Act 2009*. The FWO also has a formal monitoring role under the *Migration Act 1958* relating to subclass 457 visa holders.

The FWO is an independent statutory authority pursuant to section 681 of the *Fair Work Act 2009* responsible for:

- Assisting employees and employers to understand their rights and obligations,
- Investigating complaints, and
- Promoting and monitoring compliance with Commonwealth workplace laws, including the *Fair Work Act 2009*, its regulations, awards and agreements that set the wages and conditions for Australian workplaces.

#### Role of the Fair Work Ombudsman in relation to Temporary Visa Holders

Most temporary visa holders with a work right who are employed in Australia are covered by Commonwealth workplace laws and entitled to the minimum entitlements, rights and protections contained in the *Fair Work Act 2009* and related instruments.

During the course of its education and compliance activities, the FWO provides advice and assistance to temporary visa holders on the same basis as it does for Australians. The agency

targets a number of its activities to assisting overseas workers, including providing tailored information on its website in different languages and working directly with community groups.

The FWO investigates complaints under the *Fair Work Act 2009* from temporary visa holders during the course of its activities on the same basis as it does complaints from Australian workers. Since 2009, the FWO has finalised 1,419 complaints from subclass 457 visa holders and initiated 14 litigation proceedings involving subclass 457 visa holders. The types of allegations received by FWO from temporary visa holders relate to not being paid for time worked and underpayment

Commencing 1 July 2013, the *Migration Amendment (Temporary Sponsored Visas) Act 2013* amended the *Migration Act 1958* to appoint Fair Work Inspectors as Immigration inspectors.

The FWO has a Memorandum of Understanding (MOU) with DIBP to formalise these arrangements and to facilitate a mechanism for sharing intelligence and information between the agencies. The MOU has been in place since 2 July 2013.

Under the terms of this MOU, the FWO's role is limited to monitoring two sponsorship obligations. That is, to ensure subclass 457 visa holders are receiving their nominated salary and are performing the functions of their nominated position. Fair Work Inspectors do not undertake any other monitoring in relation to migration sponsorship obligations or in relation to any other visa type other than the subclass 457 programme. Fair Work Inspectors also have no role in the assessment or determination of a market salary rate.

Where the FWO identifies that a sponsor may be breaching their sponsorship obligations, it refers the matter to DIBP for consideration. The FWO does not make findings regarding non-compliance with visa sponsorship obligations.

A referral to DIBP or suspected breach does not necessary mean that a sponsor has not complied with their obligation. The referral provides DIBP with further information and data to consider and potentially conduct compliance activity and make findings.

Since 1 July 2013 to 31 December 2014, the FWO has monitored 3,076 subclass 457 visa holders. During this time, the FWO has identified concerns in around 18 per cent of cases. **Attachments D.1, D.2 and D.3** provide information on FWO's monitoring and litigation activities for overseas workers including subclass 457 and subclass 417 visa holders.

## 8. Terms of Reference F

### *f. the role and effect of English language requirements in limited and temporary work visa programs;*

English language requirements are an important part of the subclass 457 programme. They were introduced in recognition that visa holders with limited English are more susceptible to exploitation and less capable of understanding and raising workplace concerns with appropriate authorities. They provide protection to subclass 457 visa holders by helping them understand their rights, minimising the risk of occupational health and safety incidents in the workplace and helping to facilitate their participation in Australian society. English language skills also enable the visa holder to communicate with colleagues and customers, and assist in the transfer of valuable skills from the visa holder to other employees.

Subclass 457 visa applicants must be sufficiently proficient in English to perform effectively in their nominated occupation. However, not all subclass 457 visa holders need the same level of English ability to make a positive contribution to their Australian workplace. In recognition of this, the English language requirements recently changed from a minimum test score of 5 in each of the four International English Language Testing System (IELTS) components (listening, reading, writing and speaking), to an average score of 5 across the overall test, with a minimum score of 4.5 in each component. This change does not represent a consequential lowering of the current English language requirements and rather recognises that different occupations may need a different level of English competency in some test components. The number of English language test providers has recently been expanded, providing subclass 457 visa applicants with greater choice in providers while also increasing competition within the English language testing market.

All subclass 457 visa applicants must meet the English language requirement except in circumstances where:

- They will be paid a base salary above the specified exemption threshold, currently set at \$96 400 per annum, and/or
- They hold a passport from Canada, the United States of America, the United Kingdom, the Republic of Ireland or New Zealand, and/or
- They have completed at least five cumulative years of study in a secondary and/or higher education institution where the instruction was delivered in English.

While work health and safety information provided by Safe Work Australia and state and territory work health and safety regulators is generally provided in English, some information is available in other languages. For example:

- The option exists for the language of the site content of the Safe Work Australia website ([www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)) and the websites of some state and territory regulators can be changed using a translation function built into the actual website. This means that all content with the exception of downloadable documents can be accessed in a wide range of languages (depending on the translation service used),
- Some state and territory work health and safety regulators have published specific guidance material in other languages and may also translate work health and safety information in response to the needs of specific groups as part of education and awareness campaigns.

Unpublished Safe Work Australia research from the *Perceptions of Work Health and Safety Survey 2012* (a nation-wide self-report survey of 1,052 employers) suggests that it is not uncommon for employers to provide work health and safety information to their workers in other languages, although this still appears to be a minority practice.

The research showed that nine per cent of employers noted they provided their workers with work health and safety information that is translated into other languages. Of the employers surveyed, large businesses were more likely than small and medium sized businesses to provide information in this format.

## 9. Terms of Reference G

- g. whether the provisions and concessions made for designated area migration agreements, enterprise migration agreements, and labour agreements affect the integrity of the 457 visa program, or affect any other matter covered in these terms of reference;***

Foreign nationals recruited under a labour agreement are subject to and protected by the workplace relations and work health and safety laws that apply to Australian workers and other temporary work visa holders. A labour agreement is a formal arrangement between an Australian employer and the Australian Government, which allows the employer to recruit foreign nationals, generally on subclass 457 visas, where suitably qualified and experienced Australian workers are not available to fill skilled and semi-skilled positions.

Typically the occupations covered by a labour agreement are not available under the standard subclass 457 programme, and they are commonly used by employers in regional areas, to fill niche occupations that few Australians are qualified in or are unavailable. In this way labour agreements complement the standard subclass 457 visa programme.

Labour agreements (including designated area migration agreements<sup>10</sup>) are considered on a case by case basis and DIBP carefully scrutinises the requests of each employer in order to maintain the integrity of the programme. Employers seeking to enter into a labour agreement are required to provide a comprehensive submission to DIBP which provides a compelling evidence-base demonstrating there is a genuine skills shortage and there are no suitably qualified or experienced Australians available. Consultation with relevant stakeholders is a mandatory part of the labour agreement process.

All employers seeking access to a labour agreement must provide evidence of labour market need, including evidence of their genuine on-going recruitment efforts for the last six months. DIBP also consults with the Department of Employment for its assessment of the labour market in the requested occupations.

While marginal concessions to the TSMIT may be approved in limited circumstances where there is a compelling business case, DIBP must be satisfied that overseas workers have sufficient income to support themselves and their dependants, as they do not have access to the same range of benefits and services as Australians. Regardless, the terms and conditions of employment for overseas workers under labour agreements must, at all times, be no less favourable than those for Australian citizens or permanent residents performing the same duties at the same location.

English language proficiency requirements under labour agreements are broadly consistent with the standard business sponsorship stream of the subclass 457 programme. Concessions are only considered where there is a strong business case and the concession would not constitute a work, health or safety risk. Further, employers must demonstrate that overseas workers can adequately access workplace relations protections and can participate in the community.

Consistent with the standard subclass 457 programme, approved sponsors under labour agreements are also required to meet a range of sponsorship obligations, including a satisfactory record of, and an ongoing commitment to, the training of Australians.

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<sup>10</sup> The Enterprise Migration Agreement Programme ceased due to the softening labour market in the resource sector.

## 10. Terms of Reference H

### *h. the relationship between the temporary 457 visa and other temporary visa types with work rights attached to them; and*

Australia offers a range of visa options for people to live and work in Australia, including those in skilled and employer-sponsored categories. Detailed rules govern the entry of people in each visa category.

As people become increasingly mobile and look to take up opportunities in an international market place, temporary migration has grown globally. While Australia offers a number of temporary visas with work rights, the main interaction between the subclass 457 programme and other temporary visa programmes is with those programmes that feed into the subclass 457 programme. Other temporary visa programmes which allow either partial or full work, such as the Student, Skilled Graduate and Working Holiday programmes have influenced the characteristics of the subclass 457 programme. Recently there has been an increase in the numbers of these groups applying for subclass 457 visas while in Australia. However, it is the subclass 457 programme itself, and its policy settings, which determine who can access the subclass 457 programme, rather than the nature of the pre-existing visa held by the client.

## 11. Terms of Reference I

### *i. any related matter.*

The 18 March 2015 Government Response<sup>11</sup> to the report of the 2014 Independent Review into Integrity in the Subclass 457 programme may be relevant to the Terms of Reference for this Inquiry.

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<sup>11</sup> [www.immi.gov.au/pub-res/Pages/reviews-and-inquiries/government-response.aspx](http://www.immi.gov.au/pub-res/Pages/reviews-and-inquiries/government-response.aspx)

## Terms of Reference

The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, with particular reference to:

- a. the wages, conditions, safety and entitlements of Australian workers and temporary work visa holders, including:
  - i. whether the programs 'carve out' groups of employees from Australian labour and safety laws and, if so, to what extent this threatens the integrity of such laws;
  - ii. the employment opportunities for Australians, including:
    - A. the effectiveness of the labour market testing provisions (the provisions) of the *Migration Act 1958* in protecting employment opportunities for Australian citizens and permanent residents, and
    - B. whether the provisions need to be strengthened to improve the protection of employment opportunities for Australian citizens and permanent residents and, if so, how this could be achieved;
  - iii. the adequacy of publicly available information about the operation of the provisions, and
  - iv. the nature of current exemptions from the provisions and what effect these exemptions have on the reach and coverage of labour market testing obligations and laws regarding wages, conditions and entitlements of Australian workers and temporary work visa holders;
- b. the impact of Australia's temporary work visa programs on training and skills development in Australia, including:
  - i. the adequacy of current obligations on 457 visa sponsoring employers to provide training opportunities for Australian citizens and permanent residents,
  - ii. how these obligations could be strengthened and improved, and
  - iii. the effect on the skills base of the permanent Australian workforce;
- c. whether temporary work visa holders receive the same wages, conditions, safety and other entitlements as their Australian counterparts or in accordance with the law, including:
  - i. the extent of any exploitation and mistreatment of temporary work visa holders, such as sham contracting or debt bondage with exorbitant interest rate payments,
  - ii. the role of recruitment agents, and
  - iii. the adequacy of information provided to temporary work visa holders on their rights and obligations in their workplace and community, and how it can be improved;
- d. whether temporary work visa holders have access to the same benefits and entitlements available to Australian citizens and permanent residents, and whether any differences are justified and consistent with international conventions relating to migrant workers;
- e. the adequacy of the monitoring and enforcement of the temporary work visa programs and their integrity, including:
  - i. the wages, conditions and entitlements of temporary work visa holders, and
  - ii. cases of 457 visa fraud, such as workers performing duties outside or below the job classification of the visa;
- f. the role and effect of English language requirements in limited and temporary work visa programs;

- g. whether the provisions and concessions made for designated area migration agreements, enterprise migration agreements, and labour agreements affect the integrity of the 457 visa program, or affect any other matter covered in these terms of reference;
- h. the relationship between the temporary 457 visa and other temporary visa types with work rights attached to them; and
- i. any related matter.

That in conducting the inquiry, the committee shall review the findings and recommendations of previous inquiries into such matters, including the Legal and Constitutional Affairs References Committee's report, *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*.

Subclass 457 Programme Data

**Table 1: Primary Subclass 457 visa holders in Australia at 31 March 2015, compared with same date in previous programme year**

Source: Department of Immigration and Border Protection, 2015 (BE8273.06)

	at 31/03/14	at 31/03/15	% Change
Subclass 457 primary visa holders in Australia	111,781	106,755	-4.5%

**Table 2: Primary Subclass 457 visas granted in 2014-15 to 31 March 2015, compared with same date in previous programme year**

Source: Department of Immigration and Border Protection, 2015 (BE8273.04)

Applicant Type	2013-14 to 31/03/14	2014-15 to 31/03/15	% Change
Primary	39 767	38 134	-4.1%
Secondary	36 247	33 182	-8.5%
<b>Total</b>	<b>76 014</b>	<b>71 316</b>	<b>-6.2%</b>

**Table 3: Primary Subclass 457 visas granted in 2014-15 to 31 March 2015 where the client was onshore by last visa held**

Source: Department of Immigration and Border Protection, 2015 (BE8273.01)

Note 1: Figures are subject to variation

Note 2: Excludes visa granted under a Labour Agreement and Independent Executives

Note 3: Unknown represents the number of subclass 457 visa granted where the system shows the application is onshore and there is an unmatched previous visa grant

Visa Category - Last Visa Held	2014-15 to 31/03/15
Subclass 457 visa	4,599
Student Visa	5,532
Temporary Graduate Visa	912
Temporary Resident Visa	554
Working Holiday Maker	4,612
Visitor Visa	1,773
Other Visa	128
Unknown	8
<b>Onshore Total</b>	<b>18,118</b>
Offshore	19,009
<b>Onshore &amp; Offshore</b>	<b>37,127</b>

**Table 4: Temporary visa holders in Australia at 31 March 2015 by visa category**

*Source: Department of Immigration and Border Protection, 2015 (BE8273.03)*

Visa Category	Primary	Total
Bridging visa holders	108,947	<b>111,178</b>
New Zealand (subclass 444) visa holders	648,993	<b>648,993</b>
Student visa holders	361,742	<b>413,123</b>
Temporary graduate (subclass 485) visa holders	18,220	<b>23,021</b>
Temporary skilled (subclass 457) visa holders	106,755	<b>193,158</b>
Visitor visa holders	285,598	<b>285,641</b>
Working holiday maker visa holders	160,275	<b>160,275</b>
Other temporary visa holders	28,954	<b>36,267</b>
<b>Total</b>	<b>1,719,484</b>	<b>1,871,656</b>

### Temporary Visas with Work Rights

The subclass 457 programme is the most commonly used programme for employers to sponsor overseas workers to work in Australia. Australia has a range of other temporary visas which are purposely designed to allow the entry of people to Australia and their employment for economic, social or cultural purposes. While these visas may allow either partial or full work rights, it should be noted that not all temporary visa holders will choose to work while in Australia.

Visa Holder Category	Visa subclasses included
New Zealand visa holders	444 Special Category
Student visa holders	570 Independent ELICOS Sector
	571 Schools Sector
	572 Vocational Education and Training Sector
	573 Higher Education Sector
	574 Postgraduate Research Sector
	575 Non-Award Sector
	576 Foreign Affairs or Defence Sector
Temporary graduate visa holders	485 Temporary Graduate
Temporary skilled visa holders	457 Temporary Work (Skilled)
Working holiday maker visa holders	417 Working Holiday
	462 Work and Holiday
Other temporary visa holders	400 Temporary Work (Short Stay Activity)
	401 Temporary Work (Long Stay Activity)
	402 Training and Research
	403 Temporary Work (International Relations)
Visa Holder Category	Visa subclasses included
	405 Investor Retirement
	406 Government Agreement
	410 Retirement
	411 Exchange
	415 Foreign Government Agency
	416 Special Program
	419 Visiting Academic
	420 Temporary Work (Entertainment)
	421 Sport
	422 Medical Practitioner
	423 Media And Film Staff
	426 Domestic Worker (Temporary)—Diplomatic or Consular
	427 Domestic Worker (Temporary)—Executive
	428 Religious Worker
	430 Supported Dependant
	442 Occupational Trainee
	461 New Zealand Citizen Family Relationship (Temporary)
	470 Professional Development
	476 Skilled - Graduate
	995 Diplomatic (Temporary)

Attachment D.1

Fair Work Ombudsman—General Visa Holder Compliance and Enforcement Data (under the *Fair Work Act 2009*)—1 July 2009 to 31 December 2014

The following tables provide data on complaints finalised and litigations pursued by the Fair Work Ombudsman in relation to visa holders under the *Fair Work Act 2009*.

GENERAL VISA HOLDER DATA							
COMPLAINTS FINALISED (from visa holders generally)							
	1 Jul – 31 Dec 2014	2013-14	2012-13	2011-12	2010-11	2009-10	TOTAL
Complaints finalised	1,020	2,625	2,018*	990	585	788	8,026
Recovered	\$766,433	\$1,103,442	\$1,427,395	\$718,181	\$510,275	\$519,843	\$5,045,569
* The increase in complaints from Visa Holders in the 2012 – 2013 financial year may be due to a combination of factors including greater education, awareness within the community, the establishment of a new dedicated team and recent proactive compliance activities.							
LITIGATIONS (relating to visa holders generally)							
	1 Jul– 31 Dec 2014	2013-14	2012-13	2011-12	2010-11	2009-10	TOTAL
Proceedings initiated	11	12	16	12	5	6	62
Decisions	5	11	11	2	3	4	36
Penalties awarded	\$437,337	\$757,066	\$613,048	\$100,820	\$451,200	\$122,800	\$2,482,271

Attachment D.2

Fair Work Ombudsman—Subclass 457 Compliance and Enforcement Data—1 July 2009 to 31 December 2014

The following tables provide data on the number of complaints from and litigations pursued by the Fair Work Ombudsman in relation to subclass 457 visa holders under the *Fair Work Act 2009*. The tables also include data on the monitoring activities and outcomes of Fair Work Ombudsman for subclass 457 sponsors and visa holders in relation to its inspectorate role under migration law—under MOU with DIBP.

457 VISA HOLDER KEY DATA (under the <i>Fair Work Act 2009</i> )							
COMPLAINTS FROM IDENTIFIED 457 VISA HOLDERS							
	1 Jul – 31 Dec 2014	2013-14	2012-13	2011-12	2010-11	2009-10	TOTAL
Complaints finalised	141	404	259	157	151	308	1420
Recovered	\$222,155	\$315,362	\$371,725	\$207,871	\$250,978	\$220,496	\$1,588,480
LITIGATIONS RELATING TO IDENTIFIED 457 VISA HOLDERS							
	1 Jul – 31 Dec 2014	2013-14	2012-13	2011-12	2010-11	2009-10	TOTAL
Proceedings initiated	3	5	1	0	2	2	14
Decisions	1	1	1	2	1	0	6
Penalties awarded	\$100,000	\$21,420	\$8,580	\$100,820	\$123,000	-	\$353,820
457 VISA HOLDER MONITORING KEY DATA (under MOU with DIBP)							
457 VISA MONITORING ACTIVITIES				1 Jul – 31 Dec 2014	2013-14	TOTAL	
Monitoring activities	Number of employing entities (employing 457 visa holders) assessed*			460	1,029	1,489	
	Number of 457 visa holders monitored			1,174	1,902	3,076	
Referrals to Department of Immigration and Border Protection (DIBP)	Number of employing entities identified for referral to DIBP			154	243	397	
	Number of visa holders employed by entities identified			230	338	568	
* The number of employing entities may vary from the number or 'Sponsors' reported by DIBP. FWO counts multiple business locations, to more accurately reflect audit activities.							

<b>457 VISA SPONSORSHIP MONITORING FIGURES (under MOU with DIBP) – BREAKDOWN OF OUTCOMES</b>				
	<b>1 July– 31 Dec 2014</b>		<b>2013-14</b>	
<b>OUTCOME</b>	<b>TOTAL</b>	<b>% OF TOTAL</b>	<b>TOTAL</b>	<b>% OF TOTAL</b>
<b>CONCERNS IDENTIFIED</b>				
Nominated salary concerns	146	12.4%	169	8.9%
Nominated position concerns	58	4.9%	81	4.3%
Both nominated position and salary concerns	26	2.2%	88	4.6%
<b>Total Concerns Identified</b>	<b>230</b>	<b>19.59%</b>	<b>338</b>	<b>17.77%</b>
<b>NO CONCERNS IDENTIFIED</b>				
No prima facie concerns	619	52.7%	1,137	59.8%
No longer employed by sponsor	182	15.5%	345	18.1%
Unable to locate sponsor	95	8.1%	76	4.0%
Sponsor failed to provide information	48	4.1%	6	0.3%
<b>Total No Concerns Identified</b>	<b>944</b>	<b>80.41%</b>	<b>1564</b>	<b>82.23%</b>
<b>TOTAL</b>	<b>1,174</b>	<b>100%</b>	<b>1,902</b>	<b>100%</b>
<b>TOP 5 INDUSTRIES WHERE 457 VISA MONITORING CONCERNS IDENTIFIED</b>				
<b>1 July – 31 Dec 2014</b>	Accommodation & Food Services			22.73%
	Construction			10.39%
	Professional, Scientific and Technical Services			9.74%
	Manufacturing			9.09%
	Retail Trade			8.44%
<b>2013 - 2014</b>	Accommodation & Food Services			22.54%
	Retail Trade			10.66%
	Health Care and Social Assistance			9.02%
	Professional, Scientific and Technical Services			8.61%
	Other Services			7.38%

Attachment D.3

**Fair Work Ombudsman—Subclass 417 Compliance and Enforcement Data (under the *Fair Work Act 2009*)—1 July 2009 to 31 December 2014**

The following tables provide data on complaints finalised and litigations pursued by the Fair Work Ombudsman in relation to identified subclass 417 visa holders.

<b>417 VISA HOLDERS KEY DATA (under the <i>Fair Work Act 2009</i>)</b>					
<b>COMPLAINTS COMPLETED FROM IDENTIFIED 417 VISA HOLDERS</b>					
	<b>1 Jul 2014 – 31 Dec 2014</b>	<b>2013-14</b>	<b>2012-13</b>	<b>2011-12</b>	<b>TOTAL</b>
<b>Complaints finalised</b>	410	1,042	750	216	<b>2,418</b>
<b>Recovered</b>	\$164,150	\$344,097	\$262,309	\$67,048	<b>\$837,604</b>
<b>LITIGATIONS RELATING TO IDENTIFIED 417 VISA HOLDERS</b>					
	<b>1 Jul 2014 – 31 Dec 2014</b>	<b>2013-14</b>	<b>2012-13</b>	<b>2011-12</b>	<b>TOTAL</b>
<b>Proceedings initiated</b>	6	2	4	4	<b>15</b>
<b>Decisions</b>	1	2	3	0	<b>6</b>
<b>Penalties awarded</b>	\$190,245	\$400,884	\$275,748	0	<b>\$866,877</b>

Attachment E

Contribution of the Subclass 457 to the Australian Labour Market

The average reliance on overseas workforce across all occupations and industries is, over time, consistently less than 1.00 per cent.<sup>12</sup> Figures in red are those above the average.

E.1 Stock of Subclass 457 Visa Holders as a percentage of ANZSCO<sup>13</sup> Major Group Workforce

1. Nationally—February/March 2015

ANZSCO Classification	Employment by Occupation <sup>14</sup>	Total Primary Subclass 457 Visa Holders <sup>15</sup>	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	1,476,300	21,668	1.47
Professionals	2,546,500	46,007	1.81
Technicians and Trade Workers	1,673,500	32,022	1.91
Community and Personal Service Workers	1,135,100	1,566	0.14
Clerical and Administrative Workers	1,654,200	3,195	0.19
Sales Workers	1,080,700	717	0.07
Machinery Operators and Drivers	766,800	386	0.05
Labourers	1,124,200	258	0.02
TOTAL	11,457,300	106,755 <sup>16</sup>	0.93

2. New South Wales—February/March 2015

ANZSCO Classification	Employment by Occupation	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	489,300	9,293	1.90
Professionals	848,800	20,463	2.41
Technicians and Trade Workers	491,000	8,502	1.73
Community and Personal Service Workers	353,100	564	0.16
Clerical and Administrative Workers	524,100	1,602	0.31
Sales Workers	330,700	281	0.08
Machinery Operators and Drivers	224,000	29	0.01
Labourers	325,900	29	0.01

3. Victoria—February/March 2015

ANZSCO Classification	Employment by Occupation	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	379,600	4,500	1.19
Professionals	679,300	11,044	1.63
Technicians and Trade Workers	399,700	7,900	1.98
Community and Personal Service Workers	273,600	390	0.14
Clerical and Administrative Workers	406,900	469	0.12
Sales Workers	268,300	162	0.06
Machinery Operators and Drivers	174,200	30	0.02
Labourers	274,100	6	0.00

<sup>12</sup> Attachment E includes ANZSCO Skill Level 4 and 5 occupations where Subclass 457 visas have been granted as such occupations appear on the Consolidated Sponsored Occupations List or are covered by Labour Agreements (includes Work Agreements).

<sup>13</sup> Australian and New Zealand Standard Industrial Classification (ANZSIC) was jointly developed by ABS and Statistics New Zealand for the compilation and analysis of industry statistics in Australia and New Zealand. Subclass 457 visa data is published with reference to the ANZSIC industry which accounts for the majority of their output, as identified by an employer in a sponsorship application.

<sup>14</sup> Department of Employment, Labour Market Information Portal—ABS Labour Force Data—Four Quarter Average—February 2015

<sup>15</sup> DIBP Subclass 457 State/Territory Data—March 2015

<sup>16</sup> Includes primary Subclass 457 visa holders with no occupation specified DIBP data

#### 4. Queensland—February/March 2015

ANZSCO Classification	Employment by Occupation	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	273,800	3,527	1.29
Professionals	447,900	5,737	1.28
Technicians and Trade Workers	358,500	4,756	1.33
Community and Personal Service Workers	229,700	221	0.10
Clerical and Administrative Workers	336,200	436	0.13
Sales Workers	239,400	120	0.05
Machinery Operators and Drivers	175,000	113	0.06
Labourers	251,000	101	0.04

#### 5. Western Australia—February/March 2015

ANZSCO Classification	Employment by Occupation	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	157,000	3,278	2.09
Professionals	271,000	5,967	2.20
Technicians and Trade Workers	232,800	8,628	3.71
Community and Personal Service Workers	130,700	270	0.21
Clerical and Administrative Workers	182,400	566	0.31
Sales Workers	115,400	120	0.10
Machinery Operators and Drivers	109,000	176	0.16
Labourers	130,500	101	0.08

#### 6. South Australia—February/March 2015

ANZSCO Classification	Employment by Occupation	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 as a percentage of Employment by Occupation
Managers	104,200	534	0.51
Professionals	158,100	1,272	0.80
Technicians and Trade Workers	113,000	961	0.85
Community and Personal Service Workers	86,900	48	0.06
Clerical and Administrative Workers	111,400	49	0.04
Sales Workers	79,300	10	0.01
Machinery Operators and Drivers	56,600	31	0.05
Labourers	92,200	15	0.02

**7. Tasmania—February/March 2015**

<b>ANZSCO Classification</b>	<b>Employment by Occupation</b>	<b>Total Primary Subclass 457 Visa Holders</b>	<b>Total Primary Subclass 457 as a percentage of Employment by Occupation</b>
Managers	28,400	54	0.19
Professionals	42,800	288	0.67
Technicians and Trade Workers	33,600	56	0.17
Community and Personal Service Workers	25,500	<5	<0.02
Clerical and Administrative Workers	31,500	<5	<0.02
Sales Workers	24,400	<5	<0.02
Machinery Operators and Drivers	16,300	0	0.00
Labourers	28,800	0	0.00

**8. Australian Capital Territory—February/March 2015**

<b>ANZSCO Classification</b>	<b>Employment by Occupation</b>	<b>Total Primary Subclass 457 Visa Holders</b>	<b>Total Primary Subclass 457 as a percentage of Employment by Occupation</b>
Managers	30,200	211	0.70
Professionals	71,500	778	1.09
Technicians and Trade Workers	22,400	331	1.48
Community and Personal Service Workers	18,800	49	0.26
Clerical and Administrative Workers	41,000	27	0.07
Sales Workers	14,700	9	0.06
Machinery Operators and Drivers	4,100	0	0.00
Labourers	10,100	0	0.00

**9. Northern Territory—February/March 2015**

<b>ANZSCO Classification</b>	<b>Employment by Occupation</b>	<b>Total Primary Subclass 457 Visa Holders</b>	<b>Total Primary Subclass 457 as a percentage of Employment by Occupation</b>
Managers	13,900	253	1.82
Professionals	27,200	435	1.60
Technicians and Trade Workers	22,500	860	3.82
Community and Personal Service Workers	16,800	21	0.13
Clerical and Administrative Workers	20,600	42	0.20
Sales Workers	8,500	13	0.15
Machinery Operators and Drivers	7,700	7	0.09
Labourers	11,700	6	0.05

## E.2 Stock of Subclass 457 Visa Holders as a percentage of Workforce by Industry

### 1. Nationally—February/March 2015

ANZSIC Classification	Industry Employment <sup>17</sup>	Total Primary Subclass 457 Visa Holders <sup>18</sup>	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	804,900	15,122	1.88
Administrative & Support Services	388,600	681	0.18
Agriculture, Forestry & Fishing	325,800	2,166	0.66
Arts and Recreation Services	218,100	979	0.45
Construction	1,032,900	10,658	1.03
Education & Training	921,300	4,748	0.52
Electricity, Gas, Water & Waste Services	143,900	1,830	1.27
Financial & Insurance Services	413,900	3,646	0.88
Health Care & Social Assistance	1,411,300	9,773	0.69
Information Media & Telecommunications	210,600	9,756	4.63
Manufacturing	917,900	6,660	0.73
Mining	236,500	4,904	2.07
Other Services <sup>19</sup>	485,800	14,632	3.01
Professional, Scientific & Technical Services	949,200	8,733	0.92
Public Administration & Safety	728,800	659	0.09
Rental, Hiring & Real Estate Services	216,500	765	0.35
Retail Trade	1,242,600	5,918	0.48
Transport Postal & Warehousing	599,500	1,967	0.33
Wholesale Trade	388,000	2,583	0.67

### 2. New South Wales—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	260,100	5,475	2.10
Administrative & Support Services	118,400	331	0.28
Agriculture, Forestry & Fishing	92,300	581	0.63
Arts and Recreation Services	57,000	511	0.90
Construction	322,600	3,042	0.94
Education & Training	285,600	1,636	0.57
Electricity, Gas, Water & Waste Services	39,900	435	1.09
Financial & Insurance Services	180,300	2,442	1.35
Health Care & Social Assistance	435,500	3,204	0.74
Information Media & Telecommunication	80,800	6,288	7.78
Manufacturing	280,300	1,689	0.60
Mining	34,800	303	0.87
Other Services	158,700	6,148	3.87
Professional, Scientific & Technical Services	313,300	3,740	1.19
Public Administration & Safety	196,500	168	0.09
Rental, Hiring & Real Estate Services	68,900	337	0.49
Retail Trade	375,500	2,436	0.65
Transport Postal & Warehousing	204,000	747	0.37
Wholesale Trade	131,100	1,224	0.93

<sup>17</sup> Department of Employment, Labour Market Information Portal—ABS Labour Force Data—Four Quarter Average—November 2014

<sup>18</sup> DIBP Subclass 457 State/Territory Data—March 2015

<sup>19</sup> Other Services includes a broad range of personal services, religious, civic, professional and other interest group services, selected repair and maintenance, and private households employing staff. Services provided include hair, beauty, diet and weight management, death care, religious events promotion and administration and repair and maintenance of equipment and machinery.

### 3. Victoria—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	193,400	4,337	2.24
Administrative & Support Services	94,200	139	0.15
Agriculture, Forestry & Fishing	88,300	358	0.41
Arts and Recreation Services	66,100	206	0.31
Construction	238,000	1,321	0.56
Education & Training	236,800	1,320	0.56
Electricity, Gas, Water & Waste Services	35,300	255	0.72
Financial & Insurance Services	111,800	724	0.65
Health Care & Social Assistance	348,900	2,258	0.65
Information Media & Telecommunication	62,300	2,238	3.59
Manufacturing	282,500	1,542	0.55
Mining	12,700	214	1.69
Other Services	109,900	3,666	3.34
Professional, Scientific & Technical Services	250,200	2,909	1.16
Public Administration & Safety	149,600	117	0.08
Rental, Hiring & Real Estate Services	45,100	179	0.40
Retail Trade	327,900	1,469	0.45
Transport Postal & Warehousing	148,000	490	0.33
Wholesale Trade	111,200	690	0.62

### 4. Queensland—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	173,700	2,585	1.49
Administrative & Support Services	86,400	43	0.05
Agriculture, Forestry & Fishing	53,900	663	1.23
Arts and Recreation Services	41,300	105	0.25
Construction	220,900	1,576	0.71
Education & Training	181,100	761	0.42
Electricity, Gas, Water & Waste Services	32,800	510	1.55
Financial & Insurance Services	56,300	244	0.43
Health Care & Social Assistance	292,000	1,774	0.61
Information Media & Telecommunication	32,400	605	1.87
Manufacturing	164,900	1,042	0.63
Mining	69,000	1,210	1.75
Other Services	107,100	1,828	1.71
Professional, Scientific & Technical Services	178,400	780	0.44
Public Administration & Safety	152,300	57	0.04
Rental, Hiring & Real Estate Services	50,100	104	0.21
Retail Trade	254,300	842	0.33
Transport Postal & Warehousing	121,300	335	0.28
Wholesale Trade	67,300	282	0.42

5. Western Australia—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	84,700	1932	2.28
Administrative & Support Services	45,800	107	0.23
Agriculture, Forestry & Fishing	32,100	392	1.22
Arts and Recreation Services	28,500	67	0.24
Construction	142,600	3,867	2.71
Education & Training	103,000	467	0.45
Electricity, Gas, Water & Waste Services	16,400	533	3.25
Financial & Insurance Services	35,000	192	0.55
Health Care & Social Assistance	146,100	1,532	1.05
Information Media & Telecommunication	14,500	437	3.01
Manufacturing	88,600	1,730	1.95
Mining	96,500	2,851	2.95
Other Services	54,700	2,249	4.11
Professional, Scientific & Technical Services	116,700	1,014	0.87
Public Administration & Safety	77,700	105	0.14
Rental, Hiring & Real Estate Services	31,600	110	0.35
Retail Trade	140,000	865	0.62
Transport Postal & Warehousing	66,000	316	0.48
Wholesale Trade	45,500	275	0.60

6. South Australia— February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	53,300	335	0.63
Administrative & Support Services	26,700	<5	<0.02
Agriculture, Forestry & Fishing	43,100	101	0.23
Arts and Recreation Services	13,200	59	0.45
Construction	61,000	230	0.38
Education & Training	65,600	274	0.42
Electricity, Gas, Water & Waste Services	10,500	62	0.59
Financial & Insurance Services	20,500	16	0.08
Health Care & Social Assistance	119,200	495	0.42
Information Media & Telecommunication	10,400	98	0.94
Manufacturing	74,200	446	0.60
Mining	14,500	208	1.43
Other Services	32,200	308	0.96
Professional, Scientific & Technical Services	51,600	165	0.32
Public Administration & Safety	48,700	42	0.09
Rental, Hiring & Real Estate Services	12,200	19	0.16
Retail Trade	89,600	130	0.15
Transport Postal & Warehousing	37,400	35	0.09
Wholesale Trade	20,400	100	0.49

7. Tasmania—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	18,700	43	0.23
Administrative & Support Services	7,700	<5	0.06
Agriculture, Forestry & Fishing	13,800	37	0.27
Arts and Recreation Services	3,700	<5	0.14
Construction	18,200	<5	0.03
Education & Training	21,300	27	0.13
Electricity, Gas, Water & Waste Services	4,300	6	0.14
Financial & Insurance Services	4,700	5	0.11
Health Care & Social Assistance	31,000	167	0.54
Information Media & Telecommunication	4,100	98	2.39
Manufacturing	19,100	19	0.10
Mining	3,300	23	0.70
Other Services	10,500	31	0.30
Professional, Scientific & Technical Services	11,400	<5	0.04
Public Administration & Safety	16,900	16	0.09
Rental, Hiring & Real Estate Services	3,500	<5	0.14
Retail Trade	28,200	8	0.03
Transport Postal & Warehousing	11,700	0	0.00
Wholesale Trade	7,300	<5	0.07

8. Australian Capital Territory—February/March 2015

ANZSIC Classification	Industry Employment	Total Primary Subclass 457 Visa Holders	Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment
Accommodation & Food Services	13,200	234	1.77
Administrative & Support Services	4,900	6	0.12
Agriculture, Forestry & Fishing	700	11	1.57
Arts and Recreation Services	4,600	10	0.22
Construction	14,400	117	0.81
Education & Training	16,700	235	1.41
Electricity, Gas, Water & Waste Services	2,200	6	0.27
Financial & Insurance Services	3,600	6	0.17
Health Care & Social Assistance	22,700	274	1.21
Information Media & Telecommunication	4,300	59	1.37
Manufacturing	4,200	11	0.26
Mining	0	<5	0.00
Other Services	5,900	230	3.90
Professional, Scientific & Technical Services	20,300	60	0.30
Public Administration & Safety	64,100	39	0.06
Rental, Hiring & Real Estate Services	2,800	<5	<0.18
Retail Trade	17,400	84	0.48
Transport Postal & Warehousing	4,400	9	0.20
Wholesale Trade	2,500	5	0.20

9. Northern Territory—February/March 2015

<b>ANZSIC Classification</b>	<b>Industry Employment</b>	<b>Total Primary Subclass 457 Visa Holders</b>	<b>Total Primary Subclass 457 Visa Holders as a percentage of Industry Employment</b>
Accommodation & Food Services	7,700	177	2.30
Administrative & Support Services	4,500	49	1.09
Agriculture, Forestry & Fishing	1,600	23	1.44
Arts and Recreation Services	3,700	17	0.46
Construction	15,100	491	3.25
Education & Training	11,300	27	0.24
Electricity, Gas, Water & Waste Services	2,400	23	0.96
Financial & Insurance Services	1,700	16	0.94
Health Care & Social Assistance	15,900	66	0.42
Information Media & Telecommunication	1,700	19	1.12
Manufacturing	4,100	178	4.34
Mining	5,700	82	1.44
Other Services	6,800	164	2.41
Professional, Scientific & Technical Services	7,400	57	0.77
Public Administration & Safety	23,100	114	0.49
Rental, Hiring & Real Estate Services	2,200	9	0.41
Retail Trade	9,600	83	0.86
Transport Postal & Warehousing	6,700	32	0.48
Wholesale Trade	2,800	<5	<0.18

## Working Holiday Programme—Background and Integrity Measures

### Overview of the Working Holiday Programme

Australia's Working Holiday Maker (WHM) visa programme encourages youth mobility and cultural exchange, by allowing young adults aged 18 to 30 to have an extended holiday in Australia of up to 12 months, during which they can offset their travel costs by engaging in short-term work.

The programme consists of two visa subclasses, the Working Holiday (subclass 417) visa and the Work and Holiday (subclass 462) visa. In 2013-14, a total of 239,592 WHM visas were granted to participants. Around 95 per cent of these visas were granted to subclass 417 visa participants, with the remainder granted to subclass 462 visa participants.

A 2008-09 report by the National Institute of Labour Studies at Flinders University provides information on the economic benefits, and the experiences of participants in the, WHM visa programme ([www.immi.gov.au/media/publications/research/pdf/whm-report.pdf](http://www.immi.gov.au/media/publications/research/pdf/whm-report.pdf)).

### Second Working Holiday Initiative

In 2005, the second subclass 417 visa initiative was established as part of a wider Government package of measures to address ongoing labour shortages in certain industries across regional Australia. Under the initiative, a participant can acquire eligibility for a second subclass 417 visa by undertaking three months of 'specified work' in regional Australia while on their first working holiday visa. The initiative thus creates an incentive to perform work in particular industries and regions, but does not obligate participants to do so, and participation in the initiative is voluntary.

'Specified work' currently includes employment activities in the Agriculture, Mining and Construction industries. It was originally exclusive to the horticulture industry, but was expanded in 2006 to include agriculture more generally and to the mining and construction industries in 2008. Regional Australia is defined by a list of postcodes developed in 2004-05 in consultation with state and territory governments. These postcodes cover almost all of Australia, with the exception of greater Brisbane, Melbourne, Perth, Sydney, Newcastle, Wollongong and the Central Coast.

The primary beneficiary of the initiative since its inception has been the agriculture industry. Since 2005, the vast bulk of the work performed by participants each year under the initiative has been agricultural in nature, with around 90 per cent of participants engaging in such work. Around 8 to 9 per cent perform work in the Construction industry and around 1 to 2 per cent in the Mining industry. In 2013-14, there was 45,950 second Working Holiday visas granted under the initiative.

### Second Working Holiday Visa Grants and Growth Rates

Year*	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Visa grants	2,692	7,822	11,826	21,775	25,315	22,500	30,501	38,862	45,950
% Growth	n/a	+290.6	+51.3	+84.1	+16.3	-11.1	+35.6	+27.4	+18.2

\* A programme year runs from 1 July to 30 June (conforms to financial year format)

Further information on the WHM programme is available in six-monthly reports published on the DIBP website: [www.immi.gov.au/pub-res/Documents/statistics/working-holiday-report-dec14.pdf](http://www.immi.gov.au/pub-res/Documents/statistics/working-holiday-report-dec14.pdf).

## Second Working Holiday Initiative—Reform to make Volunteer Work Ineligible

On 1 May 2015, the Assistant Minister for Immigration and Border Protection announced volunteer work under the Working Holiday visa programme will no longer count as eligible work to qualify for a second visa. This is an important integrity reform to the WHM programme, and will require payslips be provided as evidence of work in Australia to obtain a second Working Holiday visa. This significant integrity measure will reduce the possibility of exploitation in the Working Holiday visa programme and offer better protections for those foreign visa holders.

## Regulatory Framework

The WHM programme is lightly regulated in terms of both the criteria for grant and the obligations on a visa holder. There are currently no restrictions on the occupations, industries or regions in which WHM visa holders can work, although the second subclass 417 visa initiative provides an incentive to undertake 'specified work' in regional Australia.

## WHM visa criteria

- Participants must be a passport holder of a WHM partner country
- Participants must be adults (aged 18-30)
- Participants must possess sufficient funds for their stay (\$5000 AUD)
- Participants must possess a departure ticket or funds to purchase such a ticket
- Participants must possess functional English—only applies to some subclass 462 visa participants
- Participants must possess a letter of home government support—only applies to some subclass 462 visa participants
- Participants must satisfy character and health requirements.

## WHM visa holder entitlements

- Visa holder can reside in Australia for 12 months
- Visa holder can work for the full 12 month duration of stay, but for no longer than 6 months with any one employer (unless a longer period of employment is approved by a delegate of the Secretary of DIBP)
- Visa holder can engage in study for 4 months.

The Department of Immigration and Border Protection provides information about entitlements and workplace rights through a range of channels, including visa grant letters.

## Monitoring Powers

WHM visa holders are not employer sponsored. If DIBP has concerns in relation to the employer and their adherence to broader workplace legislation with regard to employees who are not a subclass 457 visa holder, they are referred to the FWO, Australian Tax Office (ATO) and/or relevant Work Safety authority. In relation to subclass 417 holders, DIBP regularly exchanges information on matters of interest via an Memorandum of Understanding on data exchange and regular meetings.

## Role of the Fair Work Ombudsman in relation to Working Holiday (Subclass 417) Visa Holders and Seasonal Worker Programme

There are concerns with the treatment of subclass 417 visa holders, particularly in the Australian horticulture and poultry processing industries. **Attachment D** provides information on FWO's monitoring activities for the subclass 417 programme.

In August 2014, FWO began an Inquiry to examine the 88 day period required to apply for a second subclass 417 visa. The FWO has commenced a stakeholder engagement programme and held meetings with consulates, unions, community groups, employer organisations and local government.

In April 2015, members from FWO's Overseas Workers Team consulted extensively face-to-face with stakeholders in New South Wales (NSW) and Queensland as part of the Inquiry. A similar round of consultations took place across northern Australia in late 2014. The aim is to speak directly with users of the subclass 417 program to understand their concerns. These activities also raise awareness about exploitation of visa workers in communities where these employees work.

The FWO has also visited farms where subclass 417 visa holders are employed and has conducted desk-based audits of remote employers to ensure that visa holders are receiving their correct entitlements.

As part of the Inquiry, FWO is conducting a targeted market research project to better understand visa holders' use of the program. The research aims to gain insights into the experiences of people undertaking the 88 day regional work required to be granted a second subclass 417 visa.

The FWO commenced a similar major inquiry in November 2013, focusing on the poultry sector. This inquiry focused on the broader labour supply chain practices and subsequent drivers of non-compliance with the *Fair Work Act 2009* at Baiada's NSW poultry processing plants. The Inquiry report will soon be finalised.

### Harvest Trail Project

The fruit and vegetable growing sector is a large employing sector in regional Australia and attracts a large number of backpackers on subclass 417 working holiday visas. Since August 2013 FWO has visited growers of local and national crops across Australia as part of the Harvest Trail.

The Harvest Trail project aims to ensure pickers receive their minimum employment entitlements. The project will improve FWO's understanding of the drivers of non-compliance with workplace laws in this sector and examine labour hire arrangements, which are common in this sector.

### Seasonal Worker Program

The FWO has a role in the Seasonal Worker Program which is open to the horticulture industry and workers (on temporary special program (subclass 416) visas), from East Timor, Fiji, Kiribati, Nauru, PNG, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The FWO's responsibility is to provide education and advice to participants and ensure compliance with Commonwealth workplace laws. The FWO works with the Department of Employment to identify and address non-compliance amongst participating employers.

## Attachment G

### Department of Industry and Science Case Studies—Subclass 457 Programme

#### Case Study One—Temporary Migration and Science and Technology

Facilitating the temporary entry to Australia for cooperation purposes of scientists, technical personnel, government officials, and other experts in the fields of science, research and innovation, enhances Australia's capacity for scientific excellence and contributes to social, environmental and economic prosperity.

Science and technology are intrinsically international activities and international partnerships extend Australia's research and development output and impact. They open access to world-leading expertise, infrastructure, markets, investment and funding programmes. International partnerships support a dynamic Australian innovation system. Through strong international partnerships, Australian researchers are able to better their skills, experience and opportunities. The Australian Government investments in science and commercialisation activities (both financial and intellectual) are leveraged internationally.

The Department of Industry and Science supports science and technology mobility through the temporary visa options currently available, including subclass 457 visas. Several international stakeholders have reported to the Department of Industry and Science that they have perceived difficulties with pursuing subclass 457 visas for science and technology personnel to come to Australia. Where science and technology government-to-government agreements are in place, international stakeholders have expressed a preference to use the subclass 403 Government Agreement stream, through which science and technology personnel are able to visit or undertake an exchange to Australia for up to two years, consistent with the terms of the agreement.

#### Case Study Two—Temporary Migration and the Australian Astronomical Observatory

The Australian Astronomical Observatory (AAO) is a division of the Commonwealth Department of Industry and Science. As Australia's national optical astronomy observatory whose primary functions are to operate and support the use of national and international telescopes, develop and build state-of-the-art instrumentation for such telescopes, and conduct world leading research, the AAO requires specialised skills and qualifications in the areas of Astronomy, Astrophysics, Applied Physics and Engineering. Vacant positions are therefore advertised locally as well as overseas. The Australian Public Service recruitment processes are followed and all candidates are assessed equally against set criteria. In some cases the AAO is unable to find suitable candidates in the local labour market and overseas staff are sponsored under the subclass 457 programme.

At the AAO, subclass 457 visa holders have the same salary and employment conditions and receive the same learning and development opportunities as Australian employees. The AAO provides additional support to subclass 457 visa holders (including for relocation costs, temporary accommodation and return airfares) and may provide financial assistance to meet additional costs, including those arising from:

- Requirements that subclass 457 visa holders must maintain adequate schooling arrangements for school-aged dependants. State and Territory Governments may charge fees or levies for the dependents of subclass 457 visa holders to attend public schools.
- subclass 457 visa holders, including accompanying family members, are required to maintain adequate arrangements for health insurance for the duration of their stay in Australia.

Overall the subclass 457 visa process is a valuable program for the AAO to fill gaps in the Australian labour market, provide AAO local staff access to overseas professionals, provide skills transfer to local staff and build relationships for future collaboration.

### Case Study Three—Subclass 457 Programme and the Resources Sector

Timely access to skilled workers is important for development of resources projects when skills demand changes faster than the labour market and training systems can respond.

The oil and gas sector contributed \$30.8 billion in commodity export earnings in 2013-14 to the Australian economy. Underpinning future growth in the value of oil and gas to the Australian economy is the almost \$200 billion of investment in seven liquefied natural gas (LNG) projects currently under construction.

In 2014-15, the value of Australian LNG exports is forecast to rise from \$16.3 billion to \$17.6 billion as some of these projects start production. With construction of the Gorgon, Wheatstone, Ichthys and Prelude projects well advanced, Australia's LNG export volumes are expected to more than triple from around 24 million tonnes per year at present to around 79 million tonnes by 2018-19. At that time, Australia is forecast to become the world's largest LNG exporter.

It is important that Australia's migration and visa regime provides certainty and clarity for the offshore petroleum sector. The sector has a strong international focus and relies on a highly mobile and specialised workforce. Specialised technical skills and industry experience will be in greater demand as the sector moves from construction to an operational phase. In order to not exacerbate skills shortages and to maintain project efficiencies and global competitiveness of the sector, flexibility, and timeliness in terms of visa processing and pre approval is required.

While the resources industry is a significant user of temporary skilled migration, subclass 457 visa holders comprise a small population of the total resources sector workforce. The resources industry has previously estimated that the total number of non-citizens working in the industry is likely to be around 2,000 per annum, but given the temporary nature of much of their work this would be significantly less at any one time.

The number of subclass 457 visas issued for the oil and gas industry is captured as a subset of the mining sector data. Workers on primary subclass 457 visas do not make up a substantial portion of the total mining workforce, with 1,060 visas issued in 2014-15 to 31 December 2015. This makes up four percent of all visas issued in the sector, and is a 27 percent reduction over the same period in 2013-14.

In regards to the offshore petroleum industry, all workers regardless of visa or residency status, are covered by, and subject to the health and safety regime under Schedule 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* when performing activities as part of their employment in the industry.

#### Case Study Four—Subclass 457 Programme and Start-Up and Other Innovative Businesses

For start-ups and other innovative businesses, accessing world class talent through subclass 457 visas is often a necessity for successfully commercialising new products, services and processes. Innovative companies aiming to achieve global scale need to bring knowledge and experience to Australia to improve the skills of our own talent base, access international markets, and bridge knowledge gaps in Australia's pool of commercialisation expertise. Rapidly growing Australian businesses in innovative emerging industry sectors can benefit enormously by hiring experienced employees of multinational success stories to help develop the same kinds of successes domestically.

In particular, stakeholders in the information and communications technology (ICT) sector often note the relative shortage of experienced and skilled ICT workers, with proven experience servicing global markets. The StartupAUS 2015 Crossroads report (<http://startupaus.org/wp-content/uploads/2015/04/Crossroads-2015.pdf> ) notes that Atlassian, arguably Australia's most successful software development company, employed 19 per cent of their 320 Sydney staff on subclass 457 visas in 2014. The report also notes this trend is mirrored in other Australian tech start-ups. These expert employees are highly paid and contribute their skills and experience to Atlassian's other employees, helping to grow Australia's base of high quality knowledge talent.

Ensuring that innovative companies have sufficient access to this world class talent through the subclass 457 programme is important. The Department of Industry and Science suggests that future policy consideration could be given for start-ups and other entrepreneurial businesses to have more flexible access to subclass 457 visas, with appropriate controls in place to ensure that the access is targeted at highly paid staff with skills and experience unavailable within Australia, in line with the programme's objectives.