

# EY Submission to Trade and Investment Growth Committee

Benefitting from Australia's Free Trade  
Agreements

June 2015



Building a better  
working world



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## EY Submission to Trade and Investment Growth Committee

Dear Sir/Madam

EY is Australia's second largest immigration service provider. We represent some of the world's largest businesses as well as hundreds of medium and small businesses from all industry sectors including engineering, telecommunications, finance, property development, insurance, shipping, banking, professional services, retail and recruitment.

EY supports the Senate's continued commitment to reviewing Australia's temporary visa programmes ensuring that both the interests of the Australian labour market and rights of the temporary visa holders are protected.

EY believes Australia stands to benefit from the number of free trade agreements already in place and even more so following the signing of the China-Australia free trade agreement. The trade agreements not only encourage trade and investment growth for Australia, but it is an opportunity for the Australian immigration framework and policy to be better aligned with our international trade obligations to facilitate mobility of citizens from our trading partner countries.

In this submission, we will respond to the Joint Select Committee's terms of reference, limiting our comments on Australia's temporary visa programmes and how it could be enhanced by Australia's free trade agreements.

EY looks forward to contributing to the Committee's inquiry to ensure the benefits of Australia's free trade agreements are reflected in Australia's immigration framework and policy to facilitate mobility of citizens from our trading partner countries.

Kind regards

**Wayne Parcell PSM**  
Partner & Oceania Leader, Global Immigration  
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MARN9790656



## Views of Australian and global businesses

Our research conducted in 2014 for EY's Submissions to the Independent Review of integrity in the subclass 457 visa programme showed businesses are conscious of employing Australian permanent residents or citizens, while balancing reliance on overseas talent that brings international experience to enhance competitiveness and global connection.

EY consulted with more than 1500 Australian and global businesses in face to face forums and through an on-line survey.

How many Australian permanent residents or citizens work in your business?	
Answer Options	Responses
More than 1,000	40.80%
501-1,000	16.30%
101-500	20.40%
51-100	8.20%
Less than 50	14.30%

How many subclass 457 visa holders does your business currently sponsor:	
Answer Options	Responses
More than 100	30%
51-100	14%
11-50	32%
Less than 10	24%

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## 1. EY recommendations

Benefits of Australia's free trade agreements be reflected in Australia's immigration framework and policy to facilitate mobility of citizens from our trading partner countries.	4.1
Additional immigration policy guidance on labour market testing for temporary skilled (work) visa programme, in particular exemptions where labour market testing conflicts with Australia's international trade obligations. Issues for clarification are detailed at Appendix A.	4.2
Remove labour market testing from temporary skilled (work) visa programme at the earliest opportunity	4.3

## 2. Australia's free trade agreements facilitates mobility of citizens from trading partner countries

Under the current Australian immigration framework, Australian and global businesses can sponsor foreign nationals to work and live in Australia under the subclass 457 temporary work (skilled) visa programme.

Labour market testing in the subclass 457 visa programme was introduced by the *Migration Amendment (Temporary Sponsored Visas) Act 2013*, which came into effect on 23 November 2013. Sponsors are required to test the local labour market prior to nominating an overseas worker for a full-time skilled role in Australia. However, the migration legislation is subject to Australia's international trade obligations and affords exemption from labour market testing where it would conflict with Australia's international trade obligations<sup>1</sup>, in any of the following circumstances<sup>2</sup>:

- ▶ The worker the sponsor nominates is a citizen/national of Japan or Thailand, or is a citizen/national/permanent resident of Chile, Korea or New Zealand
- ▶ The nominated worker is a current employee of a business that is an associated entity of its business that is located in an Association of South-East Asian Nations (ASEAN) country (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam), Chile, Japan, Korea or New Zealand
- ▶ The worker the sponsor nominates is a current employee of an associated entity of its business who operates in a country that is a member of the World Trade Organisation, where the nominated occupation is as an "Executive or Senior Manager" per the list provided by the immigration department and the nominee will be responsible for the entire or a substantial part of its company's operations in Australia
- ▶ The sponsoring business currently operates in a World Trade Organisation member country and is seeking to establish a business in Australia, where the nominated occupation is as an "Executive or Senior Manager" per the list provided by the immigration department
- ▶ The worker the sponsor nominates is a citizen of a World Trade Organisation member country and has worked for the business in Australia on a full-time basis for the last two years

In implementing the labour market testing requirement, the immigration department clearly intended to provide exemptions from labour market testing where it would conflict with Australia's international trade obligations. However, the policy guidelines require significant refinement. We have identified a number of areas for improvement in Appendix A *Labour Market Testing - issues to be clarified by the immigration department*.

EY believes that while immigration department policy guideline remains unclear, the benefit of Australia's free trade agreement in facilitating mobility of citizens of our trading partner countries will not be fully realised. Any hindrance of international mobility of citizens from our trading partner countries will impact trade and investment growth in Australia.

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<sup>1</sup> MIGRATION ACT - PART 2 - CONTROL OF ARRIVAL AND PRESENCE OF NON-CITIZENS - Division 3A - Sponsorship - Section 140GBA

<sup>2</sup> Department of Immigration and Border Protection website: <http://www.immi.gov.au/Visas/Pages/457.aspx> - Nominate - Who can nominate - International trade obligations

### 3. Effectiveness of labour market testing provisions

In regard to the general effectiveness of labour market testing provisions, we reference EY's submission to the independent review of integrity in the subclass 457 visa programme in 2014.

In that submission EY highlighted the findings of the Independent Review published in *Robust New Foundations*, which stated:

*On the evidence presented to us we have concluded that the labour market testing provisions introduced in 2013 are easily circumvented and do not prevent employers from engaging overseas workers in place of Australians. In addition, recruitment practices are highly diverse across occupations and industries: to design a system that encompasses this diversity is impractical.*

*While the provisions are symbolic of what is trying to be achieved, in practice they do not assist in achieving the objective of providing evidence that suitable Australian workers are not available. Therefore the requirement adds unnecessary regulatory cost for little or no actual benefit. In its current form the labour market testing requirement is costly for sponsors who have done the right thing and subject to manipulation by those that have not made a serious effort to find a local worker.*

*Labour market testing has previously been removed from the 457 programme as it was found to be ineffective<sup>3</sup>, and we have not been presented with any strong evidence in support of the effectiveness of its re-introduction in 2013.*

EY recommends that labour market testing be abolished. Labour market testing adds complexity to the temporary subclass 457 visa programme without any observable benefit.

Labour market testing is not an appropriate mechanism in a modern global economy. Sixty percent of our survey respondents identified labour market testing as a significant obstacle which prevents the subclass 457 visa programme meeting the programme's intention.

Nearly 90% of sponsors surveyed agreed with the following statements:

- ▶ A suitably qualified Australian who is readily available to fill a skilled vacancy is preferred to hiring an overseas skilled worker unless there are proprietary business skills and knowledge that a local candidate would not possess
- ▶ Labour market testing is not necessary to ensure Australians are considered for employment when suitably qualified Australians are readily available without the significant costs involved in importing an overseas skilled worker

As a blunt instrument of the old economy, the concept of labour market testing disregards the fact that businesses make a large investment in relocating skilled staff from overseas, rather than look overseas for lower cost workers. Survey respondents commented:

*"It is always commercially prudent and easier to recruit locally. We know where skill shortages exist and advertising slows down the process when there may be a pressing commercial need to move quickly."*

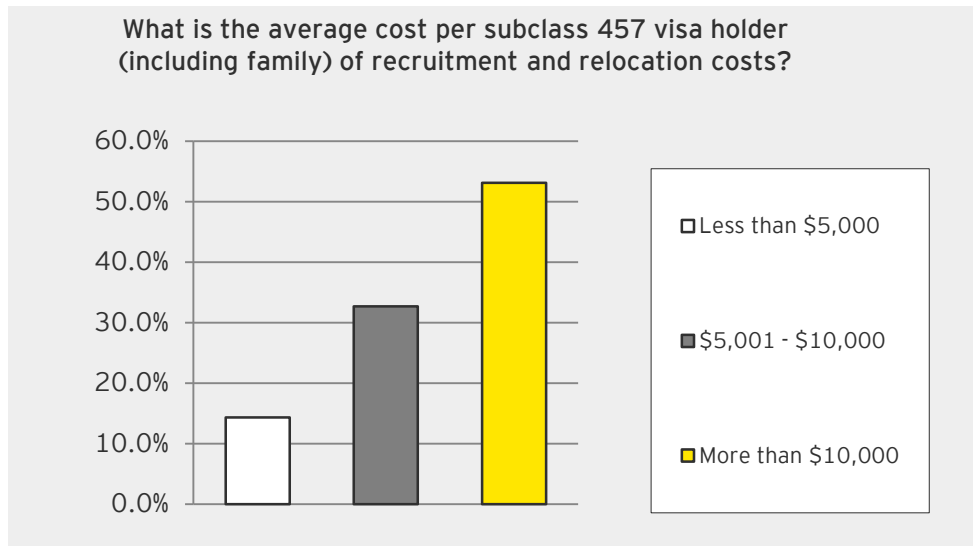
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<sup>3</sup> \*LMT was removed from the 457 programme on 1 July 2001 by Minister Ruddock after the External Reference Group Review chaired by Peter McLaughlin in its report, *In Australia's Interests: A Review of the Temporary Residence program*, recommended the introduction a skills threshold as a replacement.

"It's cheaper and easier to recruit locals where they have the required skills and experience. However, many of our roles have an international dimension, which may not be available in the local workforce."

"Local hires are always the preferred option other than where proprietary business skills and knowledge is required."

Table 1



We note that the recommendation of the Independent Review to abolish labour market testing was noted, but not supported, by the government. As labour market testing is likely to remain a feature of the subclass 457 visa programme for some time, we take this opportunity to present our recommendations for the improvement of the policy. Policy guidelines for labour market testing, including the exemptions require significant refinement. We have identified a number of areas for improvement in Appendix A *Labour Market Testing - issues to be clarified by the immigration department*.

As mentioned above, EY believes that while immigration department policy guidelines remains unclear, the benefit of Australia's free trade agreement in facilitating mobility of citizens of our trading partner countries will not be fully realised. Any hindrance of international mobility of citizens from our trading partner countries will impact trade and investment growth in Australia.



## **4. EY Recommendations**

- 4.1 Benefits of Australia's free trade agreements be reflected in Australia's immigration framework and policy to facilitate mobility of citizens from our trading partner countries.**
- 4.2 Additional immigration policy guidance on labour market testing for temporary skilled (work) visa programme, in particular exemptions where labour market testing conflicts with Australia's international trade obligations. Issues for clarification are detailed at Appendix A.**
- 4.3 Remove labour marketing testing from temporary skilled (work) visa programme at the earliest opportunity.**

## Appendix A Labour market testing - issues to be clarified by immigration department



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