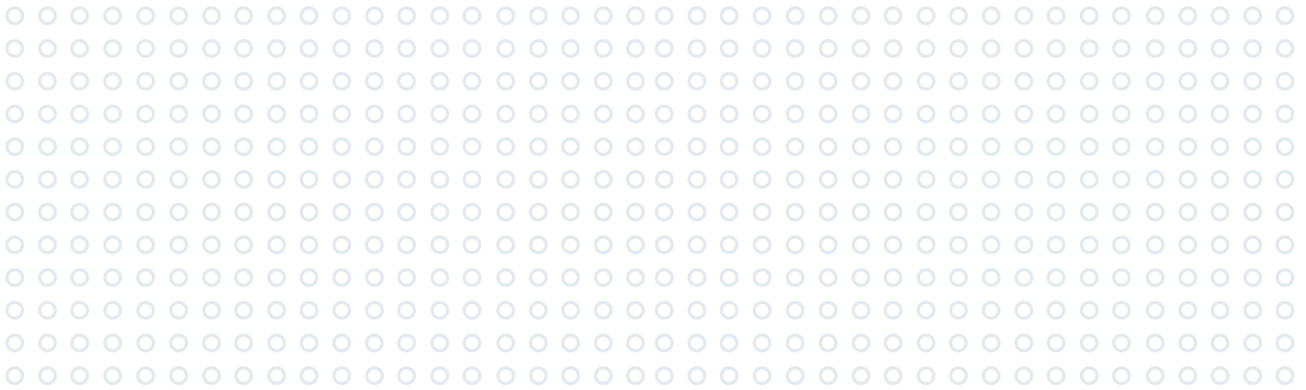


Business  
Council of  
Australia



Submission to the Senate Legal and  
Constitutional Affairs Committee on  
the Framework and Operation of  
Subclass 457 Visas, Enterprise  
Migration Agreements and Regional  
Migration Agreements

APRIL 2013

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The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

## Overview

This is the BCA submission to the Senate Legal and Constitutional Affairs Committee on the Framework and Operation of Subclass 457 Visas, Enterprise Migration Agreements and Regional Migration Agreements.

The unsubstantiated claims by the government of excessive growth and widespread rorting in the temporary skilled migrant 457 visa scheme are harming our international reputation and risk undermining a program that is vital for the economy.

The facts are that there are 105,000 primary 457 visa holders performing critical roles in Australia, which is less than one per cent of the workforce, and that number fell in March as visa grants declined.

The demand-driven design of the 457 scheme means that applications will ebb and flow according to the needs of the economy, so monthly data should not be used to claim a broader outbreak in 457 visas.

Australian businesses overwhelmingly prefer to hire Australians first, because it is cheaper and easier to fill skills requirements from the local workforce.

However, the 457 visa scheme is very important for giving businesses the confidence to make both immediate and long-term investment decisions knowing that genuine skills shortages can be overcome with temporary skilled migrants.

If there is evidence of systemic rorting then it should be produced, otherwise the government should simply deal with any employers who are found to be abusing the system.

The BCA does not support making the scheme any more onerous or inflexible, but if the government goes down that path we expect full consultation with business and compliance with the government's regulatory reform processes.

## Key points

- This inquiry into the framework and operation of the subclass 457 temporary migration visa should reinforce the importance of skilled migration to Australia's long-term prosperity.
- Our starting point has always been that priority for employment be given to Australian workers. Businesses overwhelmingly prefer to hire Australians first, because it is cheaper and faster to fill skills requirements from the local workforce. But the simple reality is that in some sectors and locations where timing is critical, there is not the supply of skilled labour to meet employment demand. These pressures will increase as our population ages.
- Temporary skilled migration works well to enable skills shortages to be filled by foreign workers. It enables investments in projects, economic expansion and basic service provision to proceed. It brings skills and knowledge into Australia that boosts innovation, grows national income and in turn creates high-value job opportunities for Australians. It is an integral component of Australia's broader population policies as it establishes a pathway to permanent residence that works extremely well for both Australia and the individual migrant.
- As the government points out, the subclass 457 visa program is uncapped, demand-driven and designed to respond to the needs of the Australian economy – it is very important in our view that these remain as the key features of program design.

- Temporary migration is part of a multifaceted approach to dealing with Australia's long-term workforce development challenges alongside lifting workforce participation and workplace productivity, skills training and retraining, and greater labour mobility. The debate is often misrepresented as substitution by foreign workers when the key concern is to attract the best skilled workers globally to complement and help grow our domestic workforce.
- While steps have been taken to speed up processing times, the inquiry should identify ways to make it even more flexible and less costly for employers who already incur additional recruitment, training, relocation and other on-costs when hiring workers from overseas to fill skills gaps.
- The inquiry should not recommend additional training, reporting or other burdens on employers. Adding further tests, such as labour market testing, will only add cost and complexity for no demonstrable benefit. The cost premiums associated with hiring overseas workers mean it is in an employer's commercial interest to have already assessed whether there might be Australian workers available to fill the roles. The rules of the scheme already disallow the use 457 visas to undercut Australian wages and conditions.
- It is essential that the temporary skilled migration debate occurs in a fact-based way. The number of 457 visa holders in Australia has stabilised over the past six months. Monthly visa applications have fallen from their peak in June 2012. The Department of Immigration and Citizenship has pointed to this decline as evidence that the 457 scheme is working as it is designed to do.
- The government's changes to the 457 visa scheme announced in February were said to be in response to excessive use and so-called rorting, but with little justification presented. Individual visa holders or employers not complying with the legislation should be dealt with directly. Ad hoc changes to the rules only add cost, undermine business confidence and slow business activity.
- Our concern about those changes was heightened by the Office of Best Practice Regulation finding that the Department of Immigration and Citizenship had not complied with the government's best practice regulation requirements in relation to these changes.<sup>1</sup>

### **Summary of recommendations**

- This inquiry should help to build the case for the importance of both temporary and permanent skilled migration with the community.
- The subclass 457 visa program should remain uncapped, demand-driven and designed to respond to the needs of the Australian economy.
- The inquiry should highlight areas of reform that can reduce 457 visa application processing times and lower regulatory and compliance costs on business.
- The inquiry should recommend that the 457 visa policy is evidence-based and that policy changes should follow the government's best practice rules for regulation making.
- The committee should make recommendations supporting the consistent and transparent provision of information on the operation of the Enterprise Migration Agreement (EMA) and Regional Migration Agreement (RMA) schemes to investors.
- The BCA supports efforts to improve forecasting of Australia's workforce needs and to use that data to better target training and migration programs to alleviate or avoid future skills shortages.
- The inquiry should not recommend the introduction of labour market testing, as this is an onerous requirement that would be complex, costly and would not provide any demonstrable benefits given employers already incur additional costs when hiring overseas workers to fill skills gaps.
- Non-compliance by employers or employees should be dealt with through better enforcement rather than through ad hoc changes to the rules of the scheme.

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1. See Department of Finance and Regulation website at [www.ris.finance.gov.au](http://www.ris.finance.gov.au).

## **Reinforcing the importance of skilled migration to Australia's future prosperity**

This inquiry is an opportunity to reinforce to the community the importance of an effective temporary skilled migration to securing Australia's long-term prosperity.

The Business Council of Australia strongly supports the 457 temporary work (skilled) visa program as an effective policy tool for managing skills shortages and boosting innovation, investment and business activity that creates high-value job opportunities for Australians.

Enterprise Migration Agreements and Regional Migration Agreements, which are based on the subclass 457 visa scheme and also the subject of this inquiry, enable the mobilisation of larger workforces needed to deliver Australia's unprecedented pipeline of major projects where local workers are not available.

The 457 visa scheme has become a very important part of Australia's economic policy settings and is undoubtedly a major success. The scheme allows for people with world-class skills and high levels of entrepreneurship to work in Australia's economy, which generates economic activity that supports innovation and makes Australia more competitive. Foreign workers in Australia on 457 visas create critical relationships and links with the rest of the global economy that facilitate future trade and investment.

By growing economic activity, the 457 visa scheme boosts employment opportunities for Australians and creates better and higher paying jobs for local workers. A 2010 National Bureau of Economic Research paper found that the effect of net migration on Australian wages has been clearly positive – around 1.5 per cent – with the biggest positive impact being to boost the wages of lower-skilled workers by four per cent.

We welcome the government's commitment to the successful operation of the 457 visa as stated in the *Australia in the Asia Century White Paper*, where it said that it is:

... committed to ensuring that our migration programs, particularly for skilled migrants, are flexible and responsive to Australia's changing needs. For example, the temporary skilled migration ('457 visa') program is demand driven, making it highly responsive to economic conditions, while strong oversight of the program and minimum training benchmarks for sponsors preserves the work and skills opportunities for Australians.

In our view, the 457 visa program is an integral part of Australia's broader migration policy settings that works well and this inquiry should help to build public support for both temporary and permanent skilled migration. It should take care not to make recommendations that will reduce the flexibility of the scheme or make the scheme more onerous for employers and migrants. Doing so would be counter to Australia's long-term interests.

## **Economic context to this inquiry into temporary skilled migration**

### **Changes in the economy require a multi-faceted approach to workforce development**

Australia's workforce development challenges require lifting workplace participation; well-targeted skills training and retraining; greater labour mobility and substantial temporary and permanent skilled migration. In many cases skills shortages can only be filled by temporary migration

Constant change in the industrial make-up of Australia's economy is a fact of life for an open economy operating in highly competitive global markets. For instance, the increase in resources investments to 8 per cent of GDP has altered demand for skills and led to significant disruption in Australia's labour market.

Our manufacturing, agriculture and services industries are also going through changes caused by many factors including new technologies, changes in customer preferences and the effects of the high Australian dollar.

This is driving four key priorities for workforce development:

- **Workforce participation:** as the population ages there needs to be a focus on encouraging workers with critical skills to remain in the workforce past traditional retirement age, as well as encouraging other sections of the community to lift participation. Workforce participation is projected to decline from 65 per cent to 61 per cent by 2050.
- **Skills training and retraining:** Australia's training system must keep up with the shifts in workforce skill sets and capabilities required by the changing industrial structure of Australia's economy.
- **Labour mobility:** there is a need to attract Australian workers to where the new jobs are being created around the country, for example, in regional parts of Queensland and Western Australia.
- **Migration:** temporary and permanent skilled migration will play a crucial role in growing labour markets, addressing skills shortages, bringing new skills and knowledge to Australia and contributing to the growth in our population that is critical to securing Australia's prosperity in the Asia-Pacific Century.

While all four priorities need to be addressed, in many instances skill shortages can only be filled by temporary migration.

As the government points out, the subclass 457 visa program is uncapped, demand-driven and designed to respond to the needs of the Australian economy – and it is very important in our view that these remain as the key features of program design.

Evidently the program is working well. On 3 February 2013 the department issued a media release titled '457 Visa Program Responds Well to Economic Needs', which observed that a downward trend in visa applications demonstrated the program's responsiveness to the changing needs of the Australian economy. Over the past three years, sanctions against employers have fallen from 164 in 2009–10 to 125 in 2011–12.

### **Continuing need for migration to contribute to well-managed population growth**

The longer-term backdrop to this review is a need to continue to grow Australia's population at the moderate rates of growth laid out in the 2010 Intergenerational Report to secure long-term prosperity and to combat demographic pressures.

Australia needs migrants to support economic development and to combat the impact of population ageing on the workforce. The Australian Workforce and Productivity Agency projects that total demand for qualifications held will increase by between 3 and 3.9 per cent on average each year to 2025.<sup>2</sup> Temporary and permanent migration will be essential to helping to fulfil the needs of the labour market.

We urge the committee to take into account when conducting its inquiry the broader strategic importance of the 457 visa program to Australia's future. This is not a simplistic debate about prioritising foreign workers over Australian workers but an important discussion about how Australia can attract skilled workers to complement the domestic workforce and contribute to its development.

With natural increase declining as a proportion of total population growth and demographic change pushing many existing workers into retirement, this means we need to continue to pursue migration policies that will build a larger, more skilled workforce for the future.

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2. Australian Workforce and Productivity Agency, *Future Focus: 2013 National Workforce Development Strategy*, February 2013. Projections relate to the three higher growth scenarios considered.

The 457 visa scheme is also hugely important to the success of the permanent migration program as it allows Australia to recruit highly credentialed specialists to go on to become permanent citizens. A total of 41,000 457 visa holders became permanent migrants in 2011–12 (out of a total annual permanent migration program of 190,000). This very successful system works in the best interest of both Australia and immigrants.

Australia's longer-term population growth needs to be broadly consistent with Australia's net overseas migration averaging at least 180,000 per annum, in accordance with:

- a permanent migration program at a minimum remaining at current levels – that is, 190,000 total places, of which over two thirds should be skilled migration (it should be noted that an estimated 70,000 Australian emigrants offset this intake each year)
- ensuring a high degree of flexibility in uncapped temporary migration schemes such as 457 visas.

### **The number of 457 visa applications and grants has stabilised**

Contrary to other claims made recently, the number of 457 visa applications and grants has stabilised following the peaks of mid-2012. The Department of Immigration and Citizenship has pointed to this decline as evidence that the scheme is working as it is designed to do.

It is important that the 457 visa debate happens in a fact-based way and that policy changes are evidence based.

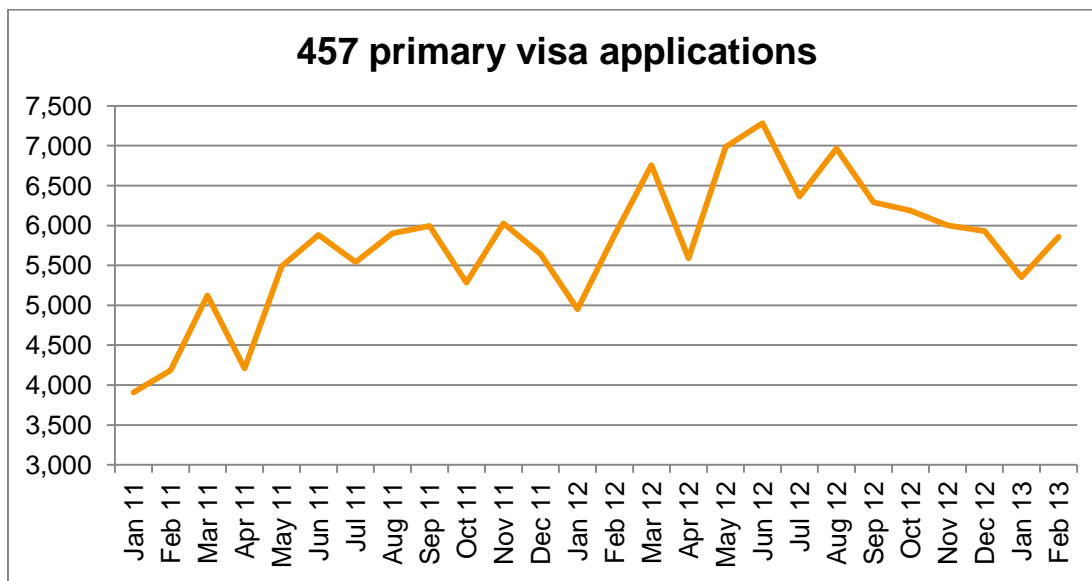
To start with, the 457 visa needs to be put into perspective. There are around 105,000 primary 457 visa holders in Australia performing critical roles. This is less than one per cent of the workforce.

Furthermore, the total number of primary visa holders actually fell by 1.8 per cent from February 2013 to March 2013. This is consistent with the recent flattening trend for the numbers of visa holders and the growth in new visas, even taking into account the seasonal nature of 457 visa demand:<sup>3</sup>

- visa applications to March 2013 are 7 per cent higher than the equivalent nine months to March 2012, however:
  - a substantial proportion of those applications were in the first quarter of 2012–13
  - visa grants are only 1.7 per cent higher – grants have fallen significantly in February and March 2013
- monthly visa applications peaked in June 2012 and have fallen in six of the past nine months to March 2013
- monthly visa applications and grants were lower in each of February and March 2013 than they were in February and March 2012
- the decline in the growth in visa applications and visa holders is heading in the opposite direction to wider employment growth, which has grown by around 0.8 per cent since June 2012.

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3. Department of Immigration and Citizenship, *Subclass 457 State–Territory Summary Report, 1 July 2012 to 31 March 2013*, released 29 April 2013.

**Figure 1: Monthly subclass 457 primary visa applications since January 2011**

Source: Department of Immigration and Citizenship.

Government claims that the number of visa holders are up 19 per cent compared to the same time last year gives a wrongful impression of a scheme growing strongly when it has in fact stabilised. It fails to acknowledge that the total number of 457 visa holders has remained steady over the past six months and, as mentioned above, that the number of visa holders actually fell from February to March. The change in the total number of visa holders is not equivalent to analysing the rate of new growth in the scheme, which is flattening.

Two other features of recent statistics are worth further exploration:

- The gap that has emerged between the number of monthly visa applications and monthly visa grants needs to be better understood to ensure processing times are not slipping.
- Most new applications are now onshore. Onshore primary applications grew 27.4 per cent in the nine months to March 2013. Offshore applications were 8 per cent lower over the same period. This clearly points to a softening in the number of new migrants entering Australia under the scheme.

### ***Recent changes by the government a worrying backward step***

The program was reviewed in 2009 and was subjected to further changes announced by the Minister for Immigration on 23 February 2013. The basis for these changes, and importantly, the way they were communicated was of much concern to business.

The government announced some changes to the 457 scheme in February designed to improve the integrity of the scheme through new requirements including to confirm that a job position is a genuine vacancy in the business, strengthening English language requirements and clarifying the training requirements of employers, among others.

Our concern about those changes was heightened by the finding of the Office of Best Practice Regulation that the Department of Immigration and Citizenship was non-compliant with the government's best practice regulation requirements in failing to prepare an adequate RIS for three of the changes.

We agree the integrity of the 457 visa scheme is important for its longevity. Enforcement is a necessary part of that. If there are individual visa holders or employers not complying with the legislation the government should deal with those cases directly.



However, unless the government can show systemic sorting of the scheme – and no clear evidence has been provided to date – then we do not see the need for ad hoc changes to the rules that only add cost, undermine business confidence, slow business activity and job creation and create disincentives for future investment.

However, the bigger risk to the integrity of the scheme of concern to business is negative rhetoric about temporary foreign workers that reduces confidence in the scheme in the wider community. Temporary skilled migrants make a valuable contribution to Australia's economy and job creation as well as to our diverse society. We need our leaders to make these workers feel welcome in Australia and to take responsibility for explaining to the community why skilled migration is important, including towards creating and sustaining Australian jobs.

What needs to be remembered is that businesses overwhelmingly prefer to hire Australians first. It is cheaper and faster to fill skills requirements from the permanent local workforce. The 457 visa scheme is very important for giving business confidence to make immediate and long-term investments knowing that genuine skills shortages in Australia can be overcome with temporary skilled migrants. A positive and constructive national dialogue about temporary skilled migration that welcomes migrants helps to attract the very best and brightest workers to Australia.

### **Positive effects of the 457 visa scheme on workforce development**

The terms of reference for this inquiry asks the committee to assess 457 visas for their 'effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements'.

Fundamentally, the point here is that temporary skilled workers are addressing immediate skills needs, but in doing so this does not lessen the importance of an effective national training system that lifts the capacity of the domestic workforce and gives Australians the opportunity to hold high-value jobs in the future.

Temporary foreign workers are at a very different stage of personal development to apprentices. The average total remuneration for 457 primary visa applicants is \$90,000. By occupation, 50 per cent are professionals, 16 per cent are managers, and 26 per cent are skilled technicians and trade workers.

Furthermore, the number of people in apprenticeships has risen over the past decade:

- 3.9 per cent of Australian workers were employed as an apprentice or trainee as at December 2011, compared with 3.4 per cent in 2001
- within the trades, 11.9 per cent of workers were employed as an apprentice or trainee as at December 2011, compared with 9.5 per cent in 2001.<sup>4</sup>

In considering these criteria, the committee should consider the ways in which the 457 visa scheme has a positive effect on training quality in Australia. Many 457 visa holders are bringing new skills and knowledge which, either through direct training and skills transfer or indirectly through on-the-job interaction, help to lift the skills of Australian apprentices and other workers. This again demonstrates the complementary rather than substitutional impact of the 457 visa scheme on the domestic workforce.

### **Enhancement of the 457 visa system to reduce costs to employers**

A key attribute of the 457 visa system is its flexibility. The Department of Immigration and Citizenship is to be commended for the efforts it has taken up to the end of 2012 to speed up processing of 457 visa applications.

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4. National Centre for Vocational Education Research, *Australian Vocational Education and Training Statistics, Apprentices and Trainees, Annual, 2011*.

Making sure the system is flexible and low-cost to employers is important given that employers already incur higher costs when employing a foreign worker compared to local workers.

In making the decision that a skills shortage can only be met by hiring a 457 visa holder, business needs to factor in additional costs arising from:

- funding assistance to help with relocation and repatriation – these costs vary, but are generally higher for professionals
- on-costs associated with worker top-up training, providing health insurance cover, funding and/or subsidising visa and residency applications
- program compliance costs, e.g. demonstrating payment at the market rate, demonstrating that training requirements are being met, monitoring and reporting obligations.

Furthermore, it is becoming more difficult to attract the very best people to Australia due to more competitive approaches being taken by other countries towards attracting skilled migrants. And, for all their liveability attributes, Australia's cities and regions are viewed as expensive places in which to buy housing and to live.

The inquiry can make a useful contribution by highlighting areas of reform that so that 457 visa application processing times can be reduced further and regulatory and compliance costs on business also reduced.

Undue costs and delays in the temporary migration scheme detract from economic growth, which ultimately is a cost borne by the community and by domestic employees who miss out on the business activities and other benefits generated by skilled migrants.

### **Provision of program information on the departmental website**

The committee should make recommendations supporting the consistent and transparent provision of information on the operation of the Enterprise Migration Agreement and Regional Migration Agreement schemes to investors to safeguard Australia's attractiveness as an investment destination.

Since these schemes were introduced, the provision of information to potential applicants has been poor.

Regional Migration Agreements were announced in May 2011 in the 2011–12 Budget. Yet, almost two years later, the Department of Immigration website advises users that 'the department will release the RMA submission guidelines shortly'.

The committee should enquire as to why the guidelines for the EMA submissions, released in 2011, are no longer available on the Department of Immigration website.<sup>5</sup> Removing program guidelines from a government website without explanation does not send a positive signal to investors already wary of chopping and changing of government policy as it relates to major project investment in Australia.

While the number of applications for EMAs has not been as high as first envisaged due to a cooling in investment, it will be important to continue to offer an efficient EMA program that will allow 457 visas and EMAs to remain a flexible and fast means for addressing skills shortages on eligible projects given the importance of timeliness or approvals to arranging project finance and the timeliness of work schedules to project success.

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5. Department of Immigration and Citizenship website, accessed 24 April 2013.

## **Better long-term forecasting of workforce needs**

The terms of reference for this inquiry ask 'whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas'.

The BCA supports efforts to improve forecasting of Australia's workforce needs and to use that data to better target training and migration programs to alleviate or avoid future skills shortages.

## **Labour market testing**

The terms of reference ask about 457 visas' 'accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process'.

The inquiry should not recommend the introduction of labour market testing, as this is an onerous requirement that would add unnecessary regulatory costs on industry and is impractical in most cases. It is complex, costly and does not provide any demonstrated benefits.

Businesses overwhelmingly prefer to hire Australians first. It is cheaper and faster to fill skills requirements from the permanent local workforce. Employers are taking on additional costs of hiring, training and relocating overseas when applying for 457 visas – it is in their commercial interest to have already assessed whether there might be Australian workers available to fill the roles.

There is next to nothing to be gained from mandatory labour market testing. Labour market testing would only add more cost and delay to employers and curtail business activity.

Furthermore, the introduction of labour testing could be inconsistent with Australia's commitments under World Trade Organization and free trade agreements, as noted in the government response to the report of the Joint Standing Committee on Migration in 2009.

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