The Parliament of the Commonwealth of Australia

Temporary visas ... permanent benefits

Ensuring the effectiveness, fairness and integrity of the temporary business visa program

Joint Standing Committee on Migration

August 2007
Canberra

978-0-642-78956-3 (Printed version)
978-0-642-78957-0 (HTML version)

Cover design by House of Representatives Publishing Office

Contents

LIST OF TABLES

LIST OF FIGURES

Foreword

Migration, in its many forms, has made an important contribution to the economic development of Australia and the creation of a diverse, vibrant society. In recent years, the Australian Government has increased significantly the level of temporary skilled migration in response to critical skills shortages throughout Australia. In my own state of Western Australia, the mining boom has led to increased demands for skilled workers, and in many cases this need can only be met by overseas workers. The situation in Western Australia is replicated in other industry sectors throughout Australia.

A range of business visas facilitate the entry of skilled workers to fill positions on a temporary basis. Of these, the 457 visa has gained considerable public attention, largely through reports of abuse[1] of the visa and those workers brought to Australia under its auspices. While few would deny the skills shortages facing Australia due to a strong economy and historically low levels of unemployment, public support for temporary business visas has the potential to be undermined by abuse of the system. The Committee therefore decided to examine the adequacy of eligibility requirements and the effectiveness of monitoring, enforcement and reporting arrangements for these types of visas. The integrity of the system needs to be protected and strengthened and, with it, public acceptance of the need for temporary skilled workers from overseas to meet proven skill shortages in key industry sectors. Employers also need to be reminded that access to skilled temporary workers is a privilege, not a right. Abuses of the system should and will be met by strong penalties and withdrawal of their access to this type of labour.

Bringing in skilled workers from overseas, however, is not a long-term solution to the skills shortages facing Australia. Training Australians, and providing them with job opportunities, has to have highest priority. Employers must demonstrate a commitment towards training an Australian workforce, rather than relying on accessing skills from a global, but at times limited, pool of workers. One of the

---

1 For more information, see Table 3.2 in Chapter 3 of the report.

prime components of the temporary business visas is the need for employers to demonstrate a commitment to training of Australians, and the Committee saw this as of fundamental importance in examining the use of such visas.

While there is a need, from the viewpoint of business, to have such skilled workers identified and brought to Australia as quickly as possible through streamlined processes, that must also be weighed against the need for sufficiently rigorous checking of the credentials and background of these workers. As events in recent weeks have shown, the Australian public would also expect that overseas workers are thoroughly assessed to determine if they might pose a security risk to this country.

I would like to thank all of the groups and individuals who made submissions to the inquiry and appeared at public hearings as it was essential that the Committee hear first hand the experience of both employers and workers utilising these visas. I would also place on record my thanks to all members of the Committee who approached this inquiry in a bipartisan way. Discussion at times was vigorous, but all came from a perspective of wanting the best possible system for Australia.

Don Randall MP
Chair

Committee membership

Chair	Mr Don Randall MP
Deputy Chair	Senator Helen Polley (from 7 December 2006)
Members	Senator Andrew Bartlett
	Senator Alan Eggleston
	Senator Linda Kirk (to 6 December 2006)
	Senator Stephen Parry
	Mr Laurie Ferguson MP
	Mrs Julia Irwin MP
	Mr Michael Keenan MP
	Hon Dr Carmen Lawrence MP
	Dr Andrew Southcott MP

Committee Secretariat

Secretary	Ms Joanne Towner
Inquiry Secretary	Dr Kate Sullivan
Senior Research Officers	Ms Zoë Smith
	Ms Julia Searle (from 11 June 2007 to 18 July 2007)
Administrative Officer	Ms Melita Caulfield

Terms of reference

On 6 December 2006 the Joint Standing Committee on Migration adopted the following inquiry:

Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas

1. Inquire into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 visas and Labour Agreements; and

2. Identify areas where procedures can be improved.

List of abbreviations

ANZSCO	Australian and New Zealand Standard Classification of Occupations
ASCO	Australian Standard Classification of Occupations
COAG	Council of Australian Governments
CSWP	Commonwealth/State Working Party
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
ETA	Electronic Travel Authority
IELTS	International English Language Testing System
IOO	Immigration Outreach Officer
JSCM	Joint Standing Committee on Migration
MCIMA	Ministerial Council on Immigration and Multicultural Affairs
MIA	Migration Institute of Australia

MSL	Minimum Salary Level
OH&S	Occupational Health and Safety
OTD	Overseas Trained Doctor
OWS	Office of Workplace Services
RCB	Regional Certifying Body
RWA	Regional Workforce Agency

List of recommendations

1 Introduction

Recommendation 1

The Committee recommends that the Department of Immigration and Citizenship, together with the Australian Federal Police and other relevant agencies, review the character requirements of the 457 visa program to ensure the integrity of security and police checks, particularly with reference to any variations in these procedures for overseas trained doctors entering under the Medical Practitioner visa (subclass 422) and the 457 visa.

Recommendation 2

The Committee recommends that the Department of Immigration and Citizenship commission research into sectoral usage of the 457 visa program, commencing with the meat processing sector, with a view to further refining temporary skilled migration policy and the 457 visa program with reference to specific industry sector needs.

Recommendation 3

The Committee recommends that the Department of Immigration and Citizenship:

- clarify the purpose of the Business (Short Stay) visa (subclass 456) in terms of whether it permits employment options—that is, valid entry for short-term specialists to meet the urgent needs of business;

- work with stakeholders to ensure an effective, streamlined migration option to meet the short-term temporary employment needs of business; and
- rename the long-stay and short-stay business visas and the business visitor visas to more accurately reflect their employment or business visit purposes, with consideration to be given to renaming the Temporary Business (Long Stay) visa as the Temporary Skilled Employment (Long Stay) visa.

Recommendation 4

The Committee recommends that, in light of the serious concerns raised during the inquiry about skills assessment processes for overseas trained doctors (OTDs), the Department of Health and Ageing, together with the Department of Immigration and Citizenship, work to ensure initiatives announced by the Council of Australian Governments to establish a national process for the skills assessment of OTDs are implemented as a matter of urgency.

Recommendation 5

The Committee recommends that the Department of Immigration and Citizenship investigate alleged misuse of the Occupational Trainee visa (subclass 442) and take action to address any problems identified with the program.

2 457 visa eligibility requirements: key issues and improved procedures

Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship, together with the Department of Employment and Workplace Relations, investigate and report to the Minister for Immigration and Citizenship on the adequacy of the salary system under the 457 visa program, underpinned by the minimum salary level, to identify if viable alternatives exist for calculating salary levels.

Recommendation 7

The Committee recommends that the Australian Government proceed with its proposal to index the salaries of 457 visa holders in line with increases to the minimum salary level or, alternatively, the award conditions under which the visa was granted.

Recommendation 8

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- work with stakeholders to review the impact on the 457 visa program of the transition from the Australian Standard Classification of Occupations to the Australian and New Zealand Standard Classification of Occupations (ANZSCO);
- regularly review the list of approved occupations gazetted under the Migration Regulations 1994 that meet the minimum skill level for the 457 visa as defined under the new ANZSCO to ensure that this list maintains the integrity of the 457 visa program in listing only 'skilled' occupations; and
- communicate to stakeholders and the Australian public what impact the adoption of the ANZSCO system will have on the definition of a 'skilled' occupation under the 457 visa program in terms of ensuring a continued benefit to Australia.

Recommendation 9

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve the flexibility of the Australian Standard Classification of Occupations and the Australian and New Zealand Standard Classification of Occupations in defining new/emerging occupations and specialisations.

Recommendation 10

The Committee recommends that the existing 457 visa subclass be maintained in its current form and not be divided into two visa subclasses for higher and lower (regional) Australian Standard Classification of Occupations classifications. However, the Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations further investigate this area, with a view to enhancing monitoring and reporting, and improving arrangements for regional areas of Australia.

Recommendation 11

The Committee recommends that the Department of Immigration and Citizenship commission an independent review of the structure and roles of Regional Certifying Bodies (RCBs), with particular regard to:

- the capacity of RCBs to fulfil their specified functions;
- the differing organisational structures of RCBs; and
- the adequacy of the 'regional' 457 visa and associated concessions.

In addition to reporting on the issues outlined above, this review should aim to:

- produce clear operational guidelines for RCBs; and
- identify mechanisms for the communication of relevant procedural, legislative and statistical information to RCBs.

Recommendation 12

The Committee recommends that, to ensure the 457 visa program is limited to skilled occupations where there are demonstrated skills shortages and there is no negative impact on Australian jobs, the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- regularly review the gazetted list of approved occupations and give consideration to ensuring that it lists only skilled migration occupations in demand—for example, through the possible implementation of a Temporary Migration Occupations in Demand List; and
- work with industry and other stakeholders to trial a limited labour market testing process to agreed standards for a narrow range of identified occupations.

Recommendation 13

The Committee recommends that, in referring specific cases for formal English language testing with a focus on occupations with a high occupational health and safety (OH&S) risk or history of sponsor non-compliance, the Department of Immigration and Citizenship also take into account that the need for 457 workers to have a higher level of English language proficiency for OH&S and broader communication reasons remains relevant, regardless of the sector or region in which they work.

Recommendation 14

The Committee recommends that the Department of Immigration and Citizenship:

- work with stakeholders to develop best practice benchmarks for training requirements to be met by sponsoring employers—this should ensure effective training objectives under the 457 visa program that uphold the commitment to training Australians;
- implement mechanisms to ensure improved communication of training requirements under the program and training outcomes; and
- ensure that appropriate resources are committed to monitoring compliance with training requirements under the program.

Recommendation 15

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve:

- the process of negotiating Labour Agreements;
- the consistency of such agreements with aspects of the overall 457 visa program; and
- the operation and transparency of such agreements.

3 457 visa compliance arrangements, communication and program administration: key issues and improved procedures

Recommendation 16

The Committee recommends that, given the number of significant changes made to the 457 visa program in 2007 and past concerns about the program, the Department of Immigration and Citizenship commission an independent review of the program in 2008-09 to assess the impact of these changes on the program's effectiveness, fairness and integrity.

Recommendation 17

The Committee recommends that the Department of Immigration and Citizenship ensure that adequate resources are allocated to the compliance regime under the 457 visa program and, in particular, to the implementation and enforcement of the new arrangements.

Recommendation 18

The Committee recommends that the Department of Immigration and Citizenship regularly report on its website details of monitoring and enforcement activities—for example, on the number of employer sponsors monitored, sites visits conducted, sponsor approvals cancelled, sponsors banned and sponsors fined.

Recommendation 19

The Committee recommends that the Department of Immigration and Citizenship introduce a more comprehensive, confidential complaints mechanism so that 457 visa holders are able to report potential breaches of visa requirements without provoking retaliatory action. This mechanism should also be widely promoted to 457 visa holders.

Recommendation 20

The Committee recommends that the Department of Immigration and Citizenship (DIAC) develop and distribute promotional material for 457 sponsors and visa holders that clearly sets out the rights of visa holders and the process that follows employment cessation. This information should:

- clearly state that DIAC has the power to allow 457 visa holders to stay beyond a 28-day period following the cessation of employment;
- be distributed to all new 457 visa holders and sent to the known postal addresses of 457 visa holders currently in Australia; and
- be provided in both English and the first language of the visa holder.

Recommendation 21

The Committee recommends that the Department of Immigration and Citizenship develop a communications strategy to ensure that stakeholders, including sponsors and visa holders, and the broader Australian population are adequately informed of the proposed changes to the 457 visa program. This should provide clarity on sponsors' legal obligations, including the payment of travel costs, medical expenses, recruitment and migration fees, and the necessity of adequate record keeping.

Recommendation 22

The Committee recommends that the Department of Immigration and Citizenship (DIAC) provide clear guidelines for 457 sponsors and visa holders on their rights and obligations. At the time of granting a visa DIAC should provide:

- sponsors with a checklist outlining their obligations; and
- visa holders with a list of their rights and their sponsor's obligations in both English and their first language.

In addition, this information should be provided to existing sponsors and visa holders in Australia.

Recommendation 23

The Committee recommends that the Department of Immigration and Citizenship collect and publish, as appropriate under privacy laws, more detailed statistics on the 457 visa program—for example, on the occupations and actual base salaries of 457 workers—to enhance transparency and reinforce public confidence in the operation of the program.

Recommendation 24

The Committee recommends that, to ensure fast-tracked service standards for processing times are met, the Australian National Audit Office undertake a performance audit of the administration of the 457 visa program next financial year. This audit should examine processing efficiency—that is, the extent to which the fast-track processing initiative leads to faster processing times compared to the rest of the caseload.

Recommendation 25

The Committee recommends that the Department of Immigration and Citizenship improve its visa electronic lodgement procedures to ensure the effectiveness of the 457 visa program.

Inquiry process

Adoption of inquiry

Section 1(b) of the Resolution of Appointment of the Joint Standing Committee on Migration states:

> Annual reports of government departments and authorities tabled in the House shall stand referred to the committee for any inquiry the committee may wish to make. Reports shall stand referred to the committee in accordance with a schedule tabled by the Speaker to record the areas of responsibility of each committee, provided that:
>
> (i) any question concerning responsibility for a report or a part of a report shall be determined by the Speaker; and
>
> (ii) the period during which an inquiry concerning an annual report may be commenced by a committee shall end on the day on which the next annual report of that Department or authority is presented to the House.[2]

The Department of Immigration and Multicultural Affairs (DIMA) *Annual Report 2005-06* was tabled in Parliament on 18 October 2006. The report makes reference to the administration of the temporary business visa program.[3] Given the ongoing concerns about the use of such visas, the Committee adopted an inquiry into this matter on 6 December 2006.

---

2 Committee website, http://www.aph.gov.au/house/committee/mig/resolution.htm. The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The Resolution of Appointment for the 41st Parliament was passed by the House of Representatives and the Senate on 18 November 2004.

3 DIMA, *Annual Report 2005-06*, Canberra, 2006, p. 37, p. 54 and pp. 84-86.

Conduct of inquiry

The inquiry was advertised in *The Australian* on 13 December 2006 and letters were sent to over 200 organisations and individuals with a possible interest in the matter. The Committee received 89 submissions, 22 supplementary submissions and 36 exhibits. Details are at Appendices A and C to this report.

Public hearings were held in Melbourne (14 March 2007), Brisbane (16 April 2007), Perth (30 April 2007), Sydney (16-17 May 2007), Canberra (1 June 2007 and 13 June 2007) and Cairns (3 July 2007). Details of witnesses are at Appendix B.

The Committee appreciated the detailed input it received from a wide range of interested groups and individuals.[4]

Structure of report

The report consists of three chapters. Chapter 1 provides an introductory overview of the temporary business visa program and clarifies issues pertinent to the Committee's terms of reference. It also outlines the Committee's focus on the Temporary Business (Long Stay) visa (subclass 457)—Standard Business Sponsorship and Labour Agreements—and provides a summary of the Committee's findings on some other temporary business related visas.

Chapter 2 covers a range of key issues relating to the eligibility requirements of the 457 visa program, particularly concerning minimum salary and skill requirements and regional concessions to those requirements. The central role played by the Australian Standard Classification of Occupations system in defining what constitutes a 'skilled' occupation under the program is also discussed. Other topics include Regional Certifying Bodies, labour market testing, and English language and training requirements. The chapter concludes with a discussion on the on-hire and recruitment industry and its interface with the 457 visa program, and on Labour Agreements as a mechanism to address identified skills shortages in Australia.

Chapter 3 discusses the important area of monitoring, enforcement and reporting under the 457 visa program. This area is essential to reinforcing the integrity of the program and ensuring public confidence in 457 visas, while still meeting the needs

4 Because of variations in pagination style among the submissions received, footnote references in the report refer to the page number of the pdf copy of the submission, as published on the Committee's web site. Similarly, page references in transcripts are to the document as it appears electronically, not as it may appear in hard copy, because of variations in printer drivers.

of business for streamlined arrangements. Other matters discussed include Commonwealth, state and territory collaboration in compliance; an improved mechanism for 457 visa holders and others to report alleged breaches of program requirements; and clarification of the '28-day' rule for visa holders to find a new employer sponsor.

The chapter also looks at communication processes under the program—in particular, communication between the Department of Immigration and Citizenship (DIAC) and employer sponsors, visa holders and other stakeholders—and how this area might be improved. The chapter concludes by looking at issues relating to DIAC's administration of the program—most notably, 457 visa processing times, which was raised as a major area of concern during the inquiry.

As set out in the terms of reference, areas where processes can be improved are identified throughout these chapters.

Developments during inquiry process

On 14 July 2006, prior to the Committee adopting the terms of reference for this inquiry, the Council of Australian Governments (COAG) announced that it had:

> … asked the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) to identify and implement cooperative measures to ensure the effectiveness, fairness and integrity of the temporary skilled migration arrangements, including appropriate and consistent minimum standards.[5]

MCIMA also met on 14 July 2006 and established a Commonwealth/State Working Party (CSWP) on Skilled Migration to develop recommendations to COAG. MCIMA agreed that the CSWP would:

> … consider and report back on measures within the 457 visa category to better:
>
> - enforce minimum conditions that do not undercut national and/or state employment standards;
> - ensure commitment to training by employers;
> - enable cooperation between relevant Commonwealth/State agencies to ensure expedient referral and investigation of potential breaches and secure compliance with Australian laws;
> - ensure Subclass 457 visa workers are appropriately informed of their rights and entitlements, and mechanisms in place are

5 Council of Australian Governments Communique, 14 July 2006, http://www.coag.gov.au/meetings/140706/index.htm#temporary.

reviewed to ensure 457 workers are better able to report potential breaches; and

- examine the ability for Commonwealth/State agencies to exchange information in this area.[6]

In February 2007, DIAC provided the Committee with an update on the work of the CSWP:

> A range of Commonwealth/State agencies are represented on the CSWP, which has to date met on four occasions to develop a draft report to COAG … The report is currently being updated and is expected to be considered by COAG senior officials in late February 2007 for release for consultation with key stakeholders. A report will then be finalised for COAG consideration.[7]

In June 2007, DIAC also provided the Committee with a document, entitled 'Temporary entry and employment of skilled migrants', containing discussion points developed by the CSWP 'for the purpose of consultation with key stakeholders'.[8] The Committee heard that, earlier in April, the Minister for Immigration and Citizenship had invited some 130 key stakeholders to provide written submissions on the discussion paper and that 45 submissions had been received in reply.[9] At the time of drafting this report, there had been no further updates on the COAG process.

The proceedings of the COAG/CSWP review are classified as COAG-in-confidence and, as such, were not made available to the Committee. Accordingly, several key contributors to this inquiry (such as DIAC and the state/territory governments) commented that they were unable to provide detailed input to the Committee and/or comment on any issues that COAG might be looking at:

> The attached Commonwealth submission seeks to address the JSCM inquiry's terms of reference to the extent possible, but without going into matters being considered by the COAG inquiry.[10]
>
> In light of input to date, and the confidential nature of the Council of Australian Governments related proceedings, the Queensland Government believes that it would be inappropriate to

6 Ministerial Council on Immigration and Multicultural Affairs, '457 Visa', 14 July 2006—see Commonwealth Government, *Submission No. 33*, p. 16.

7 Commonwealth Government, *Submission No. 33*, p. 1.

8 DIAC, *Exhibit 26*, p. 1.

9 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, pp. 68-69.

10 Commonwealth Government, *Submission No. 33*, p. 1.

> comprehensively address the full breadth of issues within this submission.[11]

On 23 January 2007, the Prime Minister announced the appointment of the Hon Kevin Andrews MP as the Minister for Immigration and Citizenship, replacing Senator the Hon Amanda Vanstone in that role. At this time, the Prime Minister also announced that the existing Department of Immigration and Multicultural Affairs (DIMA) would become the Department of Immigration and Citizenship (DIAC).

As this change occurred during the period of this inquiry, some of the evidence to the Committee referred to DIMA rather than DIAC. This report refers consistently to DIAC but references to DIMA in quoted material have therefore been left unchanged.

On 26 April 2007, the Minister for Immigration and Citizenship announced changes to skilled temporary visa laws, including new civil penalties for employers who breach the law, greater powers for DIAC and the Workplace Ombudsman (formerly the Office of Workplace Services) to investigate employers, faster processing of applications for some employers and a higher English language requirement to be eligible for a skilled temporary visa. On 26 June 2007, the Minister announced specific details regarding the higher English language requirement for the visa.

A number of these changes require an amendment to the *Migration Act* 1958. Accordingly, the Migration Amendment (Sponsorship Obligations) Bill 2007 was introduced into Parliament on 21 June 2007. The bill proposes new enforcement and sanction provisions by way of civil penalties if an approved sponsor breaches their obligations under the program and allows for the cancellation of approval as a sponsor or barring of a sponsor where an obligation has been breached. At the time of finalising this report, the proposed legislation was still before the Parliament.

Appendix D provides details of each of these announcements.

11 Queensland Government, *Submission No. 65*, p. 1.

1

Introduction

1.1 The Committee maintains that the highest priority must be placed on providing Australians with job opportunities and training. However, given the strong economy and low unemployment rate of skilled Australians at the present time[1] and that Australia faces the prospect of a declining rate of growth in its workforce age population,[2] temporary skilled migration represents an important strategy to meet short-term skills needs in some areas.

1.2 While temporary skilled migration to fill proven labour shortages offers a useful mechanism in the short term, a continuing strong focus on expanding training opportunities for Australians and building workforce participation and diversification therefore offers a more important, longer term solution to the skills shortage.

1.3 The temporary skilled migration program seeks to provide business with ready access to the global skilled labour market through streamlined visa processing arrangements to ensure the continued growth of the Australian economy, while safeguarding employment and training opportunities for Australian workers. As the Australian Mines and Metals Association commented, for example:

> The resources sector will contribute minerals and energy exports in the order of $110 billion in 2006-2007. This represents approximately two thirds of Australia's total

1 The unemployment rate for 'skilled' Australians (workers having an occupation in Australian Standard Classification of Occupations groups 1-4) is currently 'less than two per cent', Commonwealth Government, *Submission No. 33*, p. 4.

2 See Treasury, *Intergenerational Report 2007*, April 2007, http://www.treasury.gov.au/igr/IGR2007.asp (accessed 25 June 2007).

> commodity export earnings … Whilst the majority of the resource sectors labour requirements are sourced from within Australia, it is vital that where skill shortages exist at the macro or micro level alternative sources of labour are readily accessible in order to ensure the continued contribution of the resource sector to the Australian economy.[3]

1.4 The major visa class used for temporary skilled migration is the Temporary Business (Long Stay) visa (subclass 457)—the 457 visa. As will be detailed later, the number of 457 visas granted has increased markedly over recent years. A growing number of 457 visa holders are also applying for and successfully being granted permanent residency. Against this background, it was therefore timely for the Committee to conduct an inquiry into temporary business visas and, in particular, the 457 visa category.

1.5 In recent times there has also been some controversy surrounding the 457 visa. This has been for a range of reasons, including media publicity about abuses of the 457 visa program. The recent announcements by the Minister for Immigration and Citizenship to improve monitoring and compliance under the program and the fact that there were recently two major inquiries into the visa running concurrently—this inquiry and the Council of Australian Governments (COAG) review—reinforce that it is in Australia's interests to ensure the effectiveness, fairness and integrity of this important temporary business visa.

1.6 The Committee welcomed the Minister's announcements on changes to the 457 visa program over the course of this inquiry (see Appendix D), addressing areas of concern raised in evidence to the Committee. The presence of officials from the Department of Immigration and Citizenship (DIAC) was noted at the majority of the public hearings. The Committee is pleased that the inquiry process precipitated prompt action in this regard, even prior to the Committee tabling its report.

1.7 To conclude, it is the Committee's view throughout this report that the 457 visa is a skilled visa—it is, and should remain, a means through which Australian businesses can employ skilled workers. The extension of the 457 visa to try and meet unskilled labour shortages would undermine the rationale for the visa and put at risk its acceptability to the general community.

---

3 Australian Mines and Metals Association, *Submission No. 30*, pp. 3-4.

Temporary business visa program

1.8 The temporary residence program has three streams:

- economic
- social and cultural exchange
- international relations.[4]

1.9 A range of temporary business visas fall under the economic stream, as is discussed later in this chapter. DIAC highlights some of the benefits to Australia of the economic stream of the temporary residence program as including:

- employment creation
- enhancement of our skill and technology base
- development of cutting edge technologies and industries and increased competitiveness and an expansion of international trade and trading links.[5]

1.10 During 1995-96, the temporary business visa program underwent significant change as a result of the recommendations of the Roach report, entitled *Business Temporary Entry – Future Directions*.[6] This major review of the program also resulted in the introduction of the 457 visa, in August 1996.[7] A further review of Australia's temporary business visa program was undertaken in June 2002 as part of an inquiry into Australia's temporary residence program.[8]

Workplace arrangements

1.11 While 457 visa sponsoring employers and workers are governed in much that they do by the provisions of the *Migration Act* 1958, they are also firmly part of Australia's workplace arrangements and many

4 DIAC website, http://www.immi.gov.au/media/fact-sheets/46temporary_entry.htm (accessed 7 June 2007).

5 DIAC website, http://www.immi.gov.au/media/fact-sheets/46temporary_entry.htm (accessed 7 June 2007).

6 Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry – Future Directions*, Department of Immigration and Ethnic Affairs, Canberra, August 1995 (chaired by Mr Neville Roach).

7 Media release by the Hon Philip Ruddock MP, former Minister for Immigration and Multicultural and Indigenous Affairs, 'Streamlined temporary business entry approved', 5 June 1996, http://www.minister.immi.gov.au/media/media-releases/1996/r96021.htm.

8 External Reference Group, *In Australia's Interests: A Review of the Temporary Residence Program*, Department of Migration and Indigenous Affairs, Canberra, June 2002.

are therefore governed by the provisions of the federal *Workplace Relations Act* 1996.[9]

1.12 The polarised views expressed at times about Australia's workplace relations system in the context of this inquiry could have complicated discussion on some of the key issues that are the subject of this report. However, it must be emphasised that the Migration Committee is not a workplace relations committee or an employment committee or an industry committee. The Committee's first priority is dealing with migration matters.

1.13 It is also noted that, during the course of the inquiry, the Prime Minister announced changes to Australia's workplace relations system through the introduction of a 'stronger safety net for working Australians'.[10]

Ensuring effectiveness, fairness and integrity

1.14 While the Committee was aware of diverging views on certain aspects of the 457 visa program, there was broad agreement on other fundamental aspects of the program.

1.15 Firstly, the Committee noted general agreement amongst those who participated in the inquiry—across employer and union groups, state governments and industry sector representatives—that Australia currently faces a temporary skills shortage in some areas:

> … action needs to be taken to address the current and future skill needs of Australian industry.[11]
>
> After more than a decade of robust economic growth, Australia is experiencing serious skilled labour shortages … across broad areas of Australian commerce and industry.[12]
>
> Western Australia has been experiencing record low levels of unemployment (averaging 3.6 percent last year) and even with high participation rates, there are still severe shortages of skilled workers … Western Australia has projects worth

9 Some workers are covered by state workplace relations legislation—see 'WorkChoices and who is covered', https://www.workchoices.gov.au/ourplan/publications/html/WorkChoicesandwhoiscovered.htm (accessed 25 June 2007).

10 Media release by the Prime Minister, 'A stronger safety net for working Australians', 4 May 2007, http://www.pm.gov.au/media/Release/2007/Media_Release24302.cfm.

11 Australian Council of Trade Unions, *Submission No. 39*, p. 7.

12 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 1.

> more than $69 billion underway or planned over the next few years, requiring more than 40,000 workers.[13]
>
> The Australian resources sector … is experiencing difficulties in securing sufficient skilled labour and professionals.[14]
>
> The ANF recognises that Australia is facing a skills shortage, including a nursing shortage ...[15]
>
> The tourism, transport and infrastructure industries have acknowledged … that workforce shortages are a growing challenge to delivering efficient and effective business operations.[16]

1.16 As is discussed below, the Committee also noted that in the face of this skills shortage many industry participants provided evidence to the inquiry on their efforts to source Australian workers for the skill sets they required. Further, the 457 visa program was viewed as only a short-term 'fix', with expanded training opportunities for Australians and increased workforce participation and diversification being regarded as more important solutions to the skills shortage.

1.17 That said, however, the Committee acknowledges that a range of views were expressed on the question of why Australia faces a skills shortage. For example, a falling birth rate, the ageing population, a decline in university places and local training rates, the 'boom' in the resources sector, inefficiencies in the internal labour market, low unemployment rates and a buoyant economy were variously cited as contributory causes to the skills shortage.[17]

1.18 The Committee agrees that the reasons for the skills shortage are complex and varied—there is no single reason for the current shortage of skills in Australia. Of interest in this regard is that the

---

13 WA Government, *Submission 68*, p. 1.

14 Australian Mines and Metals Association, *Submission No. 30*, p. 5.

15 Australian Nursing Federation, *Submission No. 63*, p. 3.

16 Tourism and Transport Forum and Infrastructure Partnerships Australia, *Submission No. 28*, p. 3.

17 For a cross-section of views in this regard, see the Australian Mines and Metals Association, *Submission No. 30*, p. 6; the Migration Institute of Australia, *Submission No. 9*, p. 3; the Australian Manufacturing Workers Union, *Submission No. 40*, p. 32; and Engineers Australia and the Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 4.

Productivity Commission is currently conducting a research project into the 'Theory and evidence of skill shortages in Australia'.[18]

1.19 Secondly, the Committee observed general support, across a diverse range of representatives, for a temporary business visa program per se:

> The 457 visa program is critical to addressing Australia's already serious skills shortages ...[19]
>
> I should be clear in concluding that, where there is no other option, the ACTU does not oppose the use of temporary overseas skilled workers. Such programs, however, must be subject to sound regulation and compliance.[20]
>
> Temporary business visas are highly valued by industry as a means to source temporary skilled labour at a time of high skill shortages and the system has our strong support.[21]
>
> Our general approach as a union is that we believe temporary visa arrangements can have a valid place in our society, but only as a small niche program that has integrity …[22]
>
> The restaurant and catering industry (and other sectors of the hospitality industry) are strong users of temporary business migration (in particular the 457 Visa).[23]
>
> … the LHMU does envisage a role for temporary business visas for skilled employees.[24]
>
> … my Government is very supportive of skilled migration programs, including the 457 visa scheme, provided that adequate protections and procedures are in place for both employers and employees.[25]

---

18 'While much has been written about skill shortages in Australia, there is scope for more independent, rigorous analysis. The aim of this project is to synthesise, within an economic framework, current theory and evidence on skill shortages in Australia', Productivity Commission website, http://www.pc.gov.au/researchproject/2006/061205.html (accessed 15 June 2007).

19 Australian Chamber of Commerce and Industry, *Submission No. 74*, p. 2.

20 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 2.

21 Australian Industry Group, *Submission No. 57*, p. 3.

22 Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 68.

23 Restaurant and Catering Australia, *Submission No. 50*, p. 15.

24 Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 3.

25 WA Government, *Submission No. 68*, p. 2.

1.20 That said, however, the Committee again acknowledges that a range of views were evident on what form such a program should take and therefore on the level of change required to the existing 457 visa program to ensure its effectiveness, fairness and integrity. Some argued for minimal change:

> Commerce and industry regards the 457 visa program as generally working well, with few changes needed (and then only at the margin).[26]
>
> The MIA considers it important to leave the current eligibility requirements generally undisturbed and to only implement change at the margins to what is already there.[27]

1.21 Others argued for major change:

> It is our view that the current issues arising from the growth of the use of 457 visas cannot be fixed by mere tinkering around the edges of the 457 visa program. In this respect, we believe a full regulatory overhaul of the system is required.[28]
>
> The Queensland Government has repeatedly called for urgent reforms to Australia's temporary skilled migration program and, more specifically, the visa subclass 457.[29]

1.22 On this point, it needs to be noted that over the course of the inquiry several changes to the 457 visa program were announced by the Minister for Immigration and Citizenship, including new civil penalties for sponsoring employers who breach the law, greater powers for DIAC and the Workplace Ombudsman to investigate employers, and higher English language requirements (see Appendix D for further details), which would appear to address some of the concerns of those arguing for major change.

Training and workforce participation

1.23 The Committee emphasises that, while temporary skilled migration offers a useful mechanism to address Australia's skills shortage in the short term, increasing investment in the training of Australian workers and encouraging higher rates of workforce participation and

---

26 Australian Chamber of Commerce and Industry, *Submission No. 74*, p. 1.

27 Migration Institute of Australia, *Submission No. 9*, p. 5.

28 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 2.

29 Queensland Government, *Submission No. 65*, p. 1.

diversification are undoubtedly more important, longer term solutions to the skills shortage. This point was reinforced by a number of contributors to the inquiry:

> The 457 visa is a short-term option; it is not a substitute for other approaches. We hear often people say, 'It's a substitute for education and training'. It is not. It is not one or the other; it is both.[30]

> Access to temporary and permanent overseas skilled labour is a small but important component of a resources sector employer's workforce. The intention of resources sector employers in the long term is to up skill and supplement the Australian workforce, not replace it.[31]

> Temporary visa arrangements should not become a substitute for … Australians training their own skilled workforce.[32]

1.24 Temporary skilled migration to fill proven labour shortages is therefore just one way of addressing the skills shortage and there is a need for a continuing strong focus on expanding training opportunities for Australians. The Committee was therefore pleased to hear of efforts by resources and engineering bodies, for example, to encourage new entrants to their industry; expand training opportunities; employ additional graduates, apprentices and trainees; and promote their sector through school and university careers initiatives.[33]

1.25 A number of submissions, including from the Australian Council of Trade Unions (ACTU), called for the abolition of the Trade Skills Training visa (subclass 471), which allows new apprentices to receive a working visa to undertake an apprenticeship in Australia.[34]

---

30 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 41.

31 Australian Mines and Metals Association, *Submission No. 30*, p. 9.

32 Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 68.

33 See, for example, Mr Bamborough, Baker Hughes Australia, *Transcript of Evidence*, 30 April 2007, p. 33; Australian Mines and Metals Association, *Submission No. 30*, p. 9; and Ms Motto, Association of Consulting Engineers Australia, *Transcript of Evidence*, 16 May 2007, p. 35.

34 ACTU, *Submission No. 39*, p. 6. See also the Victorian Government on the 471 visa, *Submission No. 72*, p. 7. A small number of Trade Skills Training visas (subclass 471) have been granted to date—see Mr Parsons, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 64.

1.26 Greater diversification of the workforce through broadened participation from women and Indigenous people was highlighted as another way of increasing the available labour force. For example, the Transport Workers Union spoke of the need for the transport sector to 'make the industry more attractive to new entrants, including women'.[35]

1.27 The range of initiatives being taken in this area was best summed up by the Chamber of Minerals and Energy WA and the Minerals Council of Australia:

> The industry has been proactive in developing strategies in addressing the chronic and acute skills/people shortages. The industry is working on three fronts:
>
> - awareness—the industry currently directly funds around $6.5 million per year for education initiatives across the three levels of primary, secondary and tertiary education, promoting awareness of the industry, enhancing tertiary education in earth sciences, metallurgy and engineering, and promoting careers in the industry;
> - attraction—addressing barriers or impediments to new entrants to the industry, specifically school leavers, Indigenous Australians, women and mature age workers from other industries, and skilled migration in mining related professional and trade skills occupations;
> - retention—improving retention rates specifically through upskilling the existing workforce, fatigue management, addressing location and lifestyle attractiveness.[36]

1.28 The 457 visa program has a formal training requirement as a central component, as is discussed in Chapter 2.

Labour shortages and lower skilled workers

1.29 Some participants to the inquiry maintained that Australia was facing not only a skills shortage but a broader labour shortage:

> HMAA is concerned that the debate in this area continues to focus on the skills shortage which is a single (albeit very important) component of the broader problem of a general

35 Mr Crosdale, Transport Workers Union, *Transcript of Evidence*, 13 June 2007, p. 1. See also Ms Sykes-Hutchins, Globe Communications, *Transcript of Evidence*, 13 June 2007, p. 3.

36 Chamber of Minerals and Energy WA and the Minerals Council of Australia, *Exhibit No. 2*, p. 3. See also Mr Howard-Smith, Chamber of Minerals and Energy WA, *Transcript of Evidence*, 30 April 2007, p. 9.

> shortage of labour in many areas of Australia, especially those impacted by the resources boom.[37]

1.30 The 457 visa program does not enable sponsorship of low skilled/unskilled workers. However, a number of representatives from the tourism, agricultural and hospitality sectors put the case that the program should be broadened to encompass such workers:

> Restaurant and Catering Australia believes that, if the level of service provided by the industry is to continue, a new source of unskilled labour needs to be found. It is suggested that the need for unskilled labour should be regarded as inevitable and some work done to pilot approaches in perhaps a geographically or occupationally bounded way.[38]

> We consider the time is right for the Government to redress this problem and introduce a new visa or add to the conditions to the current 457 that allow unskilled labourers to be brought to Australia for a specific period of time to meet an identified shortage of workers.[39]

> The state government gave a presentation to the federal minister for immigration at a recent consultation forum. We put to him that there is probably a strong argument in Western Australia for the introduction of a new visa to address the semi- and non-skilled areas. For instance, the hospitality industry and the agricultural food industry are struggling right now for labour across their areas.[40]

1.31 The Committee notes the concerns raised in this regard but emphasises that there is considerable and proper sensitivity in the Australian population about entry arrangements for overseas workers other than those which exist already under the temporary skilled migration provisions. For example, while the unemployment rate for skilled Australians is currently 'less than two per cent', the unemployment rate for unskilled Australians is 'around six per cent'.[41]

---

37 Hotel Motel and Accommodation Association, *Submission No. 10*, p. 8.

38 Restaurant and Catering Australia, *Submission No. 50*, p. 20.

39 Snedden, Hall and Gallop Lawyers, *Submission No. 17*, p. 5.

40 Mr Moir, Small Business Development Corporation, WA, *Transcript of Evidence*, 30 April 2007, p. 15. See also Infrastructure Partnerships Australia and Tourism and Transport Forum Australia, *Submission No. 28a*, p. 4.

41 Commonwealth Government, *Submission No. 33*, p. 7.

1.32 Further, the Committee emphasises that there are other migration mechanisms which have been implemented to ease labour shortages in the agricultural, hospitality and tourism sectors—for example, the ongoing changes to the working holiday maker program.[42] As the Committee heard during the inquiry process:

> … a couple of initiatives related to the 457 visa system … have worked very well for our sector. One is the granting of the second working holiday visa to those who have worked in regional Australia in horticultural and agricultural positions for a minimum of three months of their first working holiday visa. This is beginning to have an impact in our industry. The extension of countries with reciprocal agreements for working holiday visas is also a tremendous help.[43]

1.33 The Committee also notes the recent recommendation by the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, as a result of its inquiry into workforce challenges facing the Australian tourism industry, that a second-year extension to the Working Holiday Maker visa be implemented for 'individuals who undertake at least three months work in a regional or remote location in the tourism and hospitality industry'.[44]

1.34 However, the Committee is aware that some regions are experiencing labour shortages and that certain sectors are finding it difficult to recruit and retain staff. It is therefore acknowledged that distinct sectoral and regional issues, as well as seasonally significant variations to workforce demand, complicate this matter. As one submission emphasised: 'a complex and difficult problem such as this needed to be addressed on a number of fronts and through a significant commitment across numerous areas of policy, Government administration, and industry practice'.[45]

---

42 Media release by Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, 'Working Holiday Visa enhancements a boost for backpackers and regional employers', 9 May 2006, http://www.minister.immi.gov.au/media/media-releases/2006/v06109.htm.

43 Mrs Carstairs, Rural Enterprises, *Transcript of Evidence*, 30 April 2007, p. 36.

44 House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, *Current Vacancies: Workforce Challenges facing the Australian Tourism Sector*, Canberra, June 2007, p. xvii.

45 Hotel Motel and Accommodation Association, *Submission No. 10*, p. 15.

1.35 The Committee is therefore pleased to note that these issues have properly been addressed by several recent Committee inquiries dealing with labour shortages in particular sectors:

- Senate Standing Committee on Employment, Workplace Relations and Education—inquiry into workforce challenges in the transport industry (ongoing);
- *Current Vacancies: Workforce Challenges facing the Australian Tourism Sector*, House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation (June 2007);
- *Servicing our Future: Inquiry into the Current and Future Directions of Australia's Services Export Sector*, House of Representatives Standing Committee on Economics, Finance and Public Administration (May 2007);
- *Skills: Rural Australia's Need*, House of Representatives Standing Committee on Agriculture, Fisheries and Forestry (February 2007); and
- *Perspectives on the Future of the Harvest Labour Force*, Senate Standing Committee on Employment, Workplace Relations and Education (October 2006).

1.36 To conclude, it is the Committee's view that the 457 visa is a skilled visa—it is, and should remain, a means through which Australian businesses can employ skilled workers. The extension of the 457 visa to try and meet unskilled labour shortages would undermine the rationale for this visa and put at risk its acceptability to the general community.

Overview of temporary business visa categories

1.37 The DIAC website lists three 'skilled worker temporary visas':[46]

- Temporary Business (Long Stay) visa (subclass 457)
  - ⇒ Standard Business Sponsorship
  - ⇒ Labour Agreements
  - ⇒ Service Sellers

46 DIAC, 'Skilled workers temporary visa options', http://www.immi.gov.au/skilled/skilled-workers/visa-temporary.htm (accessed 7 June 2007).

- ⇒ Invest Australia Supported Skills Program
- Medical Practitioner visa (subclass 422)
- Educational visa (subclass 418)

1.38 Aside from these visas, there are a range of business visitor visas:[47]

- Business (Short Stay) visa (subclass 456)
- Sponsored Business Visitor (Short Stay) visa (subclass 459)
- Electronic Travel Authority[48] (Business Entrant—Short Validity) visa (subclass 977)
- Electronic Travel Authority (Business Entrant—Long Validity) visa (subclass 956)

1.39 There are also two training visas, where visa holders train in a business environment:

- Trade Skills Training visa (subclass 471)
- Occupational Trainee visa (subclass 442)

Focus of report

1.40 Based on the nature of the evidence received by the Committee and given that the terms of reference for the inquiry particularly singled out the 457 visa as being of interest, this report will focus on the Temporary Business (Long Stay) visa (subclass 457)—Standard Business Sponsorship and Labour Agreements.

1.41 However, two other temporary business visa categories were also highlighted for attention in evidence to the Committee, particularly in terms of their interaction with the 457 visa: the Medical Practitioner visa (subclass 422) and the business visitor visas, including the Business (Short Stay) visa (subclass 456). Accordingly, these visas are briefly discussed below.

1.42 There were also issues raised about the Occupational Trainee visa (subclass 442). While this visa category essentially falls outside the terms of reference for this inquiry in that it is principally a training

47 Commonwealth Government, *Submission No. 33*, p. 4.

48 An ETA is an electronically stored authority for travel to Australia. Passport holders from over 30 countries are eligible to apply for an ETA.

rather than a business visa, concerns were raised about possible misuse of this visa for work purposes and its interaction with the 457 visa. The 442 visa is therefore also briefly discussed below.

Temporary Business (Long Stay) visa (subclass 457)—Standard Business Sponsorship and Labour Agreements

1.43 The 457 visa is Australia's main temporary skilled work visa.[49] Standard Business Sponsorship and Labour Agreements both fall under the 457 visa category. For the financial year 2006-07 (to 17 June 2007), grants to primary applicants totalled 40,720 for Standard Business Sponsorship and 3,170 for Labour Agreements.[50] Labour Agreement sponsorship therefore currently represents some eight per cent of the overall 457 visa program. (Unless specified, further references to the 457 visa in this report generally refer to the Standard Business Sponsorship aspect of the visa, with Labour Agreements discussed separately.)

1.44 The 457 visa allows approved employers to sponsor overseas workers for up to four years to fill skilled positions that meet minimum skill and salary levels. The DIAC website sets out in detail the eligibility requirements and conditions of the 457 visa program for both sponsoring employers and visa holders.[51] These requirements and conditions were also set out in detail in the Commonwealth Government submission to the inquiry. (For ease of reference, these are reproduced at Appendix E of this report.)

1.45 There are currently some 12,000 employer sponsors under the 457 visa program[52] and, as at 17 June 2007, some 57,130 visa holders working in Australia under the visa (that is, as a cumulative total from previous years).[53] The number of primary 457 visas granted grew

49 Workers entering Australia under the 457 visa are entitled to bring family members, known as secondary applicants. This report is principally concerned with primary applicants rather than secondary applicants. References to 457 visa holders in this report therefore generally apply to the primary applicants unless specified.

50 DIAC, *Submission No. 86a*, p. 24.

51 DIAC website, http://www.immi.gov.au/skilled/skilled-workers/sbs/index.htm.

52 Ms Daniels, DIAC, *Transcript of Evidence*, 1 June 2007, p. 74.

53 DIAC, *Submission No. 86a*, p. 24. This is from a total of some '105,000 primary and secondary 457 visa holders onshore'—see Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 81.

from 27,350 in 2004–05 to 39,530 in 2005–06, an increase of around 44 per cent (see Table 1.1).

Table 1.1 Primary and secondary 457 visa grants: 1997-2007[54]

Program year	Primary	Secondary	Total
1997–98	16 550	14 330	30 880
1998–99	16 080	13 250	29 320
1999–00	17 540	13 530	31 070
2000–01	21 090	15 810	36 900
2001–02	18 410	15 100	33 510
2002–03	20 780	16 020	36 800
2003–04	22 370	17 130	39 500
2004–05	27 350	21 250	48 590
2005–06	39 530	31 620	71 150
2006–07[55]	34 170	30 290	64 460

Source Janet Phillips, *Research Note No. 15*, 2006–07, 'Temporary (long stay) business visas: subclass 457', data for 1997-2006 (Answer to Question on Notice No. 53, Budget Estimates, Immigration Portfolio, 22 May 2006), http://www.aph.gov.au/library/pubs/RN/2006-07/07rn15.htm, p. 2; and Commonwealth Government, data for 2006-07 (to 31 March 2007), *Submission No. 33b* , p. 7.

1.46 Table 1.2 sets out the number of primary 457 visa grants in 2006-07 by state/territory. Table 1.3 sets out the top 15 citizenship countries for primary 457 visa grants in 2006-07. (Other statistics on the 457 visa for 2006-07, including on salaries and occupations, are set out in the Commonwealth Government submission.[56])

1.47 While DIAC has primary responsibility for administration of the 457 visa program, it 'works closely with DEST and DEWR in terms of matters such as skills assessment and training requirements for Australians'.[57] DIAC also works closely with other Commonwealth and state/territory agencies whose legislation may be affected by the entry of people on 457 visas—for example, the Workplace Ombudsman and state/territory agencies responsible for workplace relations, fair trading and OH&S matters.

54 Figures exclude Independent Executives and are rounded to the nearest 10.

55 Figures to 31 March 2007 only.

56 Commonwealth Government, *Submission No. 33b*.

57 Commonwealth Government, *Submission No. 33*, p. 4.

Table 1.2 Primary 457 visa grants in 2006-07 (to 31 March 2007) by state and territory

State/Territory	Primary grants
ACT	500
NSW	11 900
NT	660
QLD	6 120
SA	1 070
TAS	290
VIC	7 400
WA	6 040
Not Recorded	190
Total	**34 170**

Source Commonwealth Government, *Submission No. 33b* , p. 7.

Table 1.3 Top 15 countries for primary 457 visa grants in 2006-07 (to 31 March 2007)[58]

Country of citizenship	2005-06	2006-07
United Kingdom	7 390	7 880
India	2 930	4 700
Philippines	1 680	2 900
China, Peoples Republic of	1 630	1 890
United States of America	1 570	1 880
South Africa, Republic of	1 560	1 790
Germany, Federal Rep. of	1 080	1 170
Irish Republic	1 250	1 150
Canada	1 000	990
Japan	930	880
Malaysia	590	830
France	620	640
Netherlands	470	520
Singapore	290	420
Zimbabwe	290	420
Indonesia	330	410
Others	5 780	5 720
Total	**29 370**	**34 170**

Source Commonwealth Government, *Submission No. 33b* , p. 11.

58 Comparative data 2005-06 (to 31 March 2006) and 2006-07 (to 31 March 2007), see Note 1, '[t]his report is based on … data recorded for visa subclass 457 in the 2006-07 financial year and provides a comparison with the same period in the previous year', Commonwealth Government, *Submission No. 33b*, p. 4.

457 visa program objectives and principles

1.48 DIAC sets out the objectives and principles underlying the 457 visa program as follows:

> The Subclass 457 visa provides Australian businesses with rapid access to the global pool of skilled workers in order to help business to meet their needs at a time of significant skill shortages.
>
> It is not intended that these visas provide a vehicle for employers to minimise their obligation to hire and train Australians. Consequently employers who participate in this programme must demonstrate a commitment to training Australians …
>
> Given the unemployment rate of skilled Australians is now less than two per cent, and we face the prospect of a declining rate of growth in our workforce age population, a mechanism that provides rapid access to global skills is central to Australia's prosperity.
>
> By delivering urgently needed skills, this visa helps the Australian economy to grow and become more competitive internationally. This is key to job creation.
>
> The design principles of the visa seek to establish the most efficient means of achieving its objective. These principles include:
>
> - an effective and efficient process to meet the needs of business;
> - ensuring that this visa does not undermine the commitment of business to training Australians and improve the skills base of their workforces;
> - ensuring this visa does not undermine Australian conditions;
> - adopting a risk management approach to targeting the areas and degree of checking claims made in sponsorship/visa applications (and follow-up monitoring and site visits) noting that the majority of employers who use the visa are compliant;
> - recognising the special needs of regional Australia;
> - leveraging off the information, intelligence and expertise of other agencies;

- using objective visa criteria and electronic support wherever possible to assist sponsor and visa applicants to self-select and streamline processing;
- establishing separate arrangements for dealing with exceptional circumstances;
- making employer undertakings as clear as possible;
- collaborating with Commonwealth and State agencies to increase compliance;
- strengthening and better tailoring penalties to breaches; and
- recognising that Australia's obligations under international trade agreements … include legally binding commitments that do not permit labour market testing in certain circumstances. It is under these commitments that Australian companies are able to use Australian expertise in delivering overseas contracts.[59]

Key issues

1.49 The wide scope of the inquiry terms of reference—examining the adequacy of current eligibility requirements and the effectiveness of compliance arrangements, and identifying areas where procedures can be improved—inevitably raised numerous concerns. This report necessarily focuses on the broad key issues. It was therefore beyond the scope of this report, for example, to review visa arrangements for secondary applicants under the 457 visa program.

Security and health checks

1.50 The Committee acknowledges the crucial importance of two 'threshold' eligibility criteria for 457 visa applicants—that is, the need to meet character and health requirements. These criteria are fundamental to ensuring the integrity of the 457 visa program and, first and foremost, the safety and welfare of the Australian population.

1.51 As the following information on the character requirements on the DIAC website suggests, all 457 visa applicants are assessed against a 'character' test[60] but police checks are not routinely carried out on all applicants:

59 Commonwealth Government, *Submission No. 33*, pp. 5-6.

60 As defined under section 501 of the *Migration Act* 1958, http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s501.html (accessed 5 July 2007).

> Everyone who wishes to enter Australia must be assessed against the character requirements …
>
> For the Australian Government to determine whether you are of good character, you may be asked to provide police certificates for each country you have lived in for 12 months or more over the last ten (10) years since turning 16.[61]

1.52 The DIAC fact sheet on the character requirement further states that 'Section 501 of the Act contains a character test to ensure that visa applicants and visa holders are of acceptable character. The test puts the onus on visa applicants, and visa holders, to show that they are of good character'.[62]

1.53 DIAC form 80, 'Personal particulars for character assessment', requires applicants to provide information on previous addresses; passports and citizenship; employment and education history; and visits to Australia and other countries. The form also seeks information about criminal convictions or involvement in terrorist activities, as well as background information on parents and siblings.[63] Other DIAC forms require applicants to provide police certificates[64] and information on any previous criminal charges, convictions or fines.[65]

1.54 The Committee received some commentary relating to police and security checks for doctors under the 457 visa:

> The Subclass 457 Visa has a quicker approval process than the Subclass 422 Visa. Specifically, the Subclass 457 Visa application and approval process is more expedient and facilitates the quick placement of doctors in rural and remote communities. Effectively it means that RWAs can get a doctor on the ground faster. [The Subclass 457 Visa does not require medical practitioners to have police clearances to be undertaken, whereas the Subclass 422 Visa does. This means that if there are issues regarding police clearances, and the

61 DIAC website, http://www.immi.gov.au/allforms/character-requirements/index.htm (accessed 5 July 2007).

62 DIAC, Fact Sheet 79, 'The character requirement', 30 January 2007, http://www.immi.gov.au/media/fact-sheets/79character.htm (accessed 5 July 2007).

63 DIAC Form 80, July 2007, http://www.immi.gov.au/allforms/pdf/80.pdf (accessed 5 July 2007).

64 DIAC Form 47P, 'Character requirements: penal clearance certificates', July 2007, http://www.immi.gov.au/allforms/pdf/47p.pdf (accessed 5 July 2007).

65 DIAC Form 1101, 'Police records check', July 2007, http://www.immi.gov.au/allforms/pdf/1101.pdf (accessed 5 July 2007).

> medical practitioner has used the Subclass 457 Visa these problems will not be picked up until the candidate applies for Permanent residency in Australia. However, the police checks requirement of the Subclass 422 Visa do cause the visa process to be delayed for several months.][66]
>
> The main difference between the 422 visa and the 457 visa is that police clearance is mandated for the 422 but is not usually requested for a 457, although a case manager may request additional character check information as required even with a 457. The 457 visa process can therefore be a quicker process than the 422 if the applicant does not have to undertake police clearances as in some countries these can take months to obtain.[67]

1.55 It is crucially important that DIAC ensure the integrity of security and police checks of 457 visa applicants so there is no risk to the Australian public, while still ensuring streamlined visa processing arrangements for employers. The Committee also draws attention to the high position of trust in which doctors, regardless of whether they are overseas or locally trained, are placed in the community.

1.56 On 8 July 2007, the Prime Minister announced the introduction of stronger border controls, encompassing Australia's visa system. The Prime Minister commented that the new border control system would include 'more efficient systems with enhanced auditing capacity to ensure that security requirements do not slow down processes affecting legitimate business and tourism'.[68]

Recommendation 1

1.57 **The Committee recommends that the Department of Immigration and Citizenship, together with the Australian Federal Police and other relevant agencies, review the character requirements of the 457 visa program to ensure the integrity of security and police checks, particularly with reference to any variations in these procedures for overseas trained doctors entering under the Medical Practitioner visa (subclass 422) and the 457 visa.**

66 Australian Rural and Remote Workforce Agencies Group, *Submission No. 47*, p. 3.

67 Australian General Practice Network, *Submission No. 52*, pp. 2-3.

68 Media release by the Prime Minister, 'Stronger border control', 8 July 2007, http://www.pm.gov.au/media/Release/2007/Media_Release24420.cfm.

1.58 The DIAC website sets out information on the health requirements for visa applicants as follows:

> Temporary visa applicants
>
> Health examinations will depend on your circumstances, your intended activities in Australia, and your country of origin or residence. You will need to undertake a health examination if:
>
> - you are likely to enter a hospital or other health care environment, including nursing homes as either a patient, visitor, trainee or employee
> - you are likely to enter a classroom environment, including preschool, creche and child care situations
> - you are known or suspected of having a medical condition, regardless of your length of stay
> - you are aged 70 years or older
> - there are indications that you may not meet the health requirement.[69]

1.59 Again, the Committee emphasises the crucial importance of DIAC ensuring the integrity of its health checking processes under the 457 visa program so that the health of the Australian population is not compromised.

Sectoral issues

1.60 The Committee found that 457 visa usage sometimes varied depending on the sector, with sponsoring employers across the meat processing and resources sectors, for example, having quite different experiences of the program:

> AMIC and its members have been exposed to many issues which have resulted in access to 457 labour being denied since March 2006. The meat industry has 457 labour accessed prior to this date but has not been able to supplement these numbers since. Attempts to resolve issues delaying access to 457 labour have been unsuccessful and clearly demonstrate that the system is not working for the meat industry.[70]

---

69 DIAC website, http://www.immi.gov.au/allforms/health-requirements/index.htm (accessed 5 July 2007).

70 Australian Meat Industry Council, *Submission No. 26*, pp. 2-3. On 31 July 2006, the former Minister for Immigration and Multicultural Affairs, Senator the Hon Amanda Vanstone, stated, 'I'm aware that there are some problems in the meat industry with the use of this visa … There are some people misbehaving', *7.30 Report*, http://parlinfoweb.parl.net/

> AMMA members have voiced their support for the 457 visa and generally have been complimentary in respect to processes involved.[71]

1.61 The scope of this report does not allow for detailed industry case studies and investigation of sectoral impacts of the 457 visa. However, the Committee believes this to be an important area of investigation for DIAC in further refining temporary skilled migration policy and the 457 visa program. (The brief discussion in Chapter 2 on use of the 457 visa in the meat processing industry suggests that such research might usefully commence with this sector.)

Recommendation 2

1.62 **The Committee recommends that the Department of Immigration and Citizenship commission research into sectoral usage of the 457 visa program, commencing with the meat processing sector, with a view to further refining temporary skilled migration policy and the 457 visa program with reference to specific industry sector needs.**

Permanent residency

1.63 An important feature of Australia's temporary business visa program, as the Migration Institute of Australia (MIA) commented, is that:

> … a significant proportion of temporary business entrants go on to change their status to that of permanent resident after arrival in Australia. As such, temporary business entry has been a significant feeder into Australia's migration program ...[72]

1.64 This distinguishes Australia's temporary skilled migration program from the 'guest worker' programs of other countries, where temporary, often low-skilled, workers do not have access to permanent residency or citizenship. As Ms Bissett from the ACTU commented, '[w]e recognise the absolute difference between the 457 visa program and guest worker programs, which we oppose absolutely'.[73]

---

parlinfo/Repository1/Media/tvprog/VCFK60.doc.

71 Australian Mines and Metals Association, *Submission No. 30*, p. 14.

72 MIA, *Submission No. 9*, p. 4.

73 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 5.

1.65 About 25 per cent of temporary skilled migrants obtain permanent residence each year.[74] The Association of Consulting Engineers Australia advised that 'the bulk (80%) of 457 visa holders in [the] industry become permanent residents'.[75]

1.66 In 2005-06, some 13,300 subclass 457 visa holders applied to stay in Australia permanently.[76] DIAC further advised that 18,352 people obtained permanent residence in 2006-07 (to 17 June 2007) where the last substantive visa held was a 457 visa.[77] Over the last four years, the highest number of permanent visa grants, where the last substantive visa was a 457 visa, has been for registered nurses.[78]

1.67 The Committee regards the permanent residency outcome offered by the 457 visa as beneficial to both the individual concerned and the broader Australian community.

Committee findings on other temporary business related visa categories

Business visitor visas

1.68 Australia's business visitor visas, as listed earlier, provide for stay in Australia for periods of up to three months. (Table 1.4 sets out the number of business visitor visa grants by each subclass.) A single visa can provide for multiple entry arrangements for business visitors who come to Australia frequently for short periods. DIAC highlighted that the 'main purpose' of these visas is to:

> … enable bona fide business visitors to come to Australia to transact business; attend conferences or seminars; undertake contract negotiations; receive or deliver business training; or explore business opportunities in Australia. The visas only provide holders to undertake salaried work in very limited circumstances. These are for work which:

74 Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, *Immigration Facts No. 10*, http://www.minister.immi.gov.au/media/factsheets/fact-sheet-10-temp-great-asset.pdf (accessed 16 July 2007).

75 Association of Consulting Engineers Australia, *Submission No. 14a*, p. 3.

76 DIMA, *Annual Report 2005-06*, Canberra, October 2006, p. 85.

77 DIAC, *Submission No. 86a*, p. 24.

78 Commonwealth Government, *Submission No. 33c*, p. 1.

- involves an emergency; and
- is very short term (a few days) in duration; and
- is highly specialised in nature (in ASCO major groups 1–4); and
- does not occur repeatedly.[79]

Table 1.4 Business visitors—grants by subclass[80]

Visa subclass	2004-2005	2005-2006	2006-07 to 30/04/07
Business (Short Stay) 456 visa	174 617	185 656	166 714
Sponsored Business Visitor 459 visa	107	634	2 126
Business Entrant (Long Validity) 956 visa	18 417	15 410	11 513
Business Entrant (Short Validity) 977 visa	146 283	166 633	160 560
Total	**339 424**	**368 333**	**340 940**

Source Commonwealth Government, *Submission 33a*, p. 1.

1.69 The 456 visas are 'applied for on paper at the DIAC overseas posts and are most often used by nationals of non-ETA countries'. The 459 visas have the 'same policy settings as the 456 visa but require the applicant to have an authorised sponsor' (usually the Australian business with whom the applicant is dealing) and are 'applied for on paper at the DIAC office nearest to the sponsor in Australia'.[81]

1.70 The 956 and 977 ETA visas are 'most often applied for via travel agents or over the internet'.[82] The 977 visa has similar conditions to the 956 visa but a shorter validity period—that is, a period of 12 months from the date of grant rather than for the life of an applicant's passport, as is the case under the 956 visa.[83]

1.71 The Committee heard of the difficulties encountered by business in obtaining an appropriate visa for someone to undertake specialist short-term work: '[m]any of our clients will have need of the services of an overseas specialist for only a short period of time—often for less

79 Commonwealth Government, *Submission No. 33*, p. 4.

80 Grant figures include both primary and secondary applicants.

81 Commonwealth Government, *Submission No. 33*, p. 5.

82 Commonwealth Government, *Submission No. 33*, p. 5.

83 DIAC website, http://www.immi.gov.au/skilled/business/956-977/index.htm (accessed 13 June 2007).

than the three months which is stated as the minimum term of the 457 visa'.[84] In particular, concerns were raised about restrictions on the use of the 456 visa for short-term employment purposes:

> It was intended by DIAC that the Business (short stay) 456 visa would suffice … however following policy shifts, this visa is now much more aimed at applicants wishing to undertake business activity in Australia and not for employment. The description in DIAC policy guidelines of activities allowed on a 456 visa is vague and specifically discourages direct, full time short term (3 months) employment situations. Policy has diverged from the Migration Regulations in this area.[85]

1.72 As a consequence, the Committee heard that employers have to use the 457 visa for this purpose:

> Many resources sector employers have a much shorter requirement for overseas employees to work in Australia. Employees may be brought into Australia for trouble shooting for a few days where Australian expertise is not available or for the training of Australian residents for very short periods of time. In these circumstances the obligations required for a s.457 visa place an unnecessary and onerous burden upon employers. Where hands on work is performed there is no alternative visa.[86]

1.73 A further problem in this regard is the current lengthy processing time for the visa: '6-10 weeks processing time to obtain a 457 visa ... makes it impossible to obtain a visa to meet the work requirements'.[87] One solution to this problem, as the MIA pointed out, is to 'enable much faster processing for short-term (less than 3 months) 457 applications'.[88]

1.74 While the fast-tracking of visa applications for employers with a demonstrated record of complying with the 457 visa program, as

---

84 Australian Contract Professions Management Association, *Submission No. 76*, p. 18. See also Baker Hughes Australia Pty Ltd, *Submission No. 79*, p. 3; and MIA, *Submission No. 9*, p. 5.

85 MIA, *Submission No. 9*, p. 6. See also SGS Australia Pty Ltd, *Submission No. 41*, p. 5; and Mr Walsh, Fragomen Australia, *Transcript of Evidence*, 1 June 2007, p. 15.

86 Australian Mines and Metals Association, *Submission No. 30*, p. 15.

87 SGS Australia Pty Ltd, *Submission No. 41*, p. 4. See also Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28a*, p. 3.

88 MIA, *Submission No. 9*, p. 6.

recently announced by the Minister, will go some way to addressing this issue, the Committee sees merit in clarification of the purpose of the 456 visa (and equivalent ETA visas), to remove ambiguity about using this visa for employment purposes as opposed to business visit purposes. The Committee also understands that, prior to July 2006, the 456 and ETA 977 and 956 visas permitted limited work rights of a short-term nature.[89]

1.75 The Committee further believes it would assist if all the temporary business visas had consistent terminology, as it is not clear why the terms 'business entrant', 'business visitor' and 'business short stay' are variously used across these apparently similar categories:

- Electronic Travel Authority (Business Entrant—Short Validity) visa (subclass 977)
- Electronic Travel Authority (Business Entrant—Long Validity) visa (subclass 956)
- Sponsored Business Visitor (Short Stay) visa (subclass 459)
- Business (Short Stay) visa (subclass 456).

1.76 The Business (Short Stay) visa (subclass 456) also confusingly sounds as though it is the short-stay version of the Temporary Business (Long Stay) visa (subclass 457), although, as discussed, they apparently have completely different purposes. The title of the 457 visa further adds to the confusion in this regard as it specifies 'business' rather than 'employment'.

1.77 Renaming these visa classes to more accurately reflect their purpose would provide for a complete separation of temporary entry requirements for 'employment' and 'business visit' purposes. As the MIA emphasised:

> For some years now the 457 Visa has been known officially as the Temporary Business (Long Stay) visa. Yet the whole purpose of the visa in policy terms is to facilitate the entry to Australia of skilled **employees** from overseas. Frankly the current name may not be the most suitable in our view. It misleads the public and employers and people overseas because it uses the word 'business' which to everyone implies entry to Australia to 'do' business, and not for employment ...[90]

89 SGS Australia Pty Ltd, *Submission No. 41*, p. 5.

90 MIA, *Submission No. 9*, p. 5. See also Media, Entertainment and Arts Alliance: '[t]hat one class of business visa precludes employment whereas another is specifically for

Recommendation 3

1.78 **The Committee recommends that the Department of Immigration and Citizenship:**

- **clarify the purpose of the Business (Short Stay) visa (subclass 456) in terms of whether it permits employment options—that is, valid entry for short-term specialists to meet the urgent needs of business;**
- **work with stakeholders to ensure an effective, streamlined migration option to meet the short-term temporary employment needs of business; and**
- **rename the long-stay and short-stay business visas and the business visitor visas to more accurately reflect their employment or business visit purposes, with consideration to be given to renaming the Temporary Business (Long Stay) visa as the Temporary Skilled Employment (Long Stay) visa.**

Medical Practitioner visa (subclass 422)

1.79 Like the 457 visa, the Medical Practitioner visa (subclass 422) allows doctors (general practitioners and specialists) to work in Australia for a sponsoring employer for up to four years. However, DIAC currently encourages medical practitioners to apply for a 457 visa rather than the 422 visa:

> Up until 1 April 2005, medical practitioners applied for a visa in Visa Subclass 422 Medical Practitioner. From that date, medical practitioners have been encouraged to apply for a Subclass 457 Visa.[91]

1.80 The Committee understands that the 457 visa has a 'quicker approval process' than the 422 visa.[92] The Australian Medical Association (AMA) noted that around 2,500 doctors enter the country each year using business visa subclasses 457 and 422.[93]

---

employment purposes can only cause confusion. The Alliance recommends … the Temporary Business Entry Long Stay visa be renamed to appropriately reflect what it is designed to do', *Submission No. 55*, p. 6.

91 Commonwealth Government, *Submission No. 33b*, p. 10.

92 Australian Rural and Remote Workforce Agencies Group, *Submission No. 47*, p. 3.

93 AMA, *Submission No. 43*, p. 1.

1.81 The recruitment of overseas trained doctors (OTDs) is a key part of Australia's response to medical workforce shortages, particularly to address the severe shortage of medical practitioners in rural and remote areas of Australia. As the AMA commented:

> Over the last 10 years the percentage of doctors in Australia who have trained overseas has risen from about 20 per cent to about 25 per cent of the medical workforce. In rural and regional Australia it is up to 50 per cent in some areas.[94]

1.82 A key aspect of this recruitment process is to ensure that every effort is made in the first instance to recruit locally trained doctors, that Australia does not actively recruit doctors from lesser developed countries and that the skills of OTDs are properly assessed.[95]

1.83 Before a 457 or 422 visa can be approved, an OTD must obtain medical registration in the state/territory in which they intend practising. However, as the AMA emphasised:

> Unfortunately, the processes and standards of OTD assessment and support vary from jurisdiction to jurisdiction. One example of such variability is that some states and territories will require an overseas trained specialist to submit to the Australian Medical Council specialist assessment process, whereas other jurisdictions may not enforce this process. Employers will also sometimes employ OTDs in 'non-specialist' positions to avoid the AMC specialist assessment process, and then require them to perform work that is specialist in nature.[96]

1.84 The AMA's comments are of great concern to the Committee. The Committee notes that, in 2006, COAG agreed that health ministers would 'implement initiatives to establish by December 2006 a national process for the assessment of overseas-trained doctors'.[97] However, the Committee understands from the AMA that, while 'the Commonwealth has tried to achieve consensus amongst states and territories to move forward with this decision, some jurisdictions have been slow to sign up for strengthened assessment and support

94 Dr Haikerwal, AMA, *Transcript of Evidence*, 1 June 2007, p. 53.

95 AMA, *Submission No. 43*, p. 1.

96 AMA, *Submission No. 43*, p. 2. (For a detailed study on this area, see Professor L Hawthorne, Associate Professor G Hawthorne and Associate Professor Crotty, *Final Report: The Registration and Training Status of Overseas Trained Doctors in Australia*, University of Melbourne, February 2007.)

97 COAG Communique, 14 July 2006, http://www.coag.gov.au/meetings/140706/index.htm.

arrangements'.[98] As Dr Haikerwal, the immediate past President of the AMA, stated:

> Unless all states sign up to the process being considered, that process will fall over and we will be left with the existing highly flawed arrangements—many of the consequences of which, of course, have been widely reported in the press in recent times.[99]

1.85 The Committee strongly supports the COAG initiatives in this area and, in light of the concerns raised by the AMA and others, points to the urgent need for implementation of a national assessment process through the Australian Medical Council for overseas trained doctors and specialists.

1.86 The AMA also recommended that:

> If these delays persist, the Commonwealth should close off opportunity for OTDs to slip through assessment processes by imposing the following new conditions on 457 and 422 visa applications:
>
> - Formal assessment of the OTD's qualifications and skills by the relevant specialist College
> - Evidence of appropriate arrangements to provide supervision and/or training as determined by the College assessment
> - A requirement for the sponsor to provide the OTD with formal orientation to the Australian health system
> - The appointment of a doctor with recognised Australian qualifications as a mentor for the OTD.[100]

1.87 The Committee notes that the 457 visa program has strict skills assessment requirements where '[m]edical practitioners are required to provide evidence of registration to practise in the state or territory in which they will be working' before a visa can be granted.[101] Further, the concerns raised by the AMA relate to current perceived deficiencies in state/territory registration processes for OTDs rather than any identified failing of the 457 visa program itself or its skills

98 AMA, *Submission No. 43*, p. 2.

99 Dr Haikerwal, AMA, *Transcript of Evidence*, 1 June 2007, p. 54. See also commentary on this matter by Dr Birrell and Mr Schwartz, 'Accreditation of overseas trained doctors: the continuing crisis', *People and Place*, Vol. 14, No. 3, 2006, pp. 37-46.

100 AMA, *Submission No. 43*, pp. 2-3.

101 DIAC, *Sponsoring a Temporary Overseas Employee to Australia*, Booklet No. 11, January 2007, p. 18.

assessment requirements: 'the 457 visa arrangements … are heavily reliant on the states to get it right as far as assessing people as being of a suitable standard'.[102] However, should there be further delays in resolution of a national registration process for OTDs, the Committee draws DIAC's attention to the AMA's recommendation.

Recommendation 4

1.88 **The Committee recommends that, in light of the serious concerns raised during the inquiry about skills assessment processes for overseas trained doctors (OTDs), the Department of Health and Ageing, together with the Department of Immigration and Citizenship, work to ensure initiatives announced by the Council of Australian Governments to establish a national process for the skills assessment of OTDs are implemented as a matter of urgency.**

Occupational Trainee visa (subclass 442)

1.89 The Committee was concerned to hear of alleged abuses of the Occupational Trainee visa (subclass 442). For example, the AMA commented that:

> … the skills assessment requirements for this category of doctor are cursory and health departments do not have to seek an area of need declaration. They can be appointed in any hospital for up to 12 months on a 'structured' training program, although these often appear to be normal service positions … in normal circumstances these doctors should be required to utilise a business visa, however, an Occupational Trainee visa appears to offer an easier, less rigorous option.[103]

1.90 The Australian Doctors Trained Overseas Association (ADTOA) also raised concerns in this regard.[104] The AMA pointed to growth in the use of this visa category by the New South Wales Medical Board, in particular:

> … in 2001/02 there were 725 occupational trainees registered with the NSW Medical Board. By 2005/06 this had nearly doubled to 1326 doctors. There is a reasonable suspicion that

102 Mr Hough, AMA, *Transcript of Evidence*, 1 June 2007, p. 55.

103 AMA, *Submission No. 43*, p. 3.

104 ADTOA, *Submission No. 56*, pp. 1-3.

> many of these doctors are being used to plug workforce gaps, rather than work in structured training programs.[105]

1.91 Further concerns were raised about nurses working on 442 visas. The Australian Nursing Federation commented that some individuals registered as nurses in their home country who had entered Australia on such visas had allegedly been:

- recruited on the understanding that they would be offered training in Australia enabling them to work as registered nurses and then been charged for a training course that is not a requirement of Australian nursing registration authorities;
- overcharged for the education they received; and
- subjected to a 'clinical placement' in a residential aged care facility, 'working all shifts, overtime, public holidays with no penalties, less than acceptable pay, few leave entitlements and certainly with no educational support or supervision'.[106]

1.92 Given these comments from two major representative bodies for medical practitioners and nurses, the Committee refers the possible misuse of this visa class to DIAC for further investigation.

Recommendation 5

1.93 **The Committee recommends that the Department of Immigration and Citizenship investigate alleged misuse of the Occupational Trainee visa (subclass 442) and take action to address any problems identified with the program.**

105 AMA, *Submission No. 43*, p. 3. See also ADTOA, *Submission No. 56a*, pp. 1-2.

106 Australian Nursing Federation, *Submission No. 63*, p. 9. See also the discussion in Chapter 3 on workers with overseas nursing qualifications entering under the 457 visa program.

2

457 visa eligibility requirements: key issues and improved procedures

Introduction

2.1 Chapter 2 covers a range of key issues relating to the eligibility requirements of the 457 visa program, particularly concerning minimum salary and skill requirements and regional concessions to those requirements. The central role played by the Australian Standard Classification of Occupations (ASCO) system in defining what constitutes a 'skilled' occupation under the program is also discussed. Other topics include Regional Certifying Bodies (RCBs), labour market testing, and training and English language requirements.

2.2 The chapter concludes with a discussion on the on-hire and recruitment industry and its interface with the 457 visa program, and on Labour Agreements as a mechanism to address identified skills shortages in Australia.

Salary requirements

2.3 An eligibility requirement of the 457 visa is that visa holders must be paid either the award wage or the minimum salary level (MSL) gazetted by the Department of Immigration and Citizenship (DIAC),

whichever is higher.[1] As the former Minister for Immigration and Multicultural Affairs stated:

> The minimum salary requirements do not override requirements that workers are paid in accordance with Australian standards and conditions of employment (including awards, workplace agreements, superannuation and taxation).[2]

2.4 The MSL is adjusted annually. From 1 July 2006 the MSL was set at $57,300 for Information and Communication Technology (ICT) occupations and $41,850 for all other gazetted occupations, for a 38-hour week.[3] A 10 per cent concession can apply to the MSL for locations classed as 'regional'.[4] The current average salary for 457 visa holders is $71,000 per annum.[5]

2.5 The Committee received mixed evidence across sectors and interest groups about the effect of DIAC's salary structure for the 457 visa on visaed and Australian workers, and industry development generally. Most contributors to the inquiry acknowledged that it was necessary to have a fair and equitable method of calculating a base salary for 457 workers, to provide them with the monies necessary to live in Australia and contribute to the economy, and protect Australian workers.[6] Debate focused on whether under the current arrangements 'market rates' were paid to visa holders, the impact of regional concessions, the exclusion of non-salary benefits from the MSL, confusion over salary deductions, and the enforcement of wage payments.

---

1 DIMA website, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-nomination.htm (accessed 28 May 2007). See also *Frequently Asked Questions* (July 2007), 'an annual salary which is at least the Minimum Salary Level … or the required salary level under the instrument or other industrial agreement (under Australian law) … the larger of these amounts', DIAC website, http://www.immi.gov.au/skilled/skilled-workers/pdf/FAQ_457_visa_holders.pdf.

2 Media release by Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, 'New minimum salaries for temporary overseas skilled workers', 1 May 2006.

3 Minister for Immigration and Multicultural Affairs, *Immigration Facts No. 4*, 'Salary levels for temporary skilled migrants', http://www.minister.immi.gov.au/media/factsheets/fact-sheet-4-temp-salary-levels.pdf (accessed 5 June 2007).

4 DIMA website, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-regional.htm (accessed 28 May 2007).

5 Mr Parsons, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 53. Salary breakdown from 1 July 2006 to 17 June 2007: ASCO major group 1 to 3—average salary $77,600; major group 4—average salary $49,200; and major group 5 to 7—average salary $45,700, DIAC, *Submission No. 86a*, p. 24.

6 Migration Institute of Australia, *Submission No. 9*, p. 12.

Establishing rates of pay

2.6 Some industries, notably those paying above the minimum gazetted amount, deemed the current wage arrangements as satisfactory. For example, the Recruitment and Consulting Services Association (RCSA) stated that:

> Throughout discussions with our Members there was constant agreement that the standard wage gazetted by DIAC is not an issue and that many Members are in fact paying above the specified rate.[7]

2.7 However, as will be discussed below, evidence to the Committee tended to be divided between those who argued the MSL was too high and those who believed it was too low and not sufficiently monitored.

2.8 The Migration Institute of Australia (MIA) noted that the MSL exceeded the salary rate of Australian workers for certain occupations.[8] Indeed, it was suggested that for some professions, such as nursing, hairdressing, motor mechanics and welding, and in certain sectors, particularly agriculture, tourism and hospitality, visa holders were paid more than Australian workers.[9] According to the Law Institute of Victoria, to protect small businesses it was vital that the MSL did not exceed the wage rates payable to Australian employees.[10]

2.9 The National Farmers Federation (NFF) commented that the MSL would 'have a significant negative impact on the capacity for the regional migration program to assist regional employers'.[11] It was felt that, even with the regional salary concession, the MSL had been set too high for the agricultural industry. The NFF further observed that:

- the Australian Bureau of Statistics (ABS) did not include agricultural statistics in their calculation of the MSL;
- non-monetary benefits, which are not included in the MSL, can make up 20 to 25 per cent of workers' salaries in the industry;

---

7 Recruitment and Consulting Services Association, *Submission No. 11*, p. 2.

8 Migration Institute of Australia, *Submission No. 9*, p. 12.

9 Law Institute of Victoria, *Submission No. 46*, p. 5; Migration Institute of Australia, *Submission No. 9*, p. 12; National Farmers Federation, *Submission No. 22*, p. 3; Restaurant and Catering Australia, *Submission No. 50*, p. 16; Printing Industries Association of Australia, *Submission No. 18*, p. 7; Commerce Queensland, *Submission No. 25*, p. 4; and Australian Tourism Export Council, *Submission No. 36*, p. 2.

10 Law Institute of Victoria, *Submission No. 46*, p. 4.

11 National Farmers Federation, *Submission No. 22*, p. 3.

- the industry has dispensation to employ workers from ASCO 5 to 7—however, the lower skills level is not adequately reflected in the MSL; and
- the average salary for the industry was $30,000, inclusive of overtime and non-monetary benefits, well below the MSL.[12]

2.10 Restaurant and Catering Australia (RCA) also suggested that the MSL was above the award rate for the industry and was increasing at a disproportionate rate to Australian salaries:

> The Minimum Salary Level … gazetted by the Minister for Immigration and Citizenship (currently $41,850) is significantly higher than the award rate of pay for positions that qualify for migration under the business migration program. In addition, the increase in the salary level in the last 12 months was significantly higher than for commensurate Australian rates. In 2006 the Australian Fair Pay Commission granted an increase of $22.04 per week for rates of $700.00 per week and above. In the same period the Minister for Immigration increased the MSL for skilled migrants by $80.48 per week.[13]

2.11 The Australian Council of Trade Unions (ACTU) agreed that there should not be differential rates of pay between Australian employees and visa holders. However, a central tenet of their argument, which was supported by other union bodies, was that 457 workers were being paid less than Australian workers performing equivalent duties.[14] It was suggested that this had occurred because the MSL does not reflect market rates of pay.

2.12 In addition, the ACTU noted that the current wages system 'is not subject to any adjustment and is extremely difficult to enforce'.[15] Despite DIAC annually increasing the MSL, visa holders' salaries are not adjusted once they commence employment, and remain for the duration of their employment at the amount they were originally sponsored.[16] DIAC stated that currently 10,000 visa holders are not

12 National Farmers Federation, *Submission No. 22*, pp. 3-5.

13 Restaurant and Catering Australia, *Submission No. 5*0, p. 16.

14 Australian Council of Trade Unions, *Submission No. 39*, p. 20; Australian Rail, Tram and Bus Industry Union, *Submission No. 8*, p. 2; Australasian Meat Industry Employees Union, *Submission No. 23*, p. 19; Australian Manufacturing Workers Union, *Submission No. 40*, pp. 63-64; and Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 4.

15 Australian Council of Trade Unions, *Submission No. 39*, p. 20.

16 Australian Council of Trade Unions, *Submission No. 39a*, p. 5.

paid the updated MSL rate.[17] However, the Minister for Immigration and Citizenship has proposed that the program be amended so that visa holders' salaries are compulsorily indexed.[18]

2.13 In summary, the ACTU argued that the current conditions undercut the wages of Australian workers, afford subsides to companies with 457 visaed employees and exploit overseas workers.[19] Similarly, the Media, Entertainment and Arts Alliance, as the professional organisation representing workers in the media and entertainment industries, argued that:

> … the Alliance shares the concerns of other commentators who note that the minimum salary requirements are not in line with market rates nor even, in some instances, the minimum award rates that apply to the positions in question. It is therefore difficult to see how the general $41,850 minimum rate of pay would necessarily drive the skill focus the visa class is intended to address. Rather, it offers a mechanism that some employers might utilise to avoid paying Australian market rates.[20]

2.14 The Australian Chamber of Commerce and Industry (ACCI) acknowledged the difficulties associated with establishing a mechanism to determine wages:

> A single model which can deliver streamlined processing and protect visa holders while not impairing the efficiency of the visa class is proving difficult to tailor for all users.[21]

2.15 A number of participants to the inquiry recommended alternative mechanisms for setting salary levels for visaed employees. These included:

- basing the rate on the 'appropriate industrial instrument' specified at the time of nomination;[22]

---

17 DIAC, *Submission No. 86a*, p. 31.

18 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

19 Australian Council of Trade Unions, *Submission No. 39*, p. 5 and p. 21. See also Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 7.

20 Media, Entertainment and Arts Alliance, *Submission 5*5, p. 8.

21 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 4.

22 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 4; and Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 13.

- ensuring that wage rates are consistent with the current workplace and industrial relations arrangements and laws;[23]
- using the rate of pay stipulated in the relevant enterprise agreement—in the absence of an enterprise agreement, a body, independent of government and employers, should determine the annually adjusted base rate in 'excess of award rates' and including the going rate in an area;[24]
- paying the market rate (based on the rates other employers are paying) or the enterprise rate, whichever is higher;[25] and
- establishing the market rate for each eligible occupation.[26]

2.16 RT Kinnaird and Associates commented that:

> The single most important change needed to 457 visa rules is to require all 457 employers to pay 457 visa-holders at least the market (or 'going') wage rates for the occupation and geographic area in question; and to increase wage rates annually for all 457 visa-holders, in line with market movements in the relevant Australian wages.[27]

2.17 The proposed options for calculating the market rate were to determine:

- the wages and conditions of Australian workers doing equivalent work;
- the median, or the '75th percentile', of the salary of Australian workers in the occupation concerned; or
- the advertised rate for vacancies in the relevant occupations.[28]

2.18 In response to questions about using the MSL or 'market rate' to determine salary levels, the Department of Employment and Workplace Relations (DEWR) told the Committee:

---

23 Restaurant and Catering Australia, *Submission No. 50*, p. 3; Printing Industries Association of Australia, *Submission No. 18*, p. 9; and Commerce Queensland, *Submission No. 25*, p. 4.

24 Australian Council of Trade Unions, *Submission No. 39*, pp. 20-21; and Australian Rail, Tram and Bus Industry Union, *Submission No. 8*, pp. 9-10.

25 Construction, Forestry, Mining and Energy Union, *Submission No. 21*, p. 11.

26 Liquor, Hospitality and Miscellaneous Union, *Submission No. 2*0, p. 7; Queensland Government, *Submission No. 65*, p. 4; and Townsville Enterprise Ltd, *Submission No. 1*, p. 1.

27 R T Kinnaird and Associates, *Submission No. 80*, p. 2.

28 R T Kinnaird and Associates, *Submission No. 80*, p. 4.

> We are aware of the debate around whether there should be market rates or not, and I think it raises a bunch of issues. Firstly, it goes to complexity: what is the market rate? No-one has reliable market rate data down to the level of the precise occupation, let alone the precise area where the precise occupation might be. So if you were going to move in the direction of market rates, you could only do it at an industry level or at a broad ASCO category level, which would raise issues and at the same time create a plethora of rates. One of the things that we are all trying to balance in the discussion about further refining and reforming this visa subclass is not to create a more complex red-tape-burdened system but one that is fair and sensible. So the position that we would adopt at this point in time, subject to all the caveats about further government consideration and so on, is that the MSL—which is essentially derived from average weekly ordinary time earnings with a concession in regional areas plus a specific MSL for the IT industry—is about the right formulation. But we are aware that the debate on that issue can continue.[29]

2.19 The Committee acknowledges that central to the debate about salary requirements under the 457 visa program is the tension between finding a fair and equitable wage system that provides parity with Australian working conditions, and the practicalities of developing a system that can be effectively implemented and administered.

2.20 While taking on board DEWR's views on this issue, the Committee cannot ignore the dissatisfaction of submitters in relation to the current system, underpinned by the MSL. The Committee believes that the determination of an appropriate salary threshold (for example, at market rates) is crucial to ensuring that the employment opportunities and working conditions of Australians are protected. Similarly, where the salaries of 457 workers are significantly above those of their Australian counterparts, this would appear to impose an unreasonable cost on Australian employers and businesses. The Committee therefore urges the Minister for Immigration and Citizenship to continue to refine the policies underpinning the 457 visa program in regard to salary levels and give consideration to workable alternatives to the current system.

29 Mr Manthorpe, DEWR, *Transcript of Evidence*, 1 June 2007, p. 83.

Recommendation 6

2.21 **The Committee recommends that the Department of Immigration and Citizenship, together with the Department of Employment and Workplace Relations, investigate and report to the Minister for Immigration and Citizenship on the adequacy of the salary system under the 457 visa program, underpinned by the minimum salary level, to identify if viable alternatives exist for calculating salary levels.**

2.22 As previously noted, the Committee also urges the Australian Government to proceed with proposed legislative changes to employer sponsorship obligations. In particular, the Committee supports the proposal to pay the 'salary level in place at any particular time' (that is, to index the salaries of visa holders to reflect changes to the gazetted MSL), not necessarily the amount specified at the time of sponsorship.[30]

Recommendation 7

2.23 **The Committee recommends that the Australian Government proceed with its proposal to index the salaries of 457 visa holders in line with increases to the minimum salary level or, alternatively, the award conditions under which the visa was granted.**

Regional salary concession

2.24 In recognition of the special skill needs of regional Australia, there are arrangements in place to allow regionally based employers to access reduced skill and salary requirements where the business has sought certification by a local RCB. (The role of RCBs is discussed later in this chapter.)

2.25 While not advocating 'wholesale change' to salary levels, the MIA argued that 'some additional flexibility is warranted, especially in regional Australia'.[31] The Committee received mixed evidence from other inquiry participants, with some indicating that the regional salary concession should be abolished and others arguing that it should be increased.

30 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the Migration Amendment (Sponsorship Obligations) Bill 2007, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

31 Migration Institute of Australia, *Submission No. 9*, p. 12.

2.26 Currently, the regional minimum salary level is gazetted at 90 per cent of the full MSL. For 2006-07 (to 17 June 2007), DIAC granted 880 visas with the regional MSL.[32] The Chamber of Commerce and Industry WA explained that:

> To qualify for regional salary concessions, a Regional Certifying Body … must certify that the nominated salary is at least the regional minimum salary level that applied at the time the nomination was made and is not less than the level of remuneration provided for under relevant Australian legislation and awards.[33]

2.27 The Western Australian Government has removed the regional salary concession, and it is only granted under 'exceptional circumstances'.[34] According to the Peel Development Commission: '[t]his decision was made to assist with disparity in local workplaces'.[35]

2.28 The ACTU, with the support of other union bodies, concluded that regional exemptions for both skills and salaries should be removed.[36] The Australasian Meat Industry Employees Union (AMIEU) commented that the meat industry provides an example of why the regional salary concession is not justified:

> The industry is characterized by its almost exclusively regional base and the fact that all processors compete for the same commodity (livestock), compete in a labour market for the same skilled employees and, generally, all compete for the same markets. There appears to be no good reason in this environment as to why different provisions based on regional/metropolitan distinctions should exist, nor should any labour costs regime (by way [of] stipulated minimum salaries) be the subject of differing regulation.[37]

2.29 As previously discussed, the NFF commented that one of their concerns with the visa program was the regional MSL of $37,000: '[t]his amount is not only above award wages but it is also above market rates for our sector'.[38] This sentiment was echoed by the tourism and

32 DIAC, *Submission No. 86a*, p. 24.

33 Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 12.

34 Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 12.

35 Peel Development Commission, *Submission No. 2*, p. 1.

36 Australian Council of Trade Unions, *Submission No. 39*, p. 9. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 7.

37 Australasian Meat Industry Employees Union, *Submission No. 23*, p. 20.

38 Mrs Wawn, National Farmers Federation, *Transcript of Evidence*, 1 June 2007, p. 25.

hospitality sectors.[39] For example, the Cairns Chamber of Commerce argued that, even with the 10 per cent regional concession: '[w]e are in fact seeing a 2 tiered wage structure starting to exist with overseas workers being paid more than their Australian counterparts'.[40] Both Commerce Queensland and the Cairns Chamber of Commerce recommended that the regional concession be increased to reflect a 20 or 25 per cent reduction in the full gazetted wage, respectively.[41] Snedden, Hall and Gallop Lawyers suggested that:

> … a return to the old system, where regional certifiers could certify at a reasonable salary level, was much more appropriate. Lower salaries do not per se mean that an Australian is being deprived of employment.[42]

2.30 The Committee is aware that some regions are experiencing labour shortages and that certain sectors are finding it difficult to recruit and retain staff. However, it is the Committee's view that the 457 visa is, and should remain, a means through which Australian businesses can employ 'skilled' overseas workers. Whilst acknowledging that the application of the 457 visa is inherently limited for sectors whose operational requirements are for lower salaried and lower skilled workers, the Committee views the regional concession made in relation to salary levels as sufficient. In the section on RCBs later in this chapter, however, the Committee recommends that DIAC review the functions of the RCBs, which would also take in the regional concession regime.

Non-salary benefits, deductions and other expenses

Non-salary benefits

2.31 DIAC provides a list of non-salary benefits, such as a Living-Away-From-Home-Allowance and bonus shares, that can be afforded to a visa holder but should not contribute to meeting the minimum salary threshold.[43]

---

39 Australian Tourism Export Council, *Submission No. 36*, p. 2.

40 Cairns Chamber of Commerce, *Submission No. 27*, p. 4. See also Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 12.

41 Commerce Queensland, *Submission No. 25*, p. 4; and Cairns Chamber of Commerce, *Submission No. 27*, p. 5.

42 Snedden, Hall and Gallop Lawyers, *Submission No. 17*, p. 3.

43 DIAC website, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-nomination.htm (accessed 13 June 2007). See also Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 11.

2.32 The Committee received some evidence suggesting that salary packaging should be allowed so that non-salary benefits contribute to the minimum salary.[44] The NFF claimed that up to 20 per cent of a farm worker's salary could be made up of non-monetary benefits, such as accommodation and meals.[45] The Australian Mines and Metals Association (AMMA) commented that the minimum salary threshold should recognise payments common in the resource sector:

> International assignment remuneration circumstances such as:
>
> - tax equalisation on salaries,
> - cost of living/assignment allowances,
> - salary gross ups,
> - field bonuses, and
> - regular penalty payments
>
> should be recognized as contributing toward the minimum salary calculation.[46]

2.33 Entity Solutions argued that it was in the visa holder's interest to be able to salary package for tax purposes:

> Whilst we certainly support the need for a minimum taxable salary level to exist as part of the eligibility requirements, we note that if this cash component of the salary package is raised higher, these individuals essentially become unable to claim tax free allowances to which they would otherwise be entitled—and therefore their transition to Australia for the purpose of short term work, will ultimately become less attractive. In this manner, we may then lose the 'cream of the crop' resources to other countries that also require their skills. Our suggestion would be that the entire salary package, including both cash and non-monetary components are recognized at both application and monitoring stages.[47]

2.34 In light of the broad scope of the 457 visa program, the Committee does not recommend that non-salary components contribute to visa holders' salaries. The Committee's concern would be that such an initiative could further exacerbate the issue of pay parity between 457 workers and Australian workers. However, with the future refinement of the

---

44 Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28a*, p. 4; and National Farmers Federation, *Submission No. 22*, p. 5.

45 National Farmers Federation, *Submission No. 22*, p. 5.

46 Australian Mines and Metals Association, *Submission No. 30*, p. 14.

47 Entity Solutions, *Submission No. 44*, p. 11.

program, it may become possible for DIAC to grant companies paying significantly above both the MSL and the industrial instrument some salary exemptions.

Salary deductions and sponsor obligations

2.35 The Committee noted confusion about what constitutes a sponsor's obligation versus a valid salary deduction. The Committee heard that responsibility for health care costs was an area of particular concern.[48] For example, the letter that DIAC currently provides to visa holders does not define who ultimately pays for health insurance and health care costs:

> The sponsoring employer has also undertaken to meet the health and medical costs for sponsored visa holders while the primary visa holder works for them, *or* has undertaken to ensure that all sponsored visa holders have accepted medical insurance arrangements [emphasis added].[49]

2.36 In his second reading speech on the proposed legislative changes to the 457 program, the Minister for Immigration and Citizenship stated that sponsors' obligations include:

- paying the return travel costs from Australia of overseas workers and their family;
- paying certain medical costs on behalf of the overseas worker and his or her family which may involve the employer taking out insurance on their behalf;
- paying any fees that must be paid for the overseas worker to work in the nominated activity and other fees associated with recruitment and migration agents;
- keeping adequate records of compliance with these obligations and providing information to my department when requested in writing.[50]

2.37 The Committee notes that further clarification of this area would be useful, particularly to identify which medical costs are covered and by

48 Australian Industry Group, *Submission No. 57*, p. 2.

49 DIAC, *Submission No. 86a*, p. 5.

50 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

whom.[51] The Committee urges DIAC to clearly define who pays for medical costs.

2.38 On the issue of deductions, DIAC commented that:

> … the only allowable deduction that reduces the salary below the Minimum Salary Level (MSL) is Pay-As-You-Go (PAYG) tax. All other deductions must be authorised by the visa holder in accordance with Australian law and can only be made from payments that are above the rate of the MSL.[52]

2.39 The Committee acknowledges that wage deductions are not an imposition for visaed employees when they are being provided with a good or service, at a fair price, that they have agreed to. This also assumes that such negotiations must be free from coercion and profiteering.[53] Issues arise when:

- visaed employees are charged for deductions that they have not authorised;
- a deduction is included as a component of the MSL; [54]
- a visa holder is charged for a cost that is the sponsor's responsibility/obligation; [55] and/or
- a visa holder is coerced into paying for a good or service above the market rate.[56]

2.40 Engineers Australia and the Association of Professional Engineers, Scientists and Managers Australia (APESMA) recommended that DIAC:

> … regulate and monitor deductions from the salaries of skilled migrants including accommodation, airfares and recruitment

---

51 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

52 DIAC, *Submission No. 86a*, p. 25.

53 Mr Rizvi, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 30 October 2006, p. 37.

54 Engineers Australia and Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 13; and Johninfo Lawyers, *Submission No. 38*, p. 3.

55 Australian Council of Trade Unions, *Submission No. 39*, p. 6. For a list of employer obligations, see the DIAC website, http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm (accessed 15 June 2007).

56 Queensland Government, *Submission No. 65*, p. 5.

> costs to ensure that reported salary levels are the actual salaries paid rather than salaries prior to the deduction of costs.[57]

2.41 The issue of deductions was an area of some concern to the ACTU. The ACTU argued that:

> A temporary skilled overseas worker should not have any deductions made from their pay for rent or any other living costs without express written agreement of the worker. An employer should not be able to deduct money from the pay of a temporary skilled overseas worker for the payment of airfares, migration or recruitment costs.[58]

2.42 It would appear that DIAC's requirements with regard to deductions are not the primary issue. Rather, the concern lies with the sponsor's understanding and interpretation of them. As is discussed in Chapter 3, the Committee believes that a communication strategy needs to be developed to ensure that 457 workers and sponsors understand what deductions are allowable and the implications of impending legislative change in this area.[59] As is recommended in Chapter 3, such guidelines should provide clarity on issues such as health care costs, airfares, and migration and recruitment costs.

2.43 The 457 visa program eligibility criteria specify that the MSL 'must not include':

- accommodation or rental assistance, board, upkeep, meals or entertainment
- incentives, bonuses or commissions
- shares or bonus shares
- travel, holidays, health care/insurance
- vehicles or vehicle allowances
- communications packages
- Living-Away-from-Home-Allowance
- superannuation contributions (either voluntary employee or compulsory employer contributions)

57 Engineers Australia and Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 13.

58 Australian Council of Trade Unions, *Submission No. 39*, p. 9.

59 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

- any other non-salary benefits not included in the above, with the exception of Medicare benefits received as a fee for service by medical practitioners.[60]

2.44 Further, as is discussed in Chapter 3, the Migration Amendment (Sponsorship Obligations) Bill 2007 seeks to prohibit certain deductions from the wages of 457 visa holders, such as recruitment costs and migration agent fees (see Figure 3.1).

2.45 The Committee supports these undertakings and, as discussed above, notes that 'the only allowable deduction that reduces the salary below the MSL is PAYG tax' and that '[a]ll other deductions must be authorised by the visa holder in accordance with Australian law and can only be made from payments that are above the rate of the MSL'.[61] The Committee supports the principle, as raised above by the ACTU, that written consent be sought from visa holders prior to such deductions being made.

Ensuring minimum wage standards are met

2.46 The Committee heard evidence that alleged that some 457 sponsors were underpaying their employees and/or requiring they work without remuneration beyond a 38-hour week.[62] DIAC informed the Committee that 40 per cent of breaches during 1 July 2006 and 30 April 2007 involved the MSL.[63] Submitters were concerned about how such breaches were dealt with. Key concerns included:

- perceived inadequacies in DIAC's program for monitoring salary levels and payment, with DIAC placing emphasis on sponsors' responses to paper based questionnaires seemingly to the detriment of random site based monitoring and the independent verification of salary levels;
- the resources available for monitoring (as will be further discussed in Chapter 3); and

60 DIAC website, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-nomination.htm (accessed 10 August 2007).

61 DIAC, *Submission No. 86a*, p. 25. However, it is noted that these provisions are the subject of legislation currently before the Parliament.

62 See, for example, Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 5; and Dr Wise, Macquarie University, *Transcript of Evidence*, 1 June 2007, p. 61.

63 DIAC, *Submission No. 86a*, p. 36.

- limitations on the powers of both DIAC and the Workplace Ombudsman (previously the Office of Workplace Services) to enforce wage requirements and rectify breaches.[64]

2.47 DIAC acknowledged that they do not 'currently have the power to enforce the recovery of lost wages'.[65] Under proposed legislative changes to the program, 'where DIAC is litigating against an employer, the court would have the power to order the employer to pay a person monies owed under an obligation in addition to imposing a civil penalty'.[66] Additionally, Commonwealth and state workplace inspectors would be empowered to enforce industrial relations legislation and relevant awards and agreements, and visa holders would be able to pursue restitution in the courts.[67]

2.48 Mr Bob Kinnaird, a prominent commentator on the 457 visa program, noted a number of technical problems with monitoring 'employer compliance' in this area: if initially the salary is not properly calculated, then DIAC would be monitoring the incorrect salary; for visaed employees covered by an Australian award, their salaries are not annually indexed, as they would be for Australian employees; and that DIAC does not collect information on the 'actual base salaries' paid by employers.[68] Mr Kinnaird recommended that DIAC collect and publish data on 'actual salaries paid to 457 visa-holders'.[69]

2.49 The Committee was pleased to see the Minister's recent announcement flagging improved compliance arrangements in terms of sponsorship obligations, including minimum salary levels.[70] The Committee believes these changes, particularly the increased powers to monitor sponsors and penalise non-compliance, will substantially strengthen the integrity of the 457 visa program. Until the on-ground effects of the proposed changes can be assessed, the Committee does not feel substantive recommendations in this area are warranted. However, the

64 See, for example, Mr Fary, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 1 June 2007, p. 20; Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, pp. 21-22; Australasian Meat Industry Employees Union, *Submission No. 23*, p. 14; and Australian Manufacturing Workers Union, *Submission No. 40,* p. 61.

65 DIAC, *Submission No. 86a,* p. 8.

66 DIAC, *Submission No. 86a*, p. 8.

67 DIAC, *Submission No. 86a*, p. 8.

68 Mr Kinnaird, *Exhibit No. 8*, p. 59.

69 Mr Kinnaird, *Exhibit No. 8,* p. 64.

70 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

Committee maintains that DIAC should endeavour to provide greater transparency by collecting and publishing data on the actual base salaries of visaed employees. The Committee makes a recommendation on this matter in Chapter 3.

Comparison between 457 visa and H-1B visa in the United States

2.50 The Committee received comparative information on the 457 visa and H-1B visa in the US as part of the Commonwealth Government submission to the inquiry.[71] The H1-B visa is briefly discussed below.

2.51 The H-1B visa provides for temporary employment in the US of a person in a specialty occupation for a maximum of six years. 'Specialty occupations' under the H-1B program include 'engineers, teachers, computer programmers, medical doctors, and physical therapists'.[72] The H-1B visa has an annual limit of 65,000 visas.[73] DIAC noted that, unlike the family members of 457 workers, the 'spouses and dependants of H-1B workers do not have automatic work rights'.[74]

2.52 The US Department of Labor H-1B Specialty (Professional) Workers website specifies the conditions under which an individual may be employed on an H-1B visa.[75] The employer must submit a completed Labor Condition Application (LCA) which, amongst other things, aims to ensure that the employer is not paying less than the 'prevailing wage'. In this regard, the employer must request that a State Workforce Agency (SWA) prevailing wage determination is made:

> The prevailing wage rate is defined as the average wage paid to similarly employed workers in the requested occupation in the area of intended employment. This wage rate is usually obtained by contacting the State Workforce Agency … having jurisdiction over the geographic area of intended employment or from other legitimate sources of information such as the Online Wage Library.

71 Commonwealth Government, *Submission No. 33*, pp. 11-12.

72 See US Department of Labor website, http://www.dol.gov/compliance/guide/h1b.htm (accessed 14 August 2007).

73 See US Department of Labor website, http://www.dol.gov/compliance/guide/h1b.htm (accessed 14 August 2007).

74 Commonwealth Government, *Submission No. 33*, p. 12.

75 See US Department of Labor website, http://www.foreignlaborcert.doleta.gov/h-1b.cfm.

> The Immigration and Nationality Act … requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers working in the occupation in the area of intended employment. To comply with the statute, the Department's regulations require the wages offered to a foreign worker must be the prevailing wage rate for the occupational classification in the area of employment.
>
> The requirement to pay prevailing wages, as a minimum, is true of most employment based visa programs involving the Department of Labor. In addition, the H-1B, H-1B1, and E-3 programs require the employer to pay the prevailing wage or the actual wage paid by the employer to workers with similar skills and qualifications, whichever is higher.[76]

2.53 By completing and signing the LCA, the employer agrees to several attestations regarding an employer's responsibilities, including the wages, working conditions and benefits to be provided to the H-1B visa holder. According to a US Department of Labor fact sheet, the regulations implementing the H-1B provisions of the US *Competitiveness and Workforce Improvement Act* require all H-1B employers to:

- Offer benefits to H-1B workers on the same basis as offered to their U.S. workers;
- Pay full wages to any H-1B worker placed in a non-productive status by the employer;
- Comply with whistleblower provisions that protect employees—including former employees and applicants—who disclose information about potential violations or cooperate in an investigation or proceeding; and,
- Refrain from requiring an H-1B worker to pay the employer's petition filing fees or imposing a penalty for early cessation of employment.[77]

2.54 The US Government grants 'foreign labor certification' on the condition that the above requirements are met.[78] More details on the working

---

76 US Department of Labor, 'Foreign Labor Certification Prevailing Wages', http://www.foreignlaborcert.doleta.gov/wages.cfm (accessed 14 August 2007).

77 US Department of Labor, 'Fact Sheet 42: Publication of Final H-1B Regulations', http://www.dol.gov/esa/regs/compliance/whd/whdfs42.htm (accessed 14 August 2007).

78 See US Department of Labor website, http://www.dol.gov/compliance/topics/wages-foreign-workers.htm.

condition requirements of H-1B workers are set out in the Code of Federal Regulations:

> *Establishing the working conditions requirement.* The second LCA requirement shall be satisfied when the employer affords working conditions to its H-1B non-immigrant employees on the same basis and in accordance with the same criteria as it affords to its U.S. worker employees who are similarly employed, and without adverse effect upon the working conditions of such U.S. worker employees. Working conditions include matters such as hours, shifts, vacation periods, and benefits such as seniority-based preferences for training programs and work schedules. The employer's obligation regarding working conditions shall extend for the longer of two periods: the validity period of the certified LCA, or the period during which the H-1B non-immigrant(s) is (are) employed by the employer.
>
> *Documentation of the working condition statement.* In the event of an enforcement action pursuant to subpart I of this part, the employer shall produce documentation to show that it has afforded its H-1B non-immigrant employees working conditions on the same basis and in accordance with the same criteria as it affords its U.S. worker employees who are similarly employed.[79]

2.55 The Wage and Hour Division of the Department of Labor maintains a list of employers who have been disbarred or disqualified from obtaining approval for future H-1B petitions.[80] The US Department of Labor also has the power to:

> … investigate when the Secretary of Labor personally certifies that there is reasonable cause to believe that the employer is not in compliance and authorizes the investigation, or when a credible source provides information that includes allegations that within the past 12 months an employer has willfully failed to meet an LCA condition, has engaged in a pattern or practice

79 US Department of Labor, 'Code of Federal Regulations Pertaining to US Department of Labor', http://www.dol.gov/dol/allcfr/Title_20/Part_655/20CFR655.732.htm (accessed 14 August 2007).

80 See US Department of Labor website, http://www.dol.gov/esa/whd/immigration/H1BDebarment.htm (accessed 14 August 2007).

> of violations or has committed a substantial failure to meet an LCA condition that affects multiple employees.[81]

2.56 Where there are violations of the H-1B visa conditions:

> … the Administrator of the Wage and Hour Division may assess civil money penalties with maximums ranging from $1,000 to $35,000 per violation, depending on the type and severity of the violation. The Administrator may also impose other remedies, including payment of back wages.[82]

2.57 There is some debate evident regarding the 'prevailing wage' under the H-1B visa. On the one hand, for example, the US Center for Immigration Studies, as part of a study on the US information technology sector, noted that:

> According to the applications filed in 2005, it appears that employers may be significantly understating what U.S. computer workers are earning in order to justify paying low wages to H-1B guest workers in those occupations. In 2005, H-1B employer prevailing wage claims averaged $16 000 below the median wage for U.S. computer workers in the same location and occupation.[83]

2.58 However, on the other hand, the US Labor Secretary, Elaine L Chao, in a press release on 7 June 2007, stated that:

> The department is committed to vigorously enforcing the H-1B provisions that guard against employers undercutting American workers by underpaying temporary foreign workers.[84]

2.59 As discussed earlier, the 457 visa is underpinned by a gazetted minimum salary regime rather than a 'prevailing wage' rate that is individually determined on an occupational basis, region-by-region.

---

81 See US Department of Labor website, http://www.dol.gov/esa/regs/compliance/whd/whdfs59.htm (accessed 14 August 2007).

82 See US Department of Labor website, http://www.dol.gov/compliance/guide/h1b.htm (accessed 14 August 2007).

83 J Miano, 'Low salaries for low skills wages and skill levels for H-1B computer workers, 2005', Center for Immigration Studies, April 2007, p. 1, http://www.cis.org/articles/2007/back407.pdf.

84 Media release by the US Labor Secretary, Elaine L Chao, 7 June 2007, http://www.dol.gov/opa/media/press/esa/ESA20070698.htm (accessed 14 August 2007).

Skill requirements

2.60 The ASCO system, as compiled by the ABS, plays a central role in defining what constitutes a 'skilled' occupation under the 457 visa program. The system classifies occupations into nine broad categories (see Appendix F for the major occupations under ASCO 1-9).

2.61 A minimum skill level applies to all positions to be filled by overseas employees under the 457 visa program. The list of approved occupations that meet the minimum skill level requirement is gazetted under the Migration Regulations 1994.[85] This gazetted list is currently based on most of the occupations identified under ASCO levels 1-4 (managerial, professional, associate professional and trade).[86] Under concessional arrangements in designated regional areas, ASCO levels 5-7 can also be sponsored, with certification from an RCB. ASCO levels 8-9 fall outside the 457 visa program.

2.62 The focus of the 457 visa program is on filling vacancies in skilled occupations covering the top four ASCO levels. For example, in 2006-07, the top five occupations for primary 457 visa grants were computing and IT professionals, nurses and doctors—see Table 2.1. Table 2.2 sets out the number of 457 primary visa grants in 2006-07 by industry classification of sponsor.

85 See Gazette Notice Minimum Salary Levels and Occupations—Temporary Business Long Stay (457) visa, DIAC website, http://www.immi.gov.au/skilled/skilled-workers/sbs/occupations.pdf (accessed 20 June 2007).

86 Australian Bureau of Statistics, Catalogue 1220.0—ASCO Second Edition, 1997, ABS website, http://www.abs.gov.au/ausstats/abs@.nsf/0/E32817571E32A167CA25697E00185235?opendocument (accessed 25 June 2007).

Table 2.1 Top 15 occupations for primary 457 visa grants in 2006-07 (to 31 March 2007)[87]

Occupation	2005-06	2006-07
Computing Professionals NEC[88]	1 690	2 350
Registered Nurse	1 880	2 170
General Medical Practitioner[89]	730	1 290
Business and Information Professionals NEC	1 080	1 130
Medical Practitioner In Training	570	1 120
Management Consultant	650	880
Applications and Analyst Programmer	660	790
Chef	740	750
Cook	600	740
Metal Fabricator	650	640
Marketing Specialist	550	640
Specialist Managers NEC	660	640
Welder (First Class)	530	630
Software Designer	310	610
General Manager	600	570
Others	17 480	19 230
Total	**29 370**	**34 170**

Source Commonwealth Government, *Submission No. 33b* , p. 10.

87 Comparative data 2005-06 (to 31 March 2006) and 2006-07 (to 31 March 2007), see Note 1, '[t]his report is based on … data recorded for visa subclass 457 in the 2006-07 financial year and provides a comparison with the same period in the previous year', Commonwealth Government, *Submission No. 33b*, p. 4.

88 Not elsewhere classified.

89 Until 1 April 2005, medical practitioners applied for a visa in Medical Practitioner visa (subclass 422). From that date, medical practitioners have been encouraged by DIAC to apply for a 457 visa.

Table 2.2 Primary 457 visa grants in 2006-07 (to 31 March 2007) by industry classification of sponsor[90]

Industry Classification	2005-06	2006-07
Accommodation, Cafes and Restaurants	1 620	1 960
Agriculture, Forestry and Fishing	880	610
Communication Services	2 450	3 350
Construction	2 620	3 120
Cultural and Recreational Services	520	520
Education	1 480	1 480
Electricity, Gas and Water Supply	600	560
Finance and Insurance	1 070	1 500
Government Administration and Defence	330	610
Health and Community Services	4 250	5 820
Manufacturing	3 030	3 100
Mining	2 090	2 740
Personal and Other Services	2 060	2 160
Property and Business Services	3 670	3 500
Retail Trade	840	870
Transport and Storage	460	580
Wholesale Trade	890	640
Not Recorded	510	1 060
Total	**29 370**	**34 170**

Source Commonwealth Government, *Submission No. 33b* , p. 9.

90 Comparative data 2005-06 (to 31 March 2006) and 2006-07 (to 31 March 2007), see Note 1, '[t]his report is based on … data recorded for visa subclass 457 in the 2006-07 financial year and provides a comparison with the same period in the previous year', Commonwealth Government, *Submission No. 33b*, p. 4.

Australian and New Zealand Standard Classification of Occupations

2.63 As noted above, the ASCO system is central to defining what constitutes a 'skilled' occupation under the 457 visa program. The ABS defines five skill levels across the nine ASCO categories in terms of the Australian Qualification Framework levels—see Table 2.3.[91]

Table 2.3 Major ASCO groups and skill level

ASCO level	Occupational group	Skill level
1	Managers and Administrators	1
2	Professionals	1
3	Associate professionals	2
4	Tradespersons and related workers	3
5	Advanced clerical and service workers	3
6	Intermediate clerical, sales and service workers	4
7	Intermediate production and transport workers	4
8	Elementary clerical, sales and service workers	5
9	Labourers and related workers	5

Source *ABS*, 1220.0—Australian Standard Classification of Occupations (ASCO) Second Edition, 1997, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/FFE8817575A7F191CA25697E001851F5?opendocument and http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/176EB288428057F3CA25697E00184D40?opendocument (accessed 19 June 2007).

2.64 A new standard classification of occupations, the Australian and New Zealand Standard Classification of Occupations (ANZSCO), has been developed as a joint project between the ABS, Statistics NZ and DEWR, in consultation with stakeholders. ANZSCO will replace ASCO but has not yet been implemented for use under the 457 visa program. Table 2.4 provides a comparison between ANZSCO and ASCO.

2.65 As set out in Table 2.4, the ABS define five skill levels across the eight ANZSCO categories in terms of the Australian Qualification Framework levels.[92] As this table demonstrates, the introduction of ANZSCO may have implications for the definition of a 'skilled' occupation under the 457 visa program, given the change in the classification of skill levels.

91 See Australian Bureau of Statistics, 1220.0—ASCO Second Edition, 1997, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/176EB288428057F3CA25697E00184D40?opendocument (accessed 19 June 2007).

92 See Australian Bureau of Statistics, 1221.0—*Information Paper: ANZSCO – Australian and New Zealand Standard Classification of Occupations*, 2005, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/C4BECE1704987586CA257089001A9181?opendocument (accessed 19 June 2007).

2.66 For example, while it appears that ASCO 1-4 might translate directly across as ANZSCO 1-3, as Table 2.4 indicates, the translation of ASCO 5-7 (the regional skills concessions levels for the 457 visa program) is not quite so clear. ANZSCO could potentially allow a broader range of occupations to be defined as 'skilled' and 'semi-skilled' under the regional concession, with the relatively high ANZSCO 4-6 groups incorporating lower skill levels.

Table 2.4 Comparison between ANZSCO and ASCO groups and skill levels

Skill level	ANZSCO	ASCO Second Edition	Skill level
1, 2	1 Managers	1 Managers and Administrators	1
1	2 Professionals	2 Professionals	1
2, 3	3 Technicians and Trades Workers	3 Associate Professionals	2
2, 3, 4, 5	4 Community and Personal Service Workers	4 Tradespersons and Related Workers	3
2, 3, 4, 5	5 Clerical and Administrative Workers	5 Advanced Clerical and Service Workers	3
2, 3, 4, 5	6 Sales Workers	6 Intermediate Clerical, Sales and Service Workers	4
4	7 Machinery Operators and Drivers	7 Intermediate Production and Transport Workers	4
4, 5	8 Labourers	8 Elementary Clerical, Sales and Service Workers	5
		9 Labourers and Related Workers	5

Source ABS, *Information Paper: ANZSCO—Australian and New Zealand Standard Classification of Occupations*, September 2005, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/1675E61E8AD9F6F9CA257089001A2BC1?opendocument (accessed 19 June 2007).

2.67 The Committee draws attention to the fact that the implementation of the new ANZSCO system might therefore have significant implications for the definition of a 'skilled' occupation under the 457 visa program and the current occupations included and excluded under the regional skills concession, as this system is central to how occupations are classified under the program.

2.68 Several issues were raised with the Committee regarding the ASCO system. Firstly, many contributors to the inquiry commented on the limited flexibility of the ASCO system in defining new/emerging occupations and specialisations. For example, a tourism industry representative pointed out that the ASCO system did not cater for what was essentially a 'new academic discipline' of 'tourism managers, event managers, project facility and property facility managers and tourism

attraction supervisors'.[93] Overall, it was felt that ASCO does not allow for changes that have occurred in occupational descriptions over recent years, where job descriptions and functions cross the boundaries of traditionally understood occupations:

> ASCO is not a comprehensive list of skilled occupations and lags well behind the establishment of new classifications such that employers are forced to either modify the duties of a classification to match an ASCO classification or to claim exceptional circumstances and request the Department of Employment and Workplace Relations to establish the skill rating.[94]

> … with advances in technology, certain occupations have become more diversified and specialised while new occupations have also emerged and evolved. Reliance on the ASCO classification structure which had its second (latest) edition finalised more than a decade ago (in mid-1996), is no longer plausible as it does not adequately account for certain more specialised occupations within industry.[95]

2.69 In particular, representatives from the agricultural industry were concerned that ASCO did not reflect skilled roles in the sector:

> The ASCO codes used within Australia's skilled migration programs, including the temporary business visas, are difficult to use in relation to the horticulture industry. The types of specialisations and roles of skilled workers within this industry do not usually fall within the classifications set out in the ASCO code.[96]

> … many agri-food businesses are finding the current system frustrating as it does not have the flexibility required to meet the needs of the industry. This is due to many agricultural skills not being recognised by Australian and New Zealand Standard Classification of Occupations …[97]

---

93 Ms Davidson, Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Transcript of Evidence*, 17 May 2007, p. 42.

94 Australian Mines and Metals Association, *Submission No. 30*, p. 18.

95 Western Australian Chamber of Commerce and Industry, *Submission No. 53*, p. 11. See also Migration Institute of Australia, *Submission No. 9*, p. 11; and National Farmers Federation, *Submission No. 22*, p. 4.

96 Growcom, *Submission No. 6*, p. 2.

97 WA Department of Agriculture and Food, *Submission No. 77*, p. 2.

2.70 The MIA pointed out that recent policy changes in employer sponsored permanent residence arrangements had enabled presentation of a combination of ASCO classifications to more appropriately describe the nature of the occupation and appropriate skill level, with this regarded as providing 'a more genuine and realistic presentation of occupational descriptions for visa purposes'.[98] As the Cairns Chamber of Commerce commented, for example:

> … employers in our region are generally small and micro level businesses. Staff are required to undertake a range of roles. This multi-skilling if you like is not well suited to the ASCO definitions and the limitation in using only one code for a position. We find that some occupations are not covered at all within ASCO and the skill level for positions not adequately reflecting the current situation.[99]

2.71 Secondly, other inquiry participants pointed to a disconnect between the industry endorsed national training packages and the ASCO system:

> The reality is that there are national training packages in Australia, which I think is being overlooked in this whole debate. We talk about skills yet there is very little talk about national training packages. There is a lot of talk about ASCO and ANZSCO occupational codings, which really bear no relationship to employment issues and are there for statistical purposes; yet they are being used by the department of immigration for a completely different and totally unrelated purpose.[100]

2.72 Finally, in commenting on the outdated nature of the ASCO system, several participants were concerned that, while the new updated ANZSCO had been released in September 2006, it had not yet been implemented by DIAC:

> AMMA understands that there is a proposal to replace ASCO with a more contemporary system the Australian and New Zealand Classification of Occupations … This should occur as a matter of priority.[101]

---

98 Migration Institute of Australia, *Submission No. 9*, p. 11.

99 Cairns Chamber of Commerce, *Submission No. 27*, p. 6.

100 Mr Tame, Australia Meat Holdings Pty Ltd, *Transcript of Evidence*, 16 April 2007, p. 62.

101 Australian Mines and Metals Association, *Submission No. 30*, pp. 18-19. See also Migration Institute of Australia, *Submission No. 9*, p. 11.

2.73 The Committee notes that the list of approved occupations that meet the minimum skill level (ASCO 1-4) for the 457 visa are gazetted under the Migration Regulations 1994. However, it is unclear to what extent DIAC and DEWR customise this list to maintain the integrity of the 457 visa program in terms of listing only 'skilled' occupations and migration occupations in demand.[102] The Committee views the gazetted list of approved occupations as representing an opportunity in this regard, particularly with the impending implementation of ANZSCO.[103]

Recommendation 8

2.74 **The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:**

- **work with stakeholders to review the impact on the 457 visa program of the transition from the Australian Standard Classification of Occupations to the Australian and New Zealand Standard Classification of Occupations (ANZSCO);**
- **regularly review the list of approved occupations gazetted under the Migration Regulations 1994 that meet the minimum skill level for the 457 visa as defined under the new ANZSCO to ensure that this list maintains the integrity of the 457 visa program in listing only 'skilled' occupations; and**
- **communicate to stakeholders and the Australian public what impact the adoption of the ANZSCO system will have on the definition of a 'skilled' occupation under the 457 visa program in terms of ensuring a continued benefit to Australia.**

102 For example, DIAC comment that occupations in 'over supply in Australia may be deleted from the list of occupations able to be filled', *Sponsoring a Temporary Overseas Employee to Australia*, Booklet No. 11, July 2007, p. 37.

103 DIAC confirmed that the adoption of the ANZSCO scheme 'is on the department's forward work programme where relevant IT changes are scheduled to support this change', *Submission No. 86a*, p. 10.

Recommendation 9

2.75 **The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve the flexibility of the Australian Standard Classification of Occupations and the Australian and New Zealand Standard Classification of Occupations in defining new/emerging occupations and specialisations.**

2.76 A number of contributors to the inquiry felt that 'too much' was being asked of the 457 visa:

> Where a temporary resident needs to enter Australia on assignment, in almost all cases it is the one visa option available, regardless of their background or potential risk to the labour market. This visa category therefore aims to meet the needs of senior executives of multi national organisations, as well as … people who recently finished an apprenticeship in a trade.[104]

2.77 This led to a call from some for the program to be divided into two separate visa classes for 'higher' and 'lower' ASCO levels.[105] As Dr Davis from ACCI commented:

> We have an open mind about creating a separate visa class for ASCO 5 to 7. We can see some merit in that. It is quite clear-cut. You can preserve the integrity of the 457 program more clearly.[106]

2.78 There was a view that there had been fewer problems with the ASCO 1-3 classifications under the program. For example, Professor McDonald commented, with regard to detailed research that he and other academics had conducted on the 457 visa program:

> In general, our assessment from our research is that the results have been very good indeed, but there have been problems at the edges, especially as the skill level of the immigrant has moved downwards. The 457 visa was originally designed for meeting urgent needs at higher skill levels. It may not be the

104 Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28a*, p. 2.

105 See, for example, Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28a*, p. 2; and Fragomen Australia, *Submission No. 13*, p. 8.

106 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 43.

> most appropriate way of dealing with demand at lower skill levels.[107]

2.79 Similarly, another witness stated:

> We only deal in ASCO group one to three occupations and primarily groups one and two, which are degree qualified or management level. We feel that a lot of the changes that are being suggested as a result of things being reported in the media simply do not apply to the people that we are dealing with.[108]

2.80 The Committee sees some merit in this proposal that the program be divided into two parts but believes that, with the impending implementation of ANZSCO and the fast-tracking initiative announced by the Minister for employers with a demonstrated record of compliance under the program,[109] the current single visa class should remain in place for now. However, the Committee maintains that this matter should be further investigated by DIAC. There may be some benefit for the broader program in having one visa class for higher ASCO classifications and another visa class for lower ASCO classifications—for example, some parts of ASCO 4 and those that currently constitute what is often termed as the 'regional 457 visa'.[110]

Recommendation 10

2.81 **The Committee recommends that the existing 457 visa subclass be maintained in its current form and not be divided into two visa subclasses for higher and lower (regional) Australian Standard Classification of Occupations classifications. However, the Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations further investigate this area, with a view to enhancing monitoring and reporting, and improving arrangements for regional areas of Australia.**

---

107 Professor McDonald, ANU, *Transcript of Evidence*, 1 June 2007, p. 35. This research, undertaken by Dr Khoo, Professor McDonald and Professor Hugo, has been published in a series of reports, the most recent of which is entitled, *Temporary Skilled Migrants' Employment and Residence Outcomes: Findings from the Follow-up Survey of 457 Visa Holders*, DIMIA, Canberra, 2006.

108 Miss Northover, Entity Solutions, *Transcript of Evidence*, 14 March 2007, pp. 51-52. See also Mr Ware, Australian Contract Professions Management Association, *Transcript of Evidence*, 16 May 2007, p. 62.

109 The fast-tracking initiative essentially creates a two-tiered system but at the enterprise level rather than at the occupational/sectoral level.

110 See, for example, the Cairns Chamber of Commerce on this point, *Submission No. 27*, p. 3.

Regional skills concession

2.82 In recognition of the special skill needs of regional Australia, there are arrangements in place to allow regionally based employers to access reduced skill and salary requirements where the business has sought certification by a local RCB. Under concessional arrangements in designated regional areas, ASCO levels 5-7 can be sponsored (see Appendix F for the list of major occupational groups that can be sponsored under this arrangement). The regional concession does not extend to unskilled positions. (The role of RCBs is discussed later in this chapter.)

2.83 The implementation of ANZSCO, as discussed above, will also clearly have a major impact on the regional concession regime under the 457 visa program—for example, if ANZSCO levels 4-6 are used to define the new regional concessional occupations, as is clear from Table 2.4 some of these occupations may previously have been classified as lower than ASCO 7 (that is, outside the current regional concession).

2.84 The Committee heard of the usefulness of the regional skills concession from a number of participants. For example, the Cairns Chamber of Commerce commented that the 'regional 457 visa' had been 'an important resource for regional employers' in addressing particular issues affecting such employers.[111] However, others argued that the regional skills concession should be abolished:

> … there is no justification for exemptions from skill requirements. Unemployment levels in many non-major city areas of Australia are well above 5 per cent (the overall national unemployment rate). Youth unemployment is as high as 40% in some regional areas. In addition under-employment is currently at six per cent of the labour force. These are the people that the government and employers should be attracting to the positions in regional areas.[112]

2.85 The Committee notes the implications of the implementation of ANZSCO for both the regional skills concession and the role of RCBs. The Committee also acknowledges comments from some regional representatives about there being 'scope for further refinement of the regional program, particularly the regional 457 visa'.[113] Accordingly,

111 Cairns Chamber of Commerce, *Exhibit No. 34*, p. 2.

112 Australian Council of Trade Unions, *Submission No. 39*, pp. 26-27. See also Australian Manufacturing Workers Union, *Submission No. 40*, pp. 22-23.

113 Cairns Chamber of Commerce, *Exhibit No. 34*, p. 2. Professor McDonald, an ANU researcher on the 457 visa program, also commented that research on the 'lower level

the Committee regards it as important that there be a review of this area as part of a broader review of the role of RCBs and the 'regional 457 visa'. A recommendation on this matter is made later in this chapter, in the section on RCBs.

Sectoral difficulties in obtaining visas—skill issues

2.86 The Committee received evidence that some sectors, such as transport and meat processing, were experiencing difficulties in obtaining 457 visas for certain occupations.

2.87 In the case of the transport industry, there was debate about use of 457 visas in the sector, particularly for road transport drivers. The Committee heard that, while some parties were interested in pursuing this option, a number of structural issues had been identified in the sector relating to the training, recruitment and retention of Australian workers.

2.88 The Transport Workers Union (TWU) advised that it was not aware of any 457 visa holders working as drivers in the industry.[114] However, road transport drivers are classified at ASCO 7[115] and so could theoretically be sponsored under the regional skill concessions of the visa. Further, where Australian registration or licensing is required to undertake the nominated position, DIAC would have to be satisfied that the worker would be eligible for the relevant licence before a visa would be approved—that is, whether the relevant state/territory licensing authority would grant such a licence to the visa applicant.

2.89 Both the TWU and Australian Trucking Association (ATA) commented that the industry was facing significant skills shortages:

> The basis of our submission is that by 2020 freight volumes will double. The industry needs 77,000 extra drivers. To get these we need to train 3,850 drivers each year. In contrast, our research has shown that the number of drivers has fallen by 4,700 since 2004 to 2007.[116]

---

occupations' is a 'high priority' as most research to date has only focused on the higher occupational levels, *Transcript of Evidence*, 1 June 2007, p. 39.

114 Mr Crosdale, Transport Workers Union, *Transcript of Evidence*, 13 June 2007, p. 10.

115 See Australian Bureau of Statistics, Catalogue 1220.0—ASCO Second Edition, 1997, ABS website, http://www.abs.gov.au/ausstats/abs@.nsf/0/E32817571E32A167CA25697E00185235?opendocument (accessed 25 June 2007).

116 Mr Crosdale, Transport Workers Union, *Transcript of Evidence*, 13 June 2007, p. 1. See Australian Trucking Association, *Submission No. 64*, p. 2. Infrastructure Partnerships

2.90 However, while there was consensus on this point, a difference of opinion was evident on how this skills shortage should be addressed. The ATA was pursuing migration options in combination with training, recruitment and retention strategies for Australian workers. For example, the Committee heard that the ATA had negotiated a draft Labour Agreement with DIAC and DEWR to 'source 100 persons', as a way to 'test the market in this area'.[117]

2.91 In contrast, the TWU drew attention to the 'poor safety outcomes and low rates of pay' in the industry as barriers to recruitment and retention of Australian workers and emphasised that 457 visas were 'not the answer'.[118] Instead, the TWU pointed to the need for an increased investment in training Australian workers and targeted recruitment strategies, to make the industry more attractive to new entrants.[119]

2.92 In response, the ATA pointed to the aims and objectives of the National Industry Skills Initiative report, *Driving Australia's Future: A Report and Action Plan Addressing the Skills Needs of the Road Freight Transport Industry*[120], in seeking to improve the 'recruitment and retention of skilled employees' and develop an 'effective training culture within the industry to encourage the skilling of employees'.[121]

2.93 The Committee notes that the discussion here arguably relates more to systemic domestic problems in the industry than to issues relevant to the temporary skilled migration program. The Committee also recognises that there are crucial safety, training and skills qualification issues relating to this industry and to road transport drivers in particular. The announcement by the Minister for Immigration and Citizenship of a separate review of skills needs of this sector and use of the 457 visa program was therefore welcomed by the Committee:

> In response to consultations with members of the industry, a trucking industry working group will assess the need and

---

Australia and Tourism and Transport Forum also highlighted this point—see *Submission No. 28*, p. 5.

117 Mr Gow, Australian Trucking Association, *Transcript of Evidence*, 13 June 2007, p. 14.

118 Mr Crosdale, Transport Workers Union, *Transcript of Evidence*, 13 June 2007, p. 1.

119 Transport Workers Union, *Submission No. 87*, p. 8. See also the study conducted by Globe Workplace for the Transport Workers Union, *Workforce Challenges in Road Transport: Truck Driver Recruitment, Retention and Retirement Research Project*, January 2007, *Exhibit 30*.

120 *Driving Australia's Future: A Report and Action Plan Addressing the Skills Needs of the Road Freight Transport Industry*, Canberra, August 2003.

121 Australian Trucking Association, *Submission No. 64*, p. 3.

> circumstances in which the use of the skilled temporary 457 visa provisions may or may not be appropriate.[122]

2.94 It is also noted that the Senate Standing Committee on Employment, Workplace Relations and Education Committee is currently undertaking an inquiry into workforce challenges in the transport industry.[123]

2.95 In the case of the meat processing industry, a similar debate emerged about a range of structural issues in the sector relating to training, recruitment and retention of Australian workers and the use of 457 visas in the industry, particularly concerning the classification of 'skilled' occupations within the sector.[124]

2.96 For example, the AMIEU held the view that, excepting 'some parts of Queensland', there had been 'no real requirement' to bring in 457 workers from overseas as sufficient numbers of Australian workers were available to work in the industry.[125] The AMIEU also claimed that the use of the 457 visa in the industry was affecting the career path of Australian workers.[126] Wages and conditions in the industry were highlighted as a further barrier to the recruitment of Australian workers: 'there is very little evidence of any difficulty in employers getting sufficient people to work if they are prepared to pay what we regard as proper wages and conditions'.[127]

2.97 The AMIEU also raised concerns about the skills assessment process for 457 workers in the industry, particularly regarding offshore training and skills assessment practices involving some TAFE colleges:

> An area of extreme difficulty in the meat processing industry is migrant workers being accredited to the requisite AQF qualification for nomination when in practice the worker does

122 Media release by the Minister for Immigration and Citizenship, 'Working group to examine skill needs of trucking industry', 30 May 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07048.htm.

123 Senate Committee website, http://www.aph.gov.au/Senate/committee/eet_ctte/transport_employment/index.htm (accessed 25 June 2007).

124 The Committee heard that there are currently some 2,000 workers on 457 visas in the industry—see Mr Bird, Australasian Meat Industry Employees Union, *Transcript of Evidence*, 16 April 2007, p. 1.

125 Mr Bird, Australasian Meat Industry Employees Union, *Transcript of Evidence*, 16 April 2007, p. 1.

126 Mr Smith, Australasian Meat Industry Employees Union, *Transcript of Evidence*, 16 April 2007, p. 3.

127 Mr Bird, Australasian Meat Industry Employees Union, *Transcript of Evidence*, 16 April 2007, p. 4.

> not truly posses the skill level … The net result is that the workers inevitably need further training when they arrive in Australia …[128]

2.98 However, this claim was contested in other evidence to the inquiry:

> … the Institute stands by the quality of its training and assessment services provided offshore … our offshore training has been subject to considerable internal and external scrutiny and found to meet the requirements of both the training package and Australian quality standards. Given that a large number of our offshore students have subsequently been granted temporary visas to work in Australia, the training would also seem to [be] meeting industry demand for workers in Australia meat processing plants.[129]

2.99 Further, the AMIEU alleged that, while some employers had nominated the allowable occupation of 'slaughterperson' (ASCO 4) in their 457 visa application, 'there is a widespread practice of meat processing employers making this nomination and then utilizing sponsored employees in clearly impermissible activities such as boning (ASCO classification 9213-13) and slicing (ASCO classification 9213-13)'.[130]

2.100 The Australian Meat Industry Council (AMIC) refuted this claim:

> There have been certain allegations made about the use and abuse of 457 labour, some of which have been leveled at the meat industry. Information provided from various sources has not supported these allegations as they apply in the meat industry. Some of these allegations relate to an error in the Australian Standard Classification of Occupations … particularly that known as Boners and Slicers. It is believed that DIMA stopped processing 457 labour applications partly because of the allegations and partly about other unspecified concerns about the type of labour used in the meat industry.[131]

2.101 AMIC argued that, while boners and slicers have been classified at ASCO 9, they should be classified at ASCO 4, as at least equal in competency to a slaughterperson: '[t]he skill requirement, it would be

---

128 Australasian Meat Industry Employees Union, *Submission No. 23*, pp. 11-12.

129 South West Institute of Technical and Further Education, *Submission No. 83*, p. 2.

130 Australasian Meat Industry Employees Union, *Submission No. 23*, p. 10.

131 Australian Meat Industry Council, *Submission No. 26*, p. 1.

argued I think by most employers, for boner and slicer would be ahead of slaughterperson'.[132]

2.102 Tabro Meat Pty Ltd, Midfield Meat International Pty Ltd and T&R Pastoral Pty Ltd similarly commented that, over recent months, their 457 visas had not been processed by DIAC and reinforced that they had not breached their employer sponsorship obligations under the program and there were 'no 457 visa holders performing unskilled work'.[133]

2.103 AMIC and Australia Meat Holdings Pty Ltd also pointed to training initiatives in the industry directed towards Australian workers and efforts to make the sector more attractive to new entrants from the Australian workforce:

> … we have an extensive range of training programs which are implemented and which have proven to be very effective over a long period of time. If the industry can get the appropriate people then it will continue to train. It will obviously train people to get them to move through the ranks to become slaughtermen, boners and slicers.[134]

2.104 As discussed in Chapter 1, the scope of this report does not allow for detailed industry case studies and investigation of sectoral impacts of the 457 visa. However, the Committee maintains that this is an important area of investigation for DIAC in further refining temporary skilled migration policy and the 457 visa program, and a recommendation on this matter was outlined in Chapter 1. Given the range of issues raised during this inquiry by a number of parties involved in the meat processing sector, the Committee believes that DIAC should accordingly prioritise the meat processing industry for early attention in this regard. (The section on Labour Agreements later in this chapter also revisits some of the concerns raised by the meat processing sector.)

2.105 Importantly, the Committee also acknowledges that recent announced changes to the 457 visa program include enshrining in law key

---

132 Mr Cottrill, Australian Meat Industry Council, *Transcript of Evidence*, 17 May 2007, p. 11. See also Mr Tame, Australia Meat Holdings Pty Ltd, *Transcript of Evidence*, 16 April 2007, p. 63.

133 T&R Pastoral Pty Ltd, *Submission No. 75*, p. 1. See also Midfield Meat International Pty Ltd, *Submission No. 12*, p. 2; and Tabro Meat Pty Ltd, *Submission No. 78*, p. 3.

134 Mr Cottrill, Australian Meat Industry Council, *Transcript of Evidence*, 17 May 2007, p. 14. See also Mr Tame, Australia Meat Holdings Pty Ltd, *Transcript of Evidence*, 16 April 2007, p. 58.

obligations of the business sponsor—that is, elevating them from the Migration Regulations to the Migration Act, as a reflection of their importance. One of these obligations is 'not to employ a visa holder in a position that requires lesser skills than the position in respect of which the visa was granted'. As the Minister noted, 'this obligation protects against the Subclass 457 visa programme being used to bring overseas workers to Australia to carry out unskilled jobs'.[135]

Skills assessment

2.106 Under the 457 visa program, applicants must satisfy DIAC that they have the skills required for the vacancy for which they have been nominated:

> If there are doubts about the visa applicant's skills and/or experience to fulfil the duties of the position, a skills assessment may be required. Where Australian registration or licensing is required to undertake the nominated position, applicants may be asked to provide evidence that they are eligible for the relevant registration or license.
>
> Medical practitioners are required to provide evidence of registration to practise in the state or territory in which they will be working ...[136]

2.107 The Committee heard a range of views about skills assessment under the 457 visa program. Some argued that there should be skills assessments for all 457 visa applicants:

> According to material produced by the Department of Immigration … a skill assessment of a visa applicant is not necessarily required as a pre-requisite for the grant of a 457 visa … The lack of proper skills assessment creates a risk for both 457 visa holders and employers … Temporary skilled overseas workers … should … be required to actually possess, and have assessed as adequate for the Australian environment, the skills they are purportedly recruited for. To fail to do so

135 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

136 DIAC, *Sponsoring a Temporary Overseas Employee to Australia*, Booklet No. 11, January 2007, p. 18.

> leaves the system, and temporary skilled overseas workers, open to abuse.[137]

2.108 In this regard, the Communications, Electrical and Plumbing Union (CEPU) were particularly concerned about the trades area: 'the occupational skills and experience of 457 visa applicants, working as tradespeople particularly in the "at risk industries", should be scrutinised carefully and subject to objective skills assessment'.[138] Similarly, Engineers Australia and APESMA raised concerns about the skills assessment of engineers under the program:

> Given that a comprehensive registration system does not exist in Australia for engineers, Engineers Australia and APESMA believe that individuals should not be eligible for a 457 visa unless they have successfully undergone a skills assessment to confirm the level of their engineering experience.[139]

2.109 However, others argued that the existing skills assessment procedures were working well:

> Ai Group is of the view that the current mechanism whereby the assessment of skills is carried out by the potential sponsor should be retained, in preference to a more formal (and more unwieldy and time-consuming) skills assessment process. Where doubts exist as to the accuracy of claims regarding qualifications, the Department of Immigration and Citizenship … should investigate such breaches.[140]

2.110 In the Committee's previous inquiry into overseas skills recognition, DIAC (then DIMA) advised that formal skills assessments for 457 visas are required 'only if the decision-maker believes they are not able to decide the application based upon the information provided in the application'. In these cases 'the applicant is directed to approach the relevant skills assessing authority for their occupation to obtain a formal assessment'.[141] DIAC further commented:

---

137 Australian Council of Trade Unions, *Submission No. 39*, pp. 14-15. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 59.

138 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 15.

139 Engineers Australia and Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 12.

140 Australian Industry Group, *Submission No. 57*, p. 2. See also Western Australian Chamber of Commerce and Industry, *Submission No. 53*, pp. 10-11.

141 DIMA, *Submission No. 80* (to the Joint Standing Committee on Migration inquiry into overseas skills recognition), p. 5.

> We have also tightened up our sponsorship approval process by seeking confirmation from potential sponsors that the skills are in fact to the level stated, and we have been doing a lot of work on that. We also think there is scope for improvement, and we are looking at whether there is any scope for requiring further skills assessment, particularly offshore for the 457 visa holders.[142]

2.111 The Committee maintains that, in consultation with relevant skills assessing bodies, DIAC should review its risk analysis for referring specific cases for formal skills testing or integrity checking of claims of relevant work experience, particularly for trade occupations.

Regional Certifying Bodies

2.112 The key role of RCBs in relation to the 457 visa program is to assess and certify skills and salary concessions for the 'regional 457 visa'.[143] (These concessions were discussed earlier in this chapter.) Regional concessions can apply to most of Australia, with the exception of the Gold Coast, Newcastle, Sydney, Wollongong, Melbourne and Perth.[144] Prior to granting a regional concession, an RCB certifies that:

- the tasks of the nominated position correspond to the tasks of an occupation in the Australian Standard Classification of Occupations … major groups 1-7, as Gazetted
- the position is a genuine, full-time position that is necessary to the operation of the business
- the position cannot reasonably be filled locally
- the wages or salary for the position will be at least the minimum level required under the relevant Australian laws and awards and at least the minimum salary level that applies to the position (whichever is higher)
- the working conditions will meet the requirements under relevant Australian laws and awards.[145]

2.113 For the financial year 2006-07 (to 17 June 2007), 457 visa grants to primary applicants totalled 40,720 for Standard Business Sponsorship (excluding Labour Agreements). Some 1,200 of these grants were

142 Mr Fox, DIMA, *Transcript of Evidence* (to the Joint Standing Committee on Migration inquiry into overseas skills recognition), 27 March 2006, pp. 38-39.

143 Commonwealth Government, *Submission No. 33*, p. 16.

144 Commonwealth Government, *Submission No. 33*, p. 69.

145 Commonwealth Government, *Submission No. 33*, p. 69.

provided under the regional concession.[146] Accordingly, regional concessions currently represent some three per cent of the 457 Standard Business Sponsorship visa program. The 'regional 457 visa' therefore constitutes a relatively small part of the overall program. As outlined below, the Committee heard varied evidence on the adequacy of the structures and functions of RCBs.

Organisational structures

2.114 The organisational structures of RCBs vary within and between states and territories. RCBs include state, territory and local government authorities, chambers of commerce, shire councils and regional development boards.[147] It was suggested that the differing structures of RCBs could result in inconsistent interpretations of DIAC's certification criteria. The Queensland Government was concerned that there was potential for a conflict of interest when privately run RCBs, particularly the chambers of commerce, were certifying exemptions for their members.[148] It recommended that:

> Any conflicts of interest must not be allowed to influence decision-making and strict protocols need to be developed to ensure regional certifying bodies are accountable for their decisions.[149]

2.115 It was also put to the Committee that the fee structures for RCBs varied widely. The implication was that RCBs were profiting off regional concessions and that certification could perhaps be 'bought'. As the Queensland Government stated:

> When the fee for service goes beyond cost recovery and becomes a potential source of revenue, the transparency of the decision making process can be brought into question.[150]

2.116 Similarly, the MIA had heard:

> … of some RCBs charging high fees for their services with some RCBs seemingly having conflicts of interest. Any change in this area needs to ensure that there can be no perception that

146 DIAC, *Submission No. 86a*, p. 24.

147 DIAC website, http://www.immi.gov.au/skills/regional-certifying-bodies.htm#act (accessed 25 June 2007).

148 Queensland Government, *Submission No. 65*, p. 3. See also Migration Institute of Australia, *Submission No. 9*, p. 12.

149 Queensland Government, *Submission No. 65*, p. 3.

150 Queensland Government, *Submission No. 65*, p. 3

> it is possible to 'buy a certificate' from a RCB. This role also needs to be resourced for fast turnaround and consistent approach.[151]

2.117 The Committee heard that not obliging sponsors to use the RCB in their local region could further exacerbate any 'conflicts of interest' and disparity in the implementation of DIAC's certification criteria.[152]

2.118 The Western Australian Government commented that they were able to ensure a consistent approach by coordinating visa activities via a state administered department:

> In Western Australia, it is the State Migration Centre, located within the Small Business Development Corporation … which is responsible for coordinating skilled migration initiatives. The advantage of a central coordinating body means that the State's position in relation to regional waivers and concessions is consistently applied by all regional certifying bodies.[153]

2.119 The ACTU recommended that RCBs be restructured:

> The current Regional Certifying Bodies … should be restructured, have the same composition regardless of their location, and have a clearly defined area of responsibility such that their role can be properly fulfilled and there can be confidence in the outcomes of their deliberations.[154]

2.120 It was further recommended that RCBs should include representatives from local councils, employer bodies, unions, employment agencies, training providers and state/territory government.

Operational issues

2.121 As outlined earlier, prior to certifying a concession an RCB must ensure a number of criteria are met. It was put to the Committee that the capacity of some RCBs to undertake the job with which they were tasked was limited. The skill levels of some RCBs, the absence of clear operating guidelines and the lack of relevant information provided by DIAC were all factors.

2.122 With regard to the skill levels of RCBs, the CEPU commented that:

151 Migration Institute of Australia, *Submission No. 9*, p. 12.

152 See Queensland Government, *Submission No. 65*, p. 3; and Australian Council of Trade Unions, *Submission No. 39*, p. 30.

153 WA Government, *Submission No. 68*, p. 4.

154 Australian Council of Trade Unions, *Submission No. 39*, p. 29.

> They are not skills assessors or industrial relations experts, yet part of their role requires that they certify that the applicants skills and training match a relevant ASCO group and that the wages and salary to be paid and the working conditions are at least equal to those under relevant Australian laws and awards.[155]

2.123 Despite labour market testing no longer forming part of general 457 visa requirements, prior to certifying a regional concession RCBs must ensure that 'the position cannot reasonably be filled locally'.[156] Both the CEPU and Mr Kinnaird noted that the implications of this stipulation were ambiguous.[157] As Mr Kinnaird commented:

> It is not clear what that test means in practice: for example, whether 'locally' means only the area covered by the RCB or other regional areas, or within Australia, nor what 'reasonably' means.

2.124 Consequently, the CEPU observed that:

> Given the fact that this opinion can be attached to a nominated position that is lower than the minimum skill level, the CEPU believes there should be an objective basis for the RCB deciding the position can't otherwise be filled.[158]

2.125 A number of submissions, including from RCBs, noted that RCBs would benefit from DIAC providing them with more relevant information in terms of both general procedural material and updates, and statistical data. The Western Australian Government stated that privacy laws, which limited the data the Commonwealth could provide regarding the 457 visas, inhibited the ability of RCBs to make informed decisions about concessions.[159]

2.126 Similarly, the Peel Development Corporation acknowledged that:

> Currently there is no mechanism available that allows the Commission to know the numbers of 457 visa holders in the region nor does it know what occupations are being filled by the visa holders.[160]

---

155 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 5.

156 Commonwealth Government, *Submission No. 33*, p. 69.

157 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 13; and Mr Kinnaird, *Exhibit No. 8*, p. 52.

158 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 13.

159 WA Government, *Submission No. 68*, p. 5.

160 Peel Development Corporation, *Submission No. 2*, p. 2.

2.127 RCBs certify applications and DIAC makes the final decision about whether to approve an application and grant a visa. The Committee is not aware of a mechanism which provides RCBs with feedback from DIAC as to whether a certification has been approved and therefore a visa granted.

2.128 To improve communication between RCBs and DIAC, Townsville Enterprise recommended that DIAC provide regular updates—for example, a monthly newsletter—to inform RCBs of procedural and legislative changes.[161]

2.129 Finally, some inquiry participants questioned how the definition of 'regional' was determined. ACCI told the Committee:

> … just about all of Australia is regional anyway, bar the Sydney basin, south-east Queensland, Melbourne and I think metropolitan Perth—I think Canberra is regarded as regional. So the regional concession is rather curious.[162]

2.130 The NFF highlighted that DIAC's use of postcodes to delineate an area's status as 'regional' had problems, as some agricultural producers are located on the outskirts of cities and therefore 'cannot utilise the regional concession classification levels'.[163]

2.131 The Committee was pleased to hear that DIAC's Regional Outreach Officers were assisting RCBs and sponsors to understand migration requirements.[164] However, with only 10 officers providing coverage to rural Australia, limitations in their capacity are acknowledged.[165]

2.132 The issues raised above are by no means exhaustive. However, they do highlight concerns about RCBs and their operations. While recognising that RCBs may be well placed to assess the needs of local labour markets and disseminate information about business migration, the Committee is concerned about the varied structures of RCBs and the apparent lack of clear guidelines to define their role and operations. It is the Committee's belief that the structure and role of RCBs should be comprehensively reviewed by DIAC.

---

161 Townsville Enterprise, *Submission No. 1*, p. 2.

162 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 51.

163 National Farmers Federation, *Submission No. 22a*, p. 1.

164 Mr Whyte, Cairns Chamber of Commerce, *Transcript of Evidence*, 3 July 2007, p. 15 and p. 32.

165 Mr Whyte, Cairns Chamber of Commerce, *Transcript of Evidence*, 3 July 2007, p. 15 and p. 32.

Recommendation 11

2.133 **The Committee recommends that the Department of Immigration and Citizenship commission an independent review of the structure and roles of Regional Certifying Bodies (RCBs), with particular regard to:**

- **the capacity of RCBs to fulfil their specified functions;**
- **the differing organisational structures of RCBs; and**
- **the adequacy of the 'regional' 457 visa and associated concessions.**

In addition to reporting on the issues outlined above, this review should aim to:

- **produce clear operational guidelines for RCBs; and**
- **identify mechanisms for the communication of relevant procedural, legislative and statistical information to RCBs.**

Labour market testing

2.134 Current 457 visa requirements (except where regional concessions are sought) do not require employers to undertake labour market testing to demonstrate that the labour they require cannot reasonably be sourced within Australia. As Mr Kinnaird observed:

> The fundamental point about the 457 visa is that employers can sponsor skill migrants without any reference to whether there is a skill shortage in the field or not.[166]

2.135 Similarly, Ms Bissett, from the ACTU, commented that 'once a skill gets onto the skills list to which this program is applicable, access to the program occurs nationwide. So it is not actually a targeted program'.[167]

2.136 Labour market testing used to be part of the 457 visa program. A 2002 review of Australia's temporary residence program, including the 457 visa, recommended the abolition of such testing through 'streamlining'

166 Mr Kinnaird, *Exhibit No. 8*, p. 51.

167 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 3.

visa requirements so that they 'rely instead on skill and salary thresholds'.[168]

2.137 The Committee heard a range of views on whether labour market testing should be reintroduced for the 457 visa. Some contributors maintained that such testing should not be reintroduced, particularly given Australia's current buoyant labour market conditions, where there are well-known skills shortages in many occupations:

> ACCI believes that labour market testing is without merit on the grounds that it is an additional imposition and financial burden on employers and experience clearly indicates it is an unwieldy, labour-intensive, ineffective and wasteful process.[169]

> AMMA contends that there is no demonstrated need to introduce labour market testing in the resources sector and that such a process would result in further unnecessary delays to the 457 visa process.[170]

2.138 Others believed that labour market testing was essential to the integrity of the program and that such testing should require positions to be advertised at the market rate:

> Protection for on-going permanent employment for Australian workers is best achieved … by ensuring a rigorous process of labour market testing is undertaken prior to approval being given to employers to sponsor temporary skilled overseas workers … Such testing should require that positions are advertised at least at the regional level—but preferably more broadly—and advertised at the appropriate skill level under appropriate wages rates and conditions of employment … The lack of requirement to undertake labour market testing can and does result in the approval of visas in circumstances where there clearly is labour available.[171]

---

168 External Reference Group, *In Australia's Interests: A Review of the Temporary Residence Program*, DIMIA, Canberra, June 2002, p. 30.

169 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 4.

170 Australian Mines and Metals Association, *Submission No. 30*, p. 5. See also Information Technology Contract and Recruitment Association, *Submission No. 62*, p. 8; Migration Institute of Australia, *Submission No. 9*, p. 12; and National Farmers Federation, *Submission No. 22*, p. 7.

171 Australian Council of Trade Unions, *Submission No. 39*, p. 14.

> Employers seeking to sponsor migrant workers should be required to clearly demonstrate that Australian workers are not available to perform the work at current market rates.[172]
>
> Prior to approval to sponsor a temporary skilled overseas worker an employer should be required to demonstrate to the relevant authority that they have sought to fill the vacancy within Australia. Evidence must include advertising the position Australia wide and advertising the position at the market rates, that is the average rate paid by similar employers, or the prevailing agreement rate, whichever is higher. Advertising at the award rates or minimum wage level should not be acceptable.[173]

2.139 The Committee acknowledges the impost on business of undertaking labour market testing. Reintroducing such testing across the program could also contribute to 'red tape' and delays in the system.

2.140 Participants further commented that the considerable expense involved in recruiting 457 workers from overseas, with the employer signing up to potentially costly financial obligations in relation to the worker, acted as a form of 'labour market testing', with the cost incentive being to source workers locally. As the Victorian Government commented, current safeguards under the program to ensure that Australians are not disadvantaged by the use of 457 visas include 'setting a price signal that favours hiring and training Australians by requiring employers to meet additional costs such as return airfare, health costs (or insurance), visa and recruitment costs for the migrant'.[174]

2.141 The cost of sponsorship was variously estimated as between $14,000 and $31,000,[175] around $25,000,[176] some $15,000[177] and about $10,000.[178] Accordingly, the Committee was not surprised to hear from some

---

172 Queensland Government, *Submission No. 65*, p. 4.

173 Australian Manufacturing Workers Union, *Submission No. 40*, p. 5. See also Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 68 and p. 73; and Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 5.

174 Victorian Government, *Submission No. 72*, p. 4.

175 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 44.

176 Mr Bamborough, Baker Hughes Australia, *Transcript of Evidence*, 30 April 2007, p. 34.

177 Mr Bull, Australian Mines and Metals Association, *Transcript of Evidence*, 30 April 2007, p. 54.

178 Mr Murdoch, Austal Ships, *Transcript of Evidence*, 30 April 2007, p. 66.

participants that there was no cost incentive for them to source workers from overseas:

> Policy settings need to recognise that overseas recruitment is a last resort for most Australian employers. Recruiting an overseas person is usually much more costly than recruiting locally.[179]
>
> Clearly, there are strong market (price) signals for Australian employers to look to employ locally-sourced employees first …[180]

2.142 The Committee believes it would be inefficient to require employers to test the market and advertise to demonstrate proven skill shortages in certain high-skilled occupations and specialisations, particularly given the current low unemployment rate for skilled workers. The Committee also acknowledges the significant efforts by some sectors, such as the resources industry, to commission research into their future labour force requirements to guide the development and implementation of appropriate industry initiatives to address skills shortages.[181]

2.143 Accordingly, it is acknowledged that there are situations where labour market testing is not warranted, particularly 'where there is agreement that shortages exist in particular sectors, supported by objective evidence'.[182] As Mrs Devereux from Austal Ships stated: '[w]e are trying everything within our power to try and advertise and get people but it is just not working, so we do not have much choice here'.[183] Similarly, representatives from the resources sector commented:

> … in putting this research to the committee in respect of the skills shortage in the resources sector we are saying: 'Look, it is well demonstrated, really in our submission beyond question, that there is a skills shortage in our industry. Despite the fact that our large member companies, whether they be BHP, Rio Tinto or Woodside, spend a lot of money on training and

179 Mr Waters, Migration Institute of Australia, *Transcript of Evidence*, 16 May 2007, p. 24.

180 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 1. See also Johninfo Lawyers, *Submission No. 38*, p. 3.

181 The Chamber of Minerals and Energy WA and the Minerals Council of Australia highlighted several research studies commissioned in collaboration with the Department of Education, Science and Training to identify key skills requirements for the industry to 2015—see *Exhibit No. 35*.

182 Mr Kinnaird, *Exhibit No. 8*, p. 64.

183 Mrs Devereux, Austal Ships, *Transcript of Evidence*, 30 April 2007, p. 63.

> promote careers in the resource sector … we are still experiencing a shortage of labour'.[184]
>
> Notwithstanding that we have a view that Australians should be employed first and foremost—and certainly my organisation and the members are doing a tremendous amount of work in the education system, particularly at the secondary level within the VET-TAFE sector and in the university sector—I think it is quite apparent that the sector will grow by an additional 42,000 jobs in WA, that people with those skills are not to be found in Western Australia and, arguably, are not to be found elsewhere in Australia.[185]

2.144 However, significant variations in employment levels across regions[186] and perceived declining training opportunities for Australians or oversupplies of Australian workers in some sectors[187] suggest that a limited form of labour market testing for certain identified occupations could be of benefit, to ensure that job and training opportunities for Australians are not compromised. The Committee also highlights the need for improved, more timely data on occupational skills shortages on a region by region basis, particularly for rural areas.

2.145 As discussed earlier, the occupations gazetted under the Migration Regulations for which 457 visas can be granted (outside of the regional exemptions) simply reflect those listed in ASCO groups 1-4. These gazetted occupations do not necessarily represent a temporary skilled occupations in demand list.[188]

2.146 It is unclear to the Committee to what extent DIAC and DEWR customise the gazetted list in terms of listing not only 'skilled' occupations but also migration occupations in demand. The Committee

---

184 Mr Bull, Australian Mines and Metals Association, *Transcript of Evidence*, 30 April 2007, p. 49.

185 Mr Howard-Smith, Chamber of Minerals and Energy, Western Australia, *Transcript of Evidence*, 30 April 2007, p. 2.

186 See, for example, Ms Bissett, Australian Council of Trade Unions, '[w]e believe that there are regional variations in unemployment rates and underemployment rates, and the Australian Bureau of Statistics figures support that … a shortage [of welders] in Western Australia and Queensland caused by the resources boom, then leaves it open to an employer in Ballarat in Victoria to bring in welders under the program, even though there may be no shortage of welders in Ballarat', *Transcript of Evidence*, 14 March 2007, p. 2. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 35.

187 See, for example, Mr Kinnaird on the alleged negative impact of 457 visas on employment and training opportunities for Australians in ICT occupations, *Submission No. 80*, pp. 2-3.

188 DIAC, *Submission No. 86a*, p. 12.

views the gazetted list of approved occupations as representing an opportunity in this regard.

Recommendation 12

2.147 **The Committee recommends that, to ensure the 457 visa program is limited to skilled occupations where there are demonstrated skills shortages and there is no negative impact on Australian jobs, the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:**

- **regularly review the gazetted list of approved occupations and give consideration to ensuring that it lists only skilled migration occupations in demand—for example, through the possible implementation of a Temporary Migration Occupations in Demand List; and**
- **work with industry and other stakeholders to trial a limited labour market testing process to agreed standards for a narrow range of identified occupations.**

2.148 In summary, the Committee emphasises that the key to ensuring that the 457 visa program is not used by 'rogue' employers to undercut Australian jobs and drive down the wages and conditions of Australian workers is through an appropriate salary level that is robust and effectively monitored for compliance. As set out in the Minister's recent announcement, this key employer obligation has recently been reinforced through its proposed elevation to the Migration Act:

> The first obligation is to pay visa holders at least the minimum salary level which is set out in a legislative instrument. This obligation also acknowledges the fact that Australian employers must look first to employing and training Australians and that the Subclass 457 visa programme will not be used to erode the salaries and conditions of Australian employees.[189]

2.149 As noted earlier, under regional concessions for ASCO levels 5-7, RCBs have to ensure that a 'position cannot reasonably be filled locally'.[190] This requirement is, in effect, a form of labour market testing. The NFF recommended that, if there were concerns about this area, 'a review be

189 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

190 Commonwealth Government, *Submission No. 33*, p. 69.

undertaken of the RCBs process of how they test the "position cannot be reasonably be filled locally" criteria and then, if necessary, strengthen the process of that particular criteria'.[191] The review of RCBs recommended earlier in this chapter should also encompass an investigation of their labour market testing processes.

English language requirements

2.150 Late in the inquiry process, the Minister announced a higher English language requirement for the 457 visa. As DIAC had noted in their submission, with the growth of the 457 visa into the ASCO 4 (trade) groups, concerns about English language had emerged, relating 'mainly to occupational health and safety matters' but also to:

- an inability of some Subclass 457 visa holders being able to understand their rights and their ability to stand up for these;
- difficulties operating effectively in the community; and
- limits on pathways to permanent residence due to not being able to meet the English requirements for skilled permanent visas.[192]

2.151 The new arrangements are as follows:

> From 1 July 2007, overseas workers must have English language skills equivalent to an average band score of 4.5 in an International English Language Testing System … test, unless exempted in certain special circumstances …
>
> Applicants will not be required to meet the English language requirement if;
>
> - their first language is English and they are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America; or
> - their nominated occupation is within the highly skilled major groups 1-3 of the Australian Standard Classification of Occupations … comprising managers, administrators, professionals and associate professionals; or
> - they have completed at least five years of continuous full time secondary and/or tertiary education at an institution

191 National Farmers Federation, *Submission No. 22b*, p. 2.

192 Commonwealth Government, *Submission No. 33*, p. 9.

where at least 80 percent of instruction was conducted in English; or

- they are to be paid at least a salary specified in a legislative instrument (initially a gross base salary of $75 000 excluding all allowances and deductions).[193]

2.152 The requirement for applicants to have higher English language skills where this is necessary for licensing, registration or membership of a professional association in their nominated occupation remains unchanged under the new arrangements.

2.153 To put this new International English Language Testing System (IELTS) level of 4.5 in perspective, the threshold level of English language proficiency for the General Skilled Migration program (the permanent migration stream), from 1 September 2007, will be raised from IELTS level 5 (vocational) to 6 (competent)—except for applicants applying for trade occupations, who continue to be required to meet IELTS level 5.[194]

2.154 The bulk of the evidence to this inquiry was provided prior to the implementation of these new arrangements. At the time of commencing the inquiry, there was 'no explicit English language requirement under subclass 457 visa'[195] (except where a higher English language level was specified for licensing or registration processes). Rather, employers were required to ensure that the people they recruited had the appropriate language skills to undertake the nominated skilled occupation to Australian standards.

2.155 However, a number of participants spoke in support of the program stipulating a higher level of English language proficiency. In particular, it was emphasised that this would allow for better awareness of occupational health and safety (OH&S) requirements in the workplace and more effective communication and skills transfer in the workplace:

> … where employers recruit workers with poor English for lesser-skilled occupations, some problems may arise. These

193 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July 2007', 26 June 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm.

194 DIAC website, 'Changes to the General Skilled Migration Programme', http://www.immi.gov.au/skilled/general-skilled-migration/changes/index.htm (accessed 25 June 2007).

195 Commonwealth Government, *Submission No. 33*, p. 9.

> include the risk that 457 visa holders may not understand health and safety information …[196]
>
> The current English language requirements must be reviewed to ensure they are set at a level that ensures a 457 visa holder is competent to read and understand technical specifications relevant to the job and work environment, to receive health and safety instructions and induction training, to be capable of receiving and passing on instructions and have the capacity to converse generally with others in the workplace.[197]

2.156 Other participants were not supportive of an increase in the English language requirement, believing this would also add to visa processing times. It was felt that this was an individual workplace matter—that each employer should be responsible for assessing whether an employee has appropriate language skills for the workplace:

> There is a strong argument that it should be left to the employer to determine what level of English language proficiency is necessary for the tasks to be performed by the 457 visa applicant.[198]
>
> These requirements for English at this level in the meat industry are unreasonable and ill founded and will limit access to skilled labour from certain countries.[199]
>
> Commerce Queensland is concerned about ramping up formal English language requirements. This could compromise the flexibility and defeat the intent of the temporary visa arrangement.[200]

2.157 In particular, there was caution about going too far in implementing across-the-board English language testing, particularly if there was no flexibility for concessional arrangements under certain circumstances:

> While we understand the rationale for the introduction of English language requirements in some areas, the MIA is seriously concerned about suggestions in some places that the standard of English language proficiency be raised for all 457

196 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 3.

197 Australian Council of Trade Unions, *Submission No. 39*, p. 16. See also Australian Mines and Metals Association, *Submission No. 30*, p. 18; and the Victorian Government, *Submission No. 72*, p. 4.

198 Migration Institute of Australia, *Submission No. 9*, p. 9.

199 Australian Meat Industry Council, *Submission No. 26a*, p. 4.

200 Commerce Queensland, *Submission No. 25*, p. 3.

> visa applicants. We submit that English language proficiency should not be a mandatory prerequisite for all such applicants as that would seriously stifle the adequacy of the overall temporary resident program.[201]

2.158 The terms of reference for the inquiry specifically referred to English language proficiency as an area of particular interest, so the Committee was pleased to note that the concerns raised during the inquiry in this area were acted on by the Minister. The Committee supports the higher English language requirement of IELTS 4.5, combined with the flexibility to exempt certain applicants from this requirement. Setting a higher English language proficiency for 457 workers will help to ensure that such workers are aware of their rights and obligations, including OH&S requirements.

2.159 However, the Committee is concerned that some 457 visa holders who came in under the existing provisions of the visa may lack fundamental English language skills. As the section on Communication in Chapter 3 will discuss, DIAC should identify these workers and ensure they receive suitable follow-up information on their rights under the program and OH&S obligations in the workplace.

2.160 The Committee notes that the new exemptions to the higher English language requirement will not accommodate those who called for such exemptions for:

- regional areas; and
- lower ASCO classifications (below ASCO 3) in the tourism and hospitality sectors, such as a specialist cook in the ethnic restaurant industry.[202]

2.161 On an exemption for regional areas, the Cairns Chamber of Commerce recommended that, if English language testing is introduced for the 457 program, 'a regional waiver option be introduced'.[203] As another individual from the Cairns area commented:

> We are basically concerned about the regional programs. Our major shortage is in occupations which, in our view, do not require the level of 4.5 on the IELTS test in order for a visa to be granted. That is our main concern because it is going to

---

201 Migration Institute of Australia, *Submission No. 9*, p. 7.

202 Chefs are classified at ASCO 3 and are therefore exempt from the higher English language requirement.

203 Cairns Chamber of Commerce, *Submission No. 27*, p. 6.

> preclude a lot of people from applying, and therefore sponsors are obviously not going to be able to recruit the staff they need for a lot of positions they have on offer and cannot fill.[204]

2.162 On an exemption in this area for the tourism and hospitality sectors, Mr Hart, from the RCA, commented:

> In terms of the level of English language skill required for people such as cooks who are working in a kitchen and who may be supervised and managed by someone who has their own native tongue as their first language, I cannot see why that employment arrangement cannot function effectively with the level of foreign language skill rather than the level of English language skill that might be required of general skill migrants.[205]

2.163 The Committee appreciates the concerns raised in this regard but emphasises that the need for 457 workers to have a higher level of English language proficiency for OH&S and communication reasons remains relevant, regardless of the sector or region. However, a solution here might be for the sponsoring employer to provide assistance for intensive English language classes for such workers on arrival such that they must attain the required level of English over a certain specified period, along with there being additional OH&S safeguards. The Committee believes there could be merit in DIAC further investigating such options, in consultation with representatives from regional areas and the tourism and hospitality sectors.

2.164 In terms of ensuring compliance with the new higher English language requirement, the Minister stated that all applicants 'will need to detail their English language skills on their visa application form'. In addition, 'applicants may be asked to undertake an IELTS test to demonstrate their English language skills.'[206] It is presumed that DIAC will refer specific cases for formal English language testing on a risk management basis.

---

204 Ms Shipway, *Transcript of Evidence*, 3 July 2007, p. 52.

205 Mr Hart, Restaurant and Catering Australia, *Transcript of Evidence*, 16 May 2007, p. 17. See also Migration Institute of Australia, *Submission No. 9*, p. 8.

206 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July 2007', 26 June 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm.

Recommendation 13

2.165 **The Committee recommends that, in referring specific cases for formal English language testing with a focus on occupations with a high occupational health and safety (OH&S) risk or history of sponsor non-compliance, the Department of Immigration and Citizenship also take into account that the need for 457 workers to have a higher level of English language proficiency for OH&S and broader communication reasons remains relevant, regardless of the sector or region in which they work.**

International English Language Testing System delays

2.166 Where evidence of English language proficiency is required under the existing eligibility requirements, visa applicants are required to undergo testing under IELTS.[207] The Committee is concerned that delays in the IELTS system may add to processing times for the 457 visa—for example, the MIA commented that:

> There are long and unacceptable delays between exam dates, crowded exam facilities and frustrating administrative arrangements for people wishing to access IELTS testing opportunities … IELTS organisations are simply not geared to cope with the demand … any change that is made should take account of the limited capacity and long delays inherent in the IELTS system.[208]

2.167 The Committee emphasises that DIAC should ensure the higher English language requirement and delays in the IELTS system do not impede faster processing times under the program.

Occupational health and safety

2.168 The Committee recognises the critical importance of OH&S in the workplace—if visa holders do not understand their OH&S obligations or are forced to work in an unsafe environment, this poses a hazard to themselves, their fellow workers and the public.

---

207 IELTS provides an assessment of whether candidates are ready to work in an English-speaking environment. The test can be taken at centres around the world. Results are graded across nine bands, from band 1 (non-user) to band 9 (expert user).

208 Migration Institute of Australia, *Submission No. 9*, p. 9. See also Cairns Chamber of Commerce, *Submission No. 27a*, p. 5.

2.169 As discussed above, a number of participants supported the requirement that 457 workers have a higher level of English language proficiency for OH&S reasons:

> Cases of 457 workers being subject to considerable OHS risks and incidents are characterised by limited English and workers not comprehending local OHS legislation.[209]

> Work at the tissue-paper mill was closed down by WorkCover after 39 safety infringements. The Chinese guest workers were unable to communicate with other workers or read safety signs …[210]

2.170 A common theme across a number of case studies alleging serious breaches of 457 workers' conditions of employment, as provided in evidence to the inquiry, was that these individuals were 'not particularly fluent in English'[211] — their 'English was very basic' and they 'appeared not to have enough English to be able to function effectively in an Australian work place'.[212]

2.171 Another issue raised with the Committee concerned insurance coverage for a 457 worker who had received a workplace injury, with there being some ambiguity about coverage under the relevant state and Commonwealth legislation should an injured worker then have their employer sponsorship terminated.[213]

2.172 The Committee notes that the higher English language requirement will allow for better awareness of OH&S requirements in the workplace. The recent legislative changes announced by the Minister will also give DIAC officers greater investigative powers relevant to monitoring employer compliance with their OH&S obligations. Importantly, the legislation:

> … authorises disclosure of personal information regarding sponsors and visa holders to prescribed agencies of the Commonwealth or of a State or Territory.

> For example, where in the course of performing his or her functions, an inspector finds a workplace that obviously appears to fall short of basic occupational health and safety

209 Victorian Government, *Submission No. 72*, p. 7.

210 Australian Manufacturing Workers Union, *Submission No. 40*, p. 52.

211 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 10.

212 South Metropolitan Migrant Resource Centre, *Submission No. 35*, p. 1.

213 Mr Harris, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, pp. 89-91.

> standards, he or she would be able to make such an observation known to the State or Territory body responsible for monitoring such standards.
>
> I would expect my Department to be informed of the outcome of any such investigation so consideration could be given to bar the sponsor for breach of a law of the Commonwealth, State or Territory.[214]

2.173 The associated importance of 457 visa holders receiving workplace orientation and induction training in OH&S prior to commencing work is further noted, particularly where they are to work in 'high risk industries'.[215] The Committee also recognises the importance of providing a mechanism to support 457 workers in speaking out when they believe their workplace is unsafe or have other concerns about the program. Accordingly, the Committee makes a recommendation on this area in Chapter 3.

Training requirements

2.174 Under the 457 visa program, as part of being approved as a sponsor, businesses must demonstrate a commitment to training Australians:

> The employer must … demonstrate that their Australian business operations will meet one of the following requirements:
>
> - introduce, use or create new business skills
> - introduce, use or create new or improved technology
> - have a satisfactory record of, or a demonstrated commitment towards training Australian citizens and Australian permanent residents.[216]

2.175 As part of their application to sponsor overseas workers, employers are required to provide detailed information about their training record or commitment to training—for example:

---

214 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

215 See Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 25; and Australian Manufacturing Workers Union, *Submission No. 40*, p. 8.

216 DIAC website, 'Employer eligibility', http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-employer.htm (accessed 25 June 2007).

- details of number of employees in the business with breakdown of how many Australians, apprentices/graduates/trainees and sponsored employees
- details and evidence of training expenditure
- training plan and/or strategy
- other documents that support the application.[217]

2.176 This training commitment is currently monitored by DIAC through 'targeted monitoring checks', requiring 'sponsoring employers to complete a detailed questionnaire and provide supporting documentation'.[218] The questionnaire (form 1110) has a section relating to monitoring of training, which seeks information about the number of apprentices and trainees employed, future training plans for Australian employees, expenditure on training on Australian employees and an outline of the training provided to Australian employees in the past 12 months.[219]

2.177 DIAC advised that in 2005-06, 'over 6,400 employers were checked in this way', through the questionnaire. The department also advised that it undertakes targeted site visits of employers to verify responses provided and/or additional checks. In 2005-06, some 1,790 sponsors were site visited.[220]

2.178 The Committee heard a range of views on the training requirements under the 457 visa program. Some felt that the current training requirements were adequate or that these arrangements should in fact be more flexible in recognising the kinds of training appropriate to particular sectors or types of business:

> The MIA believes the current policy settings for employer training arrangements are appropriate and do not need to be tightened. Australian employers experiencing difficulty in competing locally or internationally often have limited training budgets and little room to manoeuvre.[221]
>
> Commitment to training must continue to be assessed in a flexible way to ensure it does not disadvantage any sector or occupation. Commerce and industry would be opposed to

217 DIAC website, 'Sponsorship application checklist', http://www.immi.gov.au/skilled/skilled-workers/sbs/checklist-sponsor.htm (accessed 25 June 2007).

218 Commonwealth Government, *Submission No. 33*, p. 12.

219 Commonwealth Government, 'Business sponsor monitoring', Form 1110, reproduced in *Submission No. 33*, pp. 73-78.

220 Commonwealth Government, *Submission No. 33*, p. 13.

221 Migration Institute of Australia, *Submission No. 9*, p. 13.

> mandated formal levels of training or assessing compliance by quantitative measures of numbers of qualifications obtained or money spent on training.[222]

2.179 Others, however, commented that the training requirements under the program needed to be strengthened:

> The ACTU has … major areas of concern with the current temporary skilled migration program [including] … the relationship between the use of temporary business visas and investment by business and government in the training and skill development of the Australian workforce.[223]
>
> The use of temporary skilled overseas workers should not be permitted unless the employer can demonstrate:
>
> - A history of accredited training;
> - A successful outcome (measured in employment outcomes) of the training;
> - Retention of trained workers within workforce;
> - On-going program of and commitment to training;
> - Demonstrated financial investment in training in the identified skill shortage area.[224]

2.180 Monitoring of training requirements was also raised as an issue:

> There is little monitoring of the sponsoring employer's commitment to training in the local market. The bulk of 'monitoring' involves the employer filling in a form giving a very brief outline of their history of investment in training and history of training … Currently, the employer is not required to substantiate any of their claims unless investigated by DIAC.[225]
>
> We are not convinced that monitoring by the department is rigorous enough in terms of the checking that is done on investment in training. We also think that it needs to be more than just their past investment; the 457 approval process has to be in conjunction with ongoing training.[226]

---

222 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 3. See also National Farmers Federation, *Submission No. 22*, p. 7.

223 Australian Council of Trade Unions, *Submission No. 39*, pp. 4-5.

224 Australian Manufacturing Workers Union, *Submission No. 40*, p. 6. See also Mr Hartley, Engineers Australia, *Transcript of Evidence*, 1 June 2007, p. 16.

225 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61*, p. 5.

226 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 5. See also Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 3; and Australian Manufacturing Workers Union, *Submission No. 40*, p. 41.

2.181 The Committee further heard that some felt there was 'little consistency in what is regarded by DIAC as acceptable in terms of meeting the training requirement' and that this was contributing to a 'lack of certainty as to what constitutes an acceptable level of training'.[227] Specific suggestions in this regard included:

- the inclusion of 'industry-wide group training arrangements' as acceptable evidence of commitment to training Australians in some sectors;[228]
- recognition being given to 'on the job' training;[229] and
- the introduction of a training levy or sectoral/regional training fund.[230]

2.182 The use of 457 visas assists in overcoming short-term skills shortages but is not a substitute for investment in the training and skills development of Australians. A strong commitment by employers to the training of Australian workers is therefore critical, and the Committee agrees that training should be an essential 'threshold' eligibility requirement of the 457 visa program. As discussed in Chapter 1, several industry participants commented on their training efforts to build the skills base of Australian workers for the temporary skill sets they required:

> The majority of our employees are local Australian employees. We do a number of advertising campaigns and participate in career fairs and things like that to attract personnel to our business. The issue lies where the need is for highly technical specific skills which employees within Australia do not actually have. They have been trained up overseas. The idea of them coming in short term is also used as a training mechanism to train our current people so we do not need that in the future.[231]
>
> Over the couple of years that we have employed 457 visa holders, we have increased our work force by around 35 per cent, so they have contributed to the increase in our work force

227 Australian Contract Professions Management Association, *Submission No. 76*, pp. 9-10. See also Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 69.

228 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 3.

229 Australian Contract Professions Management Association, *Submission No. 61*, p. 9.

230 Cairns Chamber of Commerce, *Submission No. 27*, p. 7.

231 Ms Sutherland, Baker Hughes Australia, *Transcript of Evidence*, 30 April 2007, p. 27.

> but they have not been our prime source. We currently have 262 apprentices undergoing full-time training. We intend to grow that by the end of the calendar year up to 300. We are very proud of the fact that we have a long history of identifying and training Australians.[232]

2.183 The key to ensuring that the 457 visa program does not undermine the commitment of business to training Australians is in monitoring this area for compliance, with significant penalties for breaches. As will be discussed in Chapter 3, the compliance regime for the program has been strengthened through the recent announcement of legislative changes to the Migration Act in this area. The Committee emphasises the importance of DIAC committing appropriate resources to these compliance arrangements, particularly to ensure that training requirements under the program are closely monitored.

Recommendation 14

2.184 **The Committee recommends that the Department of Immigration and Citizenship:**

- **work with stakeholders to develop best practice benchmarks for training requirements to be met by sponsoring employers—this should ensure effective training objectives under the 457 visa program that uphold the commitment to training Australians;**
- **implement mechanisms to ensure improved communication of training requirements under the program and training outcomes; and**
- **ensure that appropriate resources are committed to monitoring compliance with training requirements under the program.**

Labour hire industry

2.185 Many employees who come to Australia under the 457 visa program do so through the labour hire industry. This industry includes:

- recruitment firms;
- on-hire firms; and

232 Mr Murdoch, Austal Ships, *Transcript of Evidence*, 30 April 2007, p. 62.

- contract management companies.

2.186 These groups were described as follows:

- Recruitment firms working for a client that recruit offshore for the client. In this arrangement it is the client who is the employer/sponsor of the worker.[233]
- On-hire firms that recruit and employ offshore skilled workers using 457 visas and then place workers in client sites but otherwise remain in an employer/employee relationship.[234]
- Contract management companies that recruit contractors on behalf of a client and then manage the contract between the employee and client.[235]

2.187 The central issue to arise throughout the inquiry in relation to labour hire was whether the industry in general had met its obligations under the 457 visa program and whether tighter controls were required. Industry bodies, such as the RCSA and the Australian Contract Professions Management Association (ACPMA) sought to reassure the Committee that their members were not only meeting but in many cases exceeding their obligations, particularly in relation to minimum salary levels and training requirements.[236]

2.188 In addition, RCSA highlighted to the Committee that its members are bound by a code for professional practice that includes disciplinary proceedings for members who are in breach of the code.[237] Similarly, ACPMA and the Information Technology Contract and Recruitment Association (ITCRA) also have in place a code of conduct and rules governing members' activities and business operations.[238] Further, RCSA told the Committee: '[w]e have no examples of abuse within our membership'.[239] This was echoed by ITCRA:

> Our own code of conduct for this industry is such that we would not countenance the membership of an organisation

233 Recruitment and Consulting Services Association, *Submission No. 11,* p. 2.

234 Recruitment and Consulting Services Association, *Submission No. 11,* p. 2.

235 Recruitment and Consulting Services Association, *Exhibit No. 4,* p. 1.

236 Recruitment and Consulting Services Association, *Submission No. 11,* p. 2 and p. 3; and Australian Contract Professions Management Association, *Submission No. 76,* p. 7.

237 Recruitment and Consulting Services Association, *Submission No. 11,* p. 3.

238 Australian Contract Professions Management Association, *Submission No. 76,* p. 2 and Information Technology Contract and Recruitment Association, *Submission No. 62,* p. 3.

239 Ms Mills, Recruitment and Consulting Services Association, T*ranscript of Evidence,* 14 March 2007, p. 22.

> who was in breach or behaving in a way that put them in breach of the laws of the land. We believe it is important that compliance is looked at and that non-compliance is identified and punished.[240]

2.189 Labour hire arrangements operate across a diverse range of industries, including mining, engineering, health care, financial markets, information communications technology, manufacturing, retail, motor vehicles and publishing.[241] In many industries, labour hire through the 457 visa program is an important source of employees. Commerce Queensland argued that restricting the access of labour hire companies to the 457 visa program would adversely affect the resources and mining sector in both Queensland and Western Australia, and that numerous small to medium sized business rely upon these companies to locate suitably skilled labour.[242] Mr Howard-Smith from the Chamber of Minerals and Energy, Western Australia, commented that:

> … generally labour hire firms of the type that operate in the resources sector should be able to continue to utilise section 457 visas within the sector. The sector is heavily reliant upon contractors… [E]ntire operations are operated by contractors in some instances, particularly in mining.[243]

2.190 The labour hire groups expressed concern to the Committee at any suggestion that they be excluded from the 457 visa program. ACPMA, for example, commented that '[t]he labour hire industry provides a valuable contribution to Australia's economy by simplifying access to skilled persons in short supply'[244] and that any decision to restrict labour hire entities from sponsoring overseas employees 'will have an extensive and highly detrimental effect on large sectors of industry and government across Australia.'[245]

2.191 The RCSA supported obliging on-hire recruitment companies to enter into either industry based or individual Labour Agreements, which it

---

240 Mr Lacy, Information Technology Contract and Recruitment Association, *Transcript of Evidence,* 14 March 2007, p. 59.

241 Fragomen Australia, *Submission No. 13,* p. 4.

242 Commerce Queensland, *Submission No. 25,* p. 3.

243 Mr Howard-Smith, Chamber of Minerals and Energy, Western Australia, *Transcript of Evidence,* 30 April 2007, p. 6.

244 Australian Contract Professions Management Association, *Submission No. 76,* p. 4.

245 Australian Contract Professions Management Association, *Submission No. 76,* p. 11.

considered would provide effective monitoring arrangements and swifter 457 visa nomination approvals:[246]

> If the Department is concerned about a specific Member's history of compliance a Labour Agreement will afford stricter obligations to be imposed in turn for concessions in other areas.[247]

2.192 However, ACPMA submitted that Labour Agreements are unnecessarily restrictive and unresponsive to the needs of business, and that any imposition of mandatory requirements to enter into Labour Agreements would disadvantage the industry.[248]

2.193 The Committee received evidence that the labour hire industry has, in general, consistently shown itself to be willing to self regulate and act in accordance with both legislation and policy.[249] In spite of this, RCSA commented that there was a need for increased monitoring of 'who can actually sign up and bring in 457 visa holders'.[250] RCSA argued that '[w]e need to make sure that those companies that are allowed to action 457 visas have some credibility around them'.[251]

2.194 It was suggested to the Committee that offshore recruitment and on-hire firms have a higher incidence of non compliance.[252] However, the Committee received limited evidence in this area to fully examine these claims. Nevertheless, the Committee believes it is an issue that should be examined by DIAC.

2.195 More broadly, the Committee acknowledges the general support of the industry for a strong monitoring, compliance and enforcement regime where required. Improved monitoring, reporting and enforcement arrangements are discussed in Chapter 3.

---

246 Recruitment and Consulting Services Association, *Submission No. 11,* pp. 3-5.

247 Recruitment and Consulting Services Association, *Submission No. 11,* p. 3.

248 Australian Contract Professions Management Association, *Submission No. 76a,* pp. 1-2.

249 Australian Contract Professions Management Association, *Submission No. 76,* pp. 15-16.

250 Ms Mills, Recruitment and Consulting Services Association, *Transcript of Evidence,* 14 March 2007, p. 23

251 Ms Mills, Recruitment and Consulting Services Association, *Transcript of Evidence,* 14 March 2007, p. 29.

252 Migration Institute of Australia, *Submission No. 9,* p. 3; and Australian Contract Professions Management Association, *Submission No. 76,* pp. 5-6.

Overseas labour hire industry

2.196 Alleged abuses under the 457 visa program have received considerable media attention. The MIA acknowledged this attention and, in their submission, stated:

> We believe much of what has happened in this regard is related to the activities of overseas recruitment agents, who are unregulated and have acted with impropriety in bringing workers to Australia on 457 Visas.[253]

2.197 The Committee was informed by DIAC that:

> In the offshore context DIAC has no legislative powers covering the operation of recruitment agents, contract management services or labour hire companies.
>
> Onshore however, where these organisations are sponsors of skilled workers they are bound by the undertakings all sponsors agree to.[254]

2.198 The CEPU highlighted that there is a common practice amongst some overseas agents, particularly in China and India, of charging prospective visa applicants 'exorbitant fees to "facilitate" their application.'[255] Dr Wise and Dr Velayutham from the Centre for Research on Social Inclusion at Macquarie University highlighted the practice of 'aggressive' agents in Singapore, targeting Indian workers.[256] In some cases, the visa applicant then arrives in Australia to find that there is no job available[257] or that the job has been misrepresented and they are expected to take a less skilled position.[258] Sometimes 457 workers also find themselves signing two employment contracts, one in their home country and another, with less favourable conditions, when they arrive in Australia.[259] Another alleged activity includes contracts being executed overseas that impose conditions that are illegal in Australia, such as union bans or deductions from workers' wages.[260]

---

253 Migration Institute of Australia, *Submission No. 9,* p. 3.

254 DIAC, *Submission No. 86a,* p. 26.

255 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61,* p. 22.

256 Dr Wise and Dr Velayutham, *Submission No. 85,* p. 7.

257 Communications, Electrical and Plumbing Union of Australia, *Submission No. 61,* p. 26.

258 Dr Wise and Dr Velayutham, *Submission No. 85,* p. 8.

259 Dr Wise and Dr Velayutham, *Submission No. 85,* p. 8.

260 NSW Government, *Submission No. 51,* p. 3.

2.199 There were consistent calls throughout the inquiry for the conditions under which overseas migration agents and labour hire companies operate to be tightened. The MIA told the Committee that:

> The government should fast-track its regulation of overseas agents, give the immigration department the power to be able to say, 'We are not going to deal with you because you are not a registered agent,' and, in effect, cut them out of the process. If you are dealing with registered agents—and I would be the first to say that they are not all perfect—at least they are regulated, they are bound to a code of conduct and there are penalties involved where their registration can well and truly be cancelled if they do the wrong thing.[261]

2.200 The Committee is concerned that the overseas labour hire industry may be exposing 457 workers to potential abuses and believes this is an issue that necessitates prompt attention from DIAC.

Labour Agreements

2.201 Labour Agreements provide a formal arrangement within the 457 visa program to recruit, either temporarily or permanently, a number of skilled overseas workers. The Committee limited its focus in this inquiry to temporary recruitment through the Labour Agreement mechanism.

2.202 The parties to a Labour Agreement include the sponsoring organisation, the Australian Government (represented by DEWR and DIAC), and the employees. The sponsoring organisation may be an Australian business, a group of employers acting collectively or part of an industry association, or an Australian Government agency.[262] Unions and state governments can also be party to a Labour Agreement.

2.203 DIAC outlined to the Committee the usual content of a Labour Agreement:

- The range of occupations approved, listed by ASCO code;
- The number of persons approved for entry on a permanent and/or temporary basis for the first year of the agreement;

261 Mr Waters, Migration Institute of Australia, *Transcript of Evidence,* 16 May 2007, p. 31.

262 DIAC website, 'How this program works', http://www.diac.gov.au/skilled/skilled-workers/la/how-this-program-works.htm (accessed 27 June 2007).

- The minimum base salary that is expected to be paid to nominees, by occupation where there are salary differences;
- The minimum qualifications and experience that nominees are expected to hold, by occupation;
- The minium licensing/registration requirements;
- Agreed length of stay in Australian for the nominees;
- Expectations in relation to a company's training achievement and expenditure; and
- Expectations of information provision to enable DIAC and DEWR to monitor compliance with the terms and conditions of the agreement.[263]

2.204 DIAC noted that Labour Agreements are generally utilised in circumstances where:

- large number of workers are needed for short term projects;
- ongoing skill shortages in an occupation are evident;
- the occupation is unusual and not found in ASCO;
- a number of different occupations are needed for the same company or project; or
- concerns exist about aspects of industry practice that could be best addressed through the controls of a Labour Agreement.[264]

2.205 To be an eligible party to a Labour Agreement, a sponsoring organisation must meet a number of criteria, including demonstrating efforts made to recruit from the Australian labour market and commitments to training.[265] The Committee heard that one of the potential advantages of Labour Agreements is that they:

> … allow companies to have stable, on-going arrangements in place to employ appropriately skilled migrant workers over time, as part of their workplace planning strategies.[266]

2.206 The Committee received evidence that reflected very disparate views about the benefits and limitations of Labour Agreements. While there seemed to be a level of agreement about the potential advantages of Labour Agreements, the Committee received mixed evidence as to the actual benefits or otherwise of these agreements across different

263 Commonwealth Government, *Submission No. 33,* p. 10.

264 Commonwealth Government, *Submission No. 33,* p. 9.

265 DIAC website, 'Sponsoring organisation eligibility', http://www.diac.gov.au/skilled/skilled-workers/la/eligibility-sponsor.htm (accessed 27 June 2007).

266 Commerce Queensland, *Submission No. 25,* p. 4.

industries. It became clear to the Committee that some employers believed there were distinct disincentives to becoming party to such an agreement. The Committee also received evidence that highlighted a number of procedural issues impeding effective operation of this facet of the 457 visa program, including the lengthy time frames involved in concluding Labour Agreements.

Industry experiences

2.207 Some industries, notably those that recruit highly skilled 457 workers across ASCO 1-3 and whose salaries are generally well above the minimum salary level, considered the current Labour Agreement system to be working well. For example, since 1989, the Australian Financial Markets Association (AFMA) has been party to a Labour Agreement designed to facilitate entry of an agreed number of overseas banking industry professionals. Under the terms of the agreement, only executive, managerial and specialist positions are approved and, in 2005-06, the agreement was used by 17 AFMA members, with 64 visas approved.[267] AFMA observed that:

> Our experience, as a party to a Labour Agreement and also the representative of major financial market institutions who utilise this visa subclass, is that current eligibility requirements for visa applicants and arrangements for the monitoring, enforcement and reporting for the financial services industry is working well.[268]

2.208 The Committee heard that the skills and competencies of the financial services sector workforce are of a very high standard, with average salaries well above the industry average and the average for the 457 visa subclass.[269] In addition, nearly half of approved applicants fall within the ASCO 1 grouping.[270]

2.209 During the hearings, AFMA also told the Committee that it had not experienced either the inefficiencies in concluding a Labour Agreement or the extended processing times that have affected other sectors.[271]

---

267 Australian Financial Markets Association, *Submission No. 66*, p. 2.

268 Australian Financial Markets Association, *Submission No. 66*, p. 2.

269 Ms Hang, Australian Financial Markets Association, *Transcript of Evidence,* 17 May 2007, p. 25.

270 Ms Hang, Australian Financial Markets Association, *Transcript of Evidence,* 17 May 2007, p. 25.

271 Ms Hang, Australian Financial Markets Association, *Transcript of Evidence,* 17 May 2007, p. 25.

2.210 Other evidence to the Committee portrayed a vastly different picture of Labour Agreements. In particular, the considerable delay experienced in negotiating a Labour Agreement was identified as a key impediment to their uptake. The DIAC website notes that the standard processing time for Labour Agreements is considered to be 6 to 12 weeks.[272] AMIC commented that in its experience, '[i]t was suggested that this would take between 6 and 8 weeks but in fact 28 weeks later the industry remains without a Labour Agreement despite many meetings and versions of draft documents'.[273]

2.211 AMIC also stated:

> The Labour Agreement under negotiation has been delayed by matters included in the draft document which should have been covered by standard DIMA procedures. This would support a conclusion that a procedures review may be necessary to ensure appropriate controls are in place and matters of concern in relation to 457 labour are appropriately addressed.[274]

2.212 Similarly, Mrs McMullen from ACPMA told the Committee:

> To date, I have tried to negotiate four labour agreements, and in every case the employer has said to me, 'This is too hard; let's just do a business sponsorship' and we have gone through the business sponsorship process and the visas have been granted.[275]

2.213 A lack of transparency as to DIAC's requirements appeared to be contributing to these difficulties. ACPMA highlighted to the Committee its difficulties in obtaining clear direction from the department and stated that DIAC had rejected its proposed Labour Agreement almost in its entirety.[276] ACPMA further commented that:

> Labour Agreements, in our experience, appear to constitute essentially, a list of demands by DIAC which reveal scant

272 DIAC website, 'Step 1 – Sponsoring organisation applies for a labour agreement', http://www.diac.gov.au/skilled/skilled-workers/la/step-1.htm (accessed 2 July 2007).

273 Australian Meat Industry Council, *Submission No. 26,* p. 2.

274 Australian Meat Industry Council, *Submission No. 26,* p. 2.

275 Mrs McMullen, Australian Contract Professions Management Association, *Transcript of Evidence*, 16 May 2007, p. 64.

276 Australian Contract Professions Management Association, *Submission No. 76a,* p. 1.

> understanding of the employer's situation and little appreciation of commercial realities.[277]

2.214 The MIA also observed that Labour Agreements would be used to a greater extent if the 'bureaucratic excesses in trying to achieve such agreements were significantly less':

> It is very difficult for our members to recommend to their clients that Labour Agreements should be applied for where they are clearly desirable, if the hurdles to cross in securing same are too high due to the ongoing administration and onerous requirements. We have no doubt that Labour Agreements would be more popular with employers if they were easier to secure and easier to report on.[278]

2.215 In order to provide a streamlined approach and facilitate the effective use of the 457 visa program, the Committee believes it is essential that employers are able to negotiate a Labour Agreement in an effective and timely manner.

2.216 The Committee also notes that Labour Agreements have been used by some industry bodies in an attempt to tailor the requirements of the broader 457 visa program to their industry. For example, the Printing Industries Association of Australia commented that, from its perspective, Labour Agreements offered the potential for customised agreements designed to meet specific industry needs outside the broader 457 visa provisions and, '[w]hile they may take longer to initiate, they have the advantage of being tailored to the specific needs of the industry concerned and are more flexible once in place'.[279]

2.217 Similarly, the RCA, which had negotiated a Labour Agreement to import 300 cooks and chefs into Australia, observed that the purpose of the agreement was to streamline the process of engaging an overseas worker for small restaurant and catering businesses.[280] The RCA told the Committee that it:

> … valued a number of aspects of the agreement including, a lower minimum salary level, the flexibility to have employees cover repatriation and health care costs should they wish to do so, a streamlined nomination process for employers … and the

277 Australian Contract Professions Management Association, *Submission No. 76a,* p. 3.

278 Migration Institute of Australia, *Submission No. 9,* pp. 10-11.

279 Printing Industries Association of Australia, *Submission No. 18,* p. 8.

280 Restaurant and Catering Australia, *Submission No. 50,* p. 16.

> recognition of an industry-wide contribution (and commitment) to training …[281]

2.218 However, only 12 of the 2,058 cooks and chefs that entered Australia in 2006 ended up doing so through the Labour Agreement.[282] The RCA submitted that there were a number of reasons why the Labour Agreement had not been utilised. These included the restrictions and administrative burdens placed upon employers seeking to become party to the Labour Agreement and that the MSL under the agreement resulted in a 19.5 per cent increase for the 457 workers compared with the salary that applied to an Australian cook or chef.[283]

2.219 The RCA also argued that the administration of the Labour Agreement was highly inconsistent, with the 'commitment to training' requirement being the most inconsistently assessed area. The general experience in this industry was that as the benefits of the agreement were eroded it became more effective to simply utilise the broader 457 visa program.[284]

2.220 Many participants commented that Labour Agreements resulted in closer monitoring from DIAC. For example, Australia Meat Holdings told the Committee that prior to its Labour Agreement there had been 'no monitoring on site by the department'.[285] Similarly, Ms Sutherland of Baker Hughes Australia Pty Ltd commented that they were 'monitored quite closely' because they were on a Labour Agreement.[286]

2.221 A further interesting case study in this area involves the meat processing industry. The Labour Agreement concluded for the Queensland meat industry does not allow access to the regional concession to the minimum salary level. The Committee heard that this would result in 457 workers receiving a higher salary level than local Australian workers. Tabro Meat Pty Ltd commented that the Labour Agreement had not been accepted by most parties in the industry as it would inflict greater costs upon regional small business and make them uncompetitive in the 'export market place'.[287]

---

281 Restaurant and Catering Australia, *Submission No. 50,* p. 18.

282 Restaurant and Catering Australia, *Submission No. 50,* p. 17.

283 Restaurant and Catering Australia, *Submission No. 50,* p. 17.

284 Restaurant and Catering Australia, *Submission No. 50,* pp. 17-18.

285 Mr Tame, Australia Meat Holdings, *Transcript of Evidence,* 16 April 2007, p. 59.

286 Ms Sutherland, Baker Hughes Australia Pty Ltd, *Transcript of Evidence,* 30 April 2007, p. 28.

287 Tabro Meat Pty Ltd, *Submission No. 78,* p. 3.

2.222 Similarly, AMIC expressed the view that there would be only three companies in Queensland able to sign the agreement, because their operations were of a sufficient size that costs could be 'spread across the board'.[288] Further, according to Midfield Meats International Pty Ltd, the Labour Agreement had driven 'costs of the process to a point where it is essentially unviable'.[289]

2.223 The Committee notes that the meat industry in Western Australia is considering a Labour Agreement to try and address the issue of worker shortages. However, according to the WA Small Business Development Corporation:

> … if you look at the award rates, they are sub $41,850. When that median salary level is adjusted this year, that will really challenge the industry in terms of how they are going to pay for those people. What it will effectively mean is that they will need to raise the wages of the local workforce to match the wages of the imported labour.[290]

2.224 While it is beyond the scope of this inquiry to provide detailed sectoral case studies, it is apparent that there is considerable dissatisfaction surrounding the operation of the Labour Agreement process. The Committee is concerned by this evidence suggesting there are major difficulties with both the process of negotiating Labour Agreements and the operation and transparency of such agreements. As the RCA rightly questioned:

> If the operation of a labour agreement imposes the same if not more onerous requirements on employers, why would they use such agreements?[291]

2.225 Employers are finding themselves in a situation where they must balance the advantages of gaining access to a number of overseas workers against the conditions being imposed under a Labour Agreement. For example, AMMA told the Committee that DIAC's standard template for a Labour Agreement includes obligations that are not generally required in the broader 457 visa program.[292]

---

288 Mr Johnston, Australian Meat Industry Council, *Transcript of Evidence,* 17 May 2007, p. 10.

289 Mr Kelson, Midfield Meats International Pty Ltd, *Transcript of Evidence,* 14 March 2007, p. 37.

290 Mr Moir, Small Business Development Corporation, WA, *Transcript of Evidence,* 30 April 2007, p. 16.

291 Restaurant and Catering Australia, *Submission No. 50,* p. 18.

292 Mr Bull, Australian Mines and Metals Association, *Transcript of Evidence,* 30 April 2007, p. 52.

2.226 The Committee also noted concern from some participants that Labour Agreements could be used to erode conditions and pay for Australian workers. For example, the New South Wales Government commented that 'labour agreements are increasingly being promoted by the federal government to undercut the existing limited protections for workers and market rates'.[293]

2.227 However, the Western Australian Government indicated to the Committee that it will continue to be a party to Labour Agreements, as they:

> … provide employers with a faster and more effective means of recruiting skilled workers from overseas while at the same time protecting the interests and welfare of foreign workers and their families. This involvement in the negotiation of Labour Agreements provides State Government agencies with greater access to workplaces and employee records, and hence enhanced powers to monitor and investigate employer compliance with the scheme as well as with State law.[294]

2.228 RCSA also indicated its support for an industry based Labour Agreement on the basis that it could provide improved monitoring and a faster approval process and that stricter obligations might be imposed in some areas in exchange for concessions in others.[295]

2.229 The Committee notes that AFMA, which provided the Committee with very positive evidence about its experiences with Labour Agreements, was wary of any increased administrative burden, particularly as it argued that Labour Agreements should not impose additional regulatory requirements.[296] This point was echoed by the representative from Fragomen Australia, who told the Committee:

> My concern would be the loss of flexibility for those businesses where there are no real compliance concerns at all. General concerns we have had about the drift of policy discussions over the last year have been the focus on the problems areas and that any changes may adversely affect companies that to date have been absolutely compliant and are needing, desperately in some cases, to recruit people from overseas.[297]

---

293 NSW Government, *Submission No. 51*, p. 2.

294 Western Australian Government, *Submission No. 68,* p. 5.

295 Recruitment and Consulting Services Association Ltd, *Submission No. 11*, pp. 3-4.

296 Australian Financial Markets Association, *Submission No. 66,* p. 3.

297 Dr Crawford, Fragomen Australia, *Transcript of Evidence,* 1 June 2007, p. 14.

2.230 While it is clear that a number of issues concerning Labour Agreements need to be resolved, the Committee considers there are potential advantages to industry wide Labour Agreements. Primarily, they could provide consistency and certainty for all parties within an industry, as well as transparency to alleviate concerns about unfairness, to either the sponsored employees or Australian workers. Further, all interested parties, including employers, industry groups and unions, within an industry could be involved in negotiations. The agreement could then clearly set out the conditions that are to apply across an industry.

2.231 The Committee therefore believes that Labour Agreements potentially offer a useful alternative mechanism to address demonstrated skills shortage in certain areas—for example, through industry wide agreements with customised arrangements, as agreed by key stakeholders.

Recommendation 15

2.232 **The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve:**

- **the process of negotiating Labour Agreements;**
- **the consistency of such agreements with aspects of the overall 457 visa program; and**
- **the operation and transparency of such agreements.**

3

457 visa compliance arrangements, communication and program administration: key issues and improved procedures

Introduction

3.1 Chapter 3 discusses the important area of monitoring, reporting and enforcement under the 457 visa program, including penalties, sanctions and other enforcement mechanisms. This area is essential to reinforcing the integrity of the program and ensuring public confidence in 457 visas, while still meeting the needs of business for streamlined arrangements. Other matters discussed include Commonwealth, state and territory collaboration in compliance; an improved mechanism for 457 visa holders and others to report alleged breaches of program requirements; and clarification of the '28-day' rule for visa holders to find a new employer sponsor.

3.2 The chapter also looks at communication processes under the program—in particular, communication between the Department of Immigration and Citizenship (DIAC) and employer sponsors, visa holders and other stakeholders—and how this area might be improved.

3.3 Chapter 3 concludes by looking at issues relating to DIAC's administration of the program—most notably, 457 visa processing times, which was raised as a major area of concern during the inquiry.

Monitoring, reporting and enforcement

3.4 On 26 April 2007, in announcing changes to skilled temporary visa arrangements, the Minister for Immigration and Citizenship stated that:

> Employers must recognise that access to skilled temporary migrants is a privilege, not a right, and if they abuse this privilege, then they will face strong penalties.
>
> The changes that have been announced today will ensure that further obligations are put in place to protect and strengthen the integrity of the 457 visa scheme.[1]

3.5 The announced changes include:

- New civil penalties for employers who breach the law

  > The Migration Act will be amended to ensure employers of skilled temporary overseas workers (457 visas) face tougher penalties if they breach their sponsorship obligations.
  >
  > New civil penalties will apply for those employers who commit the most serious offences. Offences will relate to such matters as failure to pay the minimum salary level and using workers in unskilled jobs.

- Greater powers for DIAC and the Workplace Ombudsman (formerly the Office of Workplace Services) to investigate employers

  > The Department of Immigration and Citizenship will also be given stronger powers to enforce employer compliance with the 457 visa programme, including the power to conduct unannounced audits of employers and their premises.
  >
  > This will be complemented with greater powers for the Office of Workplace Services to investigate breaches of the Minimum Salary Level.[2]

3.6 These changes will require an amendment to the *Migration Act* 1958. To this end, the Migration Amendment (Sponsorship Obligations) Bill

1 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New changes to the skilled temporary visa laws', 26 April 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07030.htm.

2 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New changes to the skilled temporary visa laws', 26 April 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07030.htm.

2007 was introduced into Parliament on 21 June 2007. As set out in Figure 3.1, the legislation seeks to strengthen the obligations of sponsors who employ 457 workers.

Figure 3.1 Penalties to strengthen integrity of temporary skilled migration program[3]

Employer obligations under the legislation will include:

- Payment of the Minimum Salary Level (MSL);
- Payment of all costs associated with recruitment of the sponsored worker and migration agent fees for the worker and their family;
- Payment of fees for mandatory licence, registration or membership required for the sponsored worker to work;
- The payment of a number of other costs, such as recruitment, medical and travel costs,
- Employing skilled workers in skilled positions, as opposed to semi or unskilled work.

Sponsors will also be required to keep records of all of these payments.

Sponsors will be obliged to produce documents on request. Failure to do so could result in six months imprisonment.

Failure to comply with these obligations could result in a civil penalty being imposed together with the cancellation of a sponsor's access to the 457 visa programme.

The bill attaches civil penalties to breaches of obligations with a maximum of $6 600 for an individual and $33 000 for a body corporate for each identified breach …

The bill also authorises disclosure of personal information regarding sponsors and visa holders to relevant Commonwealth government agencies and government agencies in states and territories. For example, where a workplace appears to fall short of basic occupational health and safety standards, an inspector can make this known to the Commonwealth, state or territory body responsible for monitoring such standards.

To help enforce these provisions, trained officers will have the power to enter unannounced, without force, any place which they believe contains information or documentation relevant to monitoring the sponsor's compliance.

3 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New tough penalties strengthen the integrity of the Temporary Skilled Migration Programme', 21 June 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07047.htm.

3.7 These changes are supported by the earlier announcement in May 2007, as part of the Budget, of an additional $85.3 million in funding over the next four years to 'maintain the integrity of Australia's temporary skilled migration program'.[4] Mr Parsons from DIAC noted that the department would receive $66.1 million in support of these initiatives, with the remainder going to the Workplace Ombudsman, the Department of Employment and Workplace Relations, the Department of Education, Science and Training and the Australian Taxation Office.[5]

3.8 The Committee further heard that DIAC would be expanding its monitoring arrangements to include:

> … a survey, a small list of questions, which we will proactively send to the applicants themselves. Based on the responses that we get to those sorts of questions, they too will inform the more detailed monitoring that our state offices undertake.[6]

3.9 As Mr Hitchcock from the Migration Institute of Australia (MIA) observed, '[a] further enhancement of the monitoring process would be for the department to have access to employees as well as employers'.[7]

3.10 Given the changing ground during this inquiry, with new arrangements for monitoring, reporting and enforcement being announced after the bulk of evidence had been received by the Committee, some of the concerns raised about this area have inevitably been overtaken by events. However, the Committee is concerned that the implementation and administration of these new arrangements should benefit from the 'lessons of the past'. Accordingly, the discussion below provides a summary of some of the concerns in this area raised during the inquiry.

3.11 In summary, the Committee welcomes the Minister's amendments to the program in response to concerns raised during the course of the inquiry and is pleased that the inquiry precipitated action in this area. The Committee believes these changes, particularly the increased powers to monitor sponsors and penalise non-compliance, will

4 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'A first class skilled migration system', 8 May 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07034b4.htm.

5 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 69.

6 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 77.

7 Mr Hitchcock, MIA, *Transcript of Evidence*, 16 May 2007, p. 26.

strengthen the effectiveness, fairness and integrity of the 457 visa. As the MIA commented:

> Abuse at the hands of a few will continue to occur and it is through monitoring and compliance/enforcement action that progress can be made in addressing such matters.[8]

3.12 At the time of finalising this report, the Senate Standing Committee on Legal and Constitution Affairs was inquiring into the Migration Amendment (Sponsorship Obligations) Bill 2007.[9] A detailed examination of the legislation was outside the scope and timing of this report.

Need for improved monitoring, reporting and enforcement arrangements

3.13 A central theme that emerged in evidence to the Committee was the broad support for a stronger monitoring and compliance regime, with this being seen as a means of reinforcing the integrity of the program and reducing the risk of exploitation of 457 visa holders:

> ACCI does not object to the sanctioning of employers who deliberately and knowingly breach their obligations under the relevant visa class. Provided employers are able to understand their obligations, ACCI supports proportionate sanctions for misuse, following due legal process.[10]

> Employers who have breached the scheme should be barred from further sponsorship with civil and criminal sanctions applicable where appropriate.[11]

> There will be greater understanding and respect for employer and 457 visa holder obligations if there is greater awareness that the 'system' is monitored and that those deemed to have engaged in exploitation or other activities which damage the integrity of this important program are brought to account … Current sanctions for employers found to be in breach of their 457 sponsorship and employee obligations are not sufficient

8 MIA, *Submission No. 9*, p. 14.

9 For further information, see http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_sponsorship/index.htm.

10 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 5.

11 Australian Council of Trade Unions, *Submission No. 39*, p. 11.

> in our view in seriously deterring those few who intend to deliberately exploit 457 visa holders.[12]

3.14 However, it was also acknowledged that such programs 'can rarely be made "bullet proof" in terms of nil levels of abuse or exploitation'.[13]

3.15 It is important to acknowledge at this point in the report the considerable level of media attention that the 457 visa has received over recent years concerning alleged and proven abuses of workers under the program. This matter was raised by several contributors to the inquiry:

> There have been many reported cases in the media of alleged situations where 457 visas have been abused by employers. Examples have included underpayment of wages or no payment for overtime, discrimination on the basis of union membership, workplace safety and training requirements not being met and 457 workers being used as strike breakers.[14]

> … the conditions of employment afforded to temporary visa holders and the treatment of those visa holders as participants in the Australian workforce is of critical concern to the ACTU. Many cases have been brought to light in the last 12-18 months exposing appalling treatment of business visa holders by some employers. These cases highlight the need for a greater degree of monitoring and enforcement of standards afforded to the visa holders through relevant departments of government.[15]

3.16 The Committee heard that alleged breaches of the 457 visa program have included:

- underpayment of the minimum salary level
  - ⇒ Filipino chefs who worked in Canberra were promised $39,000 before they came to Australia. When they got here they were paid $29,100, and for that they worked a

12 MIA, *Submission No. 9*, pp. 14-16. See also Australian Industry Group, *Submission No. 57*, p. 2; RCSA, *Submission No. 11*, p. 4; Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 4; Entity Solutions, *Submission No. 44*, p. 12; and Australian Meat Industry Council, *Submission No. 26*, p. 2.

13 MIA, *Submission No. 9*, p. 5.

14 NSW Government, *Submission No. 51*, p. 3.

15 Australian Council of Trade Unions, *Submission No. 39*, p. 5.

60-hour week. They got no overtime and no superannuation.[16]

- unlawful deductions from the minimum salary, such as for travel or medical costs, or deductions unapproved by the worker, such as for accommodation costs

  ⇒ There is a common practice in the industry whereby the cost of travel to and from the country of the sponsored employee's origin is paid for by the employer, however then recouped from the employee via deductions from the sponsored employee's wages over the first 12 months of employment.[17]

- non-payment of overtime or working excessive hours

  ⇒ He worked between 15-18 hours a day, 7 days a week for more than 18 months ... Despite the long hours his weekly pay slip showed he only work 40 hours. He was paid no overtime …[18]

- discrimination on the basis of union membership

  ⇒ Both of these contracts provide that grounds for termination of employment include engagement of union activities and prohibition of engagement in union activities.[19]

- employment of skilled workers in unskilled roles

  ⇒ There are also numerous complaints regarding 457 visa holders entering the workplaces to undertake skilled occupations, but then being used as cheap manual labour.[20]

---

16 Mr Bibo, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 16 May 2007, p. 52. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 55.

17 Australasian Meat Industry Employees Union, *Submission No. 23*, p. 23. See also Construction, Forestry, Mining and Energy Union, *Submission No. 21*, p. 4; and Immigrant Women's Speakout Association of New South Wales and the Philippines-Australian Women's Association, *Submission No. 49*, p. 7.

18 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 13. See also Uniting Church in Australia, *Submission No. 15*, p. 2.

19 Australian Council of Trade Unions, *Submission No. 39a*, p. 4. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 55.

20 Australian Manufacturing Workers Union, *Submission No. 40*, p. 50.

- payment by workers of recruitment costs or migration agent fees
  - ⇒ I was required to pay approximately $10,000 to get the job, as well as my own airfares.[21]
- unfair termination of employment
  - ⇒ Workers being fired and sent home with no notice …[22]
- racial abuse and threats of physical harm
  - ⇒ When he asked for compensation for his India trip, the owner threatened to kill him and harm his family in India.[23]
- overcharging for training and accommodation
  - ⇒ the rental rates that are being charged are way above what would normally be expected.[24]

3.17 Several case studies were also drawn to the attention of the Committee involving 457 workers who had allegedly experienced serious breaches of their employment conditions (noting in some cases that these breaches had later been proven)—see, for example, the work conducted by Dr Wise and Dr Velayutham on 457 visas and the case studies provided by the Australian Manufacturing Workers Union (AMWU).[25] A list of media reports of alleged abuse of the 457 visa was also providing by the Construction, Forestry, Mining and Energy Union (CFMEU).[26]

3.18 This evidence notwithstanding, the Committee emphasises that, on occasions over the course of the inquiry, breaches alleged by one body were contested by another. For example, the various allegations made by the Australian Nursing Federation (ANF) about the 'misleading' recruitment of workers with overseas nursing qualifications under the 457 visa by Cytech Intersearch Pty Ltd were refuted as inaccurate by that company:

21 Mr Kandasamy, 457 visa holder, *Transcript of Evidence*, 16 May 2007, p. 78. See also Dr Wise and Dr Velayutham, *Submission No. 85*, p. 7; and Australasian Meat Industry Employees Union, *Submission No. 23*, p. 24.

22 Filipino Australian Affiliation of North Queensland, *Submission No. 24*, p. 2. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 50.

23 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 12. See also Mr Bibo, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 16 May 2007, p. 53.

24 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 12. See also Australasian Meat Industry Employees Union, *Submission No. 23*, p. 23; and Australian Manufacturing Workers Union, *Submission No. 40*, p. 54.

25 Dr Wise and Dr Velayutham, *Submission No. 85*; and AMWU, *Submission No. 40*, p. 44 onwards.

26 CFMEU, *Submission No. 21*, pp. 13-14.

> The ANF has grave concerns regarding the manipulation or potential manipulation of internationally qualified nurses by migration agencies and employers using 457 visas. We understand that groups of nurses, qualified in their own countries but not eligible for automatic registration in Australia, are approached off-shore and encouraged to come to Australia under a non-nursing skilled migration category while being told they will be working as nurses or that they will be eligible to apply for registration once they are here. They are misinformed and severely disadvantaged as a result of ineffective monitoring, enforcement and reporting arrangements.[27]
>
> … as at 30th March 2007, Cytech Intersearch received notification from the Department of Immigration that we are meeting our obligations based on the recent monitoring and documentation submitted … We would like to rectify the statement from the ANF 'that the position being made available is indeed the position that the applicants believe they are being employed for. And further, that no disadvantage is experienced, either financially or otherwise once workers from other countries arrive as regards the need for further education or gaining of skills' … the comments by the Australian Nursing Federation are grossly unfounded.[28]

3.19 Further, in a number of other cases, those alleging breaches of 457 visa requirements were unable to provide factual evidence in the form of specific documented examples to back up their claims. However, the Committee acknowledges that this matter was sometimes further complicated by privacy concerns and the reported unwillingness of some 457 visa holders to speak up about alleged breaches of their sponsorship conditions. As Dr Zirnsak from the Uniting Church commented:

> … in this particular case, the person in question does not wish to be identified because they hold a grave fear that, if they are identified or if their employer is identified in any way, they

27 ANF, *Submission No. 63*, p. 5. See also case study on Cytech Intersearch at p. 6 of the ANF submission.

28 Cytech Intersearch Pty Ltd, *Submission No. 84*, p. 17 and p. 38. It should also be highlighted here that Cytech stated they 'do not utilize 442 Visas. We have only ever utilized the Subclass 457 Visa program. Therefore the entire section under 442 Visas [in the ANF submission] is of no relevance to Cytech Intersearch and must be noted', p. 20.

> will be subject to retributive action that would involve their dismissal. They hold a grave fear that they would then be deported without the ability to find an alternative sponsor, particularly, in this case, given their lack of English skills.[29]

3.20 During the inquiry, the Committee published a statement on 'Protection for witnesses' on its website to reinforce the point that such individuals would be protected by parliamentary privilege should they choose to give evidence to the inquiry:

> It is an important part of the inquiry process for committees to hear from a wide range of groups and individuals, who often have very different views about a subject. It is equally important that the evidence given is provided freely and without undue influence from other people.
>
> Anyone making a written submission or giving evidence at a public hearing is protected by parliamentary privilege. Essentially this means that no legal action can be taken against a person because of what they say during a hearing (the protection does not apply if, after the hearing, a witness repeats statements made in evidence). Parliamentary privilege also means that it is an offence to inflict 'any penalty or injury upon, or deprive of any benefit, another person' on account of evidence they may give before a committee. Similarly it is an offence to influence another person about the evidence they may give, or to try and prevent a person from giving evidence.
>
> If a witness to the inquiry feels that they have been intimidated, threatened or suffered adverse consequences as a direct result of having given evidence to the Committee, they should contact the committee secretariat immediately.[30]

3.21 The Committee was aware that the reported unwillingness of some 457 visa holders to speak up about alleged breaches of their sponsorship conditions was due in some cases to the threat of their employment being terminated in retaliatory action by their employer. (This matter is discussed in further detail later in this chapter.) In this regard, the Committee sought assurance from DIAC that, 'in the case of witnesses to the inquiry, it be consulted prior to action being taken

29 Dr Zirnsak, Uniting Church in Australia, *Transcript of Evidence*, 14 March 2007, p. 15.

30 Joint Standing Committee on Migration website, http://www.aph.gov.au/house/committee/mig/457visas/hearings/PROTECTION%20FOR%20WITNESSES.pdf.

to terminate the visa of the witness and return them to their country of origin'.[31] DIAC confirmed that:

> In respect of any Subclass 457 visa holder who may give evidence to the Committee, subject to permission from the visa holders themselves, the Department can give its assurance to advise the Committee of any action the Department may consider to assist the visa holders to return to their country of origin if the visa holders are dismissed by their sponsor and are unable to find another sponsor.[32]

3.22 That said, in some other cases, the Committee did receive documentary evidence backing up claims of alleged breaches. Some of the breaches alleged above have also been proven by DIAC and the Workplace Ombudsman (formerly the Office of Workplace Services)[33] or through the courts. For example, DIAC advised that, for the 2006-07 financial year (to 31 March 2007), 68 sponsors had been sanctioned.[34] In addition, the department advised that, for the 2006-07 financial year (to 31 January 2007), around 300 sponsors were under investigation and were not allowed to sponsor further overseas workers until these investigations were complete.[35]

3.23 The Committee acknowledges the seriousness of these issues and the importance of the Minister's announcements as a necessary means of building the integrity of, and public confidence in, the program in terms of fair treatment of 457 visa holders. Importantly, all those reporting alleged breaches of the 457 visa program to the Committee were advised that they should report them to DIAC, if they had not already done so.

3.24 It also needs to be stated at this point in the report that, as several contributors to the inquiry emphasised, the majority of employers under the program are 'doing the right thing':

---

31 Correspondence to DIAC from the Joint Standing Committee on Migration, reproduced in *Submission No. 86*, p. 4.

32 DIAC, *Submission No. 86*, p. 1.

33 See on this point, for example, the Australian Council of Trade Unions, *Submission 39a*, p. 2; and the Australian Manufacturing Workers Union, *Submission No. 40*, p. 52 and p. 55. See also details of legal action listed on the Workplace Ombudsman website, http://www.wo.gov.au/asp/index.asp?sid=7407&page=legal-action (accessed 16 July 2007).

34 DIAC, *Submission No. 86a*, p. 39.

35 Commonwealth Government, *Submission No. 33*, p. 13.

> According to official figures, allegations of misuse of the 457 visa program have been levelled against some 180 employers, out of more than 10,000 businesses using the program. That is, 98.4 per cent of employers involved in the temporary skilled migration program are doing the right thing and just 1.6 per cent might be doing the wrong thing. However, and again according to government statistics, more than 70 per cent of those allegations of misconduct by employers will be disproved or found to have no merit … Taken together, this indicates 99.4 per cent of employers are doing the right thing …[36]
>
> Much of the media attention on 'Section 457 visas' and 'overseas worker exploitation' has been generated as a result of an overly narrow but magnified coverage of a relatively small number of employers not abiding by Australian immigration and workplace relations laws. Lesser known are the large number of employer sponsors of temporary overseas workers who are diligently complying with and upholding their sponsorship obligations as part of the temporary business visa program for 457 visas.[37]
>
> There is no doubt that the majority of employers can be relied upon to at least be paying the 457 visaholder the relevant pay rate and to be employing the visaholder to work in the occupation for which they sponsored them.[38]
>
> In our experience, acting for many hundreds of large and small companies—Australian owned and multinational companies—the vast majority of those companies utilising the 457 visa are not abusing that privilege and are not disadvantaging Australian workers through their recruitment or employment practices.[39]

3.25 DIAC pointed to a sanction rate of some 0.57 per cent for the program.[40] The Committee therefore notes that there are many examples of 457 visas working successfully for all parties.

---

36 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 2.

37 Chamber of Commerce and Industry WA, *Submission No. 53*, p. 13.

38 Communications, Electrical and Plumbing Union, *Submission No. 61*, p. 19.

39 Mr Walsh, Fragomen Australia, *Transcript of Evidence*, 1 June 2007, p. 10. See also Cairns Chamber of Commerce, *Submission No. 27*, p. 3; and Ms Kearney, Australian Nursing Federation, *Transcript of Evidence*, 14 March 2007, p. 40.

40 DIAC, *Submission No. 86a*, p. 39.

3.26 However, several inquiry participants raised concerns about the small number of employer sponsors monitored by DIAC and the low rate of site visits (see Table 3.1):

> New South Wales is … concerned that the level of compliance activities conducted by DIMA is inadequate. In 2005-06, DIMA reported in its annual report that only 65.2 per cent of 457 visa sponsors were monitored for compliance with visa conditions, down from 96.9 per cent the previous year and falling well short of the target of 100 per cent. For all visas, only 33 sanctions were issued where there was a breach of visa or sponsorship conditions identified.[41]

3.27 DIAC advised the following statistics:

> Responses from employers are reviewed by DIAC and other checks as appropriate, including referring matters to other relevant agencies, are then conducted. In 2005-06, over 6 400 employers were checked in this way.
>
> DIAC also undertakes targeted site visits of employers to verify responses provided and/or undertake additional checks. During the site visits, interviews are conducted with the employers and separately with some of the employees. In 2005-06, some 1 790 sponsors were site visited …
>
> For the 2006-07 financial year to 31 January 2007, 20 sponsors have been sanctioned. In addition, around 300 sponsors are currently under investigation and are not allowed to sponsor further overseas workers until these investigations are complete.[42]

3.28 More recently, for the financial year 2006-07 (through to end April 2007), DIAC advised that 1,400 site visits had been undertaken.[43] Tables 3.2 and 3.3 provide a summary of sponsor investigations by outcome and sponsor sanctions by reason.

41 NSW Government, *Submission No. 51*, p. 2.

42 Commonwealth Government, *Submission No. 33*, pp. 12-13.

43 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 78.

Table 3.1 DIAC compliance data: 2003-04 to 2005-06

	2003-04	2004-05	2005-06
457 visa sponsors monitored for compliance with visa conditions	100 per cent	96.6 per cent	65.2 per cent
457 visa sponsors site visited at place of employment	28 per cent	22.4 per cent	18.0 per cent

Source DIMA *Annual Report 2005-06*, p. 84.

Table 3.2 457 sponsor investigations by outcome: 1 July 2006 to 30 April 2007

Outcome of investigation (269 investigations)	%
Unsubstantiated	33
Sanctioned	25
Formally warned	19
Referral to other agency (no current DIAC action)	23

Source DIAC, *Submission No. 86a*, p. 35.

Table 3.3 457 sponsor sanctions by reason: 1 July 2006 to 30 April 2007[44]

Sanctions by reason (breaches: 162, sanctions: 68)	%
Breach of minimum salary level	40
Failure to notify DIAC of change in circumstances	13
Failure to pay superannuation	9
Failure to comply with Workplace Relations laws	7
Non-compliance with monitoring request	6
Failure to pay tax for employee	5
Failure to continue to satisfy requirements of sponsorship	4
Failure to notify of cessation of employment	4
Not working in nominated position	4
Breach of immigration law	4
Business no longer active	2
Provision of false information	1
Employing unlawful non-citizen	1

Source DIAC, *Submission No. 86a*, p. 36.

44 The table reflects the fact that some sponsors have been sanctioned for more than one reason.

3.29 Reflecting the concerns of a range of organisations, issues raised about monitoring, reporting and enforcement arrangements included that DIAC:

- lacked the enforcement provisions to fine sponsors;[45]
- provided pre-notification to employer sponsors before making a site visit for an alleged breach of program requirements;[46]
- had to refer certain matters to other agencies for investigation (alleged OH&S or workplace relations breaches, for example) but legislative difficulties complicated the sharing of information with these agencies, particularly across the states and territories;[47]
- did not have the power to order an employer to pay a 457 worker owed money under the minimum salary level requirement;[48]
- lacked sufficient resources to undertake adequate monitoring;[49] and
- had limited investigative powers to access employer documents, particularly in terms of monitoring the minimum salary level requirement.[50]

Previous DIAC arrangements for monitoring, reporting and enforcement

3.30 Legislation came into effect on 1 July 2004 providing for sanctions against sponsors found in breach of sponsorship undertakings. These allowed for cancellation of the business sponsorship approval and a bar for up to five years on bringing in overseas workers.[51] On 30 October 2006, the former Minister for Immigration and Multicultural Affairs announced that $17.6 million in funding, over four years, would be provided for the establishment and training of 'investigative mobile strike teams', to ensure employers of temporary

45 Philippines Australia Union Link, *Submission No. 45*, p. 5.
46 Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 6.
47 WA Government, *Submission No. 68*, p. 5.
48 Communications, Electrical and Plumbing Union, *Submission No. 61*, p. 6.
49 MIA, *Submission No. 9*, p. 14.
50 Communications, Electrical and Plumbing Union, *Submission No. 61*, p. 20.
51 DIMIA, *Annual Report 2004-05*, p. 74.

skilled migrants were complying with sponsorship requirements.[52] This statement was followed by the major changes announced to the program in April 2007, as discussed above.

3.31 The April 2007 amendments to the program, announced late in the inquiry process, will inevitably alter DIAC's monitoring, reporting and enforcement procedures and practices. However, for the record, DIAC submitted details of its current arrangements in this area—principally, that all 457 visa sponsors were required to sign-up to and comply with the sponsorship undertakings set out in Figure 3.2.

Figure 3.2 DIAC's existing compliance arrangements[53]

(1) For subsection 140H(1) of the Act, an applicant for approval as a standard business sponsor must make the following undertakings:

(a) to ensure that the cost of return travel by a sponsored person is met;

(b) not to employ a person who would be in breach of the immigration laws of Australia as a result of being employed;

(c) to comply with its responsibilities under the immigration laws of Australia;

(d) to notify Immigration of:

(i) any change in circumstances that may affect the business's capacity to honour its sponsorship undertakings; or

(ii) any change to the information that contributed to the applicant's being approved as a sponsor, or the approval of a nomination;

(e) to cooperate with the Department's monitoring of the applicant and the sponsored person;

(f) to notify Immigration, within 5 working days after a sponsored person ceases to be in the applicant's employment;

(g) to comply with:

(i) laws relating to workplace relations that are applicable to the applicant; and

52 Media release by Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, 'Package to enhance integrity of temporary skilled migration', 30 October 2006, http://www.minister.immi.gov.au/media/media-releases/2006/v06247.htm. On 21 May 2007, Ms Daniels from DIAC stated, 'I am not sure that we call them mobile strike teams; we call them additional monitoring resources', Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 58.

53 Commonwealth Government, *Submission No. 33*, pp. 70-71.

(ii) any workplace agreement that the applicant may enter into with a sponsored person, to the extent that the agreement is consistent with the undertaking required by paragraph (i);

(h) to ensure that a sponsored person holds any licence, registration or membership that is mandatory for the performance of work by the person;

(i) to ensure that, if there is a gazetted minimum salary in force in relation to the nominated position occupied by a sponsored person, the person will be paid at least that salary;

(j) to ensure that, if it is a term of the approval of the nomination of a position that a sponsored person must be employed in a particular location, the applicant will notify Immigration of any change in the location which would affect the nomination approval;

(k) either:

(i) for an application made before 1 November 2005— to pay all medical or hospital expenses for a sponsored person (other than costs that are met by health insurance arrangements); or

(ii) for an application made on or after 1 November 2005—to pay all medical or hospital expenses for a sponsored person arising from treatment administered in a public hospital (other than expenses that are met by health insurance or reciprocal health care arrangements);

(l) to make any superannuation contributions required for a sponsored person while the sponsored person is in the applicant's employment;

(m) to deduct tax instalments, and make payments of tax, while the sponsored person is in the applicant's employment;

(n) to pay to the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to a sponsored person …

(2) For paragraph (1)(n), the costs include the cost of:

(a) locating the sponsored person; and

(b) detaining the sponsored person; and

(c) removing the sponsored person from Australia (including airfares, transport to an airport in Australia and provision of an escort (if needed)); and

(d) processing an application for a protection visa made by a sponsored person.

3.32 Mr Parsons from DIAC further advised that:

> The monitoring program is driven by a number of things. The first is that we have a profile based on experience by industry, so that there are certain industries which have proved to be more problematic in their adherence to the requirements. Sponsors from those industries score additional points in our risk assessment for receiving closer monitoring than others. The department also sends a questionnaire to sponsors six months after the commencement of a 457 applicant and thereafter every 12 months. That information—the answers or the non-reply to that questionnaire—is fed into the mix as well. The third element that currently feeds into the direction of our targeted monitoring is information that comes to the department through the customer service line or from … third parties ... That then informs our state office people as to where best to target their monitoring at present.[54]

3.33 DIAC currently has '62 monitors working on the 457 program, with plans to grow that by a further 30 as a result of the funding coming from government in the package that was announced by the minister'.[55]

Suggestions for improvement

3.34 The Committee is concerned that the implementation and administration of the new compliance arrangements for the 457 visa program should benefit from suggestions for improvement raised during the inquiry—noting that some of these have already been addressed by the new arrangements. Reflecting the concerns of a range of organisations, these suggestions included that:

- workplace inspections should be 'both announced and unannounced' and workplace inspectors should have the power to conduct interviews with temporary business visa holders and employer staff;[56]
- monitoring and integrity measures 'should focus on what is at the heart of the sponsorship mechanism'—that is, 'ensuring that the

54 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 77. The questionnaire referred to above is DIAC Form 1110, 'Business Sponsor Monitoring'—see Commonwealth Government, *Submission No. 33*, pp. 73-78.

55 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 82.

56 Human Rights and Equal Opportunity Commission, *Submission No. 4*, p. 5.

right money is paid' and 'that the work nominated is being undertaken';[57]

- any employer found abusing the system 'should be excluded from further participation in the scheme and be subject to civil and criminal penalties';[58]
- in order to expedite the 457 visa process, standard business sponsors 'who have a demonstrable record of compliance with the spirit and intent of the 457 visa process should be provided with dispensation in respect of some of the requirements';[59]
- DIAC should have the 'same powers as the OWS to demand access to company information particularly where it relates to pay rates and conditions';[60]
- there should be data matching of '457 data against tax records of 457 visa-holders held by the ATO';[61]
- there should be 'capacity to source information from other Government Departments' and 'joint and priority investigation of breaches of Australian laws such as those related to employment relations, superannuation, occupational health and safety, workers compensation, taxation';[62]
- there should be a 'ban on agents charging potential 457 holders exorbitant fees to secure employment and a visa';[63]
- there is a need for 'appropriate legislation that is enforceable'—the current 457 visa program 'does not have sufficient legislative support to ensure integrity in the enforcement process';[64] and
- 'some attention is immediately required to make clear what are permissible and impermissible deductions and what deductions

57 JohnInfo Lawyers, *Submission No. 38*, p. 4.

58 Australian Council of Trade Unions, *Submission No. 39*, p. 34.

59 Australian Mines and Metals Association, *Submission No. 30*, p. 5.

60 Communications, Electrical and Plumbing Union, *Submission No. 61*, p. 6.

61 Mr Kinnaird, *Exhibit No. 8*, p. 64.

62 Immigrant Women's Speakout Association of New South Wales and the Philippines-Australian Women's Association, *Submission No. 49*, p. 3. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 9.

63 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 15.

64 Australia Meat Holdings Pty Ltd, *Submission No. 73*, p. 3.

cannot be brought into account in determining whether minimum salary levels have been met'.[65]

3.35 A number of participants also emphasised that DIAC must be properly resourced to undertake any enhanced monitoring role: '[t]he first issue is that DIAC and the Office of Workplace Services are not sufficiently staffed to be able to monitor the situation'.[66]

3.36 In summary, as Mr Waters from the MIA commented: '[i]f employers … know that the monitoring process is for real and is happening, and is happening extensively, they will respect this particular program in the same way perhaps as they would respect the rules of the ATO and other government institutions'.[67]

Reinforced integrity measures

3.37 Given the evidence provided to the inquiry about the need for enhanced monitoring, reporting and enforcement arrangements and the constructive suggestions made towards improving this area, the Committee supports the measures taken by the Minister in this regard. In particular, the Committee notes the proposal to elevate key obligations of the employer sponsor to the Migration Act as a reflection of their importance so that they will come into effect by operation of law. The new investigative and enforcement powers are also welcomed. As the Minister noted in his second reading speech on the legislation:

> The New Investigative Powers
>
> The bill also gives my Department greater investigative powers.
>
> These powers, to the extent possible, have been adapted from the investigative powers of Office of Workplace Services inspectors.
>
> Specially trained officers of my Department will have the power to enter (unannounced and without force) any place of business or any other place which they have reasonable cause

65 Australasian Meat Industry Employees Union, *Submission No. 23*, p. 25. See also Australian Manufacturing Workers Union, *Submission No. 40*, p. 7 and Engineers Australia and Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 13.

66 Mr Moir, WA Small Business Development Corporation, *Transcript of Evidence*, 30 April 2007, p. 17.

67 Mr Waters, MIA, *Transcript of Evidence*, 16 May 2007, p. 27.

to believe there is information, documents or any other thing, relevant to monitoring the approved sponsor's compliance with the obligations.

In support of inspectors' information gathering powers, the Bill also creates an offence for failing to produce a document requested by an inspector. This offence attracts a maximum penalty of imprisonment for 6 months.

The New Enforcement Powers

The bill attaches civil penalties to breaches of obligations with a maximum of $6 600 for an individual and $33 000 for a body corporate for each identified breach.

These penalties are complemented by other enforcement measures, both existing and others set up by this bill.

I will continue to have the power to cancel sponsorship approval or bar sponsors where they have failed to comply with a new obligation. I will also now be able to bar sponsors who have breached a law of the Commonwealth, State or Territory where appropriate.

Where my Department has identified a breach of an obligation and is pursuing civil remedy proceedings, the Court, in addition to imposing a civil penalty on the employer, has the power to order the employer to pay a person monies owed under an obligation.

Persons owed money under an obligation may also independently seek restitution. If, for example, a worker has been paid less than the 'minimum salary level', he or she may pursue an order for the amount of the underpayment.

As well as creating a right of recovery, the bill also provides a power to make regulations to set up an infringement notice regime, under which sponsors would be issued with infringements notices as an alternative to civil proceedings. The amount of the infringement notices cannot exceed 1/5th of the maximum amount of the civil penalty ($1 320 for an individual and $6 600 for a corporation).[68]

68 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

3.38 As these changes are essential to strengthening the integrity of the 457 visa program and, taken as a whole, make fundamental modifications to its operation, the Committee believes it is important the program in its new form be independently reviewed in 12-18 months time.[69] It is also important that these changes do not increase 'red tape' and add to costs and processing times for business. Adequate resources also need to be allocated by DIAC to the implementation, monitoring and enforcement of the new arrangements.

Recommendation 16

3.39 **The Committee recommends that, given the number of significant changes made to the 457 visa program in 2007 and past concerns about the program, the Department of Immigration and Citizenship commission an independent review of the program in 2008-09 to assess the impact of these changes on the program's effectiveness, fairness and integrity.**

Recommendation 17

3.40 **The Committee recommends that the Department of Immigration and Citizenship ensure that adequate resources are allocated to the compliance regime under the 457 visa program and, in particular, to the implementation and enforcement of the new arrangements.**

3.41 There is also a need for DIAC to undertake more detailed reporting on its monitoring activities to further build public confidence in the 457 visa program.

Recommendation 18

3.42 **The Committee recommends that the Department of Immigration and Citizenship regularly report on its website details of monitoring and enforcement activities—for example, on the number of employer sponsors monitored, sites visits conducted, sponsor approvals cancelled, sponsors banned and sponsors fined.**

3.43 The Committee further emphasises that, in order for this new compliance regime to operate effectively and fairly, information about

69 See, for example, the recommendation by the Cairns Chamber of Commerce that 'a regular review process (possibly every 2 years) be put in place to ensure the 457 visa program remains a useful tool for the business community', *Submission No. 27*, p. 9.

457 visa requirements, compliance obligations and sanctions needs to be clearly communicated to employers, migration agents and other stakeholders. This issue is discussed later in this chapter.

Mechanism for reporting alleged breaches

3.44 The Committee was concerned to hear of the plight of some 457 workers who were in allegedly 'exploitative' positions but felt unable to report their concerns about possible breaches of immigration, OH&S, taxation, workplace relations and criminal law as they were not assured of a confidential mechanism that would protect them from possible retaliatory action from their employer.[70]

3.45 They therefore risked termination of their employment and ultimately having their visa cancelled and being deported from Australia. As Ms Bissett from the ACTU commented: 'there needs to be some protection for the 457 visa holders who do have legitimate complaints and legitimate issues so that they can raise those without having the threat hanging over their head of a 28-day deportation'.[71]

3.46 Concerns were also raised that, on a more basic level, some 457 visa holders did not know where to go to in any case to report their concerns: 'we found that there is really very little knowledge about how you seek redress. None of them really knew about the Office of Workplace Services, for example … That is the big thing that has come out'.[72] This is further discussed in the section on Communication, later in this chapter.

3.47 During the course of the hearing, the Committee sought information from DIAC about what protection is afforded to 457 visa holders bringing possible abuses of the program to the department's notice. DIAC advised that:

> … these matters are investigated in a manner that provides as much protection to the visa holder as possible. For example, where the allegation is in relation to underpayment of the MSL, DIAC investigates salary records for a number of workers, where this is possible, not just the complainant. In

70 See, for example, Immigrant Women's Speakout Association of New South Wales and the Philippines-Australian Women's Association, *Submission No. 49*, p. 8.

71 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 8.

72 Dr Wise, Macquarie University, *Transcript of Evidence*, 1 June 2007, p. 64.

> this way, any issues that are identified are seen to arise from normal monitoring activities, not from an allegation made by the visa holder.[73]

3.48 Several contributors specifically highlighted the need for some kind of 'whistleblowing' mechanism or 'complaints hotline' to protect 457 workers—to provide them with a confidential way to report alleged breaches or seek advice and assistance:[74]

> The fear of deportation and losing even very limited income has meant that the employee will not make a complaint ... Protections for visiting migrants holding subclass 457 and related visas should be improved, to ensure that all such visa holders … are able to freely make a complaint without fear of reprisal by their employer.[75]

> The fear of loss of job (with no access to remedies against unfair or unlawful termination), and hence a requirement to leave the country if no new sponsorship is found, is a major impediment to reporting breaches and/or mistreatment of temporary skilled overseas workers by the workers … Relevant agencies must establish safe and secure mechanisms of communication between the agency and the 457 visa holder.[76]

> … the department [should] establish an anonymous hotline for reporting situations of abuse of 457 holders. This should be widely promoted to 457 holders with a particular focus on problem industries.[77]

3.49 The Human Rights and Equal Opportunity Commission (HREOC) best summarised how such a mechanism might work:

---

73 DIAC, *Submission No. 86*, p. 2.

74 Interestingly, Mr Waters from the MIA commented that they had 'introduced a pro bono service for at-risk visa holders in the 457 area … in close consultation with the ACTU and the immigration department to ensure that those exploited visa holders have independent, effective and appropriate assistance available to them at no cost', *Transcript of Evidence*, 16 May 2007, p. 25.

75 Uniting Church in Australia, *Submission No. 15*, p. 3 and p. 5.

76 Australian Council of Trade Unions, *Submission No. 39*, p. 34 and p. 37.

77 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 15. See also Entity Solutions, *Submission No. 44*, p. 12; Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 6; Federation of Ethnic Communities Council of Australia, *Submission No. 34*, pp. 3-4; Snedden, Hall and Gallop Lawyers, *Submission No. 17*, p. 2; Australian Nursing Federation, *Submission No. 63*, p. 5; and Australian Manufacturing Workers Union, *Submission No. 40*, p. 9.

> DIMA should ensure that any person with concerns about the way they are being treated by their employer have free, simple and confidential access to a DIMA complaints line for temporary business visa holders.
>
> The DIMA complaints line should be linked to TIS [Telephone Interpreting Services].
>
> DIMA should ensure that contact information for the following complaint agencies is prominently displayed in all workplaces where temporary business visa holders are employed:
>
> - DIMA
> - Office of Workplace Services …
> - Human Rights and Equal Opportunity Commission
> - State and Territory anti-discrimination and equal opportunity agencies
> - legal aid services in the relevant state or territory
> - relevant unions.
>
> Staff on the DIMA complaints line should be properly trained as to the alternative complaint options available to the temporary business visa holder.[78]

3.50 DIAC advised that 457 visa holders have 'a range of ways to bring their complaint to the attention of the department. They include contacting us directly, contacting a business centre, ringing us through our standard 131 number or ringing us through our "dob in" line'.[79]

Recommendation 19

3.51 **The Committee recommends that the Department of Immigration and Citizenship introduce a more comprehensive, confidential complaints mechanism so that 457 visa holders are able to report potential breaches of visa requirements without provoking retaliatory action. This mechanism should also be widely promoted to 457 visa holders.**

78 Human Rights and Equal Opportunity Commission, *Submission No. 4*, p. 3.

79 Ms Daniels, DIAC, *Transcript of Evidence*, 1 June 2007, p. 73.

Cessation of employment

3.52 As referred to above, the Committee recognises that one of the reasons visa holders can be reluctant to report abuse is that they are fearful their employment will be terminated and they will be returned home. It was put to the Committee that the 28-day period to find alternative employment was insufficient for visa holders and increased their vulnerability to 'rogue' employers.[80] The Philippines Australia Union Link commented that, if a visa holder 'leaves the employer's service, they lose any income, their visa and any right to work in Australia'.[81] It was argued that finding a sponsor within 28 days was:

> … a very hard task as no information on which businesses are approved sponsors is available publicly. Moreover, the employee is out of their country, is likely to be burdened by debt, and may face the situation where the erring employer will not or can not pay entitlements owing to the employee, including the cost of return travel to their country of origin. If detained and deported, the costs incurred may become a debt to the Commonwealth.[82]

3.53 It was recommended to the Committee that visa holders be given three months to find alternative employment.[83] Furthermore, it was argued that this period be extended if compensation or employment litigation were being sought, and that visa holders be provided with relevant welfare and employment services.[84]

3.54 The Australian Industry Group saw the 28-day transition period as an opportunity for visaed employees to leave unsatisfactory employment conditions:

> They can vote with their feet. As you would be aware, they have 28 days to change employment. They are in very high demand areas. To be on the list and to have been brought out

80 Construction, Forestry, Mining and Energy Union, *Submission No. 21*, p. 4; and Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 5.

81 Philippines Australia Union Link, *Submission No. 45*, p. 8.

82 Philippines Australia Union Link, *Submission No. 45*, p. 9. See also Immigrant Women's Speakout Association of New South Wales and the Philippines-Australian Women's Association, *Submission No. 49*, p. 8.

83 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 8; Mr Conroy, Australian Manufacturing Workers Union, *Transcript of Evidence*, 17 May 2007, p. 19; and Construction, Forestry, Mining and Energy Union, *Submission No. 21*, p. 4.

84 Australian Council of Trade Unions, *Submission No. 39*, p. 25.

> here you can guarantee that their skills will be in great demand, and if there are abuses in their workplaces they will vote with their feet. We have quite a number of cases where we have heard that happen … That is a huge cost for the employer, who might have spent $5,000 or $10,000 bringing that person out here.[85]

3.55 In a letter to the Committee, DIAC outlined their approach to visa holders who cease working for their sponsoring employer.[86] In summary, visa holders are given 28 days to find an alternative sponsor, during which time their original sponsor continues to pay their salary. 'At the end of 28 days', DIAC explained:

> … the Department will seek to make contact with the visa holder to discuss options. If the visa holder has reasonable prospects of finding another sponsor, we will provide the visa holder with more time to continue to look. It should be noted, however, that after the 28 days, the original sponsor is no longer liable for provision of salary to the employee unless this is part of an applicable industrial entitlement. It is the link to continuation of salaries paid after the visa holder loses their job that tends to highlight the 28 day period.[87]

3.56 If the visa holder does not have 'a reasonable prospect' of finding an alternative sponsor they are assisted to return home.[88]

3.57 The Committee heard that the DIAC Business Centres located in each state had the discretionary power to afford visa holders with additional time to arrange alternative employment.[89] As Ms Daniels from DIAC informed the Committee:

> I think it is fair to say that the general parameters are that they have 28 days to find a new employer, but on a case-by-case basis we would expect that each individual is effectively case managed in the sense that if they need more time or they are actively looking for a new employer then we certainly

85 Mr Melville, Australian Industry Group, *Transcript of Evidence*, 1 June 2007, p. 5.
86 DIAC, *Submission No. 86*, pp. 1-2.
87 DIAC, *Submission No. 86*, p. 1.
88 DIAC, *Submission No. 86*, p. 1.
89 Ms Daniels, DIAC, *Transcript of Evidence*, 1 June 2007, p. 76.

would expect that they would have the opportunity to take a little bit longer than the 28 days.[90]

3.58 The Committee was satisfied that the 28-day transition period was sufficient in view of the discretionary powers of DIAC to provide additional time if required. It is the Committee's view that sponsors and visa holders should be informed that DIAC has the flexibility to permit workers to remain beyond 28 days following the termination or cessation of employment.

Recommendation 20

3.59 **The Committee recommends that the Department of Immigration and Citizenship (DIAC) develop and distribute promotional material for 457 sponsors and visa holders that clearly sets out the rights of visa holders and the process that follows employment cessation. This information should:**

- **clearly state that DIAC has the power to allow 457 visa holders to stay beyond a 28-day period following the cessation of employment;**
- **be distributed to all new 457 visa holders and sent to the known postal addresses of 457 visa holders currently in Australia; and**
- **be provided in both English and the first language of the visa holder.**

Commonwealth, state and territory collaboration in compliance

3.60 The Committee heard a number of concerns about the need for improved cooperation between Commonwealth and state/territory agencies relating to compliance, to ensure prompt referral and investigation of potential breaches of Australian laws. The Western Australian Government commented, for example, that '[s]trengthening both Commonwealth and State Government processes for monitoring and enforcing employers' compliance with employment and other laws is crucial to the integrity of the 457 visa program.'[91]

3.61 Similarly, the ACTU commented that 'the rights of temporary skilled overseas workers can be best protected through a high level of co-

90 Ms Daniels, DIAC, *Transcript of Evidence*, 1 June 2007, p. 75.

91 WA Government, *Submission No. 68*, p. 6.

operation between all agencies involved in monitoring of workplaces, including employment rights, occupational health and safety, wages, visa inspection'.[92]

3.62 There was also a call for DIAC to provide more detailed information to the states and territories on 457 visa usage, particularly where significant numbers of 457 visa holders are settling in regional centres, to assist with settlement and planning issues:

> DIAC should be required to provide to State Governments the details of s.457 holders' employers and general numbers of s.457 holders located within their jurisdiction, to enable the States to accurately assess impact, monitor workplace health and safety, and plan for adequate services.[93]

3.63 One of the impediments to information sharing apparently related to privacy laws:

> ... Commonwealth agencies are currently unable to share information on their investigations with State agencies due to privacy laws … The issue of federal privacy laws in sharing information across governments needs to be clarified in the context of the compliance and monitoring of employers under the 457 visa system.[94]

3.64 The Committee considers that these concerns appear to have been addressed by the Minister's recent announcement about the program:

> The Bill authorises disclosure of personal information regarding sponsors and visa holders to prescribed agencies of the Commonwealth or of a State or Territory.
>
> For example, where in the course of performing his or her functions, an inspector finds a workplace that obviously appears to fall short of basic occupational health and safety standards, he or she would be able to make such an observation known to the State or Territory body responsible for monitoring such standards.

---

92 Australian Council of Trade Unions, *Submission No. 39*, p. 33.

93 Queensland Government, *Submission No. 65*, p. 5. See also Australian Council of Trade Unions, *Submission No. 39*, p. 33; R T Kinnaird and Associates, *Submission No. 80*, p. 1; and Australian Manufacturing Workers Union, *Submission No. 40*, p. 8.

94 WA Government, *Submission No. 68*, p. 5.

> I would expect my Department to be informed of the outcome of any such investigation so consideration could be given to bar the sponsor for breach of a law of the Commonwealth, State or Territory.
>
> To facilitate information exchange with the Australian Taxation Office, the bill also includes necessary amendments to the Taxation Administration Act 1953.[95]

3.65 The Committee also notes that the COAG review of the 457 visa program is still ongoing and that this process is looking at measures to better:

- enable cooperation between relevant Commonwealth/State agencies to ensure expedient referral and investigation of potential breaches and secure compliance with Australian laws …
- examine the ability for Commonwealth/State agencies to exchange information in this area.[96]

Communication

DIAC's communication with sponsors, visa holders and other stakeholders

3.66 This report has necessarily canvassed a number of communication issues associated with the 457 visa program. There was consensus in the evidence that more needed to be done to ensure that visa holders and sponsors were aware of both their rights and responsibilities.[97] Of particular concern was that visa holders' vulnerability to abuse was increased due to limitations in the provision of information:

> Should they be well-informed of their rights, entitlements and obligations? Absolutely. DIAC or the sponsoring employer should have a requirement to give them a show bag, or whatever term you want to use, of information in English, or possibly in their home language, that they can understand. That information should say, 'If you have a problem or if

95 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

96 Ministerial Council on Immigration and Multicultural Affairs, '457 Visa', 14 July 2006—see Commonwealth Government, *Submission No. 33*, p. 16.

97 Association of Consulting Engineers Australia, *Submission No. 14*, p. 6.

> your employer's obligations, as set out in this literature, aren't what's happening to you, here is a 1800 number to ring.' That should be to DIAC and DIAC should then make appropriate enquiries. We have no problem with that at all.[98]

3.67 The Committee heard a range of options aimed at improving the dissemination of information and communication exchange between stakeholders. These included:

- creating a telephone hot line for visa holders to report abuse;[99]
- providing all visa holders with a copy of the sponsor's visa approval letter which outlines the employer's responsibilities;[100]
- developing a plain language information and orientation kit for visa holders, including information on employment rights, OH&S, unions, Australian Workplace Agreements and minimum conditions, and contact points for relevant government agencies and ethnic community organisations, as well as advice on record keeping in case of a dispute with their sponsor;[101]
- informing relevant community, union and other support groups when large groups of 457 visa holders enter a community;[102]
- ensuring state and territory authorities have the necessary information to monitor 457 visa holders and sponsors;[103]
- reviving the idea of a Business Advisory Panel to provide policy advice to DIAC about the needs of business in regard to the 457 visa program;[104]
- sending sponsors a checklist outlining their obligations;[105] and
- developing simple mechanisms for sponsors to provide DIAC with relevant compliance information, such as through the use of templates and the provision of direct email links.[106]

98 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 46.

99 Entity Solutions, *Submission No. 44*, p. 12.

100 Mrs Carstairs, Rural Enterprises, *Transcript of Evidence*, 30 April 2007, pp. 40-41.

101 Dr Wise and Dr Velayutham, *Submission No. 85*, p. 14.

102 Australian Council of Trade Unions, *Submission No. 39*, p. 10.

103 Queensland Government, *Submission No. 65*, p. 5.

104 Fragomen Australia, *Submission No. 13*, p. 10.

105 Cairns Chamber of Commerce, *Submission No. 27*, p. 7.

106 Entity Solutions, *Submission No. 44*, p. 12.

3.68 While addressing several problems identified with the current visa arrangements, the recent changes proposed by the Minister provide DIAC with a considerable communications challenge. As the MIA emphasised: '[t]here should be a substantial information campaign to alert employers should employer sanctions be increased'.[107] In his second reading speech to Parliament on the bill to amend the Migration Act, the Minister outlined undertakings to address limitations in the program's communication strategy and provide clarity on issues that had previously caused confusion, including:

- 'enhanced information exchange powers between my department [DIAC] and other prescribed Commonwealth, state and territory agencies';[108] and
- elevating the existing undertakings required of sponsors to legal requirements and clearly delineating sponsors' legal obligations with regard to travel costs, medical expenses, recruitment and migration fees, and adequate record keeping.[109]

3.69 Effective communication of these proposed changes to sponsors, visa holders and the public at large is essential to the program's integrity and ensuring public confidence in the program. The Committee urges DIAC to develop and resource a comprehensive communications strategy to promote the proposed changes. The Committee believes that with adequate promotion the announced changes will strengthen the program and address key issues identified during this inquiry.

Recommendation 21

3.70 **The Committee recommends that the Department of Immigration and Citizenship develop a communications strategy to ensure that stakeholders, including sponsors and visa holders, and the broader Australian population are adequately informed of the proposed changes to the 457 visa program. This should provide clarity on sponsors' legal obligations, including the payment of travel costs, medical expenses, recruitment and migration fees, and the necessity of adequate record keeping.**

107 MIA, *Submission No. 9*, p. 15.

108 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

109 Hon Kevin Andrews MP, Minister for Immigration and Citizenship, Second reading speech on the *Migration Amendment (Sponsorship Obligations) Bill 2007*, 21 June 2007, http://www.minister.immi.gov.au/media/speeches/2007/ka04-21062007.htm.

Recommendation 22

3.71 **The Committee recommends that the Department of Immigration and Citizenship (DIAC) provide clear guidelines for 457 sponsors and visa holders on their rights and obligations. At the time of granting a visa DIAC should provide:**

- **sponsors with a checklist outlining their obligations; and**
- **visa holders with a list of their rights and their sponsor's obligations in both English and their first language.**

In addition, this information should be provided to existing sponsors and visa holders in Australia.

Data reporting

3.72 A number of contributors pointed to the need for more detailed data on the operation of the 457 visa program:

> … there should be much greater transparency and public disclosure of information about the 457 visa program.[110]

> The ANF asks that DIMA establish regular and accurate reports and statistics on all aspects of the 457 visa program.[111]

3.73 Mr Kinnaird suggested that this data should encompass:

- the jobs for which 457 visa nominations have been approved …
- location of the position (for example, Sydney, country NSW), detailed industry and occupation (ASCO six-digit code), base salary and other remuneration, skill sets specified by the employer for the position … and specified experience required …
- aggregated data on 457 visa nominations approved, say by industry sector and/or detailed occupation groupings …
- data on actual base salaries paid to 457 visa-holders [as distinct from 457 salary levels approved by DIAC when it approves the visa] ...[112]

110 R T Kinnaird and Associates, *Submission No. 80*, p. 1.

111 Australian Nursing Federation, *Submission No. 63*, p. 9. See also Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 3.

112 Mr Kinnaird, *Exhibit No. 8*, p. 63. See also Queensland Government, *Submission No. 65*, p. 5; Communications, Electrical and Plumbing Union, *Submission No. 61*, p. 24; and Australian Nursing Federation, *Submission No. 63*, p. 9.

3.74 The Committee agrees that greater transparency and public disclosure of information and statistics would be of benefit, particularly in reinforcing community confidence in the operation of the program.

Recommendation 23

3.75 **The Committee recommends that the Department of Immigration and Citizenship collect and publish, as appropriate under privacy laws, more detailed statistics on the 457 visa program—for example, on the occupations and actual base salaries of 457 workers—to enhance transparency and reinforce public confidence in the operation of the program.**

DIAC program administration

Visa processing times

3.76 Lengthy 457 visa processing times were widely reported in evidence to the Committee. For example, the MIA, a body representing some 1,500 migration agents in Australia, commented that:

> A deterioration of Temporary Resident 457 sponsorship and visa processing times is unacceptable and causing damage to employers who need skills urgently that for labour shortage or product specific reasons are not available locally. We understand from our regular liaison with DIAC at state and national level that the delays have been caused variously and collectively over the past 2 years by staff shortages, insufficient training effort and software and information technology problems. Fixing these problems is of vital importance.[113]

3.77 Those providing evidence to the inquiry also commented on the serious cost implications such delays had on their business:

> Given that many of our sponsored employees are required in Australia as a matter of urgency in order to implement or oversee critical projects, particularly in a specialist ICT field, a

113 MIA, *Submission No. 9*, p. 17.

> 6 to 8 week processing delay is simply untenable to the operations of Australian businesses.[114]

3.78 It was further observed that slow processing times affect Australia's competitiveness in the global market for skills:

> The shortage of engineers is now becoming a global issue, meaning the potential for business migration to fill these gaps is increasingly competitive. It will be vital for Australian processing procedures and times to remain simple and short to avoid potential applicants accepting positions in other countries.[115]

3.79 DIMA's *Portfolio Budget Statements 2006-07* indicated median processing times against service standards for the 457 visa of 30 days for applicants from low-risk countries, and six weeks for medium-risk countries.[116] However, the Committee heard of the following variation in processing times:

> Electronically lodged packages … have gone out on average from 2 weeks processing time to up to 8 weeks over the past 2 years. Manually lodged packages have gone out from 4 weeks on average to a minimum of 3 months.[117]

> Over the last couple of years we have seen a significant increase, we believe, in the processing time for 457 visas. It went from about 10 to 14 days early last year through to about six to eight weeks.[118]

> 457 visa processing times, at least in Sydney, take from six to eight weeks for non ETA nationals and four to six weeks for ETA nationals. Processing times appear to be getting progressively longer.[119]

---

114 Entity Solutions, *Submission No. 44*, p. 8. See also Association of Consulting Engineers Australia, *Submission 14a*, pp. 2-3.

115 Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28*, p. 5.

116 DIMA, *Portfolio Budget Statements 2006-07*, Canberra, 2006, p. 66. 'High risk' is defined as those nations for whom ETA is not available. Service standards exclude sponsorships and nomination processing.

117 MIA, *Submission No. 9*, pp. 16-17.

118 Ms Motto, Association of Consulting Engineers Australia, *Transcript of Evidence*, 16 May 2007, p. 34.

119 Stirling Henry Migration Services, *Submission No. 16*, p. 4.

> … the period prior to final approval can range from 6 to up to 12 weeks.[120]

3.80 The Committee also heard of delays with overseas integrity checking:

> Applications lodged where 'in-country' integrity checking is required [have] increased from six weeks, to a minimum of three months and in some cases up to eight months. Member feedback indicate that the resources to undertake this level of checking are inadequate.[121]

3.81 In their submission, DIAC pointed to a 'general improvement in processing times between July 2003 to January 2006', partially due to the introduction of electronic lodgement. However, the department indicated that the 'increase in processing times in 2006 is likely to be linked to an increase in the volume of higher risk cases that require closer checking'.[122] DIAC advised in June 2007 that the average processing time for ASCO 1-3 applications was 'currently running at 27 days'. In the case of lower ASCO classes, DIAC commented that 'it is probably fair to say that there is increased evidence of fraudulent documentation or fraudulent statement of skills or qualifications'.[123]

3.82 Streamlined visa processing is of critical concern to employers. Although it is accepted that there has been a steady increase in 457 visa applications over recent years, these lengthy processing times are of serious concern to the Committee.

3.83 While the Committee acknowledges that some aspects of visa processing times are affected by factors over which DIAC has limited control, such as whether applications lodged have been fully completed and the time taken to undertake security and health checks, clearly there is an urgent need to streamline processes for business, without putting the integrity of the program at risk.

3.84 Accordingly, the Committee welcomes the Minister's recent announcement on the implementation of arrangements for the 'fast-tracking' of applications from employers with a 'demonstrated record' of complying with the 457 visa program:

---

120 Australian Mines and Metals Association, *Submission No. 30*, p. 19.

121 MIA, *Submission No. 9*, p. 17.

122 Commonwealth Government, *Submission No. 33*, p. 11.

123 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 70.

> Applications lodged by fast-tracked employers and their overseas personnel will be priority processed, helping to streamline access to skilled workers.[124]

3.85 However, at the time of finalising this report, there was no detailed information available on how this arrangement would work in practice or what processing service standards have been set and resources allocated to achieve 'fast-tracking'[125]—how, for example, processing times might be speeded up for visas from certain countries where further checking was required, without compromising the integrity of the program.

Recommendation 24

3.86 **The Committee recommends that, to ensure fast-tracked service standards for processing times are met, the Australian National Audit Office undertake a performance audit of the administration of the 457 visa program next financial year. This audit should examine processing efficiency—that is, the extent to which the fast-track processing initiative leads to faster processing times compared to the rest of the caseload.**

Electronic lodgement arrangements

3.87 The Committee understands that an electronic lodgement facility was introduced on 1 November 2003, enabling Australian employers and overseas workers to make applications for online 457 sponsorship, nomination and visas.[126] DIAC commented that the use of this facility in terms of the 457 visa had grown rapidly. For example, in 2005-06, some 65 per cent of sponsorships were lodged online, 72 per cent of nominations and 73 per cent of visas.[127]

3.88 Several participants to the inquiry were critical of this electronic lodgement facility. The MIA commented that, while this process 'seemed to work well for a short period in its infancy, it has been

124 Media release by the Hon Kevin Andrews MP, Minister for Immigration and Citizenship, 'New changes to the skilled temporary visa laws', 26 April 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07030.htm.

125 For further details on how the fast-track processing arrangement might be implemented see Mr Waters, MIA, *Transcript of Evidence*, 16 May 2007, p. 24; and Association of Consulting Engineers Australia, *Submission No. 14a*, pp. 4-5.

126 Commonwealth Government, *Submission No. 33*, p. 11.

127 Commonwealth Government, *Submission No. 33*, p. 11.

fraught with problems, delays and downtime overall and there is no sign of this situation improving in the foreseeable future.'[128] The MIA also pointed to insufficient training of DIAC staff working in 457 e-lodgement processing.[129]

Recommendation 25

3.89 **The Committee recommends that the Department of Immigration and Citizenship improve its visa electronic lodgement procedures to ensure the effectiveness of the 457 visa program.**

Industry Outreach Officers

3.90 Currently there are 15 DIAC Immigration Outreach Officers (IOOs) working in 19 host organisations.[130] DIAC described the role of the IOOs as being:

> … to engage with those key industry sectors to ensure that there is a two-way flow—that there is understanding by those industry sectors of what the obligations and parameters of the migration program are. In return, we get very useful and very timely insight and feedback from those industry sectors on the effectiveness of the various parameters of the visa programs.[131]

3.91 The Committee heard overwhelmingly positive feedback from organisations that were utilising IOOs, and evidence suggested that they were providing a two-way communication flow between DIAC and industry as intended.[132] As Restaurant and Catering Australia submitted:

> The R&CA is most grateful for this resource and commends the Government for this commitment to building the level of knowledge and understanding, within the business community, of immigration programs … The Association

128 MIA, *Submission No. 9*, p. 17.

129 MIA, *Submission No. 9*, p. 18.

130 Mr Parsons, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 53.

131 Mr Parsons, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 53.

132 Mr Howard-Smith, WA Chamber of Minerals and Energy, *Transcript of Evidence*, 30 April 2007, p. 5; Restaurant and Catering Australia, *Submission No. 50*, p. 15; Mr Bidwell, Commerce Queensland, *Transcript of Evidence*, 16 April 2007, p. 55; and Association of Consulting Engineers Australia, *Submission No. 14*, p. 4.

> believes that this program is a meaningful way to gather intelligence from the business community to improve administrative procedures, monitoring and enforcement of temporary business migration arrangements.[133]

3.92 Although no exact figures were given with regard to the cost of the IOO program, there were indications of some resource sharing between DIAC and host organisations.[134] DIAC provided salaries and computing equipment, while host organisations provided accommodation.

3.93 The Committee commends DIAC on the development of the IOO program and supports its continuation and expansion. The Committee believes the initiative provides a 'best practice' model for other government departments interacting with industry.

Don Randall MP
Chair

133 RCA, *Submission No. 50*, p. 15.

134 Mr Melville, Australian Industry Group, *Transcript of Evidence*, 1 June 2007, p. 8. See also Mr Parsons, DIAC, in Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates, 21 May 2007, p. 54.

Additional comments

Senator Helen Polley, Mr Laurie Ferguson MP, Mrs Julia Irwin MP and Hon Dr Carmen Lawrence MP

Labor supports the Committee's report and recommendations. However, Labor members of the Committee must note that the report's recommendations fall short of recommending Labor's key policy in regard to temporary skilled work visas.

Labor believes that temporary skilled workers are entitled to the effective market rate of pay based on the principle of equal pay for equal work. Labor would ensure that temporary work visa holders are paid within the ambit of the going market rate for the relevant industry. Labor would maintain the Minimum Salary Levels as a base salary under the 457 visa.

Senator Helen Polley
Deputy Chair

Mr Laurie Ferguson MP

Mrs Julia Irwin MP

Hon Dr Carmen Lawrence MP

A

Appendix A: List of submissions

Submission	Individual/organisation
1	Townsville Enterprise Ltd
2	Peel Development Commission
3	Riverina Regional Development Board
4	Human Rights and Equal Opportunity Commission
5	Australian and New Zealand College of Anaesthetists
6	Growcom
7	Adult Multicultural Education Services
8	Australian Rail, Tram and Bus Industry Union
9	Migration Institute of Australia
10	Hotel Motel and Accommodation Association
11	Recruitment and Consulting Services Association
12	Midfield Meat International Pty Ltd
12a	CONFIDENTIAL
13	Fragomen Australia
14	Association of Consulting Engineers Australia
14a	Association of Consulting Engineers Australia (supplementary)

15	Uniting Church in Australia
16	Stirling Henry Migration Services
17	Snedden Hall and Gallop Lawyers
18	Printing Industries Association of Australia
19	Dr Siew-Ean Khoo, Professor Peter McDonald and Professor Graeme Hugo
19a	Dr Siew-Ean Khoo (supplementary)
20	Liquor, Hospitality and Miscellaneous Union
20a	Liquor, Hospitality and Miscellaneous Union (supplementary)
21	Construction, Forestry, Mining and Energy Union
22	National Farmers Federation
22a	National Farmers Federation (supplementary)
22b	National Farmers Federation (supplementary)
23	Australasian Meat Industry Employees Union
24	Filipino Australian Affiliation of North Queensland
25	Commerce Queensland
26	Australian Meat Industry Council
26a	Australian Meat Industry Council (supplementary)
27	Cairns Chamber of Commerce
28	Tourism and Transport Forum Australia Ltd and Infrastructure Partnerships Australia
28a	Tourism and Transport Forum Australia Ltd and Infrastructure Partnerships Australia (supplementary)
29	Australian Refugee Association
30	Australian Mines and Metals Association
31	Australian Nursing and Midwifery Council
32	Community and Public Sector Union
33	Commonwealth Government
33a	Commonwealth Government (supplementary)

33b	Commonwealth Government (supplementary)
33c	Commonwealth Government (supplementary)
34	Federation of Ethnic Communities Council of Australia
35	South Metropolitan Migrant Resource Centre
36	Australian Tourism Export Council
37	Ms Emanuela Canini
38	Johninfo Lawyers
39	Australian Council of Trade Unions
39a	Australian Council of Trade Unions (supplementary)
39b	CONFIDENTIAL
40	Australian Manufacturing Workers Union
41	SGS Australia Pty Ltd
42	Central Western Regional Development Board
43	Australian Medical Association
44	Entity Solutions Pty Ltd
45	Philippines Australia Union Link
46	Law Institute of Victoria
47	Australian Rural and Remote Workforce Agencies Group
48	CONFIDENTIAL
49	Immigrant Women's Speakout Association NSW and Philippine-Australia Women's Association
50	Restaurant and Catering Australia
51	New South Wales Government
52	Australian General Practice Network
53	Chamber of Commerce and Industry Western Australia
54	Engineers Australia and Association of Professional Engineers, Scientists and Managers Australia
54a	Engineers Australia (supplementary)
55	Media, Entertainment and Arts Alliance

56	Australian Doctors Trained Overseas Association
56a	Australian Doctors Trained Overseas Association (supplementary)
57	Australian Industry Group
58	Northern Rivers Regional Development Board
59	MigrantLink Australia Ltd
60	Mr Howard Tebble
61	Communications, Electrical and Plumbing Union
61a	Communications, Electrical and Plumbing Union (supplementary)
62	Information Technology Contract and Recruitment Association
63	Australian Nursing Federation
64	Australian Trucking Association
65	Queensland Government
66	Australian Financial Markets Association
66a	Australian Financial Markets Association (supplementary)
67	Australian Queen Bee Exporters Pty Ltd
68	Western Australian Government
69	Australian Skilled Migration
70	Austal Ships
70a	Austal Ships (supplementary)
71	Mr Andrew Gibson
71a	Mr Andrew Gibson (supplementary)
72	Victorian Government
73	Australia Meat Holdings Pty Ltd
74	Australian Chamber of Commerce and Industry
75	T&R Pastoral Pty Ltd
76	Australian Contract Professions Management Association

76a	Australian Contract Professions Management Association (supplementary)
77	Western Australian Department of Agriculture and Food
78	Tabro Meats Pty Ltd
79	Baker Hughes Australia Pty Ltd
80	R T Kinnaird & Associates Pty Ltd
80a	R T Kinnaird & Associates Pty Ltd (supplementary)
81	Western Australian Farmers Federation
82	Rural Enterprises
83	South West Institute of Technical and Further Education
84	Cytech Intersearch Pty Ltd
85	Dr Amanda Wise and Dr Selvarej Velayutham
86	Department of Immigration and Citizenship
86a	Department of Immigration and Citizenship (supplementary)
87	Transport Workers Union of Australia
88	Frank Lanza Migration Services
89	TK Building Pty Ltd

B

Appendix B: List of witnesses

Wednesday, 14 March 2007 - Melbourne

Australian Council of Trade Unions

Ms Michelle Bissett, Industrial Officer

Ms Alison Tate, International Officer

Australian Nursing Federation

Ms Geraldine Kearney, Assistant Federal Secretary

Entity Solutions Pty Ltd

Mr Matthew Franceschini, Chief Executive Officer

Miss Lindy Northover, General Manager

Information Technology Contract and Recruitment Association

Mr Alan Chanesman, Advisor to ITCRA

The Hon Mr Norman Lacy, Executive Director

Law Institute of Victoria

Ms Alice Palmer, Solicitor, Administrative Law and Human Rights Section

Mr David Stratton, Member, Migration Law Committee of the Administrative Law and Human Rights Section

Midfield Meat International Pty Ltd

Mr Noel Kelson, Executive Manager

Recruitment and Consulting Services Association

Ms Julie Mills, Chief Executive Officer

Ms Gemma Turner, Legal Advisor to RCSA

Uniting Church in Australia

Mr Antony McMullen, Social Justice Officer, Justice and International Mission Unit, Synod of Victoria and Tasmania

Dr Mark Zirnsak, Director, Justice and International Mission Unit, Synod of Victoria and Tasmania

Monday, 16 April 2007 - Brisbane

Individuals

Mr Andrew Gibson

Australasian Meat Industry Employees Union

Mr Graham Bird, Federal Secretary

Mr Craig Buckley, National Organiser

Mr Russell Carr, Queensland Branch Secretary

Mr Graham Smith, South Australian Branch Secretary

Australia Meat Holdings Pty Ltd

Mr John Keir, Chief Executive Officer

Mr Neville Tame, Group Manager, Human Resources

Commerce Queensland

Mr Paul Bidwell, General Manager, Policy

Communications Electrical Plumbing Union

Mr Alan Paton, Northern Territory Organiser, Communications

Mr Peter Tighe, National Secretary

Growcom

Mr Mark Panitz, Chief Advocate

Monday, 30 April 2007 - Perth

Austal Ships

Mrs Linda Devereux, Executive Manager, Human Resources

Mr Stephen Murdoch, Chief Operating Officer

Australian Mines and Metals Association

Mr Geoff Bull, Solicitor

Baker Hughes Australia Pty Ltd

Mr Edward Bamborough, Operations Manager, INTEQ - Australia, NZ and PNG

Ms Amy Billing, Visa Coordinator

Mr James Smith, Area Manager, South Asia Pacific, Baker Oil Tools Division

Ms Heather Sutherland, Human Resources Manager

Chamber of Minerals and Energy, Western Australia

Mr Reg Howard-Smith, Director

Rural Enterprises

Mrs Bev Carstairs, General Manager

Western Australian Department of Agriculture and Food

Mr Bruce Thorpe, Director, Farm Business Development Unit

Western Australian Small Business Development Corporation

Mr Bruce McFarlane, Director, Small Business Services

Mr Stephen Moir, Acting Managing Director

Wednesday, 16 May 2007 - Sydney

Association of Consulting Engineers Australia

Ms Megan Motto, Chief Executive Officer

Miss Caroline Ostrowski, Policy Officer

Australian Contract Professions Management Association

Mrs Ellison McMullen, Legal Counsel

Mr Colin Ware, Chairman

Australian Doctors Trained Overseas Association

Mr Andrew Schwartz, President

Construction, Forestry, Mining and Energy Union

Mr Peter Harris, Union Organiser, New South Wales Branch

Mr Rajan Kandasamy, Member

Mr Mikko Siikaluoma, Member

Mr John Sutton, National Secretary, National Office

Cytech Intersearch Pty Ltd

Mr Bernard O'Bree, Proprietor and Director

Ms Belinda Seers, Operations Manager

Liquor, Hospitality and Miscellaneous Union

Mr David Bibo, Organiser

Mr Joseph Kennedy, Legal Officer

Migration Institute of Australia

Mr Neil Hitchcock, Member

Mr Bernard Waters, Chief Executive Officer

Restaurant and Catering Australia

Mr John Hart, Chief Executive Officer

Thursday, 17 May 2007 - Sydney

Australian Financial Markets Association

Ms Denise Hang, Policy Executive

Mr David Lynch, Director of Policy

Australian Manufacturing Workers Union

Mr Pat Conroy, National Project Officer

Australian Meat Industry Council

Mr Kevin Cottrill, Chief Executive Officer

Mr Garry Johnston, National Director, Human Resources and Legal

Mr Ken McKell, Human Resources Manager

Immigrant Women's Speakout Association NSW

Ms Jane Brock, Chief Executive Officer

Infrastructure Partnerships Australia

Mr Graeme Geldart, Director, Policy and Administration

Mr Peter Olsen, General Manager, Human Resources, Leighton Contractors Ltd

Philippines Australia Union Link

Mr Peter Murphy, Secretary

R T Kinnaird & Associates Pty Ltd

Mr Bob Kinnaird, Director

Transport and Tourism Forum Australia Ltd

Ms Kate Davidson, National Manager, Research and Sustainability

Friday, 1 June 2007 - Canberra

Association of Professional Engineers, Scientists and Managers, Australia

Mr Geoff Fary, Acting Executive Director

Australian Chamber of Commerce and Industry

Dr Brent Davis, Director, Trade and International Affairs

Australian Demographic and Social Research Institute

Dr Siew-Ean Khoo, Senior Fellow

Professor Peter McDonald, Director

Australian Industry Group

Mr Anthony Melville, Director, Public Affairs and Government Relations

Mr Andrew Witheford, Senior Adviser, Public Policy

Australian Medical Association

Dr Mukesh Haikerwal, Immediate Past President

Mr Warwick Hough, Director, Workplace Policy

Centre for Research on Social Inclusion

Dr Selvaraj Velayutham, Postdoctoral Fellow

Dr Amanda Wise, Senior Research Fellow

Department of Education, Science and Training

Dr Anne Byrne, Branch Manager, Skills Analysis and Research Strategy Branch

Mr Greg Clarke, Director, Quality Systems and Skilled Migration Section, Skills Analysis and Quality Systems Branch

Department of Employment and Workplace Relations

Mr Chris Foster, Principal Advisor, Economics, Labour Market Strategies Group

Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group

Ms Jane Press, Director, Migration Policy and Analysis Section

Department of Immigration and Citizenship

Ms Jacqui Daly, Director, Labour Agreement Section, Business Branch

Ms Yole Daniels, Assistant Secretary, Business Branch, Migration and Temporary Entry Division

Mr David Drummond, Director, Sponsored Business Integrity Section, Business Branch

Mr Anthony Parsons, First Assistant Secretary, Migration and Temporary Entry Division

Engineers Australia

Mr Rolfe Hartley, National President

Ms Kate Hurford, Associate Director, Public Policy

Fragomen Australia

Dr David Crawford, Partner

Mr Robert Walsh, Managing Partner

National Farmers Federation

Mr Cawley Hennings, Workplace Relations Officer

Mrs Denita Wawn, Workplace Relations Manger and Industrial Advocate

Wednesday, 13 June 2007 - Canberra

Individuals

Mr Tony Matthews

Australian Trucking Association

Mr Neil Gow, National Manager, Government Relations

Globe Communications

Ms Natalie Sykes-Hutchins, Managing Consultant

Transport Workers Union

Mr Mark Crosdale, Newcastle and Northern Sub-branch Secretary

Tuesday, 3 July 2007 - Cairns

Individuals

Miss Helen Banks

Ms Carol Shipway

Mr John Young

Advance Cairns Limited

Dr Bruce McConaghy, Chief Executive Officer

Cafe China

Mr Bruce Sutcliffe, Consultant

Cairns Chamber of Commerce

Dr Chris White, Member

Mr Sandy Whyte, Executive Officer

Coral Coast Migration Service

Mr Nicholaas van Voorst van Beest, Registered Migration Agent

Filipino - Australian Affiliation of North Queensland

Ms Gemma Kay, Vice President

Frank Lanza Migration Services

Mr Frank Lanza, Migration Agent

Hilton Cairns

Mrs Tarita Neal, Director, Human Resources

Immigration Help

Ms Natalia Arens, Managing Director

In Depth Video and Photography

Mr Mark Geddes, Managing Director

Migration Plus

Ms Fiona Ryan, Agent

Swiss Farms

Mrs Franziska Inderbitzin, Partner

Townsville Migrant Resource Centre

Mrs Thez Hamilton, Client Service Officer, International Women's Group

C

Appendix C: List of exhibits

1 Growcom

Comment on Production Horticulturists (Submission to the Department of Immigration and Multicultural Affairs)

(Related to Submission No. 6)

2 Chamber of Minerals and Energy, Western Australia

Submission to the Department of Immigration and Multicultural Affairs on COAG/MCIMA call for measures to improve the temporary business 457 visa

3 Chamber of Minerals and Energy, Western Australia

Correspondence to Minister for Immigration and Multicultural Affairs on changes to subclause 457 visa

4 Recruitment and Consulting Services Association Ltd

Recruitment and Consulting Services Association Corporate Membership Categories of Service

5 Information Technology Contract and Recruitment Association

Information Pack on Information Technology Contract and Recruitment Association

6 Australian Chamber of Commerce and Industry

ACCI Issues Paper - 457 Review - An Opportunity to Improve Skilled Migration Program, November 2006

(Related to Submission No. 74)

7 Australian Contract Professions Management Association

Paper Prepared for Submission to DIAC

(Related to Submission No. 76)

8 R T Kinnaird & Associates Pty Ltd

Current Issues in the Skilled Temporary Subclass 457 Visa, in 'People and Place', vol. 14, no. 2, 2006

(Related to Submission No. 80)

9 Australasian Meat Industry Employees Union

AMIEU correspondence to Minister for Immigration

(Related to Submission No. 23)

10 Australasian Meat Industry Employees Union

AMIEU correspondence to Department of Immigration

(Related to Submission No. 23)

11 Cytech Intersearch Pty Ltd

Training Information provided to Fijian Nurses

(Related to Submission No. 84)

12 Cytech Intersearch Pty Ltd

Previous Questionnaires to our Nurses and Responses

(Related to Submission No. 84)

13 Cytech Intersearch Pty Ltd

Previous Newsletters to our Nurses

(Related to Submission No. 84)

14 Chamber of Minerals and Energy, Western Australia
Accessing the Required Skills from International Markets

15 Dr S Velayutham and Dr A Wise
The Moral Economies of Temporary Skilled Migration of Indians to Australia
(Related to Submission No. 85)

16 Rural Enterprises
Small Area Labour Markets – December Quarter 2006
(Related to Submission No. 82)

17 Rural Enterprises
Labour Agreement Occupation Codes
(Related to Submission No. 82)

18 Rural Enterprises
Survey Year 12 Graduates on Agriculture
(Related to Submission No. 82)

19 Australian Manufacturing Workers Union
Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes paper by Siew-Ean Khoo, Peter McDonald and Graeme Hugo, Australian Centre for Population Research
(Related to Submission No. 40)

20 Australian Manufacturing Workers Union
Guest workers cut wages: Vanstone (press article 8 June, 2006)
(Related to Submission No. 40)

21 Siew-Ean Khoo, Graeme Hugo and Peter McDonald
Skilled Temporary Migration from Asia-Pacific Countries to Australia
(Related to Submission No. 19)

22 Restaurant and Catering Australia
10 Things New Employees Should Know
(Related to Submission No. 50)

23 Restaurant and Catering Australia
Restaurant and Catering Australia Magazine Dec 2006
(Related to Submission No. 50)

24 Restaurant and Catering Australia
The Business of Eating Out - Second Year Implementation Report
(Related to Submission No. 50)

25 Restaurant and Catering Australia
Serving Up Flexibility - Creating Flexible Workplaces in the Restaurant and Catering Industry
(Related to Submission No. 50)

26 Commonwealth Government
Discussion Paper - Temporary Entry and Employment of Skilled Migrants
(Related to Submission No. 33)

27 Australian Doctors Trained Overseas Association
NSW Health - International Medical Graduates Forum Program
(Related to Submission No. 56a)

28 Australian Doctors Trained Overseas Association
NSW Health - International Medical Graduates Forum
(Related to Submission No. 56a)

29 Australian Doctors Trained Overseas Association
NSW Medical Board - Registration of International Medical Graduates
(Related to Submission No. 56a)

30 Transport Workers Union of Australia

Workforce Challenges in Road Transport - Truck Driver Recruitment, Retention and Retirement Research Project (Stage One)

(Related to Submission No. 87)

31 Australian Trucking Association

Australasian Transport News Article

(Related to Submission No. 64)

32 R T Kinnaird & Associates Pty Ltd

IT Article "Aussie-Indian mix pays off" 22/9/03, The Australian

(Related to Submission No. 80a)

33 R T Kinnaird & Associates Pty Ltd

Letter from US Senators to Infosys Technologies Ltd

(Related to Submission No. 80a)

34 Cairns Chamber of Commerce

Temporary Long Stay Business Visa - A Regional Perspective - June 2007

(Related to Submission No. 27)

35 Chamber of Minerals and Energy, Western Australia

Staffing the Supercycle: Labour Force Outlook in the Minerals Sector, 2005-2015

36 Chamber of Minerals and Energy, Western Australia

Significant Resource Projects Underway or Planned in Western Australia

D

Appendix D: Ministerial announcements on temporary business visa program

New Changes to Skilled Temporary Visa Laws[1]

Thursday, 26 April 2007

The Australian Government today announced new changes to the Skilled Temporary Visa Laws.

The changes include new civil penalties for employers who breach the law, greater powers for the Department of Immigration and Citizenship, and the Office of Workplace Services, to investigate employers, faster processing of applications for some employers and a higher English language requirement to be eligible for a Skilled Temporary Visa.

The Migration Act will be amended to ensure employers of skilled temporary overseas workers (457 visas) face tougher penalties if they breach their sponsorship obligations.

New civil penalties will apply for those employers who commit the most serious offences. Offences will relate to such matters as failure to pay the minimum salary level and using workers in unskilled jobs.

The Department of Immigration and Citizenship will also be given stronger powers to enforce employer compliance with the 457 visa programme,

---

1 Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New changes to the skilled temporary visa laws', 26 April 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07030.htm.

including the power to conduct unannounced audits of employers and their premises.

This will be complemented with greater powers for the Office of Workplace Services to investigate breaches of the Minimum Salary Level.

The Australian Government will put in place formal arrangements for the fast-tracking of applications from those employers who have a strong and demonstrated record of complying with the 457 visa programme.

Applications lodged by fast-tracked employers and their overseas personnel will be priority processed, helping to streamline access to skilled workers.

These changes will be introduced this year.

From 1 July 2007, employers will be required to ensure that overseas workers they sponsor have English language skills equivalent to an average score of 4.5 in an International English Language Testing System (IELTS) test, or a higher level where required as part of licensing or registration.

Applicants will be required to detail their English language skills and on a targeted basis, may be required to complete an IELTS test.

The manner in which this requirement would be implemented will continue to be discussed with key industry groups.

Due to a strong economy and unemployment at a 30 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Employers must recognise that access to skilled temporary migrants is a privilege, not a right, and if they abuse this privilege, then they will face strong penalties.

The changes that have been announced today will ensure that further obligations are put in place to protect and strengthen the integrity of the 457 visa scheme.

New tough penalties strengthen the integrity of the Temporary Skilled Migration Programme[2]

Thursday, 21 June 2007

The Minister for Immigration and Citizenship, Kevin Andrews, today introduced legislation into the Australian Parliament to strengthen the obligations of sponsors who employ 457 visa workers.

The legislation will impose sanctions and penalties on those employers who fail to comply with their obligations.

Employer obligations under the legislation will include:

- Payment of the Minimum Salary Level (MSL);
- Payment of all costs associated with recruitment of the sponsored worker and migration agent fees for the worker and their family;
- Payment of fees for mandatory licence, registration or membership required for the sponsored worker to work;
- The payment of a number of other costs, such as recruitment, medical and travel costs,
- Employing skilled workers in skilled positions, as opposed to semi or unskilled work.

Sponsors will also be required to keep records of all of these payments.

Sponsors will be obliged to produce documents on request. Failure to do so could result in six months imprisonment.

Failure to comply with these obligations could result in a civil penalty being imposed together with the cancellation of a sponsor's access to the 457 visa programme.

The bill attaches civil penalties to breaches of obligations with a maximum of $6 600 for an individual and $33 000 for a body corporate for each identified breach.

---

2 Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New tough penalties strengthen the integrity of the Temporary Skilled Migration Programme', 21 June 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm.

The bill also gives a court the power to order money owed under any of the obligations including payments to employees, be paid in addition to the civil penalty.

The bill also authorises disclosure of personal information regarding sponsors and visa holders to relevant Commonwealth government agencies and government agencies in states and territories. For example, where a workplace appears to fall short of basic occupational health and safety standards, an inspector can make this known to the Commonwealth, state or territory body responsible for monitoring such standards.

To help enforce these provisions, trained officers will have the power to enter unannounced, without force, any place which they believe contains information or documentation relevant to monitoring the sponsor's compliance.

It is widely acknowledged by all levels of government, the business community and the union movement that there is a shortage of skilled labour.

Due to a strong economy and unemployment at a 32 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Employers must recognise that access to skilled temporary migrants is a privilege, not a right, and if they abuse this privilege, then they will face strong penalties.

The large majority of employers who are doing the right thing will not be impacted.

I intend for the full force of the law to be applied to those rogue employers who are not.

New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July[3]

Tuesday, 26 June 2007

From 1 July 2007, overseas workers must have English language skills equivalent to an average band score of 4.5 in an International English Language Testing System (IELTS) test, unless exempted in certain special circumstances.

Applicants must have higher English language skills where this is required for licensing, registration, or membership of a professional association in their nominated occupation.

Sponsors must still ensure that their employees meet the appropriate skill and English language requirements for licensing and registration and professional association membership in relevant occupations. This is an existing requirement and has not changed.

All applicants will need to detail their English language skills on their visa application form. In addition, applicants may be asked to undertake an IELTS test to demonstrate their English language skills.

Applicants will not be required to meet the English language requirement if;

- their first language is English and they are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America; or
- their nominated occupation is within the highly skilled major groups 1-3 of the Australian Standard Classification of Occupations (ASCO), comprising managers, administrators, professionals and associate professionals; or
- they have completed at least five years of continuous full time secondary and/or tertiary education at an institution where at least 80 percent of instruction was conducted in English or

3 Media release by the Hon Kevin Andrews, Minister for Immigration and Citizenship, 'New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July, 21 June 2007', 26 June 2007, http://www.minister.immi.gov.au/media/media-releases/2007/ka07052.htm.

- they are to be paid at least a salary specified in a legislative instrument (initially a gross base salary of $75 000 excluding all allowances and deductions).

These exemptions will not apply to applicants who have been nominated for a position that requires English language for licensing, registration or professional association membership.

In every case, sponsors must ensure that overseas workers they employ have sufficient English language skills to complete the tasks of the occupation and to meet their obligations under occupational health and safety and workplace relations laws.

Applications made before 1 July 2007 will not be affected by the change.

The English language requirement will help to ensure workers are able to respond to occupational health and safety risks and raise any concerns about their welfare with appropriate authorities.

Due to a strong economy and unemployment at a 32 year low, some Australian industries are experiencing a temporary shortage of skilled workers.

Access to skilled temporary migrants is a privilege, not a right, any sponsor who abuses this privilege, will face strong penalties.

These changes will further protect and strengthen the integrity of the 457 visa scheme.

E

Appendix E: 457 eligibility requirements and sponsorship undertakings[1]

457 visa: key eligibility requirements

Step 1: Sponsorship

There are two types of sponsorship:

- Standard Business Sponsorship (SBS)
- Overseas Business Sponsorship (OBS)

Standard Business Sponsorship (SBS): Allows Australian businesses to meet their immediate skill needs through sponsorship of overseas skilled workers to work in nominated positions in their business.

A Standard Business Sponsorship is assessed as to whether the employment a 457 visa entrant will be of **benefit to Australia** by:

- creating or maintaining employment opportunities for Australians, **or**

---

1 Attachment F, 'Subclass 457 key eligibility requirements' and Attachment G, 'Sponsorship undertakings', Commonwealth Government, *Submission No. 33*, pp. 67-69 and pp. 70-71.

- expanding Australian trade, **or**
- improving Australian business links to international markets, **or**
- contributing to the competitiveness of sectors within the Australian economy.

The employer must also show that their business operations will:

- introduce or use a new technology/business skill; **or**
- have a record of, or commitment to training Australians in its operations.

The sponsoring business must also be:

- lawfully and actively operating in Australia,
- the direct employer or a company related to the direct employer,
- not known to have an adverse business background (including the individuals in the company),
- complying with Australian immigration laws, **and**
- able to comply with the Sponsor's undertakings.

Overseas Business Sponsorship (OBS): OBS is for businesses that have no formal operating base or representation in Australia, under this sponsorship they may apply to bring employees to Australia to do one of the following:

- establish a branch or other business activity such as joint ventures, agency distributorships or subsidiary branches in Australia
- fulfil obligations for a contract or other business activity in Australia.

An Overseas Business Sponsorship (OBS) is assessed as to whether the sponsor is actively and lawfully operating a business outside Australia, and will be the direct employer.

In addition they must demonstrate that the employment in Australia of the visa holder would contribute to:

- the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
- expansion of Australian trade in goods or services; or
- the improvement of Australian business links with international markets; or

- competitiveness within sectors of the Australian economy.

Step 2: Nominations

The employer must nominate the position to be filled. The nomination process is to identify the position the employer is seeking and to assess whether it meets the minimum skill and salary requirements.

Additional factors are considered for regionally certified positions. See 'Regional 457 visa'.

Approved nominations for positions the employer wishes to fill are valid for 12 months or until the position is filled, whichever is earlier. Preferably the nominations should be lodged with the sponsorship application.

Step 3: Visa application

The visa process is to:

- determine if the applicant has the personal attributes and relevant experience to undertake the nominated position
- ensure the applicant meets health and character requirements
- ensure employee is aware of the salary they are to be paid.

Visa applicants linked to Australian sponsors can lodge online through eVisa system.

Visa applicants linked to offshore sponsors must lodge at their nearest Australian mission.

Primary applicants have mandatory condition 8107 imposed in their visa. This restricts them to work in the position they were nominated for and to remain with the sponsoring employer.

Visa validity is for up to 4 years and is linked to the period of vacancy. Where an employee seeks to work for another employer, they must first apply for a new visa (associated with a sponsorship and nomination). The visa application can (in the case of a standard business sponsorship) be made using an application form or online. The visa applicant is assessed against the duties and the requirements for the position. The principal visa applicant is issued with a visa condition 8107 restricting their work to the sponsor.

Secondary applicants have unlimited work and study rights. Eligible family members of the employee may apply with the employee or separately. If they

apply separately, they must complete a separate application form and pay a separate application charge.

Regional 457 visa

Recognising the special skill needs of regional Australia, the government has arrangements in place to allow regionally based employers to access reduced skill and salary requirements where the business has sought certification by a local Regional Certifying Body (RCB). RCBs are bodies based in regional Australia that have been recommended for approval by State and Territory Governments to certify regional nominations. They include State, Territory and local government authorities and a range of other bodies.

RCBs certify that:

- the tasks of the nominated position correspond to the tasks of an occupation in the Australian Standard Classification of Occupations (ASCO) major groups 1-7, as Gazetted
- the position is a genuine, full-time position that is necessary to the operation of the business
- the position cannot reasonably be filled locally
- the wages or salary for the position will be at least the minimum level required under the relevant Australian laws and awards and at least the minimum salary level that applies to the position (whichever is higher)
- the working conditions will meet the requirements under relevant Australian laws and awards.

Which areas are eligible?

All areas of Australia are eligible for regional arrangements except for Brisbane, the Gold Coast, Newcastle, Sydney, Wollongong, Melbourne and Perth. If the employee sponsored to work in a regional area, is found to be living or working in a nonregional location then their visa may be cancelled.

Sponsorship undertakings

(1) For subsection 140H(1) of the Act, an applicant for approval as a standard business sponsor must make the following undertakings:

a) to ensure that the cost of return travel by a sponsored person is met;
b) not to employ a person who would be in breach of the immigration laws of Australia as a result of being employed;
c) to comply with its responsibilities under the immigration laws of Australia;
d) to notify Immigration of:
   (i) any change in circumstances that may affect the business's capacity to honour its sponsorship undertakings; or
   (ii) any change to the information that contributed to the applicant's being approved as a sponsor, or the approval of a nomination;
e) to cooperate with the Department's monitoring of the applicant and the sponsored person;
f) to notify Immigration, within 5 working days after a sponsored person ceases to be in the applicant's employment;
g) to comply with:
   (i) laws relating to workplace relations that are applicable to the applicant; and
   (ii) any workplace agreement that the applicant may enter into with a sponsored person, to the extent that the agreement is consistent with the undertaking required by paragraph (i);
h) to ensure that a sponsored person holds any licence, registration or membership that is mandatory for the performance of work by the person;
i) to ensure that, if there is a gazetted minimum salary in force in relation to the nominated position occupied by a sponsored person, the person will be paid at least that salary;
j) to ensure that, if it is a term of the approval of the nomination of a position that a sponsored person must be employed in a particular location, the applicant will notify Immigration of any change in the location which would affect the nomination approval;
k) either:
   (i) for an application made before 1 November 2005 — to pay all medical or hospital expenses for a sponsored person (other than costs that are met by health insurance arrangements); or
   (ii) for an application made on or after 1 November 2005 — to pay all medical or hospital expenses for a sponsored person arising from treatment administered in a public hospital (other than expenses that are met by health insurance or reciprocal health care arrangements);
l) to make any superannuation contributions required for a sponsored person while the sponsored person is in the applicant's employment;

m) to deduct tax instalments, and make payments of tax, while the sponsored person is in the applicant's employment;
n) to pay to the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to a sponsored person.

F

Appendix F: Major sub-group occupations for ASCO levels 1-9[1]

1		**MANAGERS AND ADMINISTRATORS**
	11	Generalist Managers
	12	Specialist Managers
	13	Farmers and Farm Managers
2		**PROFESSIONALS**
	21	Science, Building and Engineering Professionals
	22	Business and Information Professionals
	23	Health Professionals
	24	Education Professionals
	25	Social, Arts and Miscellaneous Professionals
3		**ASSOCIATE PROFESSIONALS**
	31	Science, Engineering and Related Associate Professionals
	32	Business and Administration Associate Professionals
	33	Managing Supervisors (Sales and Service)
	34	Health and Welfare Associate Professionals
	39	Other Associate Professionals
4		**TRADESPERSONS AND RELATED WORKERS**
	41	Mechanical and Fabrication Engineering Tradespersons
	42	Automotive Tradespersons
	43	Electrical and Electronics Tradespersons
	44	Construction Tradespersons

1 ABS, Catalogue 1220.0—Australian Standard Classification of Occupations (ASCO) Second Edition, 1997, ABS website, http://www.abs.gov.au/ausstats/abs@.nsf/0/E32817571E32A167CA25697E00185235?opendocument (accessed 25 June 2007).

	45	Food Tradespersons
	46	Skilled Agricultural and Horticultural Workers
	49	Other Tradespersons and Related Workers
5		**ADVANCED CLERICAL AND SERVICE WORKERS**
	51	Secretaries and Personal Assistants
	59	Other Advanced Clerical and Service Workers
6		**INTERMEDIATE CLERICAL, SALES AND SERVICE WORKERS**
	61	Intermediate Clerical Workers
	62	Intermediate Sales and Related Workers
	63	Intermediate Service Workers
7		**INTERMEDIATE PRODUCTION AND TRANSPORT WORKERS**
	71	Intermediate Plant Operators
	72	Intermediate Machine Operators
	73	Road and Rail Transport Drivers
	79	Other Intermediate Production and Transport Workers
8		**ELEMENTARY CLERICAL, SALES AND SERVICE WORKERS**
	81	Elementary Clerks
	82	Elementary Sales Workers
	83	Elementary Service Workers
9		**LABOURERS AND RELATED WORKERS**
	91	Cleaners
	92	Factory Labourers
	99	Other Labourers and Related Workers