

**REPORT BY THE JOINT STANDING COMMITTEE ON MIGRATION:**

*Temporary visas ... Permanent benefits: Ensuring the effectiveness,  
fairness and integrity of the temporary business visa program*

**THE GOVERNMENT RESPONSE TO THE REPORT**

## Preamble

The Australian Government welcomes the opportunity to respond to the report of the Joint Standing Committee on Migration's inquiry into temporary business visas titled *Temporary visas ... permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program*. The report was tabled in Parliament on 12 September 2007.

The Australian Government agrees with the Committee that temporary skilled migrants are essential to meet current and future skills shortages in Australia and make a significant contribution to the Australian community. The Subclass 457 visa is the main temporary visa for skilled temporary workers. Many people on this visa apply for permanent residence through the employer sponsored migration visas. The employer sponsored visas, both temporary and permanent, provide a targeted response to skills shortages. These migration programs complement the government initiatives to increase the skills levels of Australians.

The Government also agrees that it is important to restore public confidence and support for the Subclass 457 visa program. While most sponsors comply with the requirements for the Subclass 457 visa there is a small group that seeks to exploit or abuse the program. The Government introduced to the Parliament, the Migration Legislation Amendment (Worker Protection) Bill 2008 that strengthens the capacity to monitor sponsors, share information with other regulators and to take strong action against those who abuse the program, including pecuniary and other administrative sanctions. The Bill was enacted on 18 December 2008 and is to commence by mid September 2009.

Training Australians and not just relying on the temporary employees from overseas is an important part of the Subclass 457 visa requirements, as discussed in the report. The training standards have not been clear in the past. The training requirement and ways in which it can be met and measured were considered in the reviews that the Government has instituted since taking office, especially the Skilled Migration Consultative Panel comprising representatives from state governments, unions and industry. The reviews also considered other key aspects of the Subclass 457 visa including adequate remuneration and regulations to prevent exploitation and undercut Australian working conditions.

The reviews of the Subclass 457 visa program that the Government commissioned are:

- the business-led External Reference Group (ERG) established by the Minister for Immigration and Citizenship in February 2008 to examine ways to make the program operate as effectively as possible. The ERG presented its report in April 2008. Fourteen of the sixteen recommendations have been agreed to and are being implemented;
- the Subclass 457 Integrity Review led by industrial relations expert, Ms Barbara Deegan, which examined ways to improve the integrity of the program. Ms Deegan presented her final report in October 2008;
- the Subclass 457 Inter-Departmental Committee (IDC) comprising representatives from Department of Immigration and Citizenship (DIAC), the Department of Education, Employment and Workplace Relations (DEEWR), the Department of Foreign Affairs and Trade (DFAT), the Treasury, the Department of the Prime Minister and Cabinet and the Department of Finance and Deregulation. The IDC

was created to consider the reform package for the Subclass 457 visa program and to bring together the outcomes of the other reviews; and

- the Skilled Migration Consultative Panel comprising representatives from industry, unions and State Governments to consider issues and policy proposals for the skilled migration program and to provide advice to the IDC on the reform package.

The reports from the IDC and the Skilled Migration Consultative Panel brought together the issues raised in the reviews undertaken, including the findings and recommendations of the Joint Standing Committee on Migration, for Government consideration of the long term reform of the 457 visa. The aim of the reform is to increase the effectiveness of the program, restore the integrity of the program and public confidence, ensure that it meets the skill needs to contribute to the Australian community, and, using a risk based approach, provide fast processing for genuine sponsors and strong actions against those who may attempt to exploit or abuse the program. The report was presented to Ministers on 19 December 2008.

The Government is grateful for the work the Committee has taken in respect to this important subject and for all those who contributed with their submissions and evidence to the Committee.

The Government's response to the recommendations made by the Committee follows. A number of the recommendations have already been implemented. Others will be announced following the Government consideration of the reviews and consultations. The delay in responding to the Committee's report has been due, in part, to the number of changes to the Subclass 457 visa program that were being considered and implemented in 2008.

### **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.**

**The Government notes this recommendation.**

The Australian Security Intelligence Organisation (ASIO) is the competent authority which conducts national security assessments on visa applicants. ASIO assess visa applicants referred by the Department of Immigration and Citizenship (DIAC) as per the requirements of Public Interest Criteria 4002 (PIC 4002) under the *Migration Regulations 1994*. At the completion of a security assessment, ASIO provides advice to DIAC as to whether the applicant is assessed as a direct or indirect risk to security.

The character requirement of the 457 visa program is detailed in Public Interest Criterion 4001 (PIC 4001) of the *Migration Regulations*. The Australian Federal Police (AFP) is not a direct stakeholder in these requirements. Under current processing arrangements, Subclass 457 visa applicants are not required to provide police clearances except in situations where they have declared a previous criminal history in their application.

All overseas trained doctors have their medical qualifications verified through the International Credentials Service of the Educational Commission for Foreign Medical Graduates of the United States (ECFMG). State and Territory Medical Boards also have a legislative responsibility to ensure that they only register people of good character.

Subclass 422 (Medical Practitioner) visa applicants are required to provide police clearances for any country in which they have lived for more than 12 months in the last 10 years.

The Australian Government continues to monitor the security and police clearance requirements against risk assessments.

### **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.**

**The Government supports this recommendation.**

The specific needs of some industries warrant the development of Labour Agreements. Labour Agreements allow the Australian Government to stipulate certain requirements relating to the recruitment of overseas workers, which may not be applicable under the standard Subclass 457 visa program.

In 2006-07, the Commonwealth and the Australian Meat Industry Council negotiated a Meat Industry Labour Agreement that enables meat processing companies to regularise the status of existing overseas meatworkers on Subclass 457 visas where they can demonstrate the skills are not readily available in Australia.

Changes to the Migration Regulations introduced on 10 September 2007 have made the Labour Agreement the only pathway available to access overseas meat workers under the Subclass 457 visa program. These changes have received some criticism from the industry.

This approach was extended to the on-hire industry. On 1 October 2007, access to the standard Subclass 457 visa program was removed for on-hire employers that seek to place overseas workers with other unrelated businesses. A Labour Agreement is now the compulsory pathway for access to overseas workers for the on-hire industry. The agreement provides checks and balances to assist in managing prevalent practices such as 'benching' (not paying salary between contracts) and the underpayment of workers.

Further analysis of sectorial usage of the Subclass 457 visa program, and the suitability of certain industries to access a Labour Agreement, will be considered on a case-by-case basis.

### **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.**

**The Government supports point one and two of this recommendation.**

DIAC is currently developing policy options that aim to:

- clarify the distinction between the Subclass 456 Business (Short Stay) and 457; and
- ensure visa options are available that balance the need to be responsive to the short-term demands of the labour market with the need to protect Australian workers and their conditions.

Under current policy, short term employment, generally no more than four weeks, for Subclass 456 Business (Short Stay) visa holders may be possible where it is:

- highly specialised in nature and not ongoing; or
- an emergency or urgent situation and not ongoing; or

- in Australia's interest.

In 2008, an investigation by the Workplace Ombudsman found that workers on a vessel laying a gas pipeline touching the seabed were considered to be within the Australian Migration Zone. These workers had originally been granted Subclass 456 visas. Following the Workplace Ombudsman's findings, the Minister for Immigration and Citizenship directed that where people are employed on vessels carrying out similar work, they will be required to apply for a Subclass 457 visa. This will ensure that overseas workers employed within the Australian Migration Zone are properly paid and Australian wages and conditions are not undermined. Changes are being made to the Subclass 457 visa enabling sponsorship for periods of less than three months.

**The Government notes point three of this recommendation.**

The Government has conducted a comprehensive review of the Subclass 457 visa program. This has included external consultation with stakeholders on changes to improve and streamline the visa.

Consideration may be given to the names of the visas after the Government has considered the reforms of the Subclass 457 visa program.

**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.**

**The Government supports this recommendation.**

At its 14 July 2006 meeting, the Council of Australian Governments agreed to a nationally consistent assessment process for the assessment of overseas trained doctors. Details of the new assessment model have been agreed and the new assessment pathways were phased in across States and Territories. The new assessment model will ensure all overseas trained doctors undergo adequate assessment, supervision and orientation. This will ensure that only appropriately qualified doctors are registered. The new assessment model has been fully implemented from 1 July 2008.

### **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.**

**The Government supports this recommendation.**

A national assessment model for overseas trained doctors has been introduced. The Department of Health and Ageing has also worked with DIAC to develop processes that will minimise misuse of the Occupational Trainee visa. The new measures have been implemented by all specialist colleges and medical registration boards.

DIAC also monitors the use of Subclass 442 visas in other occupational groups to ensure the integrity of the visa program is maintained. The Workers Protection Act 2008 will apply to sponsors in the Subclass 442 visa program.

### **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.**

**The Government supports this recommendation.**

The Minimum Salary Level (MSL) for Subclass 457 visa holders was increased on 1 August 2008 when a new legislative instrument came into effect. The MSL increased by 3.8 per cent and applies to new sponsored worker visa applicants and to all existing visa holders. The revised formula applies to all sponsored workers who are paid in accordance with a MSL.

The Subclass 457 Integrity Review conducted by industrial relations expert Ms Barbara Deegan investigated the MSL as part of the broader package of reforms for the Subclass 457 visa program. This issue was considered in the Subclass 457 Integrity Review's first discussion paper titled 'Minimum Salary Level and Labour Agreements' published in July 2008. The Subclass 457 Integrity Review has reported to the Minister and includes further consideration of the MSL under the Subclass 457 visa program. The Government has announced market rates of salary will be introduced as an alternative to the current MSL arrangement from mid September 2009.

In the interim, the MSL will be increased for all new and existing 457 visa holders by 4.1 per cent on 1 July 2009, in line with all employees total earnings as reported by the Australian Bureau of Statistics.

### **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.**

**The Government supports this recommendation.**

On 23 May 2008, the Minister for Immigration and Citizenship announced a 3.8 per cent increase to Minimum Salary Levels (MSLs), which took effect from 1 August 2008. This increase was based on the increase in total employment earnings in the period from November 2006 to November 2007.

The MSL will be increased for all new and existing Subclass 457 visa holders by 4.1 per cent on 1 July 2009, in line with increase of all employees total earnings to November 2008 as reported by the Australian Bureau of Statistics (ABS).

In addition to the MSL, there is a requirement that Subclass 457 visa holders be engaged in accordance with Australian work standards including industrial instruments (where they refer to a higher salary than prescribed by the MSL Legislative Instrument), superannuation, occupational health and safety, workers compensation, workplace relations and taxation legislative requirements.

The Government has decided to replace the current MSL arrangement with a system of market rates of salary, whereby Subclass 457 visa holders would be paid the market rate for their specific occupation, thereby ensuring parity with Australian workers.

### **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.**

**The Government supports this recommendation.**

DIAC will make the necessary changes to its visa processing computer systems in 2009. These changes will affect the processing of Subclass 457 visas, but also include changes affecting skilled migration, students and a broad range of other departmental business, such as reporting.



Significant work is required in a number of DIAC's computer systems as well as the new Generic Visa Portal being developed under the DIAC's Systems for People Project. An implementation date for the systems changes required is yet to be finalised. The aim is to have the necessary work completed in 2009 to coincide with the ABS and DEEWR moving to ANZSCO as the single reference for analysing and recommending changes to the list of skilled occupations for the Subclass 457 visa program.

DIAC has, as part of the transition planning, consulted with stakeholders. Assessing authorities had the opportunity to comment on a draft of the new Skilled Occupations List (SOL) for permanent migration and to affirm which occupations they are able to assess under ANZSCO.

DIAC, ABS and DEEWR officers meet regularly to develop the strategy to shift from ASCO to ANZSCO. The new arrangements will be outlined on DIAC's website. DIAC's network of Regional Outreach and Industry Outreach Officers are supporting the change strategy and providing advice on the changes. DIAC will also engage the Migration Agent Industry, which plays a significant role in preparing sponsorship documentation for Subclass 457 visa processing.

The Minister for Immigration and Citizenship last changed the Legislative Instrument that includes occupations and minimum salary levels for the Subclass 457 visa in August 2008. This change was part of a program to reform the Subclass 457 visa program. Whilst this list still used ASCO numerical codes and occupation titles, the changes followed consultation by DEEWR and DIAC with stakeholders.

DIAC invited community comment on the reform of the Subclass 457 visa program through the Subclass 457 Integrity Review led by industrial relations expert, Ms Barbara Deegan. This review also included references to skill levels. The report is being considered by Government.

#### **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.**

**The Government supports this recommendation.**

Occupations eligible for various visas are based on the Australian Standard Classification of Occupations (ASCO) and, in the future will be based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO). This provides structure and consistency to eligibility criteria. There is flexibility to add new and emerging occupations and specialisations or to exclude specific occupations from the lists, including the Subclass 457 list of acceptable occupations. The Minister for Immigration and Citizenship can amend by legislative instrument, the list of eligible occupations in response to changing demands and when new occupations are to be included in the program due to a skills shortage or when existing occupations are to be excluded due to an oversupply in the labour market.

On 1 July 2008, for example, the Minister amended the legislative instrument to exclude 'Heavy Truck Driver' as an eligible occupation in the regional Subclass 457 visa program, following a recommendation from the Trucking Industry Working Group. At the same time, the Minister added 'Mining or Construction Site Heavy Truck Driver' as an eligible occupation, to take into account the specific labour requirements of the mining and construction industries in regional areas.

The Subclass 457 Integrity Review conducted by Ms Barbara Deegan recommended that new skills lists be developed by DEEWR in consultation with DIAC and industry parties to ensure that only occupations requiring genuine skill are included. This option is being considered as part of the ongoing review of the Subclass 457 visa program.

On 1 April 2009, the Government announced that all occupations in ASCO Major Groups 5-7 (applicable to regional Australia) would be removed from the approved lists and be required to use Labour Agreements.

The current Subclass 457 visa program has the flexibility to include and exclude specific occupations and specialisations as required, based on consultations between DIAC, DEEWR and relevant stakeholders. There is also the option to request a labour agreement for occupations not on the list of occupations for this visa.

#### **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.**

**The Government supports this recommendation.**

Regional arrangements for the Subclass 457 visa subclass were addressed as part of the review of the Subclass 457 visa program. The Government has decided that the special need for lower skilled occupations in ASCO 5-7 will not have regional concession and will be considered under labour agreement. This provides enhanced reporting arrangements.

The Government has also announced that the MSL and regional MSL concessions will be replaced by market salary rates. This effectively excludes the need for special regional arrangements.

The *Migration Legislation Amendment (Worker Protection) Act 2008* has been passed by Parliament and will come into force in September 2009 to better define employers' obligations and employees' rights. The obligations will be incorporated in the *Migration Regulations*, allowing greater flexibility where required for changing circumstances. The Act and associated Regulations will strengthen the monitoring and enforcement regime.

Any further changes to the current form of the Subclass 457 visa program will be informed by the findings and recommendations from the review of the program, including the Skilled Migration Consultative Panel (comprising representatives from State Governments, industry and unions); the Subclass 457 Integrity Review conducted by industrial relations expert Ms Barbara Deegan; and the Subclass 457 Inter-Departmental Committee.

#### **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.**

The Government supports this recommendation.

In the current Subclass 457 visa program review, the structure and roles of Regional Certifying Bodies (RCBs) were considered by an Inter-Departmental Committee including DIAC, DEEWR, DFAT, the Treasury, the Department of Prime Minister and Cabinet and the Department of Finance and Deregulation. The review has been submitted to Government for consideration.

#### **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.**

The Government notes this recommendation.

The eligible occupations for the Subclass 457 visa are based on the Australian Standard Classification of Occupations and are listed in a Legislative Instrument, which can be changed quickly. New and emerging occupations and specialisations can be added to the approved list of occupations and occupations of concern can be removed from the list with a change to the Legislative Instrument. This ensures that the program can respond quickly to changes in the labour market. The list is monitored to ensure that it reflects skill needs.

There is no proposal to introduce a temporary Migration Occupations in Demand List (MODL). The list of approved occupations for the Subclass 457 visa program enables close monitoring of occupations accepted under the program.

However, any changes to the gazetted list of approved occupations or consideration to introduce labour market testing (LMT) procedures must be consistent with Australia's international trade commitments. Under the WTO General Agreement on Trade in Services (GATS) Australia has made certain commitments to allow the entry and temporary stay of executives and senior managers, independent executives and service sellers and to allow the entry and temporary stay of specialists (persons with trade technical and professional skills) subject to individual compliance with labour market testing.

Our commitments largely relate to Australian classifications of ASCO 1-4 occupations.

Australia's free trade agreements also commit Australia on the temporary entry of executives, managers and specialists as intra corporate transferees, independent executives, and contractual service suppliers-without limits and without labour market testing. Australia has also made sectoral commitments which relate to certain specific professions, specifically Thai chefs in the Thailand Australia Free Trade Agreement (TAFTA).

It is important to avoid reforms that could be inconsistent with Australia's commitments under World Trade Organization/General Agreement on Trade in Services (WTO/GATS) and free trade agreements.

As part of the current Australian Mode 4 offer for the Doha round of negotiations Australia has offered additional concessions regarding the entry and temporary stay of skilled persons, including the removal of labour market testing for specialists.

Some Free Trade Agreements have specific occupational concessions beyond WTO GATS commitments, which must be complied with. Australia should also be cautious about measures that could limit our capacities in future negotiations.

The Government has decided to include a sponsorship criterion that employers demonstrate a record of employing local labour and non-discriminatory employment practices.

### **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.**

**The Government supports this recommendation.**

An English language requirement for Subclass 457 visa applicants was introduced in July 2007. All primary Subclass 457 visa applicants must meet the English language

requirement unless they fall within certain exempted categories. This measure was specifically introduced to address occupational health and safety concerns in the workplace and better equip Subclass 457 visa holders to bring any issues or concerns to appropriate attention. English language skills also assist in the settlement of Subclass 457 visa holders into their local community.

The Subclass 457 Integrity Review conducted by Ms Barbara Deegan recommended that the current English language requirement be retained with some minor changes to exemptions.

The Government has agreed to increase the English language requirement for ASCO 4-7 occupations and chefs to IELTS level 5 from 14 April 2009.

#### **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.**

**The Government supports this recommendation.**

Training benchmarks were considered as part of the current review of the Subclass 457 visa program by the Inter-Departmental Committee comprising DIAC, DEEWR, DFAT, the Treasury, the Department of Prime Minister and Cabinet and the Department of Finance and Deregulation.

The Government has agreed that DEEWR develop training benchmarks for all sponsorship applications.

#### **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.**

**The Government supports this recommendation.**

The Department of Immigration and Citizenship and the Department of Education, Employment and Workplace Relations are working towards a more streamlined process for Labour Agreement negotiations. A process for consulting with industry stakeholders on

individual Labour Agreement proposals was introduced in early 2008. This process supports other consultative arrangements under Labour Agreements. The views of industrial stakeholders are integral to Labour Agreement but do not constitute a veto. Requests to access Labour Agreements remain commercial-in-confidence during the negotiation process although a company may choose to make certain information available to industrial stakeholders on a commercial-in-confidence basis.

The terms and conditions included in Labour Agreements generally mirror those in the existing Subclass 457 visa program. All Labour Agreement visa processing has been co-located with standard Subclass 457 visa processing. This will also increase the consistency and integrity of decision making.

Labour Agreements will be subject to provisions of the Worker Protection Act 2008 which is to be implemented in September 2009. This will ensure greater monitoring and enforcement powers with respect to Labour Agreements.

#### **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.**

**The Government supports this recommendation.**

In February 2008, the Minister for Immigration and Citizenship appointed a business-led External Reference Group (ERG) to consider the Subclass 457 visa. The final report reinforced the existence of skill shortages and labour market pressures and the important role of the skilled migration program. The Government accepted 14 of the 16 recommendations and a number of immediate measures have been initiated including:

- arrangements to eliminate the back-log of Subclass 457 applications;
- establishing three dedicated Subclass 457 processing centres in Sydney, Melbourne and Perth from 1 July 2008; and
- a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights of visa holders and obligations of employer sponsors.

On 14 April 2008, the Australian Government appointed industrial relations expert Ms Barbara Deegan to examine the integrity of the Subclass 457 visa arrangements. The terms of reference for the Subclass 457 Integrity Review included examining:

- Measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program;
- The employment conditions that apply to workers employed under the temporary skilled migration program;
- The adequacy of measures to protect 457 visa holders from exploitation;
- The health and safety protections and training requirements that apply in relation to temporary skilled workers;

- The English language requirements for the granting of temporary skilled migration workers' visas; and
- The opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The Integrity Review has reported to the Minister for Immigration and Citizenship and the Deputy Prime Minister. The Integrity Review will complement the recommendations of the External Reference Group (ERG).

The final reports from Ms Deegan and the ERG will inform the Australian Government's medium and longer term strategy to improve the transparency, accountability and integrity of the temporary skilled migration program.

On 8 July 2008, the Minister for Immigration and Citizenship announced the establishment of a Skilled Migration Consultative Panel including representatives from State Governments, unions and industry. The Panel:

- considered and provided advice to Government through an Inter-Departmental Committee on matters referred to it regarding temporary skilled migration policy changes;
- considered and provided advice on issues referred by the 457 Integrity Review, consulting with their members and constituents when appropriate; and
- provided informed feedback on reform proposals based on a sound appreciation of the issues and the impacts these issues have on business, the Australian workforce and the broader community.

The Panel provided advice through the latter half of 2008 to assist the Government in its development of a package of longer term measures.

The reforms will complement broader labour market policies, including the development of a new fair and flexible workplace relations system.

#### **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.**

**The Government supports this recommendation.**

Significant additional resources have been allocated to the compliance regime under the Subclass 457 visa program. A comprehensive monitoring officer training program has been developed to prepare monitoring officers for their roles as inspectors after the implementation of the Worker Protection Act 2008.

The training content was adapted to focus on the new policies and procedures introduced on 15 October 2007. This shifted the monitoring environment to a targeted risk-based approach to monitoring.

On successful completion of the training course, monitoring officers are awarded the national qualification of Certificate IV in Government (Statutory Compliance). The course was developed to ensure that monitoring is conducted in accordance with the strategic themes of DIAC, and focuses on record keeping, site visits, handling cases in line with national standards and conducting thorough audits. The program runs for 23 days and is divided into four blocks focusing throughout on:

- Standardised record keeping procedures;
- Consistent and transparent decision making; and
- Relevant legislation and policy.

The Government will provide \$19.6 million over four years to strengthen the integrity of temporary working visa arrangements, including the 457 visa program, by clarifying the obligations and rights of employers and workers, further protecting workers from exploitation. As part of the Government's broad reforms, the Minister for Immigration and Citizenship introduced a Bill to amend the *Migration Act (1958)* to better define employers' obligations and employees' rights. It was enacted on 18 December 2008 and is to commence by mid September 2009. It will strengthen the monitoring and enforcement regime. The Act:

- better defines the obligations of sponsors in regulations;
- enhances the capacity of the Department to investigate non-compliance;
- expands the range of sanctions that may be imposed in respect of non-compliance by allowing a court to impose civil penalties; and
- facilitates information sharing across government and with the community at large to further support a monitoring regime.

#### **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, site visits conducted, sponsor approvals cancelled, sponsors banned and sponsors fined.**

**The Government supports this recommendation.**

DIAC provides detailed statistics on the Subclass 457 visa program on a monthly basis. DIAC is planning to expand this reporting to include more general monitoring and enforcement activities. Information on statistics can be found on the DIAC website at: [www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm](http://www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm).



## 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.**

**The Government supports this recommendation.**

DIAC has in place a compliments and complaints policy which ensures all complaints are dealt with in a confidential manner. Feedback received by DIAC is handled in accordance with the Information Privacy Principles (IPP) of the Privacy Act 1988. In particular:

- Information is only collected insofar as is necessary and lawful (IPP1);
- Information is only stored for as long as necessary and with appropriate security to prevent unauthorised access (IPP4); and
- Information is only disclosed to the person the information is about, not to any other person or organisation (IPP11).

In addition, the immigration 'dob-in' line which is used by members of the public to report a person working or living illegally in Australia is being enhanced to include reporting sponsors who are breaching their obligations to overseas workers. To raise awareness of and encourage use of the facility, details will be included in information material provided to Subclass 457 visa holders.

There are also alternative complaints mechanisms which can be used by Subclass 457 visa holders, including the Commonwealth Ombudsman and the Workplace Ombudsman.

The Minister for Immigration and Citizenship introduced a Bill to amend the *Migration Act (1958)* to better define employers' obligations and employees' rights. It was enacted on 18 December 2008 and is to commence by mid September 2009. The Act will strengthen the monitoring and enforcement regime and will:

- better define the obligations of sponsors;
- enhance the capacity of the Department to investigate non-compliance;
- expand the range of sanctions that may be imposed in respect of non-compliance by allowing a court to impose civil penalties; and
- facilitate information sharing across government and with the community at large to further support a monitoring regime.

In the 2008-09 budget, the Australian Government announced funding for a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights and obligations of visa holders and awareness of obligations amongst employer sponsors. For visa holders, this measure includes a comprehensive information pack that will be translated into community languages. For sponsors, this measure includes requiring employers themselves to declare that they understand their obligations under the program prior to accessing the scheme.

## **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.**

**The Government supports this recommendation.**

A Frequently Asked Questions (FAQ) flyer for visa holders, providing information on the Subclass 457 visa program and contact details for further assistance, was sent to all active sponsoring employers within Australia in September 2007. The information package also included advice about the strengthening of employer obligations. The FAQ sheet states that a visa holder has 28 days to find a new sponsor and apply for a new Subclass 457 visa if their employment with their original sponsor is terminated. It also states that the visa holder has the option of applying for another visa subclass. If the visa holder does not apply for another visa, they have to leave Australia before the end of the 28 days, unless they have received approval from DIAC for an extension.

In recognition that many visa holders change their Australian addresses on a regular basis, the information was not sent directly to Subclass 457 visa holders, but to all Subclass 457 visa sponsors, with a requirement that they provide all sponsored workers with a copy of the flyer within five working days of receipt of the letter or of their commencement in the sponsor's employment.

The material was provided in English. This initial version of the Frequently Asked Questions has since been updated and will be translated into the most widely used language groups of Subclass 457 visa holders.

Information on the Department's website is available in seven community languages.

### **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.**

and

### **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.**

**The Government supports these recommendations.**

DIAC has developed a comprehensive information strategy to improve transparency in and understanding of the Subclass 457 visa program, and to ensure that stakeholders, including sponsors, visa holders and the broader Australian population, are adequately informed of changes to the Subclass 457 visa program. This will provide clarity on visa holders' rights and sponsors' obligations. A range of information products has already been developed for both sponsors and visa holders.

Approximately 20,000 employer sponsorship requirements brochures, outlining employer undertakings under the Subclass 457 program, with an accompanying letter from the Minister for Immigration and Citizenship, were mailed to Subclass 457 sponsors in July 2008.

An information sheet on Minimum Salary Level (MSL) requirements and advising of the increase of the MSL on 1 August 2008 was developed and was included in the Employer Responsibilities Kit distributed in August 2008. The kit included the MSL information sheet, the employer sponsorship requirements brochure, a Work entitlement checklist, the Quick reference guide to checking work entitlements and a document titled "Do your employees have a valid visa to work in Australia?".

The previous FAQ for visa holders has been redeveloped into three separate documents. These cover "Pay, tax and superannuation, recovering earnings", "Accommodation, family and health care" and "Sponsors, contracts, unions and workplace conditions". These have been translated into some of the languages of the nationalities most frequently using the Subclass 457 visa program.

In order to raise awareness about visa requirements and to encourage decision-ready applications, a comprehensive set of checklists for the sponsorship, nomination and visa application stages of the visa process have also been developed.

All of the above information is available on the DIAC website.

Pilot information sessions to inform visa holders of their rights and obligations and focus groups to investigate the different ways visa holders find out information about their rights in Australia, are also being developed.

### **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.**

**The Government supports this recommendation.**

Following an announcement by the Minister for Immigration and Citizenship, a report containing statistics on the Subclass 457 visa program has been published on the Department of Immigration and Citizenship's website. The report is located at [www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm](http://www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm) and contains the following information:

- Number of visa grants by location of the nominated position and applicant type;
- Top 15 citizenship countries for visa grants by applicant type;
- Number of visa grants to primary applicants by government sector and location of the nominated position;
- Number of visa grants to primary applicants by location of nominated position;
- Average nominated base salary for visa grants to primary applicants by industry of sponsor and location of the nominated position;
- Average nominated total remuneration for visa grants to primary applicants by industry of sponsor and location of the nominated position;
- Number of visa grants to primary applicants by industry of sponsor;
- Number of visa grants to primary applicants by industry classification of sponsor and location of the nominated position;
- Number of visa grants to primary applicants by ASCO major group;
- Number of visa grants to primary applicants by ASCO major group and location of the nominated position;
- Average nominated base salary for visa grants to primary applicants by ASCO major group and location of the nominated position;
- Average nominated total remuneration for visa grants to primary applicants by ASCO major group and location of the nominated position;
- Top 15 nominated occupations for visa grants to primary applicants;

- Top 15 nominated occupations for visa grants to primary applicants by location of the nominated position;
- Top 15 citizenship countries for visa grants to primary applicants;
- Top 15 citizenship countries for visa grants to primary applicants by location of the nominated position;
- Number of primary visa holders in Australia by industry of sponsor and location of the nominated position;
- Number of primary visa holders in Australia by ASCO major group and location of the nominated position;
- Top 15 nominated occupations primary visa holders in Australia by location of the nominated position;
- Top 15 citizenship countries for primary visa holders in Australia by location of the nominated position; and
- Top 5 subclasses for persons granted a permanent visa who last held a subclass 457 visa.

The report for the 2007-08 Financial Year to 30 June 2008 was made available on the Department's website on 22 July 2008 and includes total program numbers as well as statistics for each State and Territory. Updated reports are published on a monthly basis.

#### **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.**

**The Government supports this recommendation.**

DIAC notes the Committee's recommendation and would welcome an ANAO audit, should the Auditor-General decide that it is an audit priority. In addition, the Department is undertaking a related audit of the Effectiveness of Controls over the Regional Certification of Concessional 457 Visas and Monitoring of 457 Visas as part of the Financial Year 2008-09 Internal Audit Program.

A number of measures were also introduced in July 2008 to improve processing times for Subclass 457 visas in response to the External Reference Group report. These measures included reducing the backlog of Subclass 457 applications; establishing three dedicated Subclass 457 processing centres in Sydney, Melbourne and Perth; and introducing a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights of visa holders and obligations of employer sponsors. The processing times for Subclass 457 visas have been significantly reduced as a result of these measures.

**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.**

**The Government supports this recommendation.**

Since July 2007, there have been three computer system releases containing improvements to increase the effectiveness of Subclass 457 processing. These include textual enhancements to the electronic lodgement forms, an increase to the size limit of allowable attachments, enhancements to the document checklist list within departmental systems, enhancements to the storage of authorised recipient contact details, and the automated storage of application attachments into the Department's record keeping system. In addition, hardware within the electronic business environment has been upgraded, which is expected to improve the availability and capacity of all electronic business applications including electronic visa applications.