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Department of Immigration and Boarder Protection
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RE: Independent Review of Integrity in the Subclass 457 visa

Dear Mr Azarias,

Thank you for the opportunity to provide a submission to the Independent Review of Integrity in the Subclass 457 visa.

The Migration Council Australia (MCA) is an independent, non-partisan, not-for-profit body established to enhance the productive benefits of Australia's migration and humanitarian programs.

MCA brings together corporate Australia and the community sector to provide a national voice to advocate for effective settlement and migration programs.

We believe that the success of the migration program is critical to Australia's future prosperity. Assisting new migrants and refugees to settle is an investment in the future of the Australian community, our economy and our prospective workforce.

Our aim is to promote greater understanding of migration and settlement and to foster the development of partnerships between corporate Australia, the community sector and Government.

The attached submission builds on the evidence provided in person on the 19 March 2014.

Yours sincerely

Carla Wilshire

CEO
Migration Council Australia

SUBMISSION TO THE INDEPENDENT REVIEW OF INTEGRITY IN THE 457 VISA SUBCLASS

MIGRATION COUNCIL AUSTRALIA

Note
New survey evidence was recently made available to the Migration Council Australia (MCA). This evidence, particularly in relation to migrant salaries, is incorporated into this submission.

Background
In 2013, the MCA released 'More than Temporary: Australia's 457 visa program'. The report was informed by the largest survey of 457 visa holders and sponsoring employers in the history of the program.

The evidence from this report informs much of our submission. In addition, the MCA has a commitment to expanding the provision of support services to those migrants in need. The provision of a limited range of support services for some skilled migrants and their dependents would greatly assist in improving the fundamentals of the 457 visa program and would mitigate some instances of abuse through access to third party support.

This submission argues that the role of the 457 visa program should be understood within the context of Australia's broader migration framework. Temporary migration to Australia is a relatively recent phenomenon yet one that serves our national interests within in a globalised world. Whereas historically immigrants were permanent settlers, today a range of temporary migration categories play important roles across the Australian economy and society, none more so than the 457 visa.

One of the largest misconceptions of the 457 visa program is that it is simply 'temporary'. Survey data indicates that up to 70 per cent of migrants who have been in Australia for longer than six months want to stay in Australia. Moreover, Departmental data suggests nearly 50 per cent of 457 visa holders make the transition to permanent residents. In effect, the program has become an increasingly important immigration pathway for future Australian citizens.

Further, the program is far from homogenous. Employers use the program for different purposes, from short-term contracts to importing innovation, and migrants have a range of intentions when arriving in Australia. Some 457 visa holders stay for months, others for a lifetime. Understanding the nuances and the full range of policy implications of the program is critical to any review.

Terms of reference 1

Determine the level of non-compliance by sponsors in the subclass 457 programme, both historically and under the current regulatory framework.

Level of non-compliance

The survey data analyzed by the MCA indicated that a minimum of two per cent of all 457 visa holders were paid below the threshold level in 2011-12. Based on this, the MCA believes it likely that between two and four per cent of the program is subject to non-compliance with regard to migrant wages.1

While any level of non-compliance is concerning and warrants close attention, it should be noted that there is an inbuilt level of non-compliance associated with the implementation of large-scale programs. On the current evidence it could be argued that the program is performing reasonably but may require further monitoring.

In determining the performance of the program it is important to note that survey data suggests that 76 per cent of 457 visa holders are either very satisfied or satisfied with their current wage, a figure consistent with Australian attitudes. In terms of a migrant's relationship with their employer, the survey evidence demonstrated a program that was highly effective. 88 per cent of visa holders were either very satisfied or satisfied with the relationship with their employer. Four per cent were dissatisfied. In terms of promotion prospects, 64 per cent were very satisfied or satisfied while 14 per cent were dissatisfied.

It was however concerning to learn that five per cent of migrants did not feel as if their employer was meeting their obligations. The most common reasons included not meeting agreements (4.3 per cent), a lack of overtime payments (3.8 per cent) and feel restricted from leaving (2.6 per cent).2 Of particular note is the last response, 'feeling restricted from leaving'. Even this small number of instances is instructive in terms of the power dynamics that underlie the 457 visa program.

Overall the data suggests the vast majority of employers do the right thing however there are a permanent but small number of exploitative employers. This is an important consideration for government that should be given significant thought.

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[1] The Migration Council only had access to migrant income data that was heavily modified. For instance, the two per cent figure represents those who stated an income under $40,000. This is primary reason why the Migration Council uses a non-compliance rate of between two to four per cent as well as instructing this was a minimum figure. Departmental data may indicate a varying level of non-compliance. More information on migrant income is included below.

[2] Multiple answers were allowed.

The MCA notes that recent regulatory changes to mitigate poor employer behavior included labour market testing. However we also note that there has been little disclosure as to how this is operating in practice.

The MCA is concerned that the regulatory burden associated with the introduction of Labour Market Testing significantly exceeds the effectiveness of such a tool in addressing non-compliance or in countering the displacement of Australian workers. For the employer who intends to exploit migrants or misuse the program, labour market testing is no barrier. Yet labour market testing imposes a heavy bureaucratic burden on the vast majority of employers who abide by the regulations of the 457 visa program. We note in our research into the history of the program that labour market testing was abolished for such reasons. It is our contention that a more applicable method to ensure 457 visa holders do not displace Australian workers is via an effective price signal. This is highlighted in the following Term of Reference.

In the absence of further public data, it is very difficult to determine an exact rate of non-compliance with regards to other regulatory requirements. The MCA would welcome the opportunity to provide further analysis should such data be made available. This is particularly the case with claims relating to undercutting of Australian wages and conditions. Greater disclosure of income data from the department would allow better monitoring and research of 457 visa holder incomes. Indeed it could be argued that the act of releasing this information would act as an accountability measure on employers who deliberately choose to exploit migrants.

The MCA is concerned that in some sectors there may be a significant level of non-compliance with regard to the various income thresholds for language and market salary rate exemptions. This has occurred in the past, where employers nominate migrants above a particular threshold, only to re-nominate the same migrant after the visa has been granted to avoid an English language test. This issue was resolved in recent policy reform.

There is very little information on non-compliance in relation to visa holders not working in the occupation for which they were nominated. The MCA supports the recent changes allowing the Fair Work Ombudsman to monitor 457 visa sponsors, including the provision “that work undertaken by subclass 457 visa holders matches the job title and description approved in their visa”. These monitoring trends should be closely analysed and publicly released.

The MCA also notes that the vacancy rate in the labour market can be used to as a blunt tool to monitor the operational integrity of the program.

The table below details the ratio of the number of 457 visa lodgements in 2012-13 with the industry vacancy rates for May 2013:

Table 1 - Ratio of the number of 457 visa lodgments and industry vacancy rates for May 2013

Accommodation and food services	1.127
Administrative and Support Services	0.024
Agriculture, Forestry and Fishing	N/a
Arts and Recreation Services	0.9
Construction	0.537
Education and Training	0.794
Electricity, Gas, Water and waste services	2.6
Financial and Insurance Services	0.345
Health Care and Social Assistance	0.583
Information media and telecommunications	3.273
Manufacturing	0.463
Mining	0.931
Other Services	1.537
Professional, Scientific and Technical Services	0.399
Public Administration and Safety	0.125
Rental, Hiring and Real Estate Services	0.238
Retail Trade	0.327
Transport, Postal and Warehousing	0.35
Wholesale Trade	0.316
All industries	0.587

The data shows those industries which are heavy users of the 457 visa program (IT, Other Services, Accommodation and Food Services) have over one 457 visa holder for every vacancy. It should be further noted that 457 visa holders are not perfect substitutes for all vacancies as many vacancies will be for lower skilled positions, ineligible under the 457 visa program. Rough analysis such as this can provide an indicative guide to determining which industries require further monitoring. However it should be noted that the MCA does not advocate using this measure as a tool to assess non-compliance in the 457 visa program.

Vacancy rates, average income and geographic trends are just three examples of wider data sets that could be used to inform decision-making process. For instance, the vacancy rate data should point towards a higher burden of proof for those industries that use the 457 visa program substantially above current and historical norms. This can help departmental decision makers better evaluate future visa applications.

It should also be noted that there is always a level of non-compliance that is unintentional. This is understandable in a program where regulation is subject to constant change and flux.

Situations more likely to lead to non-compliance

One of the major issues at the heart of the 457 visa program is the underling power imbalance between employers and migrants. This is mitigated by requirements such as English language proficiency and the restriction on low-skilled workers, both of which act to restrain exploitation rates. However, despite these requirements, some migrants experience exploitation, such as underpayment.

Under current policy, no migrants – either primary or secondary – in the 457 visa program are afforded any settlement support. The policy rationale for this stance is that skilled migrants do not require settlement services as they have the support of employment. Further, it is argued that as temporary migrants are here for short periods, they do not require the support needed to lay strong community foundations.

However the MCA sees two clear benefits to the provision of such support. One is that many 457 visa holders become permanent and, if required, should be provided support on an as needs basis, particularly non-English speaking spouses. 70 per cent of visa holders indicate they intend to remain in Australia if they have already spent 10 months in Australia. Delaying integration and participation for prolonged periods is likely to reduce long-term success of settlement.

The second rationale for the provision of settlement support relates to program compliance. Interaction and support from a third party can help to mitigate the worst aspects of non-compliance from employers with regard to migrant exploitation and the erosion of Australian wages and conditions.

While some 457 visa holders will not speak out about exploitation under any circumstances, it is likely many others simply are unaware of their rights and do not have access to independent support. An exploitative employer is a poor option, as is the Government agency charged with issuing their visa.

The provision of ‘opt-in’ settlement support for 457 visa holders would provide an additional safety net. By generating contact with a supportive third-party, sitting outside government and a direct employer, migrants who feel exploited would have an outlet to discuss their individual situation and learn about their labour rights and the cultural norms of Australian employment. This form of settlement support could be provided by an existing community organisation, with a discreet set of outcomes. It is also likely that such support would increase the productivity of the program by reducing inefficiencies that result from social and cultural adjustment.

The MCA also recognizes that the main labour market environment where non-compliance will rise is in periods of weaker labour demand. This reduces the prospect of labour mobility, acting to bind migrants more closely to their employers. Recent evidence from the U.S. supports this claim. Labour

mobility for H1B visa holders (the U.S. equivalent of the 457 visa) disappears when unemployment is eight per cent whereas at four per cent unemployment, mobility of workers is high, approximately 15 per cent annually.[3]

This is important contextual information for the 457 visa program. It should be noted that even in periods of weak labour demand, program regulations can foster better compliance. For instance, the regulation change increasing the time allowed in Australia without a sponsor from 28 days to 90 days in 2013 increased the likelihood visa holders would refuse to work in exploitative workplaces. Additional time to find a new job allows migrants more freedom to resign positions where non-compliance, such as underpayment, occurs.

However in general, as 70 per cent of 457 visa holders indicate they wish to stay in Australia permanently, any period of rising unemployment is likely to lead to more non-compliance. Such periods should be accompanied by heightened regulatory security.

There are other situations where non-compliance is more likely. These include in occupations where there is only a small number of total employment opportunities and geographical areas with small populations.

Occupations with a small number of employers limit the ability to move employers in the case of mistreatment. While some occupations have a large footprint in the labour market, others have a very select number of opportunities. Further, locations with smaller, distinct labour markets may also lead to non-compliance. There is an inherent risk in regional areas that suffer from skill shortages. To help better understand these characteristics of the 457 visa program, labour mobility information should be publicly released. This can provide a baseline to better inform program trends, including a proxy for non-compliance.

Another instance where non-compliance is more likely is within workplaces that only employ 457 visa holders. While only 1.5 per cent of survey respondents indicated they did not work with Australians, this is still a matter of concern as it indicates a small number of visa holders are exposed to labour market isolation.

Another instance where non-compliance is more likely is in an environment of rising temporary visa numbers but limited permanent visa placements. Given the number of visa holders who intend to stay in Australia, a reduction in the number of permanent residency placements would ‘squeeze’ the availability to become a permanent resident, prolonging time spent on a temporary visa and further tying workers to employers.

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[3] “Flight of the H1B: inter-firm mobility and return migration patterns for skilled guest workers”, B Depew, P Norlander, T Sorenson, IZA Discussion Paper 7456

The previous government raised the number of permanent residency positions, particularly the number of permanent employer sponsored positions, and as such, this has not become a major issue over the past five years. However any reallocation or reduction in the number of employer sponsored permanent residency positions may foster non-compliance in the form of ‘permanent’ temporary migrants who fear for losing their jobs given the link to permanent residency it presents.

Overall, a level of non-compliance will always occur in the 457 visa program. This is not an excuse for accepting migrant exploitation or the erosion of working conditions but evidence for the need of strong compliance and mitigation strategies. Committing to keep the level of non-compliance permanently low is vital to ensure the 457 visa program maintains public trust.

Terms of reference 2 and 3

Evaluate the regulatory framework of the subclass 457 programme and determine whether the existing requirements appropriately balance a need to ensure the integrity of the programme with potential costs to employers in accessing the programme.

Report on the scope for deregulation while maintaining integrity in the programme.

Types of sponsorship organisations

457 visa holders are critical to filling specific skill shortages for any business regardless of their longevity. Any Australian business should be able to become a sponsor, providing they meet the required regulations and have not been subject to previous penalties with regard to immigration law.

There is very little information regarding how an overseas business operating in Australia might use the 457 visa program. For example, there is no publicly available information on how many migrants are sponsored by overseas business sponsors relative to Australians businesses. The MCA also notes that here is no record of what type of businesses become overseas business sponsors.

However, the MCA considers that overseas business sponsors can present complexities. In 2012 it was widely reported that an overseas business was employing up to 500 migrants without any Australians in their operations in Western Australia. While acknowledging that this is a media account rather than hard data evidence, such reports raise important questions about regulations and the governance of how overseas business sponsors should operate. How are market salary rates for 457 visa holders established without Australian workers? What frameworks are in place if case of business failure, given overseas business may operate outside certain aspects of other Australian employment law? These are questions that do not have easy answers but should be considered.

A more effective sponsorship and nomination framework

There are several changes to the sponsorship and nomination framework that could unlock potential efficiencies.

At the sponsorship stage, the training benchmarks should be abolished. This piece of regulation is administratively costly and does not support its intended outcome. There is no governance around the use of Training Benchmark A in particular. There is also no evidence the training benchmarks have induced more training of Australian workers. The current training requirements are more symbolic than effective.

Replacing the training benchmarks should be a higher nomination fee of $1000. This would serve multiple purposes. The first would be to raise additional revenue on the proviso this is funneled into existing Australian training programs, particularly the support of apprenticeship programs. This would allow economies of scale to drive efficiencies in the collection and distribution of additional training revenue while removing costly administration at the sponsorship stage for each sponsor.

This would also act as an up-front price signal designed to ensure sponsors look to Australian workers instead of substituting them with 457 visa holders. The current figure of $330 does not achieve this aim. While historically, it was expensive to recruit overseas workers, this cost has been substantially reduced in recent years given nearly half of all 457 visa are granted onshore. While the Migration Council notes some sponsors will still pay large sums of money for offshore recruiting and hiring, this is not as prevalent as it once was. A more substantial nomination fee will act as a more effective price signal in the 457 visa program.

In addition, the nomination process should be simplified. This should include the streamlining of current income threshold exemptions regarding market salary rates and English language proficiency. Both should be established at the Fair Work High Income Threshold, indexed annually.

One possible piece of deregulation is to introduce the nomination of any occupation, on the proviso the position is paid above the Fair Work High Income Threshold. This would allow those sponsors who have a severe skill shortage in specialised low skill occupations to recruit 457 visa holders while not undercutting existing wages and conditions in Australia. The Fair Work High Income Threshold is substantial and this would remove mass hiring of low skilled migrant workers given the salaries required to nominate these occupations. However, substantial monitoring and compliance to ensure these workers were paid their nominated salary would be required.

Current fee and cost regime

The MCA consider the current fee regime to be ill considered. The 457 visa program is essentially a labour market program, incorporating immigration policy. Fees should be levied on businesses given this is where the initial demand for the program stems from. Labour demand creates activity in the 457 visa program meaning the source of labour demand should be charged. As above, the MCA recommends a fee of $1000 per nomination.

A sponsorship fee should be nominal, to discourage incomplete applications, but not intended to raise significant revenue given the formative price signal is at the nomination stage.

Visa fees were reasonable for a long period of time under the 457 visa program. In 2013, these fees were substantially increased, such that a family

of three went from paying less than $500 to potentially more than $2000. It is difficult to see the policy rationale for imposing higher visa fees and as such it is likely the fees were increased simply as a revenue raising measure by the previous federal government. In 2012, 11 per cent of visa holders had an income equal to or less than $50,000. Given this, coupled with the lack of access to social security, it is imprudent to levy such heavy fees on migrants. Such fees are also likely to impact the composition of the program by reducing the number of families relative to the number of single males.

Given these fees are now incorporated in the budget revenues, the MCA recommend a visa fee increase freeze for three years. This would allow inflation to ease the relative cost of the visa fee while maintaining the revenue built into the Budget forecasts.

Labour market testing

The Migration Council does not consider labour market testing to be an effective compliance tool. The process is administratively heavy without any demonstrated reward and is unlikely to ensure Australian workers are provided precedence over migrants.

The MCA believes under current legislation, the Minister has the power to exempt the vast majority of current occupations in the CSOL. The legislation allows an exemption if the occupation requires three years or more experience, see 140GBC(3)(A)(ii). Under ANZSCO, the vast majority of skill level three occupations (those currently subject to labour market testing), require three years or more experience. To remove labour market testing, without changing any legislation, the Minister can simply add the remaining occupations requiring labour market testing to the legislative instrument which governs exemptions.

This can be done immediately to remove this administrative burden on current and future sponsors.

Effectiveness of Market Salary Rates framework

The market salary rates framework is the foundation of the 457 visa program. It ensures migrants are not discriminated in the labour market and allows temporary migration to ebb and flow without undermining existing wages and conditions. Introduced in 2009, market salary rates are the most important policy tool in the 457 visa program. If the concept of market salary rates is not effective, critical arguments to maintain public support on the 457 visa program will be lost.

In June 2009, the average base salary was $77,500. Four years later, this had increased to $82,100, a 5.9 per cent increase. However this was a small increase compared to the average gains for the labour market as a whole

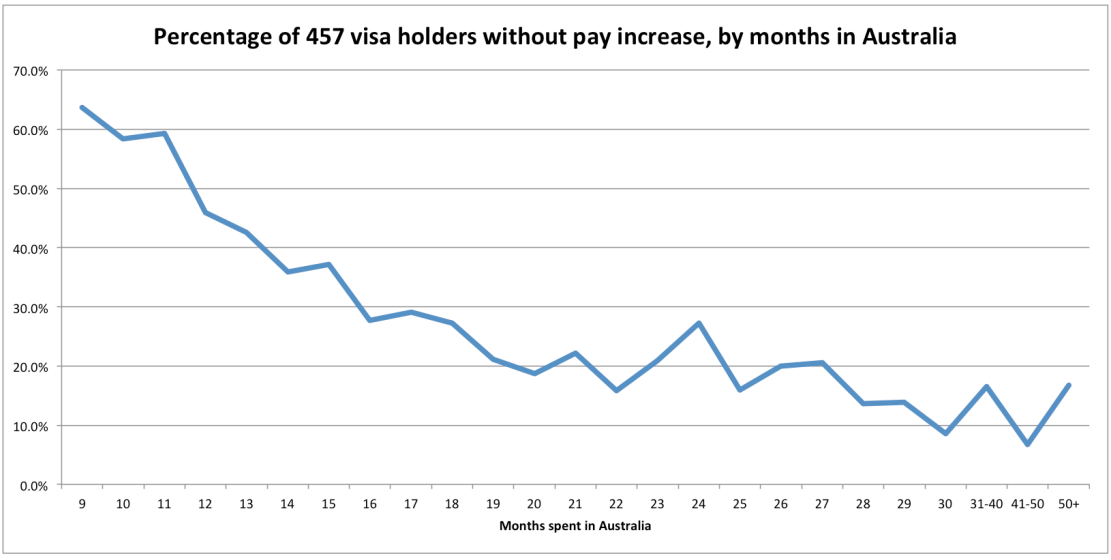
(17.9 per cent increase). This is most likely due to the changing composition of the program. For example the share of trades and technician occupations has increased from 14 per cent to 28 per cent. Trades occupations are, in general, paid less than other Managerial and Professional occupations under the 457 visa program.

New survey data recently made available to the MCA confirms there are likely some parts of the 457 visa program where the market salary rate framework is ineffective. At the time of the survey, the median salary was between $75,000 and $80,000. This is lower than the nomination data published in the quarterly reports would suggest. This raises questions as to whether employers pay 457 visa holders the same salary for which their position was nominated.

More concerning, 11 per cent reported their income was equal to or less than $50,000. This is a substantial proportion of the program, especially considering that at the time of the survey, the salary threshold was $49,300. Of these people, over 70 per cent are of a non-English speaking background. While many of the employers responsible for the 11 per cent in question are likely compliant with 457 visa regulations, the TSMIT is a threshold and should not be used as a de-facto 'market salary rate' for such a large proportion of the program.

This situation arises as a result of the trends in 457 visa holders incomes over time. Some 25 per cent of all migrants surveyed reported no change in income. Of these, 18.7 per cent had been in Australia for more than 12 months. Further, an additional 2.7 per cent reported a pay cut. These are concerning figures.

This graph highlights the percentage of 457 visa holders who have not received a pay increase and how many months they have been in Australia:



Perhaps most concerning is the permanent minority of visa holders without a pay increase over long periods of time. While the sample size of visa holders after 30 months is low, approximately 15 per cent have no pay increase. While much of this activity may be technically compliant with existing regulation, a significant portion of the salaries are likely nominated at the salary threshold. Some people do not receive a pay increase and there is no requirement in the 457 program to provide one. Yet as income is the most important condition provided to workers in the labour market, taken together, this new data is concerning. This new survey information points to the need for further analysis of the distribution of income under the 457 visa program.

This evidence also raises questions as how to manage market salary rates over time, after the nomination has been approved and after the visa holders have been in Australia for a period of time longer than 12 months. One possible method to mitigate this is to reduce the validity of the nomination to two years, thereby ensuring more regular market salary rates are applied over the course of the employer-employee relationship.

The survey evidence demonstrates how the different aspects of the 457 visa program can combine to generate an environment not conducive to the maintenance of market salary rates. For example, in the Accommodation and Food Services industry, 32 per cent of visa holders had not received a pay increase after 12 months in Australia, substantially above the figure for the program as a whole (21 per cent). However, the motivation of migrants may play a large role in this. Over 50 per cent of visa holders working in Accommodation and Food Services say they receive higher wages in Australia than their previous position in their home country, compared to only 33 per cent for the program as a whole. This alludes to multiple factors impacting on how the market salary framework for the 457 visa program operates in the labour market.

To better enforce the market rates framework, more evidence should be required at the nomination stage. Currently, employers can meet regulations by demonstrating migrant workers receive the same pay as Australian workers in the same position for that employer. For instance, if a sponsor has one Australian worker on $55,000 and another on $65,000 who performs the same position, the sponsor can support their nomination with documentation from the person earning $55,000, which becomes the default market salary rate for the 457 visa holder. In reality however, the market salary rate would be an average of these two salaries.

Additional evidence should be required to demonstrate how nominated salaries meet the market salary, outside of the sponsor. There is wide availability of data for departmental officers to draw on when assessing migrant salaries under the 457 visa program. The ABS in particular publishes detailed industry and occupational breakdowns of salaries. Meeting a more considered threshold than the conditions of a single workplace would better support the market salary rates framework. Given the data from the new

survey evidence, the MCA recommends the department incorporate available labour market income data into the decision making process for visa nominations, on advice from the ABS and the Department of Employment.

The Temporary Skilled Migration Income Threshold

The MCA consider that the application of the TSMIT is appropriate and that a salary threshold is required. Australian citizens who earn award salaries are also eligible for different types of social support, dependent on their individual situation. This may include child support, single parent support, family tax benefits and various types of tax exemptions and rebates. Temporary migrants, including 457 visa holders, are for the most part excluded from this support. Further, temporary migrants must hold private health insurance and in some states pay for public schools (ACT, NSW and soon in Western Australia).

This means the TSMIT acts as a type of 'minimum income' floor, indicative of a basic wage for those excluded from government benefits. The MCA recommends the department undertake a detailed study to better determine the appropriate TSMIT level. Currently, the TSMIT has simply been indexed over time from an original figure. Further it is understood that the historical figure that the current rate is indexed against was set arbitrarily. A review to determine the science that should factor into such a figure would strengthen the policy.

Moreover, there is a strong argument to having at least two thresholds, one covering urban locations and one for regional areas. The difference between these thresholds should be determined by further research, indicating the different incomes required.

There are risks to this approach. Previous regional exemptions under the 457 visa program were subject to rorting. There is also an added danger associated with limited labour mobility in regional areas. Combined with lower incomes, this could increase the risk of employer exploitation of migrants. Additional regional monitoring would be required to ensure migrants receive the salary at which they were nominated.

The TSMIT should be indexed to cost of living indicators as opposed to income indicators as it is not labour market related but a 'basic wage' regulation.

Skills assessment effectiveness

In the vast majority of circumstances, it is likely an employer is better placed to determine the skills required for their workplace than an immigration visa processing officer, performing a desktop skills assessment. To combat fraud in cases where employers seek to abuse the 457 visa program, a limited set

of evidence should be required for visa applicants to pass any skills assessment. This should include previous education and experience in equivalent roles.

Formal skills assessments should be abolished. These assessments are only levied on particular nationalities of citizens and for particular occupations. The MCA consider this to be discriminatory. Further, it likely leads to fungibility and non-compliance with regard to occupation selection, as sponsors nominate occupations without formal skills assessment while having migrants work in occupations requiring such assessments.

English Language requirements

While a level of English language proficiency is important, the MCA consider the current English language requirements are inflexible.

The current requirements – a 'hard' 5.0 IELTS score or B OET score – is inflexible. This rule excludes those who have a high standard of English yet fail an individual component of the test, such as writing. Many occupations require a different set of language skills and by allowing for an average score of 5.0 or B in either test, flexibility could be introduced to English language proficiency without sacrificing the provision that migrants require a demonstrated proficiency in English.

There is a strong argument to include an English language income exemption equivalent to the Fair Work High Income Threshold. A high income is a useful proxy to determine the relative power of an employment relationship and migrants receiving income above the Fair Work High Income Threshold are far less likely to be exploited by their employer.

The MCA cautions against any move to abolish the English language requirement as a retrograde step that would have long-term negative consequences. English language ability correlates strongly with income levels in Australia and a proficient level of English is required for permanent residency. As a majority of 457 visa holders wish to stay in Australia, an inability to speak English increases the likelihood they will remain a long-term 'temporary migrant' and have less ability to move within the labour market.

The Consolidated Sponsored Occupations List (CSOL)

The CSOL is an appropriate source for occupations under the 457 visa.

The composition of the CSOL is currently well defined. All skill level one, two and three occupations under the ANZSCO framework are eligible under the CSOL. While this is not perfect, it is the best method currently available. This method provides consistency.

There should be an established, transparent process for occupations outside this framework to be included under the 457 visa program. Industry bodies or employers could petition the government using this process to include additional occupations outside the currently defined CSOL.

While ANZSCO was not intended for broad use in immigration policy, it is a highly useful proxy. While imperfect, ANZSCO generally is appropriate to capture the needs of the labour market given its scope and detail.

As mentioned above, emerging occupations of shortage or those unclear with regard to skill level, should be subject to an established process for inclusion on the CSOL. This has occurred in the past in an ad-hoc fashion under labour agreements. By formalising this process, the 457 visa program would add additional flexibility for those sponsors caught between the gaps of ANZSCO.

Improved support and information for employers and visa holders

As indicated above, the MCA strongly commends any move to provide additional information for visa holders in relation to their rights in Australia, as well as a formal 'opt-in' service in relation to workplace orientation. This would require a small amount of funding to be taken from the increased nomination fee for the 457 visa program. Access would be voluntary with information on services provided by the department on the grant of a visa. The Department could simply notify all migrants of the opportunity to attend, the name of the local provider and a point of contact.

This service would immediately provide a proper opportunity for migrants to learn about the labour market and workplace norms. Instead of more printed material very few people read, this interactive session would allow migrants to learn Australian expectations of the workforce and provide a point of contact in case of potential exploitative practices.

In addition, MCA recommend that eligibility for the Adult English Migrant Program be extended to those spouses of primary visas holders on an 'as-needs' basis. This would better assist long-term settlement given such high rates of transition from the 457 visa to permanent visas.

The vast majority of employers take their sponsorship obligations seriously. This is demonstrated by the high level of migrants who believe their employer complies with their obligations. The provision of more information to employers is unlikely to have an effect on integrity, except in cases where non-compliance is born of unfamiliarity. Where the department can identify such cases, more information may assist sponsors to comply with regulations. However more information will not mitigate those employers who are determined to act outside of program regulations.

Increasing program transparency

Increasing the transparency of Australia's immigration framework would undoubtedly help improve integrity concerns. No program would benefit more so than the 457 visa program. This could occur in numerous ways.

The first is the release of more detailed program data. This would include non-personalised, unit level data that is compliant with privacy legislation outlining key aspects of the nomination process. At a minimum, this should include; salary, occupation, industry, state and the size of the employing sponsor.

This would achieve transparency and the benefits would include; migrants being able to compare like for like salaries, academic researchers taking a more sustained interest in the program and stakeholders such as unions and industry bodies making more informed contributions on the program and potential reform.

Further, there is a strong case to release the names of sponsoring employers and a broad indication of how many 457 visa holders each sponsor employers. This disclosure – common in the United States – would remove unnecessary secrecy from the 457 visa program. It is very difficult to make a successful argument in terms of commercial confidentiality in relation to whether a business uses the 457 visa program or not. This is a public program that should include the publication of beneficiaries.

Transparency is perhaps the most cost effective method of generating additional integrity in the 457 visa program as well as informing a more evidence-based public discussion about Australia's immigration framework.

Terms of reference 4

Review and advise on the appropriateness of the current compliance and sanctions.

Compliance and sanctions under the 457 visa are grossly inadequate. Effective legislative oversight can only function with a monitoring regime that supports those employers who do the right thing and sanctions those who are exploitative and profiteers.

Departmental activity for 2012-13 illustrate this inadequacy:

	2010-11	2011-12	2012-13
Active Sponsors	18520	22450	30090
Sponsors monitored	2091	1754	1857
Site visits	814	856	1238
Formally sanctioned	140	125	217
Formally warned	453	449	302
Referrals to other agencies	61	18	12
Infringement notice	9	49	68
Pecuniary penalty by Federal Court	0	1	0

(Source: DIBP Annual Report 2012-13, p.78)

While these metrics alone should not determine the success or otherwise of the 457 visa program compliance regime, they present issues.

As the number of active sponsors has increased by over 60 per cent in two years, the number of serious penalties – such as infringement notices and pecuniary penalties – has only marginally improved. While site visits are up substantially, these metrics point to the probable substantial lack of resourcing. At the most basic level, more resourcing to enforce the rules and regulations of the 457 visa program is a necessity.

These results allude to the primary reason Fair Work Ombudsman inspectors were provided with more powers in relation to 457 visa holders in 2013, a policy supported by the Migration Council Australia. Further cooperation between the FWO and DIBP would be welcome where this can lead to more effective monitoring of sponsors.

The MCA believes the current set of sanctions is appropriate. However they should be being applied more liberally in the case of exploitation. The most effective sanction is undoubtedly the barring of sponsors from using the 457 visa program in the future. Making this sanction easier to apply in cases where exploitation is deliberate would be an effective policy shift.

The range of criminal penalties is the exception to this. It is most difficult to believe there has only been one criminal sanction worthy of attention in three years since this framework was introduced. It is important to highlight poor and exploitative behaviour under the 457 visa program however the Migration Council notes this approach is expensive and can be difficult to prove in a court of law without a sufficient amount of evidence.

As stated above, the provision of information to workers should be provided through a third-party, who can deliberately explain the Australian labour market and employee protections and conditions. The MCA does not believe more information provided to employers will mitigate undercutting Australian wages or conditions, or prevent migrant exploitation, as this will occur at the margins regardless of how much information is provided to employers.