

A REWORKED 457 VISA PROGRAM: TEMPORARY SKILLED MIGRATION IN AUSTRALIA

Migration Council
AUSTRALIA





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EXECUTIVE SUMMARY

In April 2017, the Government announced it would abolish the Temporary Work (Skilled) visa (subclass 457 visa) (i.e., the Program) and replace it with a Temporary Skill Shortage visa. Implementation of the changes would be conducted in phases and completed in March 2018. The most recent data shows that the initial phases of implementation have led to a reduction in issuance of 35 per cent of temporary skilled worker visas (July–Sept. 2016 compared to July–Sept. 2017).¹ This is a significant impact, particularly given that the numbers for this quarter (Jul. to Sept.) have remained relatively stable since 2013. It is likely that the remaining changes such as the requirement for skilled temporary work applicants to have two years relevant work experience, will further impact the number of visas granted, making it more difficult for businesses to fill vacant jobs where there are no available Australian workers.

The implications of the changes are likely to be more far reaching than addressing those that misuse the system. Most significantly, the creation of a short-term visa with no pathway to permanent residency is based on a list of occupations that do not justify the limitations imposed on applicants.

These limitations along with the requirement for employer sponsored permanent skilled applicants to have at least three years relevant work experience will significantly limit the pool of onshore applicants for employer sponsored permanent skilled visas, effectively dismantling the proven two-step immigration process.

Migration Council Australia recommends that further consideration be given to eliminating the distinctions between the two recently created lists of occupations (the short-term stream and medium-term stream) to ensure a fairer system that addresses genuine temporary and long-term (permanent) needs of Australian employers who are unable fill positions with Australian workers.

To better ensure unscrupulous employers do not misuse the Program, Migration Council Australia recommends a robust fully transparent system be established to define skill shortages and the list of eligible occupations. Employers should be detached from this process by removing employer labour market testing for most occupations in favour of more robust industry assessments.

Lastly, strengthening the monitoring and enforcement program would be the final element necessary to ensure the Program serves its intended purpose, that is that employers hire foreign workers where they are unable to find Australian workers to fill the job.

¹ Department of Immigration and Border Protection, Temporary Work (Skilled) visa (subclass 457) Programme, Data and Resources, BP0014 Temporary Work (skilled) visas granted, updated on 31 Oct. 2017 <https://data.gov.au/dataset/visa-temporary-work-skilled>, accessed on 13 Nov. 2017



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INTRODUCTION

Traditionally the 457 program has played a critical role in terms of Australia's economic migration plan. It responds to the Government's commitment to a demand-driven skilled migration program. Close to 95 per cent of the Program is comprised of managers, professionals, and technicians and trades workers.² It is a relatively small program, representing approximately 0.7 per cent of the total labour market³, a reduction of 30 per cent since 2013.⁴

Critically, the 457 visa program addresses labour shortages as well as supplies a source of tried and tested labour force to fill the permanent skilled migration program. In 2015-16, 38.4 per cent of the economic permanent migration visas were issued to persons who previously held a 457 visa and more specifically, 79 per cent of employer sponsored permanent resident visas (Employer Nomination Scheme and Regional Sponsored Migration Scheme) were issued to persons who previously held a 457 visa⁵.

As Australia is geographically isolated in an increasingly international market, the movement of skilled workers is key to our economic success. The Program allows businesses to draw on international markets for skills and expertise they cannot find in Australia. It also enables overseas businesses to temporarily access the Australian market to fulfil contracts or provide services to an Australian business. The 457 program's flexibility is designed to address labour market variances while at the same time boosting knowledge transfer and innovation.

Although there have been instances of misuse of the Program or exploitation of workers, the proportion of these instances has been low in comparison to the size of the intake. Overall the Program contributes to Australia's international competitiveness and is key to our aspirations of becoming a regional hub. It benefits from strong industry support (85 per cent) and high levels of satisfaction (88 per cent) from foreign workers.⁶

The Program changes announced in April 2017 are far reaching and will likely significantly impact the Program's successes. The changes can be grouped into four main categories: (1) tightening pathways to permanent residence; (2) redefining skill shortages; (3) other measures to protect the Australian labour force; and (4) increased monitoring and enforcement measures.

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- 2 Department of Immigration and Border Protection, BR0008 Subclass 457 quarterly report, 31 December 2016, 1.03 Number of primary applications lodged in 2016-17 to 31 December 2016 by nominated occupation, p. 5
 - 3 Information obtained by using data from the Australian Bureau of Statistics, 6202.0 Labour Force, Australia, March 2017; and the Department of Immigration and Border Protection key statistics and Trends in the Temporary Work (skilled) visa (subclass 457) programme for 2016-17 to 31 March 2017, <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/work-in-australia/key-trends-457-programme-31122016>
 - 4 Migration Council of Australia, More than Temporary: Australia's 457 Visa Program, p.7
 - 5 Information obtained by using data from the Department of Immigration and Border Protection's Subclass 457 quarterly report, quarter ending at 30 June 2016, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/457-quarterly-report-30-06-2016.pdf>, accessed 11 October 2017; and the 2015-16 Migration Programme Report, Programme year to 30 June 2016, Department of Immigration and Border Protection, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/2015-16-migration-programme-report.pdf>, accessed 11 October 2017

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- 6 Migration Council of Australia, More than Temporary: Australia's 457 Visa Program, p.12-20



**AS AUSTRALIA IS
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1 TIGHTENING PATHWAYS TO PERMANENT RESIDENCE

A SPLIT SYSTEM

First and foremost, the most fundamental change to the Program is the creation of two categories of skilled temporary workers:

- Those who will address a short-term skill shortage — authorised to work for two years, renewable once onshore and with no pathway to permanent residency; and
- Those of “high value to the Australian economy and aligning to the government’s longer-term training and workforce strategies”⁷ — authorised to work for up to four years, renewable indefinitely and with access to a pathway to permanent residency.

This change effectively creates a two-class temporary skilled worker scheme: with a “high value” class who contribute to the Australian economy and in exchange have the option of planning long term economic and social participation in Australia, and a lesser class who simply fill a need on a short-term basis and have little incentive to come.

7 Department of Immigration and Border Protection, Fact sheet one: Reforms to Australia’s temporary employer sponsored skilled migration programme – abolition and replacement of the 457 visa, Version 31.5.17, <https://www.border.gov.au/WorkinginAustralia/Documents/abolition-replacement-457.pdf>, accessed September 28, 2017

The elimination of a pathway to permanent residence for approximately half the occupations in the Program represents a huge disincentive for workers to apply, as approximately half of 457 visa holders indicated the reason for applying for the visa was to live in Australia or become a permanent resident, and approximately 70 per cent of applicants intend to apply for permanent residence once their visa expires.⁸

The difficulty for businesses seeking to attract talent in the short-term category of the new program is that the only incentive for potential applicants is to acquire two years work experience in Australia. This may not be sufficient for applicants who would embark on a career-limited pathway through this stream.

Further, this change poses significant risks of producing a cohort of skilled workers living on the margins of Australian society who contribute to the economy and pay taxes but do not have a commitment to Australian society as they are effectively barred from contemplating a natural full integration.

8 Op. Cit., Migration Council of Australia, p.14.

Department of Immigration and Border Protection, Filling the Gaps: findings from the 2012 survey of subclass 457 employers and employees, p.3 <https://www.border.gov.au/ReportsandPublications/Documents/research/filling-gaps.pdf>, accessed 11 October, 2017

Temporary workers in the short-term stream are made to bear the full risk in the temporary migration equation with few advantages to them and most advantages to the Australian economy. However, this does not align with Australia's immigration values and could run the risk of imposing pressures on the economy if suitable workers cannot be found.

DISMANTLING THE TWO-STEP MIGRATION PROCESS

By eliminating the pathway to permanent residency for approximately half the occupations on the temporary skilled workers list, the government is effectively preventing a large source of skilled workers who have proven their ability to work in the Australian workforce from continuing to contribute to the economy on a long term basis. There is ample evidence to demonstrate the successful labour market integration of skilled permanent residents as they have a comparatively high employment rate. A 2015 survey found that at the six-month stage of settlement, almost nine-in-ten skilled permanent residents were employed⁹ and labour market outcomes improved substantially between the six and 18-month stage of settlement.¹⁰ Overall, according to the Australian Bureau of Statistics, around three quarters (75 per cent) of skilled migrants were employed in 2016, which is above the national average rate of about 66 per cent.¹¹ In addition to the employment success of skilled permanent residents, their partners have "an employment participation rate more than 10 percentage points higher than that of the general population, indicating a willingness to find work and enter the workforce".¹²

The Australian Population Research Institute estimates this barrier will cut the number of permanent entry employer nominated visas to about a third of their recent levels given the current pattern of sponsorship by occupation¹³. While this estimate might overstate the impact, the significance of the change will certainly be felt.

Foreign students, the other main source of permanent entry employer sponsored visas, are also significantly restricted from applying for an employer sponsored permanent residency visa as applicants will now require three years relevant work experience. Recent graduates will find it difficult to meet the new work experience requirement and will therefore be more likely to apply their knowledge and skills in other countries. This may represent a lost opportunity for Australia, particularly in regards to graduates with Science Technology, Engineering and Mathematics (STEM) skills, or qualifications relevant to emerging sectors.

Deliberately reducing the onshore pool of candidates (students and skilled workers) for permanent entry employer sponsored visas will significantly limit Australia's two-step immigration process and will steer employers towards selecting skilled permanent residents from an overseas pool of candidates. Most permanent employer sponsored entrants apply from within Australia. In 2016, 85.9 per cent of employer sponsored visas were issued to onshore applicants (41,454 onshore places out of a total of 48,250 places). It represents the visa category with the largest component of onshore applicants¹⁴. The ten-year (from 2004–05 to 2014–15) average of visas granted to onshore applicants for the permanent employer sponsored program is 83.1 per cent¹⁵.

9 Department of Immigration and Border Protection, Continuous Survey of Australia's Migrant Cohort 3 Report — Introductory Survey 2015, p.3.

10 Department of Immigration and Border Protection, Continuous Survey of Australia's Migrant Cohort 2 Report — Change in Outcomes 2015, p.3.

11 Australian Bureau of Statistics, 6250.0 — Characteristics of Recent Migrants, Australia, November 2016, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>, accessed October 3, 2017

12 Op. Cit., Department of Immigration and Border Protection, Introductory Survey 2015, p 10.

13 Australian Population Research Institute, Research Report, The Coalition's 457 Visa Reset: Tougher Than You Think, August 2017, Bob Birell, p. iii

14 Department of Immigration and Border Protection, 2015-16 Migration Programme Report, Programme year to 30 June 2016, Government of Australia, <https://www.border.gov.au/ReportsandPublications/Documents/statistics/2015-16-migration-programme-report.pdf>, accessed October 10, 2017

15 Department of Immigration and Border Protection, Australia's Migration Trends 2014-15, p.25

Barring those who have demonstrated an ability to effectively contribute to the Australian economy (457 applicants) or those with Australian credentials (foreign students) in favour of workers who have yet to demonstrate an ability to integrate into Australian culture and practices could represent a retrograde step. It is worth noting that the move to the two-step approach was intended to maximise the chances of positive employment outcomes for new migrants and achieve the greatest economic gains for the Skilled Migration Program. Undoing this system risks reducing the productivity of the Program as a whole.

IMPACT ON THE PERMANENT MIGRATION PROGRAM BALANCE

Further, should the number of employer sponsored permanent resident visas decrease, the proportion of Skilled Independent visas, State/Territory and Regional nominated visas and Business visas will have to increase in order to maintain the level of approximately two thirds skilled migration in Australia's Permanent Migration Program. However this may not be sufficient to offset the significant opportunity and economic costs of a decrease in the number of employer sponsored permanent residents, as they represent the cohort with the best employment outcomes. Indeed, according to the Department of Immigration and Border Protection¹⁶, their employment outcomes are better than those of other skilled migrants and better than the population at large.

Six months into settlement, the employment rate of employer sponsored migrants is close to 100 per cent, most of which is full-time and high skilled, while Onshore Independent migrants have a slightly higher unemployment rate and lower wages, and Offshore Independent migrants have an increasing unemployment rate (14 per cent in 2013 and above 20 per cent in 2015), four times higher than the general population.

State/Territory and Regional nominated migrants also have an increasing unemployment rate (10.3 per cent in 2013 and 16.1 per cent in 2015) and the lowest wages of all above-mentioned categories (median annual full-time earnings \$57,000 to \$60,000).¹⁷ Employer sponsored migrants continued to experience near full-employment and a high proportion in full-time and highly skilled jobs. Only two per cent of employer sponsored migrants were unemployed while rates for other migrants were within the range of five to six per cent. Nine-in-ten employer sponsored migrants were in full time employment and seven-in-ten were in highly skilled jobs.¹⁸

EXTENDING THE TEMPORARY STATUS

Another significant change to the pathway to permanent residence is the increase of the eligibility period from two years to three years for permanent employer sponsored skilled visa programs, including persons holding a 457 visa working in an occupation on the medium-term list. The benefits of increasing the permanent residence eligibility period are unclear as an additional year as a temporary worker in the same occupation is unlikely to increase integration into the work force. The negative impacts of this change are clear however, as it increases the worker's dependence on the employer.

16 Op. Cit., Department of Immigration and Border Protection, Introductory Survey -2015, p. 3-4. ; and Op. Cit., Department of Immigration and Border Protection, Changes in Outcomes — 2015, p. 4

17 Op. Cit., Department of Immigration and Border Protection, Introductory Survey — 2015, p. 8, 12.

18 Op. Cit., Department of Immigration and Border Protection, Changes in Outcomes — 2015, p. 4 and 13



OVERALL, THE AMENDMENTS TO TIGHTEN THE PATHWAYS TO PERMANENT RESIDENCY WILL HAVE SOCIAL AND ECONOMIC IMPACTS, THE EXTENT OF WHICH REMAIN TO BE SEEN.

ENGLISH LANGUAGE REQUIREMENTS

Of further consideration, on July 1, 2017, the language requirement for applicants for employer sponsored permanent resident visa programs was increased from a level 5 (vocational English) to a level 6 (competent English) in the IELTS (International English Language Testing System) scoring system. This is significantly above the current language requirement for 457 visa applicants (minimum of 4.5 in each component and an average of 5) and the new requirement for the medium-term stream as of March 2018 (minimum of 5 in each component). While the score of 6 across the four language disciplines (Reading, Speaking, Listening and Writing) is the minimum requirement for international students coming to undertake tertiary study in Australia, it may not be required for temporary skilled workers to perform well in their job.

Temporary skilled workers with a level 5 proficiency may find it difficult to meet the level 6 requirements to obtain permanent residency. This further tightening of pathways to permanent residency could create a class of temporary skilled workers with adequate language ability to work successfully in Australia but unable to meet to move out of a precarious situation due to the language threshold, putting them at increased risk of exploitation and unable to change employers easily.

Overall, the amendments to tighten the pathways to permanent residency will have social and economic impacts, the extent of which remain to be seen.

2 REDEFINING SKILLS SHORTAGES

A key criticism of the 457 visa program is that it has been used by businesses to recruit foreign workers to fill jobs where Australian workers could have been hired. While a significant component of the Program is used where there is a shortage of available Australian workforce, or where there is a need to develop knowledge transfer, training and innovation, certain sectors may have misused the Program.

To assess the labour market's needs, in the absence of implementing the 2014 recommendation to institute an independent advisory body to provide advice on the skills shortage occupations list,¹⁹ the Government has elected to further refine the combination of a government-established list of eligible occupations and employer labour market testing.

GOVERNMENT ESTABLISHED LIST OF ELIGIBLE OCCUPATIONS

The Government has announced that both lists (short-term and medium-term) "will be underpinned by more focused occupation lists that are responsive to genuine skill needs and regional variations across Australia".²⁰

19 John Azarias, Jenny Lambert, Prof. Peter McDonald, Katie Malyon; Robust New Foundations; A Streamlined, Transparent and Responsive System for the 457 Programme; An Independent Review into the Integrity in the Subclass 457 Programme; Published September 2014, p.51.

20 Op. Cit., Joint media release, 18 April 2017
Speech to LNP Queensland State Conference, Malcolm

As such, the new lists of eligible occupations have a reduced number of occupations and some occupations include caveats allowing for concessions for regional Australia or eligibility restrictions (such as type of work contract and type of business) to better address defined skills shortages.

Initially the Government announced that the short-term list would be reviewed based on advice from the Department of Employment, and the medium-term list would be reviewed by the Department of Education and Training.²¹ It has since updated this approach to have the Department of Employment reviewing and recommending eligible occupations for both lists.²² The Department of Employment will work closely with other departments, including the Department of Education and Training and the Department of Immigration and Border Protection, and will conduct public consultations.

Turnbull, 15 July 2017, "The 457 visa will be replaced with new temporary visas, underpinned by skills lists that are focused on skills shortages", <https://www.malcolmturnbull.com.au/media/speech-to-lnp-state-conference-15-july-2017>, accessed October 6, 2017

21 Department of Immigration and Border Protection, 457 reforms and occupation list changes: questions and answers (version 29.05.17), p.4, Australian Government, <http://www.border.gov.au/WorkinginAustralia/Documents/457-reforms-qanda.pdf>, accessed October 2, 2017

22 Department of Employment, Skilled Migration Occupation Lists, Australian Government, <https://www.employment.gov.au/SkilledMigrationList>, accessed October 5, 2017

This shift in approach has the potential to implement a more robust process of assessment in creating lists of eligible occupations aligned with labour market needs.

Creating a transparent system of publicly available indicators and thresholds considered to determine labour market needs would significantly boost the Program's credibility. The Department of Employment is currently developing its methodology to review the lists.²³ At present, beyond skill shortages, the Government proposes to take into account an extensive number of labour market factors including: employment growth projections; Australian graduate outcomes; apprenticeship outcomes; reliance on temporary visa holders and skilled migrant employment outcomes. The specific indicators considered and established thresholds have not yet been published. The methodology's stated guiding principles are essential yet insufficient. The principles include:

- Transparency in the methodological approach and stakeholder consultation processes;
- Reliable, robust labour market evidence and analysis; and
- Consideration of new evidence and investigating opportunities to improve the methodology over time through new technologies and modelling capabilities.

Further transparency in publishing the evidence-based findings would ensure accountability and help stakeholders (including businesses and prospective foreign applicants) as well as the public understand any changes to the lists of eligible occupations. If the lists of eligible occupations differ from the Department of Employment's findings, it would be appropriate for the Department of Immigration and Border Protection to consider publishing a report explaining how migration integrity issues, risk of fraud or other considerations were taken into account to establish the lists.

²³ Department of Employment, Consultation Paper – Methodology, Migration Occupation Lists – Update and Methodology, <https://docs.employment.gov.au/documents/skilled-migration-occupation-lists-proposed-methodology>, accessed October 6, 2017

The publication of the rationale for the established eligible occupations lists and any changes made to it, would also clarify the distinction between the short-term list and the medium-term list.

Currently the distinction seems to be based on the fact "the medium term visas will be issued only for more critical skills shortages"²⁴ and "occupations that have been assessed as being of high value to the Australian economy and aligning to the Government's longer term training and workforce strategies"²⁵. Understanding in practical terms how listed occupations align with economic and labour market projections, and identifying connections between the occupations on the medium term list, and to a certain extent on the short term list, with the Skilling Australians Fund would help rationalise how the Program is designed to meet Australia's labour needs and build our economy. It would also help clarify why certain occupations are limited to a maximum two-year contract renewable once (short term list) while others can benefit from indefinitely renewable four-year contracts (medium term list).

The lists will be reviewed every six months to ensure the Program remains responsive to changing labour market needs. On the other hand, this review frequency creates uncertainty for potential applicants and employers who have begun hiring conversations or even begun an application process that can take between five and ten months to process.²⁶ The occupation they are considering may be removed from the list before a decision is made on whether to grant the visa. Occupations identified for possible change (the "Red — Short Term Skilled Occupation List (STSOL) occupations for possible removal" and "Blue — Occupation not on current lists for possible additional to STSOL" lists of the Department of Employment's Traffic Light Bulletin)²⁷ are most likely to create uncertainty for employers and applicants. This uncertainty could deter skilled applicants and make it more difficult for businesses to fill their genuine needs with qualified skilled workers.

²⁴ Op. Cit., Joint media release – Putting Australian workers first

²⁵ Op. Cit., Department of Immigration and Border Protection, Fact sheet one, Version 31.5.17

²⁶ Department of Immigration and Border Protection, Global visa and citizenship processing times, <https://www.border.gov.au/about/access-accountability/service-standards/global-visa-citizenship-processing-times>, accessed October 6, 2017

²⁷ Department of Employment, Skilled Migration Occupation Lists, Traffic light bulletin, <https://docs.employment.gov.au/documents/traffic-light-bulletin>

Overall, the most essential way to alleviate many concerns regarding the temporary skilled migration program is to establish an overarching economic strategy including the temporary skilled migration program. Providing clear, objective measures to assess true labour market needs (including indicators and thresholds), publishing the findings, and describing how the temporary skilled migration program fits within the broader forward economic plan would go far in addressing concerns about the Program. In other words, what level of wages (what range) and other conditions are necessary to create a shortage? How are restrictions/caveats applied? What criteria are used to put an occupation on the short-term and medium-term streams? What are the justifications for the Department of Immigration and Border Protection's lists not aligning with the Department of Employment findings? How does temporary migration fit within the national workforce development strategies and skills and training policies? In other words, how do short-term economic outcomes transition towards a long-term economic plan?

EMPLOYER LABOUR MARKET TESTING

In addition to establishing the lists of eligible occupations, the Government will enhance employer labour market testing by making it mandatory unless an international obligation applies.

Once the lists of eligible occupations are established and the supporting documentation is published, it is difficult to see the added value of an employer's own assessment of the labour market in regards to their own needs. This approach relies on subjective analysis from an interested party and does little to bar an unscrupulous employer from bypassing Australian workers in favour of a foreign worker. The 2014 Azarias review of the 457 Program argued that "the Organisation for Economic Co-operation and Development has pointed out, employer-conducted labour market testing is not "fully reliable", and in the Australian context has proven ineffective".²⁸

A mandatory general employer labour market testing scheme will not ensure an objective evaluation of whether there are available Australians to fill the vacant position. A more effective measure would be to develop a tailored labour market assessment of industries, which would include tests for specific industry and regional practices and target businesses identified as having to justify an unusually high number of foreign workers. This mechanism would ensure resources are better spent and that testing outcomes are more reliable. This approach would go further in protecting the domestic labour market.

It seems the Government's intention is to adopt a version of this targeted labour market assessment by implementing a non-discrimination test. To further support the Australian labour force, the Government announced a non-discrimination workforce test to ensure companies with mostly foreign workers are not deliberately excluding Australian workers. The effectiveness and implications of this test will depend on how it will be implemented. It is assumed the test will involve an extension of the employer's labour market test to justify the labour shortage and the hiring of foreign workers. However, the implementation of the non-discrimination test has yet to be clarified and describe key elements including: how the businesses will be identified; whether industry specific practices will be taken into account; what will constitute acceptable justifications; what consequences would be applied to the employer; and whether there would be any impact on the foreign worker.

²⁸ Op. Cit., John Azarias, p.51



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3 FURTHER MEASURES TO ENHANCE & PROTECT THE AUSTRALIAN LABOUR FORCE

There are two more notable changes made to the Program that are intended to enhance access to the labour market for Australians (Skilling Australians Fund) and limit access to the labour market for some temporary worker applicants (relevant work experience requirement).

SKILLING AUSTRALIA FUND

Migration Council Australia has long advocated for a direct link between the temporary skilled migration program and a long-term plan to vocational education and training of Australian workers. The Government announcement that contributions to the Skilling Australians Fund (the Fund) will replace contributions to the employer's training program or to an industry-training program (training benchmark requirements) is a positive and significant step. The Fund contributions allow for a more strategic approach to addressing training needs across industries and are in line with national forward planning.

The Fund is intended to prioritise apprentices and trainees in six key areas: occupations in demand; occupations with a reliance on skilled migration;

industries and sectors of future growth; trade apprenticeships; rural and regional areas; and respect of people from targeted cohorts.²⁹ Further information on the correlations between these priorities, the listed eligible occupations, and the funded state and territory projects would demonstrate the temporary skilled migration program and the training Australians program work in parallel towards a common goal of enhancing the labour force.

The contribution not only funds national training initiatives for Australians in areas of need, it also serves as an assurance that employers are willing to pay extra to hire a foreign worker. The contribution is set at \$1,200 per year for small businesses (under \$10 million in annual turnover) and \$1,800 per year for other businesses. The difference between the two contribution levels seems minimal. Contributions from larger businesses could be increased to ensure a more proportional amount of their annual turnover is geared towards training Australians in areas of need, alleviating the burden on small and medium enterprises.

²⁹ Department of Education and Training, Skilling Australians Fund Fact Sheet, <https://docs.education.gov.au/node/43741>, accessed September 28, 2017

WORK EXPERIENCE

Among recent changes is a requirement for a minimum two-years of relevant work experience for temporary skilled worker applicants. The impact of this new requirement will depend on the definition of work experience. Concessions have been made to include experience gained by PhD students.³⁰ However, this requirement could make it very difficult for the vast majority of recent foreign graduates both in Australia and overseas to qualify for a temporary skilled work visa. These cohorts are generally more mobile across sectors and could bring significant knowledge and innovation to Australia. More broadly, consideration needs to be given to the potential opportunity cost of such a requirement in an area of development or skills shortage including STEM skills.

Foreign students who have graduated in Australia have tended to have varied employment outcomes. However, in areas of skill shortages, it would seem more efficient to facilitate employment for temporary workers with Australian credentials than to impose obstacles and guide employers towards temporary workers with foreign credentials. There may also be a benefit in allowing pathways for graduates who have established relationships with potential employers in areas of research and innovation or other areas of interest to Australia.

³⁰ Department of Immigration and Border Protection, 457 reforms and occupation list changes: questions and answers, version 08.11.17, p.5



IT WOULD SEEM MORE EFFICIENT TO FACILITATE EMPLOYMENT FOR TEMPORARY WORKERS WITH AUSTRALIAN CREDENTIALS THAN TO IMPOSE OBSTACLES AND GUIDE EMPLOYERS TOWARDS TEMPORARY WORKERS WITH FOREIGN CREDENTIALS.

4 NEED FOR EFFECTIVE MONITORING & ENFORCEMENT MEASURES

MONITORING THE PROGRAM

In 2015–16, 42 per cent of monitored temporary work sponsors, the majority of which were 457 sponsors, were found to be in breach of their obligations. This rate is higher than in recent years. Overall 372 sponsors were sanctioned, 210 received a formal warning and 28 were issued with infringement notices and one civil penalty case was heard in the Federal Court.³¹ Although it is encouraging that monitoring through targeting of risk has improved enforcement outcomes, these numbers show there is still much work to be done in raising awareness with businesses industry and stakeholder groups, as well as a significant need for increased risk-based monitoring.

ANNOUNCED FURTHER ENFORCEMENT MEASURES

The Government stated it will verify foreign worker wages by collecting tax file numbers and comparing them with the Australian Tax Office records to confirm that foreign workers are receiving adequate pay.

This initiative is welcome as it both safeguards local wages by ensuring foreign workers are not undercutting Australian workers by accepting lower than market value wages, and it also protects the foreign worker from wage-based exploitation. Although this initiative is a step in the right direction, the 7-Eleven cash-back scheme³² uncovered in 2015 demonstrates that this initiative may not be sufficient to ensure workers are paid fair wages in areas where there is a higher risk of worker exploitation.

The Government also announced its intention to publicise the names of employers who breach obligations. This name and shame approach is both an incentive to ensure employers abide by their obligations and a warning to prospective workers who may consider working for a listed employer. Further details on the parameters of the naming policy (whether the breach and penalty will be publicised and the duration of the publication) and its effects remain to be seen. At the very least, this initiative increases transparency and accountability of the Program.

³¹ Department of Immigration and Border Protection, Annual Report 2015-16, p.43 <https://www.border.gov.au/ReportsandPublications/Documents/annual-reports/annual-report-full-2015-16.pdf>

³² Fair Work Ombudsman, 7-Eleven signs on with Fair Work Ombudsman to set the standard for franchising in Australia, 7 December 2016.

PROPORTIONAL ENFORCEMENT SCHEME

A comprehensive and proportional enforcement scheme would increase the integrity of the Program by ensuring unscrupulous employers are held accountable for their infractions in a commensurate approach. Further developing a proportional scale of consequences for non-compliant employers should include consequences ranging from remedies to encourage compliance to punitive consequences where an employer has benefited financially.

Current enforcement options include warnings, cancelling or barring a sponsor from using the Program for up to five years, issuing an infringement notice, executing an enforceable undertaking or applying to the Federal court for a civil penalty order.³³ Further increasing penalties such as increased fixed cumulative pecuniary penalties and barring egregious employers from the Program for ten years or indefinitely would also reinforce program integrity.

³³ Department of Immigration and Border Protection, Annual Report 2015-16, p.43.



THE TEMPORARY SKILL SHORTAGE VISA HAS SOME POSITIVE ELEMENTS THAT SHOULD BE FURTHER DEVELOPED AND SOME ELEMENTS THAT WILL CREATE PROFOUND NEGATIVE EFFECTS, THE EXTENT OF WHICH ARE NOT ENTIRELY PREDICTABLE.

CONCLUSION

Many persons on temporary visas are permitted to work in Australia including students, working holiday makers and temporary workers. However, only temporary work visas are specifically aimed at facilitating overseas workers to be employed in areas of benefit to Australia, such as cultural, sport or academic research activities³⁴, international relations³⁵ or specialist areas³⁶. The 457 visa is focused on skilled work in areas of shortage in Australia. The Program has many requirements to ensure overseas workers are granted a visa if businesses cannot find an Australian citizen or permanent resident to do the skilled work. As such, the Program contributes to Australia's growing economy by ensuring businesses are able to find the required workforce to prosper. Additionally, the Program allows temporary workers to transition to permanent residence. Most 457 visa holders intend to apply for permanent residence and many apply through the Employer Nomination Scheme³⁷ (ENS). The vast majority of ENS visas are issued to previously 457 visa holders. Permanent residents in the ENS category have excellent employment outcomes with nearly 100 per cent employment rate, mostly full-time employment and highly skilled employment. In other words, the 457 visa is a success in terms of temporary and long-term (permanent residency scheme) contributions to the Australian economy. It is a temporary economic migration program with positive long-term effects.

Temporary economic migration is a natural derivative of globalisation. It is necessary to keep Australia competitive and innovative. Extracting the most out of the Program is imperative to allow Australian job seekers, Australian businesses and the Australian economy as a whole, as well as skilled migrants to prosper and contribute to Australia's growth.

Although the Program has positive outcomes, there have been some instances of misuse. To avoid misuse, certain Program requirements should be strengthened, namely defining skill shortages, implementing tailored industry assessments and further targeted enforcement measures. Other Program elements that have proven to be successful should be maintained, such as a pathway to permanent residence.

Overall, the Government's amendments to the 457 visa program and ultimately replacing it with a newly named Temporary Skill Shortage visa has some positive elements that should be further developed (partially transparent occupations lists, Skilling Australians Fund, further enforcement measures) and some elements (creation of a short-term stream, barriers to permanent residence, requirement for relevant work experience, six month review of the occupation list and mandatory labour market testing) that will create profound negative effects (more complex, more costly, highly changeable and less certain, less attractive), the extent of which are not entirely predictable.

34 Subclass 408 Temporary Activity visa

35 Subclass 403 Temporary Work (International Relations) visa

36 Subclass 400 Temporary work (Short Stay Specialist) visa

37 Subclass 186

