

# More than temporary: Australia's 457 visa program



This report was prepared by the Migration Council Australia.

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

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

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For more information about the MCA, please go to: [www.migrationcouncil.org.au](http://www.migrationcouncil.org.au)

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# Table of contents

Executive summary	3
<b>Chapter 1:</b>	
<b>About the program</b>	7
Sponsorship	7
Nomination	8
Visa grant	8
Compliance and monitoring	8
Program trends	9
<b>Chapter 2:</b>	
<b>Survey methodology</b>	10
<b>Chapter 3:</b>	
<b>Contribution to the labour market</b>	12
Migrant satisfaction	12
Employer satisfaction and usage	16
Union membership	18
Recommendations	20
<b>Chapter 4:</b>	
<b>Temporary migration and the global economy</b>	21
Skills development and training	21
National innovation system	24
Recommendations	26
<b>Chapter 5:</b>	
<b>Inclusion and community</b>	27
Sense of belonging	28
Discrimination and participation	32
Recommendations	32
<b>Chapter 6:</b>	
<b>History of the 457 visa</b>	33
Introduction	33
The Roach Report	35
Introduction of Temporary Business Visas	38
Review and reform under the Howard Government	40
Joint Standing Committee on Migration – “Temporary visas...permanent benefits”	46
Review and Reform under the Rudd-Gillard Governments	48
<b>Chapter 7:</b>	
<b>International comparisons of temporary migration</b>	62
Canada	64
New Zealand	65
The United Kingdom	65
The United States	66
<b>Conclusion</b>	68

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## List of acronyms

ABS	Australian Bureau of Statistics
ACTU	Australian Council of Trade Unions
AMEP	Adult Migrant English Program
ASCO	Australian Standard Classification of Occupations
AWPA	Australian Workforce and Productivity Agency
CSOL	Consolidated Skilled Occupation List
DEEWR	Department of Education, Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
EMA	Enterprise Migration Agreement
IELTS	International English Language Testing System
JSCM	Joint Standing Committee on Migration
NESB	Non-English speaking background
TSMIT	Temporary Skilled Migration Income Threshold
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

## Executive summary

*Over the past decade, Australia's migration program has evolved. It has transformed from a program to source labour into a tool which supplements our skill base and imports knowledge. It has become less permanent but more responsive; less centrally set and more demand driven. At the heart of this transformation is the growth of temporary skilled migration.*

Over the past decade, Australia's migration program has evolved. It has transformed from a program to source labour into a tool which supplements our skill base and imports knowledge. It has become less permanent but more responsive; less centrally set and more demand driven. At the heart of this transformation is the growth of temporary skilled migration.

Approximately 190,000 temporary migrants now live and work in Australia as primary and secondary 457 visa holders.<sup>1</sup> To put this in perspective, the total number of 457 visa holders currently in Australia is now roughly equal to the annual intake under our permanent migration program, but only a fraction of the total number of the 1.2 million temporary migrants residing in Australia at any one time.<sup>2</sup>

The 457 visa program is a purpose-built labour market policy tool and part of a new era of people movement management. A growing portion of the permanent program comprises employer-sponsored migrants. Of these permanent migrants, more than 70 per cent of those sponsored already reside in Australia on temporary 457 work visas. This is the newest policy advancement, a two-step migration process, allowing demand to drive the flow of skills into our labour force.

The growth of temporary skilled migration means we now have two "migration programs" to address skills shortages that are tied together and inextricably linked: the 457 program and the permanent skilled migration program. Temporary skilled migration has become an automatic relief valve, cushioning the relationship between labour market needs and the time lag inherent to centrally planned permanent migration. Surges in skilled labour requirements or dips in economic activity see numbers of temporary skilled workers ebb and flow. The program helps to maintain Australia's international competitiveness and is critical to our aspirations to become a regional hub.

Temporary skilled migration has received extensive media coverage and political attention in the almost two decades since the 457 visa was first introduced. Interest in the program reflects the inherent tension in providing a flexible and responsive tool to assist business in accessing the skilled labour they require to satisfy Australia's labour and economic needs, and enhance our international competitiveness, while also protecting Australian workers, their jobs, training and conditions. In particular there have been periodic reports of exploitation of overseas workers and reporting of aspects of the program by employers.

<sup>1</sup> Figures include secondary visa holders and are an estimation based on the average rate of grants for secondary visa holders.

<sup>2</sup> This figure includes 457 visa holders, international students, working holiday makers and New Zealand citizens.

Despite being subject to such attention, to date there has been little comprehensive analysis undertaken of the 457 program and its operation. This is particularly concerning given the size of the program, its significance in the calculus of investment and its impact on Australia's economic growth and sustainability.

This report provides the first comprehensive analysis of wide-scale survey data.<sup>3</sup> It draws on a survey, commissioned by the Department of Immigration and Citizenship, of some 3,800 visa holders and 1,600 companies to examine the operation of the temporary skilled migration program from the perspective of both visa holders and employers. It also examines the impact of the program at a national level, including its affect on innovation and skills development.

Chapter 1 of this report provides an overview of the 457 program as it presently operates, noting the circumstances in which primary and secondary 457 visa holders come to Australia.

Chapter 2 describes the methodology of the survey, while the findings of the survey are detailed in Chapter 3 through Chapter 5.

Chapter 3 looks at the performance of the program and its impact on the labour market. It finds that, on the whole, the program is meeting the needs both of employers and 457 visa holders. In particular there is a high level of job satisfaction, demonstrating that 457 visa holders are integrating well into the Australian workforce. Employer usage generally reflects the policy intention of the program and employers indicate a high level of support for the current settings.

However, we also find indicators that a small number of employers are misusing the program, highlighting the need for effective compliance and monitoring systems. In particular, responses relating to wages and conditions require further monitoring and investigation. Moreover, the survey data indicates that unions could play an increased role in enhancing the effectiveness of the program, as 457 visa holders who are union members are more satisfied with their employment and more likely to stay in Australia over the long term.

Key findings:

- Workers on 457 visas enjoyed high levels of satisfaction, with 88 per cent either very satisfied or satisfied with their relationship with their employer.
- 71 per cent of 457 visa holders intended to apply to become permanent residents after their visa expired.
- 85 per cent of employers were satisfied or very satisfied with the program.
- 2 per cent of 457 visa holders reported incomes less than the threshold income set by regulation.
- Only 7 per cent of 457 visa holders indicated that they were affiliated with a union.

Chapter 4 examines the contribution of the program to broader economic policy outcomes, including skills development and innovation. The survey results reinforce that skills transfer and knowledge from 457 visa holders play an important part in building Australia's human capital. Temporary migration does not just fill skills shortages; it addresses skills deficits by training Australian workers. The program is critical in keeping us competitive in the era of international knowledge wars, when industry innovation is global.

<sup>3</sup> Other surveys have occurred in the past providing valuable insights into the program however they contained a significantly smaller sample. The work of McDonald, Hugo, Khoo and Voigt-Graf in particular laid the groundwork for a more detailed understanding of the 457 program.

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## Key findings:

- Over three-quarters (76 per cent) of 457 visa holders said they helped to train or develop other workers.
- 68.5 per cent of employers said they were using 457 visa holders to train Australian counterparts.
- An overwhelming majority (86.3 per cent) of visa holders felt that their job in Australia used their skills and training well.

Chapter 5 reflects on the lives of 457 visa holders outside of employment — their social experiences, level of community engagement and sense of belonging. Living in Australia for prolonged periods of time, 457 visa holders are part of our communities. Some fifty per cent will transition to permanent residency. For those who do return home, their period of stay in Australia will, more often than not, be for a period of years rather than months. Our analysis of the survey also finds that more attention must be paid to secondary visa holders, such as spouses and dependent children. The survey results also indicate that participation of secondary visa holders is critical in the decision to stay in Australia.

## Key findings:

- The vast majority of 457 visa holders indicated they were settling into Australia well (on a scale of one to ten, the average was 8.35).
- Participation and employment of spouses (secondary visa holders) is an important factor in choosing to stay on in Australia.
- Participation in sports and hobbies at least monthly was higher than the Australian average.
- Some 18.4 per cent of 457 visa holders from non-English speaking backgrounds indicated that they had faced discrimination because of their skin colour, ethnic origin or religious beliefs.

In analysing the survey findings, the report concludes that Australia is missing the full potential of gains from temporary migration. Spouses of 457 visa holders, while having work rights, do not receive any support and can struggle in terms of employment outcomes, English language acquisition and understanding of Australian culture. Assisting these migrants with post-arrival support would improve labour market participation rates. Further, the report finds that the rapid growth of temporary migration has not been matched by consideration of its impact and contribution to broader economic policies. As such, the report puts forward a series of recommendations for further research and policy development. A full list of recommendations can be found below.

Given the flexible and fluid nature of temporary skilled migration, policy settings for this program require constant monitoring and review. Chapter 6 of this report provides a full historical analysis of the evolution of the 457 program, from inception to date. The picture that emerges is of a program that has been constantly adjusted and fine-tuned to meet changing circumstances, with an increased focus on regulation and compliance mechanisms over time.

While the review initiating Australia's temporary skilled migration program was commissioned by the Keating Government, the 457 visa itself was introduced under the Howard Government in 1996. The first significant phase of program reform, in the early 2000s, was directed towards improving the regime by increasing the ability of employers to better utilise temporary migration. The second phase of reform, starting in 2006, can be classified as a response to instances of exploitation of 457 visa holders and a strict focus on the integrity of the program. The Rudd-Gillard Government continued this tradition of integrity-based reform, albeit with a broader focus to also protect Australian wages and conditions.

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The recommendations proposed in this report are similarly a response to the most recent evolutions in the 457 visa system. The recommendations seek to address current challenges associated with the program, and future-proof it so that it can continue to meet Australia's economic and broader social needs.

We stress that support for migration programs in Australia should not be taken for granted. The confidence of the Australian community in the migration program is paramount to its success and is contingent on strong and bipartisan political leadership. As such, reforms need to be informed by evidence and need to factor in the potential consequential effects.

### **Recommendations**

1. That the Federal Government increase sponsorship and nomination fees associated with the 457 visa program to act as a price signal, providing a resource pool to strengthen compliance and deliver settlement services.
2. That the Federal Government, in consultation with industry peak bodies and the Australian Council of Trade Unions (ACTU), establish voluntary Australian workplace orientation sessions available for all 457 visa holders.
3. That the Federal Government extend visa condition 8107 from a period of 28 days to 90 days, as recommended in the Deegan Review.
4. That the Federal Government allows any 457 visa holder who has worked continuously in Australia for two years to apply for the transition pathway to permanent residency under the Employer Nomination Scheme irrespective of the number of employers they have worked for.
5. That the Federal Government fund research into immigration policies and their link to Australia's national innovation and productivity agenda.
6. That peak industry bodies collaborate to undertake an examination of innovation through migration at the enterprise level.
7. That the Federal Government incorporates analysis of the role of migration in national workforce development strategies and skills and training policy.
8. That the Federal Government extends settlement services and other services that enable social and economic participation to the dependants of 457 visa holders.
9. That the NSW and ACT governments remove all education expenses associated with the dependent children of 457 visa holders.
10. That the Federal Government, the ACTU and industry peak bodies work together to develop workplace and enterprise level programs to address discrimination and exploitation.

# Chapter 1: About the program

*The 457 program enables residence in Australia for the purposes of employment for a period of up to four years. It is only available to skilled workers who have been sponsored by an employer to fill a skills shortage.*

The 457 program enables residence in Australia for the purposes of employment for a period of up to four years. It is only available to skilled workers who have been sponsored by an employer to fill a skills shortage. Employers are made up of private enterprise, academic institutions, and government and non-profit organisations. The key foundation of the 457 program is a focus on skills. Employers can only hire people who have existing qualifications or experience, and only to fill positions in certain skilled occupations.

Workers on 457 visas are found in every industry. They make up approximately one per cent of the total labour market and account for approximately two per cent of our skilled workforce. The 457 program is uncapped, meaning the number of visas granted in any given year is determined by demand. At 31 March 2013, there were 105,600 primary visa holders in Australia. In addition, there are approximately 85,000 secondary visa holders (spouses and children).<sup>4</sup>

The 457 program is 'demand-driven' and is incorporated into the economic cycle. When the economy grows demand increases and more people are sponsored. When the economy slows, such as during the global financial crisis, demand for the program drops off. Use of the 457 program is currently at a historic high. This is attributable to comparatively robust economic conditions with poor economic performance in some parts of the developed world.

The Department of Immigration and Citizenship (the Department) administers the program. This includes approving employers to use the scheme and granting visas to migrants for entry into Australia. In addition, the Department is charged with monitoring and compliance activities. Further, the Gillard Government recently announced additional powers would be given to the Fair Work Ombudsman to monitor and enforce compliance with 457 visa conditions. Heavy penalties can be levied on employers who abuse the program.

The procedural process to issue a 457 visa consists of three distinct stages. First, an employer must be an organisation approved to sponsor 457 visa holders. The second stage is approval of a particular position for the employment of a 457 visa holder. The final process is the visa grant, which encompasses an assessment of the skills of the worker concerned. More detail on each stage is provided below.

## **Sponsorship**

Several conditions must be met to become an approved sponsor. The employer must be lawfully operating and must pay a sponsorship fee (currently \$420). Additionally, the employer must meet a training benchmark. Either the employer must have spent one per cent of payroll on training Australian staff or contribute two per cent of payroll to an industry training fund.

Employers must also attest that they have a strong record of employing local labour and non-discriminatory work practices. This regulation has been criticised, as the attestation does not require demonstration by any other methods.

<sup>4</sup> Taken from the Department of Immigration and Citizenship monthly statistical update for the 457 Program. The update does not release the spouse and children figure. Past figures indicate that for every primary 457 visa holder, there is approximately 0.8 additional visas granted.

## Nomination

After becoming an approved sponsor, an employer can nominate a position in the business. This position must be an occupation listed on the Consolidated Skilled Occupation List (CSOL). The CSOL contains 649 different occupations (from a total of 1342 possible occupations). Each of these occupations is classified as a 'skilled' position as they require a minimum AQF Certificate III and two years of on-the-job training. However, the majority of occupations have a higher skill threshold. There is a fee to nominate each position (currently \$85).

At this stage, the employer must nominate the name of the migrant who will fill the position and the salary they will be paid. Often employers provide employment contracts or copies of Enterprise Agreements to verify pay rates. Importantly, the salary must be the "market rate", that is the amount paid in the Australian labour market for that position. A market salary must be demonstrated by showing that an Australian would receive the same income doing the same job. The pay cheques or Enterprise Agreements of other workers can be used to justify income levels for migrants on 457 visas. In addition, the salary must be above the Temporary Skilled Migration Income Threshold (TSMIT), which currently is \$51,400. Historically, this figure is indexed every year in July in line with inflation.

## Visa grant

After a nomination has been approved, the person identified can apply for a subclass 457 visa. As part of this process, each migrant must demonstrate they have a genuine intention to perform the occupation that they have been nominated to undertake. This involves showing how skills have been acquired, such as formal education or detailing past work experience. Some migrants are also required to undergo a formal English test (there are several broad exemptions to this) and some occupations in Australia require registration and licensing from other bodies (for example nurses and electricians).

Importantly, migrants are subject to two visa conditions. Firstly, all migrants must hold private health insurance. The second condition is that each worker who holds a 457 visa can only work for the employer that nominated him or her and in the position they were nominated to undertake. As part of this condition, 457 visa holders cannot cease employment for more than 28 consecutive days. Once in Australia, a worker on a 457 visa can change employers or positions. However, the job needs to be with an employer who is also an approved sponsor and they must again go through the process of nominating for a particular position.

## Compliance and monitoring

The Department undertakes a program of monitoring sponsors to "enhance the integrity of temporary economic visas, including the subclass 457 visa program". Compliance work is performed by a network of 37 inspectors. The focus of compliance is determined by internal risk assessments. Recently, the government expanded monitoring of the 457 program by allowing oversight of the program by the Fair Work Ombudsman. The Ombudsman will now monitor to provision of market salary rates to 457 visa holders and undertake checks to verify that they are performing tasks commensurate with the job description they were nominated to undertake.<sup>5</sup> With an additional 300 inspectors, this provides a safety net.

**Table 1: 457 Visa program compliance and monitoring**

Active sponsors	22 450
Monitored	1 754
Visits	856
Sanctioned	125
Warned	449
Referred	18
Infringement	49
<b>Successfully prosecuted</b>	<b>1</b>

(Source: Department of Immigration and Citizenship Annual Report 2011-12)

<sup>5</sup> See <http://www.minister.immi.gov.au/media/bo/2013/bo194313.htm>

# Chapter 1: About the program

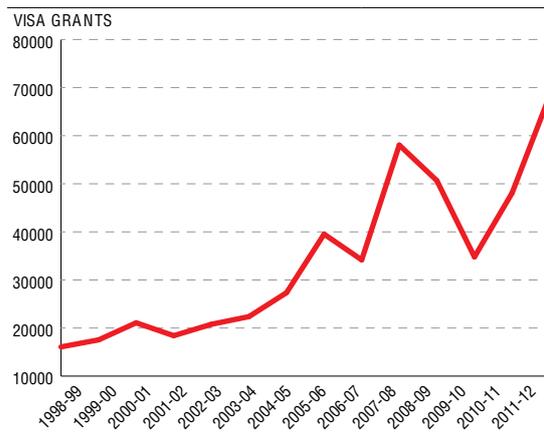
## Program trends

Since the program's inception, there has been relatively consistent growth in usage. While the onset of the Global Financial Crisis saw a significant dip in visa grants, activity has since increased to historic levels. At the end of 2011-12, there were 22,450 employers who sponsored at least one 457 visa holder. This represents a 20 per cent increase on the year before, indicating a broadening in uptake.<sup>6</sup> Despite this growth, it is important to place the program in perspective as, overall, workers holding 457 visas make up a small fraction (one per cent) of the labour market.

Increased usage of the 457 program is now driving changes in the permanent migration program. Workers holding 457 visas dominate categories of permanent residency that are increasing over time. This includes permanent visas that are sponsored by employers.

Additionally, permanent visas are increasingly being granted to migrants who already live and work in Australia. For example, more than half of all permanent visas granted to migrants already in Australia were made to applicants on a 457 visa. In 2011-12, there were 79,287 permanent skilled and family visas granted to migrants in Australia, of which, 40,485 previously held a 457 visa.<sup>7</sup>

**Graph 1: Primary 457 visa grants, 1997-1998 to 2011-2012**



(Source: the Department of Immigration and Citizenship)

<sup>6</sup> Department of Immigration and Citizenship, *Annual Report 2011-12*, p. 86.

<sup>7</sup> Note: The number of visas granted to migrants already in Australia is about 40 per cent of the total migration program – an additional 105,711 skilled and family visas granted offshore, for a total Permanent Migration Program of 184,998. Also note that the transition to permanent residency figures include spouses and children of primary migrants.

## Chapter 2: Survey methodology

The following sections provide an analysis of survey data from 3,812 workers on a 457 visa and 1,600 employers who use the program. The total sample size for visa holders was significant, representing approximately 5 per cent of all 457 visa holders in Australia at the time. The survey, funded by the Department of Immigration and Citizenship, was undertaken by the Social Research Centre in May and June 2012.

To be included in the survey, a migrant must have been in Australia on 5 May 2012 and had their visa granted between October 2009 and June 2011. For the purpose of data analysis, this ensures that all migrant participants had been living in Australia for a minimum of 10 months. This is important as not all 457 visas are granted to migrants who stay. Some employers use the program to transfer existing employees between offices in different countries, such as from regional headquarters to country offices. These 457 visa holders are likely to stay in Australia for shorter periods of time.

For employers to be included, they must have sponsored at least one worker on a 457 visa as of 5 May 2012 who had their visa granted in the period between October 2009 and 30 June 2011. For sponsoring employers, HR managers or persons responsible for hiring employees were asked to respond on behalf of the employer.

Migrants and employers were selected in the sample from records provided by the Department. The questionnaire used in the survey was developed between the Department and the Social Research Centre based on previous research into sourcing migrants (such as the Continuous Survey of Australian Migrants). A stakeholder workshop was held to explore key topics to be covered.

The questionnaire was piloted and refined. After the survey was completed, weighting was assigned to data; however, the analysis used in this report is derived from raw data. This is due to the large sample sizes of the survey. The weighted data saw only marginal differences, not influencing the overall themes of the survey.

**Table 2: Collection of survey data**

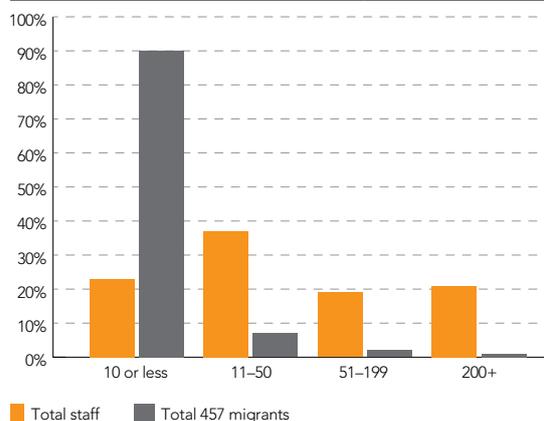
	Target Interviews	Sample	Completed Interviews	Response Rate	Interview Length (average) (mins:secs)
Migrant Workers	3,100	15,199	3,812	25.1%	23:34
Current employers	1,500	2,832	1,500	91.7%	8:08
Lapsed employers	100	436	100	73.5%	4:29

## Chapter 2: Survey methodology

Of the 1,600 employers surveyed, employer size was as follows:

- 23 per cent employed less than 10 staff
- 37 per cent employed between 11 and 50 staff
- 19 per cent employed between 51 and 199 staff
- 21 per cent employed over 200 staff.

**Graph 2: Employer size by staff and 457 usage**



Of the 3812 holders of 457 visas surveyed:

- 64 per cent were male
- 36 per cent were female
- 49 per cent were from English-speaking backgrounds
- 51 per cent were from non-English speaking backgrounds.

Translations and interpreters were not used to collect survey data, as 457 visa holders are assumed to be tested for and have a minimum standard of English. Only a small percentage of migrants surveyed indicated difficulty with English after an initial period of living in Australia. 457 visa holders under the labour agreement program were not surveyed.

For all survey questions, there were a range of responses, including for many, "Don't know" or "Refuse". Generally, the responses to these questions ranged from one to ten per cent. Data tables are detailed in Appendix A.

Like all surveys, there will be some sampling error contained. The 'true value' is approximately +/- 2 per cent.

It is also useful to mention that the findings in this report are not presented as 'right' or 'wrong'. The survey data provides an indication of migrant and employer satisfaction against a range of questions. There are of course many other non-migration impacts on satisfaction for both of these groups.

## Chapter 3: Contribution to the labour market

*This survey provides a body of evidence to indicate that the program is meeting the needs of both employers and 457 visa holders. In particular, a high level of employment satisfaction demonstrates that 457 visa holders are integrating well into the Australian workforce. On the whole, employer usage and attitudes reflect the policy intention of the program and, further, employers indicate a high level of satisfaction and an ongoing commitment to usage.*

The basic objective of the 457 program is to meet skill needs which cannot be effectively met by domestic labour within a reasonable timeframe. Critically, the intention of the program is that it does this without adversely affecting labour market outcomes for Australian workers. Refinement of policy mechanisms associated with Australia's temporary migration framework has therefore concentrated on calibrating the tools used to achieve both objectives simultaneously. However, to date there has been very little research and analysis evaluating the functioning of the program with respect to these outcomes.<sup>8</sup>

This survey provides a body of evidence to indicate that the program is meeting the needs of both the majority of employers and the vast majority of 457 visa holders. In particular, a high level of employment satisfaction demonstrates that 457 visa holders are integrating well into the Australian workforce. On the whole, employer usage and attitudes reflect the policy intention of the program and, further, employers indicate a high level of satisfaction and an ongoing commitment to usage.

However, there are concerning indicators that highlight the inherent risk about any temporary migrant work program. In particular, responses regarding wages and conditions require further monitoring and investigation. Moreover, survey data concerning union affiliation indicates that unions could play an increased role in enhancing the effectiveness of the program. For example, 457 visa holders who are union members are more satisfied with their employment and more likely to stay in Australia over the long term.

### **Migrant satisfaction**

The survey indicated very high levels of satisfaction, with 88 per cent of visa holders either very satisfied or satisfied with their relationship with their employer. Only 4 per cent of 457 visa holders were dissatisfied. This compares favourably to Australian satisfaction data. In 2012, general job satisfaction statistics for the Australian labour market were as low as 54 per cent.<sup>9</sup>

<sup>8</sup> There are, of course, exceptions to this general trend. Professor Peter McDonald, Professor Graeme Hugo, Dr Siew-Ean Khoo and Carman Voigt-Graf conducted significant research into the 457 program throughout the 2000s. More recently, Joo-Cheong Tham has undertaken useful research.

<sup>9</sup> CareerOne.com.au, *Hidden Hunters Report*, 2012.

## Chapter 3: Contribution to the labour market

**Table 3: Migrant satisfaction: Relationship with employer by industry type**

Accommodation and food services	94%
Administrative and Support Services	84%
Agriculture, Forestry and Fishing	86%
Arts and Recreation Services	88%
Construction	86%
Education and Training	88%
Electricity, Gas, Water and waste services	77%
Financial and Insurance Services	86%
Health Care and Social Assistance	90%
Information media and telecommunications	88%
Manufacturing	92%
Mining	92%
Other Services	89%
Professional, Scientific and Technical Services	88%
Public Administration and Safety	100%
Rental, Hiring and Real Estate Services	82%
Retail Trade	86%
Transport, Postal and Warehousing	97%
Wholesale Trade	93%
<b>Total</b>	<b>88%</b>

In terms of promotion prospects, 64 per cent of visa holders said they were either satisfied or very satisfied by the opportunities for a promotion in their current job, with only 14 per cent dissatisfied. This is a significant statistic, as the prospect of promotion is likely to weigh heavily in any decision to stay permanently. Moreover, the extent to which employers provide opportunities to progress speaks to their intention in terms of usage of the program and the premium placed on the skills of 457 visa holders.

In terms of earnings, 76 per cent of visa holders were either very satisfied or satisfied with their wages. While there are no exact commensurate national level data, the finding is in accord with results from other similar surveys of the general Australian population. For example, the HILDA survey, asks for a 0 to 10 rating for income satisfaction. Across the broad Australian community, the average result for income satisfaction was of 7.0 in 2009.<sup>10</sup>

Promisingly when examining a breakdown between English and non-English speaking background 457 visa holders there was very little difference in terms of income satisfaction. This is in contrast to migrants in the labour market, where higher unemployment and lower participation are apparent for migrants. While there is likely to be a mismatch in wage expectations between migrants originating from different development contexts, it is encouraging that there is little disparity in terms of migrant perspectives. However, it is important to note that 11 per cent of 457 visa holders were either dissatisfied or very dissatisfied with their earnings. While HILDA also shows some level of dissatisfaction of Australian attitudes towards earnings, the survey data regarding wages indicate that some visa holders are paid significantly less than they are entitled to receive.

Approximately 5 per cent of 457 visa holders did not feel as though their employers were meeting their obligations. The most common responses were agreements not honoured (4.3 Per cent), issues with living away from home allowance (3.9 Per cent), over-worked, lack of over-time payments (3.8 Per cent), discrimination (3.0 Per cent) and feel restricted from leaving (2.6 Per cent).

<sup>10</sup> *Families, Incomes and Jobs, Volume 7: A Statistical Report on Waves 1 to 9 of the Household, Income and Labour Dynamics in Australia (HILDA) Survey 2012* Note: While this is an imperfect comparison due to the different sample populations and methodology, this appears to infer at some level that satisfaction levels for migrant earnings are somewhat similar to Australian averages. The HILDA survey collects information about economic and subjective well-being, labour market dynamics and family dynamics. It is a longitudinal survey that has been undertaken since 2001. It is funded by the Department of Families, Housing, Community Services and Indigenous Affairs and designed and managed by the Melbourne Institute of Applied Economic and Social Research.

## Chapter 3: Contribution to the labour market

It is cause for considerable concern that approximately 2 per cent of 457 visa holders indicated that their earnings were less than \$40,000, both when they first arrived and when they were surveyed (June 2012). This is significantly below the salary threshold of \$51,400 and indicates that a small proportion of employers are abusing the program. Given the skill spectrum associated with the program, it is also highly unlikely that these visa holders are being paid wages that are comparable to market salary wages. It is worth mentioning that these migrants are not concentrated in any one industry or location. It is also notable that a full 25 per cent of 457 visa holder responses to questions about their salary were 'Don't know' or 'Refuse'. This was the single question in the survey that elicited this type of response.

It is also concerning that approximately 1.5 per cent of 457 visa holders stated that they did not have any Australian colleagues. When combined with the restrictions on labour mobility and low levels of monitoring and enforcement, this can create conditions conducive to exploitation. However, it is worth noting that there is very little correlation between those migrants who are receiving below threshold salary levels and those who work by themselves (0.05 per cent of total survey).

The final report of the Deegan Review also made the critical point that "Those visa holders who are susceptible to exploitation are also reluctant to make any complaint which may put their employment at risk."<sup>11</sup> This is particularly true of 457 visa holders with limited English skills who wished to remain in Australia and gain permanent residency, but who were heavily reliant on their employer for their continued presence in Australia and consequently vulnerable and open to exploitation.<sup>12</sup>

The Deegan Review also raised concerns about the position of working age children who were secondary visa holders, noting that claims had been made during consultations that children of primary visa holders who had left school had "been persuaded to work under irregular and exploitative conditions for employers who have claimed that to 'regularise' the situation (and pay correct wages etc) would jeopardise that person's status as a dependent of the primary visa holder and their right to remain in Australia."<sup>13</sup>

The survey does not ask about the working conditions or wages of secondary visa holders, including spouses. Arguably, secondary visa holders who may not speak English well or at all and may be unskilled are particularly vulnerable to exploitation. Further research on the work patterns of secondary visa holders will be important in determining the extent and risk of exploitation.

Critically, 88 per cent of 457 visa holders said they had working conditions that were equal to Australian colleagues. Though it is disquieting that 7 per cent said their conditions were not equal. Conversely, 34 per cent of migrants said they felt they worked harder than Australian colleagues, with 65 per cent indicating their work ethic was about on par with their Australian colleagues. While this is a subjective question, it provides important insight into how 457 visa holders view themselves relative to their colleagues in the workforce.

The survey also indicated a strong desire on the part of 457 visa holders to see the program as a pathway to permanent residency in Australia. About half (48 per cent) of all 457 visa holders indicated the reason for applying for the visa was to live in Australia or to become a permanent resident. Moreover, 71 per cent intended to apply to become permanent residents after their visas expired.

<sup>11</sup> Barbara Deegan, *Visa subclass 457 integrity review: final report*, October 2008, accessed at [http://www.immi.gov.au/skilled/skilled-workers/\\_pdf/457-integrity-review.pdf](http://www.immi.gov.au/skilled/skilled-workers/_pdf/457-integrity-review.pdf), p.23.

<sup>12</sup> *ibid.*, p.55.

<sup>13</sup> *ibid.*, p.58.

## Chapter 3: Contribution to the labour market

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About 40 per cent of 457 visa holders indicated they used migration agents. Like a tax agent, a migrant agent helps immigrants with associated paper work and dealing with the administration of attaining a visa. In Australia, migration agents must be formally registered with the Office of the Migration Agents Registration Authority, or MARA. This organisation regulates how migration agents can behave in providing advice to immigrants. 457 visa holders were satisfied with migration agents in Australia with 81 per cent responding positively about their experience while 7 per cent expressed dissatisfaction.

The survey did not ask the reason for dissatisfaction and further research on this issue is recommended. The ACTU website highlights that overseas visa holders are vulnerable to exploitation because of the potential for recruitment and/or migration agents to provide misinformation during the recruitment process; language barriers; a lack of traditional support and family networks in Australia; unfamiliarity with the way the Australian legal and administrative system works; and a lack of knowledge of their rights under Australian law and low rates of union membership.<sup>14</sup>

A high proportion of 457 visa holders are from non-English speaking countries (notably China and India) where hiring, HR and work practices are not comparable with Australia, and cultural practices are significantly different. A lack of knowledge of the Australian context diminishes the capacity of the primary 457 visa holder to engage with their rights in the workplace and reduces their ability to participate in the broader Australian community.

The most recent and arguably most comprehensive review of the program, the Deegan Review, explicitly noted the need for more information to be provided to 457 visa holders upon their entry to Australia and suggested orientation support. The Review also flagged the possibility of providing services through additional charges to the primary users and beneficiaries of the program, namely business. By earmarking money raised by increasing visa fees, the government could fund post-arrival support in a revenue neutral way.

The Deegan Review also highlighted the need for 457 visa holders to be given greater agency in their relationship with their employer. Currently, 457 visa holders can only go without a sponsored employer for 28 days under the terms of their visa. In the event of a breakdown in the relationship with their employers, 28 days is arguably too little time to secure alternative employment or to see through an unfair dismissal claim. The Deegan review recommended this time limit be extended to 90 days. By affording 457 visa holders more time to remain in Australia without a sponsor, this acts to loosen the direct tie to each employer.

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<sup>14</sup> Australian Council of Trade Unions, *Temporary Overseas Workers*, <http://www.actu.org.au/Issues/OverseasWorkers/default.aspx>

### **Employer satisfaction and usage**

Employers who sponsor 457 visa holders show overwhelming support, with 85 per cent affirming they are satisfied or very satisfied with the program. When compared to other public policy initiatives targeted at business, this figure is significant. Other public policies, such as supporting small businesses to grow and invest, only attract minimal support.<sup>15</sup>

A concerted government focus on processing times has reduced the wait associated with the program while fees are comparatively low. The satisfaction finding is in accord with survey feedback from business in relation to regulatory engagement with the Department vis-à-vis other government regulatory authorities. The Australian Chamber of Industry and Commerce's *National Red Tape Survey* ranks the level of red tape associated with engagement with the Department as significantly lower than other agencies.<sup>16</sup>

In the majority, employer usage and attitudes reflect the policy intention of the program. Eighty-three per cent of employers responded that they found it very or somewhat difficult to hire or employ workers from the local labour market. Overall, there was relatively little difference between businesses of different sizes. Employers in smaller states tended to experience more difficulty finding workers than larger states. Respondents noted that professionals (38 per cent), trades workers (26 per cent) and managers (9 per cent) were the most difficult roles to fill. It is worth noting that these figures are in accord with the overall occupation mix in the 457 program (52 per cent, 25 per cent and 14 per cent, respectively).

In terms of specific occupations, professional vacancies were the most difficult to fill for larger firms. Fifty-one per cent of firms with over 200 employees found it difficult to hire local professionals, compared to 30 per cent for firms of 10 or fewer people. A similar pattern is evident for vacancies for community and personal service positions; 14 per cent for larger firms compared to 5 per cent for the smallest firms. The pattern is reversed for trades and technician workers, with 32 per cent of firms with 10 employees or fewer finding it difficult to fill trades workers compared to 22 per cent for firms of over 200 employees.

Growth in different industries is reflected geographically. Trades and technician workers are more difficult to fill in Western Australia (43 per cent) than in Victoria (19 per cent). This corresponds with the economic profile of each state; construction and mining related sectors are growth industries in Western Australia, while services are a growth area for Victoria.

There was a wide range of responses as to why employers find it difficult to fill vacancies from the local labour market. Apart from the lack of skills locally, other reasons stated include better paid jobs in other industries (11 per cent), remote location business (9 per cent), Australians don't like the job (8 per cent) and have a poor attitude (5 per cent), and other employers in the same industry offering more income (5 per cent).

In terms of hiring practices, the top four methods of recruitment were a referral from existing networks (29 per cent), approached by the employee (26 per cent), an internet ad (24 per cent) and through a recruitment agency (19 per cent). Larger firms were more likely to use a recruitment agency and internet ads while smaller firms relied more heavily on networks.

<sup>15</sup> See <http://www.smh.com.au/small-business/startup/startups-need-more-govt-support-survey-20121108-29060.html>.

<sup>16</sup> Australian Chamber of Commerce and Industry 2012, *National Red Tape Survey*.

### Case study

The Accommodation and Food Services industry employs about 780,000 people, making it the 7th largest industry in Australia in terms of overall employment. Traditionally lower skill levels and lower wage rates have meant that accommodation and food services have been a below average user of the 457 program, however over the past 18 months applications have surged. The average base salary for the industry is \$55,000 compared to the \$83,000 for the program overall.

In 2012-13, the industry has recorded a record share of the overall program, with 9.4 per cent of overall 457 visa grants. Driving this increase has been the rise in nominations of Cooks, likely the number one occupation for the 2012-13 program year.

Within the industry, there is strong support for the program. Des Crowe, CEO of the Australian Hotels Association, says that the hotel sector is a perfect example where more workers will be needed in the future.

“Hotels in Australia are a diverse industry. We have employers that are owner-operated and in regional areas to larger employers in global cities like Sydney. These diverse businesses generally share the same difficulties in finding skills and labour from the local workforce. If current trends continue, by 2020 an estimated 56,000 vacancies will be available based on the Government’s own research.”

“The 457 program can fill some of these vacancies, such as Cooks and Chefs, but our members are also in need of workers in lower skilled occupations that aren’t eligible for the 457 program.”

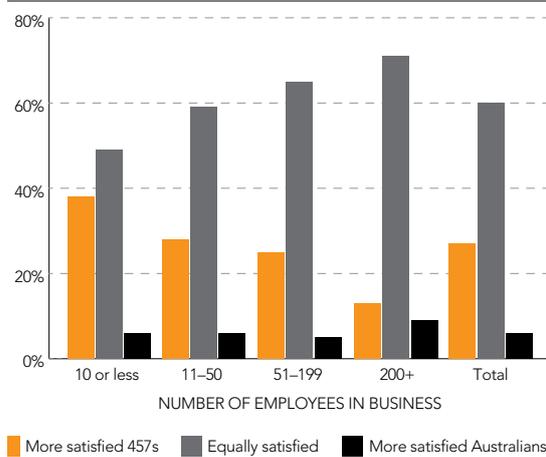
“The salary threshold is too high for some occupations where the industry has skills and labour shortages, while other occupations where there is a demand for more workers are not eligible for the program, such as Hotel Service Managers, Food Service workers and administration staff.”

Des Crowe says part of the difficulty is that existing labour market programs designed to get people into the labour market are failing industries like the Hotel sector.

“Our industry isn’t classified as a priority industry. This means there are basically no connections between employers who have vacancies and programs like Job Services Australia. The AHA has participated in previous Employer Broker Programs which have been successful in the past, current programs aren’t working. This hurts the industry and economy as vacancies go unfilled.”

The majority of employers indicated that they were equally satisfied (61 per cent) with Australian and 457 visa holders in the workplace. However, among those employers that indicated a preference there was a greater level of support for 457 visa holders; 27 per cent are more satisfied with 457 visa holders, against only 6 per cent who are more satisfied with Australians. Satisfaction rates appear to be driven in part by firm size. Smaller firms have substantially higher satisfaction responses relative to larger firms. Thirty-eight per cent of firms with 10 or fewer employees are more satisfied with 457 visa holders, compared to just 13 per cent of firms with 200 or more employees. This is perhaps to be expected given within larger employers it becomes more difficult to distinguish between employees.

**Graph 3: Employer satisfaction by employee**



A preference toward 457 visa holders and difficulty filling vacancies allude to a broader sense of dissatisfaction with the local labour market. Moreover, high overall program satisfaction ratings indicate that the program has become more than a temporary stopgap. For employers, the program is increasingly part of workforce planning.

To date, the 457 program has largely been viewed as an exclusively “immigration” program. A more nuanced understanding would incorporate the program into a broader labour market discussion.

Statistics relating to the usage of the program, particularly the trend to preference 457 visa holders, indicate that there is a need to strengthen the price signal of engaging foreign labour. As such, strengthening the price signal through an increase in the charge to nominate a 457 visa holder is recommended. Currently this charge is \$85 per nomination. This should be increased to ensure that more businesses look to hire Australian workers where available. In addition, the charge to become a sponsor of 457 visa holders is \$420. This should be increased to create incentive to look to local Australian workers before hiring 457 migrants. However, for employers who are unable to find Australian labour, the additional fee is unlikely to be prohibitive compared to exhaustive recruitment costs. To improve labour market outcomes, these fees and charges should be used to provide migrant support on a needs basis.<sup>17</sup>

### Union membership

The survey data on union membership show that 457 visa holders who are union members are more satisfied with their employment and more likely to stay in Australia over the long term.

The survey asked visa holders to indicate whether or not they were members of a trade union. Only 7 per cent of those surveyed indicated that they were affiliated with a union. This compares poorly with the Australian average of 18 per cent.<sup>18</sup> Females were more likely to be union members (11.3 per cent) than males (5.1 per cent). The gender difference is likely to be driven by membership patterns across industries. Service sectors with high levels of female participation also tend to have higher rates of unionisation.

<sup>17</sup> Visa fees and charges are subject to annual revisions.

<sup>18</sup> Australian Bureau of Statistics 2011, *Employee Earnings, Benefits and Trade Union Membership*. <http://www.abs.gov.au/ausstats/abs@.nsw/Latestproducts/6310.0Main%20Features2August%202011?opendocument&tabname=Summary&prodno=6310.0&issue=August%202011&num=&view=>

### Case study

Since the inception of the 457 program, the ACTU has been concerned that without significant regulatory safeguards, temporary labour has the potential to undermine Australian wages and conditions.

The ACTU also holds strong concerns that temporary sponsorship arrangements make 457 visa holders vulnerable to exploitation.

In March this year the ACTU established a confidential hotline to assist 457 visa holders who are being exploited by their employer. Since the line has been operating the ACTU has received a host of complaints including:

- A farm where 15-20 workers with 457 visas are living in very cramped accommodation, working long hours and rarely leaving the site. The caller said there are OHS issues related to the use of chemicals and many of the workers are presenting at a local medical centre with various health problems.
- A factory where workers are working about 100 hours a week, not only in production work but are then directed to some security work as well.
- An establishment where about 40 per cent of workers are on 457 visas. The workers understood they were being employed as Thai masseurs, but once here have been told if they don't have sex with clients they will be sacked.
- Reports of a construction team of 457 visa workers being paid about one third of their Australian counterparts' wages.
- A construction site in Melbourne, which relies heavily on 457 visas, where the workers are not wearing goggles or masks and the scaffolding is unsafe.
- The case in Werribee where 457 visa workers were flown in over the top of local unemployed skilled workers to work on a City West Water project. There have been subsequent reports that workers are working 70-80 hours a week with no overtime.

The ACTU maintains that increased resources for compliance and the provision of information on Australian workplace rights are key to preventing exploitation.

Indeed, the industries with the highest membership rates were health care and social assistance (24.5 per cent) and education and training (11.7 per cent). Union membership rates for the health care and social assistance industry were surprisingly high, given the national industry rate is just under 30 per cent.<sup>19</sup> By comparison, the national rate of membership for the education and training industry was substantially higher than the rate indicated in the 457 visa holder survey, at 35 per cent.<sup>20</sup>

Other industries with above average migrant union membership were construction (10.3 per cent) and electricity, gas, water and waste services (10.4 per cent). Some industries, such as accommodation and food services (0.7 per cent), mining (0.0 per cent), ICT (0.7 per cent), financial services (0.5 per cent) and professional and scientific services (1.9 per cent) showed significantly low levels of union membership.

An analysis was undertaken of union membership against a set of satisfaction indicators. Critically, the finding is that 457 visa holders who are union members are significantly more satisfied with their jobs. Visa holders who were union members were 8.7 per cent more likely to be satisfied with their income, 5.6 per cent more likely to feel their job was interesting; 7.0 per cent more likely to be satisfied with their prospects of a promotion and 10.4 per cent more likely to have opportunities for training.

Union membership was also a determinant of intentions to settle in Australia. Approximately 8.5 per cent of migrants who intended to stay in Australia were union members, while less than 2 per cent of those intending to leave held membership. This could be attributed to varying factors. However membership in a trade union can play a role in creating a sense of social acceptance and creates a bond with co-workers. Union membership can also provide additional benefits such as an independent source of advice and can lead to a greater sense of security.

These results point to a greater role for the union movement in the process of settlement and cultural adjustment. Unions also play an important role in shaping the discussion around how 457 visa holders exist in society and the labour market. Further, access to 457 visa holders and union involvement in the program helps to safeguard the integrity of the program.

### Recommendations

- That the Federal Government increase sponsorship and nomination fees associated with the 457 visa program to act as a price signal, providing a resource pool to strengthen compliance and deliver settlement services.
- That the Federal Government, in consultation with industry peak bodies and the Australian Council of Trade Unions (ACTU), establish voluntary Australian workplace orientation sessions available for all 457 visa holders.
- That the Federal Government extend visa condition 8107 from a period of 28 days to 90 days, as recommended in the Deegan Review.
- That the Federal Government allow any 457 visa holder who has worked continuously in Australia for two years to apply for the transition pathway to permanent residency under the Employer Nomination Scheme irrespective of the number of employers they have worked for.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

## Chapter 4: Temporary migration and the global economy

*The survey results reinforce that skills transfer and knowledge from 457 visa holders play an essential part in building Australia's human capital. Temporary migration does not just fill skills shortages; it addresses skills deficits by training Australian workers. It is critical in keeping us competitive in the era of international knowledge wars, when industry innovation is global.*

The survey results reinforce that skills transfer and knowledge from 457 visa holders play an essential part in building Australia's human capital. Temporary migration does not just fill skills shortages; it addresses skills deficits by training Australian workers. It is critical in keeping us competitive in the era of international knowledge wars, when industry innovation is global. In effect, Australia's temporary migration system is our answer to the "brain drain": that is, brain circulation. The flow of people has not only helped us to keep pace, it also has created a skills pull in some sectors that has enabled Australia to lead innovation.

### **Skills development and training**

From its inception, the impact of the 457 scheme on our skill base has been framed as a provisional stopgap to address short-term skills shortages. The perception is that 457 visa holders are only here on a temporary basis, and are not seen as adding permanently to our skills capacity. Indeed, long-term, the program is perceived as having a negative impact on national workforce planning and development by changing the investment calculus of employers and Australian employees in relation to training. This argument is based on three assumptions.

Firstly, some contend that the immediacy of the 457 scheme creates a disincentive for employers to invest in long-term training solutions for Australian employees. If skills shortages can be addressed as they arise, there is no enticement to plan for future needs. As such, over the long term, it is assumed that the very existence of the 457 scheme changes the workforce investment calculations of employers.<sup>21</sup>

Secondly, it has been argued that the program places downward pressure in hiring Australians, reducing the attractiveness of up-skilling for Australian workers. This, in turn, affects the decision of local workers to invest in further education and skills development.<sup>22</sup>

The third contention is that there is little incentive for Australian employers using the program to provide further training to 457 visa holders, as their employment is temporary. Any skills learnt would leave with them and would increase the skill base of global competitors.

21 ACTU submission to the Joint Standing Committee on Migration Inquiry into Temporary Business Visas, February 2007, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=mig/457visas/subs/sub039.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/457visas/subs/sub039.pdf).

22 Birrell, B and Healy E, *The Impact of Immigration on the Australian Workforce*, Centre for Population and Urban Research, February 2013, [http://artsonline.monash.edu.au/cpur/files/2013/02/Immigration\\_review\\_Feb-2013.pdf](http://artsonline.monash.edu.au/cpur/files/2013/02/Immigration_review_Feb-2013.pdf).

## Chapter 4: Temporary migration and the global economy

To ameliorate the effect on incentive to train domestically, benchmarks have been intentionally built into the program design. As discussed previously, employers must either demonstrate that one per cent of the payroll is spent on training their own workers or they must contribute two per cent of the payroll to an industry training fund.

The survey asked both employers and employees a series of questions around training. The results refute previous conceptions of a one-way negative effect on training; the survey shows a positive correlation between temporary migration and the development of human capital.

Over three-quarters (76 per cent) of 457 visa holders help to train or develop other workers. The emphasis on training was echoed by employers, 68.5 per cent of whom said they were using 457 visa holders to train Australian counterparts. For the largest employers, of over 500 people, this rose to 74 per cent. Moreover, 85 per cent of employers listed strong skills in teamwork and people management as an important factor in assessing a potential nomination.

Perhaps the most significant indicator of the importance of the program in up-skilling Australia is that nearly four in every five multinational organisations surveyed specified that they use 457 visa holders to train and develop Australian workers.

Graph 4: 457 visa holders training of Australian workers by industry

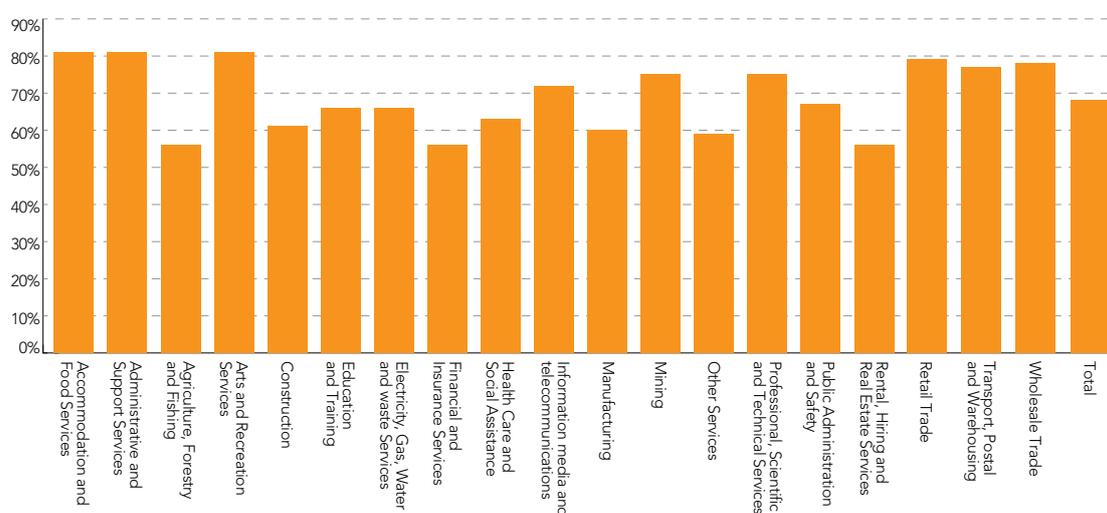


Table 4: Responses to question: "Do your 457 workers help in the training and development of your Australian visa holders?" (sample = 1600)

	Yes	No	Don't know	Refused
Total	68.9%	19.6%	1.5%	10.1%
Local organisation with operations only within one state or territory	64.3%	22.3%	1.8%	11.6%
National organisation with operations in multiple states	72.1%	18.5%	1.0%	8.4%
Multinational organisation with operations in other countries	78.0%	13.1%	1.3%	7.6%

## Chapter 4: Temporary migration and the global economy

### Case Study

Almost all of the ASX200 companies use the 457 program. Among the original rationales listed for introducing long-term visas for temporary migrants was to enable global firms to move employees from one country to another. David, a senior HR manager at a multinational retail firm operating in Australia and over 200 other countries, explains how 457 visa holders have added to his firm.

“We have between 10 to 15 senior executives on 457 visa holders from a total staff population of over 5000. The vast majority of all recruitment is Australian as we consider the firm to be highly competitive in the labour market.”

“Temporary migration allows these highly experienced managers to hit the ground running. We operate across all regions of the world and through a number of subsidiary firms. They bring knowledge and skills along with a proven, qualified background. This is vital for our business model and when change occurs.”

“Being a multinational firm, the majority of these are ‘internal transfers’, bringing with them an understanding of the firm’s culture, existing manufacturing and sales methods. Being located in Australia is also a major attraction to some.”

David says in very select circumstances, the firm also targets ‘hot spots’. He said recently this occurred with hiring a handful of engineers given competition from the resource industry. However, there are also downsides.

“There are drawbacks for us. The process is expensive and bureaucratic. We use an external migration agent. The firm also wears potential risk under the conditions of the 457 program. This is why we use the program only when necessary and do so judiciously.”

He says that recent changes to short-term business visas have negatively impacted the firm.

“These changes now require more temporary, short-term jobs to undertake the 457 visa process. This has really impacted on ancillary services, such as IT support, where short-term jobs are common. Global firms require flexibility with staff movement otherwise inefficiencies and bottlenecks are quickly created where there was none before.”

## Chapter 4: Temporary migration and the global economy

The results paint a compelling and previously unseen picture of the role that the 457 program plays in Australia's national skills and workforce development strategy. In some industries, migration might be playing the central role in workforce development at the enterprise level. In the accommodation and food services sector, for instance, over 80 per cent of employers said 457 visa holders help training and develop Australians while over 95 per cent of 457 visa holders say they train and develop other workers. Some employers who use the 457 scheme choose to provide training to their Australian workers, with 90 per cent stating they offer training to their employees.

Once here, 79 per cent of 457 visa holders felt they received the same level of training as their Australian counterparts, with only 8 per cent indicating that they received less training than Australian workers. Moreover, an overwhelming majority (86 per cent) of 457 visa holders felt that their job in Australia used their skills and training well. The data discredit previous assumptions that employers do not provide training for 457 visa holders.

Rather than the 457 program simply plugging skills gaps, the data show that the 457 program is working to up-skill our domestic workforce and connect us with global practice. According to modelling developed for the Australian Workforce and Productivity Agency (AWPA), Australia will face a shortage of 2.8 million higher-skilled qualifications by 2025, falling significantly short of industry demand.<sup>23</sup> In effect, in the years leading to 2025, demand for qualifications will continue to increase between 3 and 4 per cent each year.<sup>24</sup>

The AWPA's *Future Focus: 2013 National Workforce Development Strategy* notes that domestic training alone cannot cater for anticipated demand.<sup>25</sup> The strategy acknowledges that significant levels of migration will be needed to supply industry with the qualifications to sustain current growth trajectories. The strategy does not distinguish between permanent and temporary migration and does not comment on the move to a demand-driven model, matching skills supplied and industry need. Moreover, in looking through the prism of formal qualifications, the strategy sees migration only as an input of skills capital.

It is recommended that future workforce development strategies examine the role that the flow of temporary skilled workers has in supporting in-house training and the transfer of knowledge.

### **National innovation system**

Indeed, beyond filling predicted demand, the level of training and skill facilitation indicated in the survey raises important questions about the role that the 457 program is playing in supporting our national innovation system.

Human capital accumulation and the movement of people are increasingly being recognised as key determinants of the level of innovation. Australia is handicapped by geographical isolation and a relatively small domestic economy. As 98 per cent of innovation occurs outside of Australia,<sup>26</sup> any national innovation strategy must consider how Australia connects with global developments. It is probable that temporary migration and the flow of people has become a critical mechanism allowing Australia to secure a foothold in innovation breakthroughs. The movement of people maintains our link to international evolutions in processes and knowledge frameworks and the diffusion of technology.

23 Australian Workforce and Productivity Agency (AWPA) 2013, *Future focus: 2013 National Workforce Development Strategy*, <http://www.awpa.gov.au/our-work/national-workforce-development-strategy/Pages/default.aspx>.

24 *ibid.*

25 *ibid.*

26 Smith, R, *Migration and the Innovation Agenda*, Department of Innovation, Industry, Science and Research Working Paper, April 2011.

## Chapter 4: Temporary migration and the global economy

### Case Study

With economic growth in Asia fuelling Australian exports, Brad, an HR manager at a multi-site Western Australian engineering firm says the 457 program has helped his firm grow to meet demand. The program has also provided unexpected benefits.

With over 350 staff across five locations, the firm has rapidly expanded during the past decade. Back in mid-2011, with iron ore and gold prices at historic highs, the company began a nationwide search for skills. Job advertisements were placed in local papers across multiple states including Tasmania. However only a handful of candidates had suitable skills or were willing to relocate. Additional apprentices and a strong indigenous recruitment program, helped alleviate some of the demand but the firm also decided to recruit skilled migrants through the 457 program. From a recruiting campaign targeting Ireland and the United Kingdom, Brad was able to hire a range of boilermakers, fitters and a couple of carpenters.

Over the past 18 months, these skilled migrants have come to call Australia home. With a no Fly-in, Fly-out policy, these migrants and their families are supporting the local communities and economies of regional Western Australia from Kalgoorlie to Port Hedland. Brad says the firm prides itself on the provision of initial accommodation, social support for spouses and community introductions for schools.

After recruiting about 70 migrants on 457 visas over the last two years, Brad says his firm is now able to focus its recruiting strategy on Australian workers:

“The labour market has changed recently and we’ve been able to find a good number of skilled tradespeople, apprentices and other un-skilled workers to fill our vacancies”.

Brad says the most surprising outcome of recruiting migrants was the unique qualities and skills they brought to Australia:

“Some of these guys were working in high tech environments such as nuclear engineering back in the UK and they have completely transformed the way we look at workplace safety.

“The guys who have come over have been able to teach the rest of our staff how to improve process and get better outcomes without relaxing safety standards”.

Brad says the firm has started sponsoring those that want to stay in Australia for permanent residency.

In summary Brad said that the overseas recruiting campaign has resulted in a influx of skilled workers who helped fill a need and also provided the company, and the state with workers and their families who will contribute to the economy in the future.

## Chapter 4: Temporary migration and the global economy

To date there has been very little research focusing on the link between Australia's migration program and the speed and breath of national innovation.<sup>27</sup> However, international studies have looked at the nexus between the two systems, including the link between temporary migration and innovation. For example, increases in the visa used in the United States for temporary skilled employment (H-1B) correlated to increases in the rate of patenting. The study further found that immigrant scientists and engineers were critical in driving advances that lead to the commercialisation of new technologies.<sup>28</sup>

Further work has focused on the "crowding in" effect of migration in speciality occupations as new migrants create a critical mass and lend depth to a nation's scientific infrastructure.<sup>29</sup> More broadly, the notion of a creative class has been proposed.<sup>30</sup> The presence and movement of large numbers of knowledge workers in a particular region creates a pull factor, attracting professionals in a given field or industry. These innovative clusters create a mass of human capital that drives innovation and fuels growth.

International research has also identified the impact of settlement policies in the innovation output of migration programs.<sup>31</sup> While migrants provide human capital and knowledge, their contributions are mediated by the context in which they settle. Policies that address barriers to participation and social integration also act to reduce the impediments migrants face in contributing to innovation and productivity gains.

Yet as noted, while international literature has developed an evidence base, Australian research has not kept apace. This point has been made in a recent working paper, *Migration and the Innovation Agenda*, produced by the Department of Innovation, which notes the paucity of Australian data and calls for further research.<sup>32</sup> While a number of government publications have made cursory mention of the role of migration in facilitating innovation,<sup>33</sup> the Department of Innovation Working Paper is the first formal analysis produced to date.

Australia's national innovation policy remains silent on the role of migration. The most recent Australian Government innovation agenda, *Powering Ideas*, does not mention the role of people movement as a factor in Australia's national innovation system.<sup>34</sup> Given the size and nature of Australia's migration program, this would seem a significant oversight. Over the past decade Australia has embarked on a radical overhaul of our migration system to ensure policy settings are calibrated to build human capital. Moreover, new policy tools, such as the 457 program, have evolved.

### Recommendations

- That the Federal Government fund research into immigration policies and their link to Australia's national innovation and productivity agenda.
- That peak industry bodies collaborate to undertake an examination of innovation through migration at the enterprise level.
- That the Federal Government incorporates analysis of the role of migration in national workforce development strategies and skills and training policy.

27 *ibid.*

28 Kerr, WR & Lincoln, WF 2008, 'The supply side of innovation: H-1B visa reforms and US ethnic invention', HBS Working Paper 09-005, Harvard Business School, Boston.

29 Hunt, J & Gauthier-Loiselle, M 2009, 'How much does immigration boost innovation?', IZA Discussion Paper No. 3921, Institute for the Study of Labor (IZA), Bonn.

30 Florida R 2002, *The Rise of the Creative Class*, Basic Books, New York.

31 Hart, DM 2007, 'Understanding immigration in a national systems of innovation framework', *Science and Public Policy*, vol. 34, no. 1, pp. 45-53.

32 Smith, R 2011, *Migration and the Innovation Agenda*, Department of Innovation, Industry, Science and Research Working Paper.

33 Department of Immigration and Citizenship 2009, *Select skills: principles for a new Migration Occupations in Demand List*.

34 Department of Innovation, Industry, Science and Research 2009, *Powering Ideas: An Innovation Agenda for the 21st Century*, <http://www.innovation.gov.au/Innovation/Policy/Documents/PoweringIdeas.pdf>.

## Chapter 5: Inclusion and community

*Living in Australia for prolonged periods of time, 457 visa holders are part of our communities. Some fifty per cent will transition to permanent residency. For those who do return home, their period of stay in Australia will, more often than not, still be for a period of years rather than months. As such, there is a pressing need to examine the lives of 457 visa holders outside of employment — their social experiences, level of community engagement and sense of belonging.*

Living in Australia for prolonged periods of time, 457 visa holders are part of our communities. Some fifty per cent will transition to permanent residency. For those who do return home, their period of stay in Australia will, more often than not, still be for a period of years rather than months. As such, there is a pressing need to examine the lives of 457 visa holders outside of employment — their social experiences, level of community engagement and sense of belonging. Further, while public discussion has tended to focus on primary visa holders, it is important to note that a significant proportion of the total number of 457 visas issued are to secondary visa holders: spouses and dependent children.

Unlike the vast majority of temporary migration programs operating in other jurisdictions, Australia's program allows spouses to work in the labour market. Spouses of 457 visa holders have full work rights in Australia and their children have the capacity to study. This plays an important part in creating both an incentive to work in Australia and encouraging the settlement process for families. About two-thirds of spouses are female and more than half are from non-English speaking backgrounds. As the secondary visa holder, spouses are not necessarily skilled and may not be proficient in English. For this reason, any further examination of the social experience of 457 visa holders needs to include the experience of the family unit, children and partners.

Moreover, the growing prevalence of temporary workers living in neighbourhoods across Australia raises important questions for communities around the capacity to engage and participate. As they are seen as temporary, 457 visa holders and their dependants are not eligible for any settlement assistance and receive very few government services. For example, they are not eligible for employment services, English language classes, settlement support or Medicare. In some states (NSW and the ACT), there is a charge on school fees for dependent children.

Within the Australian migration context, the absence of a service framework is unique to temporary migration and presents a departure from Australia's traditional model of permanent migration.

The survey asked a series of questions exploring the broader experiences of 457 visa holders. While more research needs to be undertaken to provide a more thorough understanding of the social experience of 457 visa holders and secondary visa holders, the survey data provides some insight into these issues.

### **Sense of belonging**

One of Australia's greatest achievements over past decades has been the successful integration of millions of post-World War II migrants. This tradition has continued to the present day: each year more than 200,000 migrants settle permanently in our community.<sup>35</sup> One in four of us was born overseas<sup>36</sup>, and this trend will continue. Some 60 per cent of Australia's population growth is from migration.<sup>37</sup>

Over six decades of planned migration has meant that Australia has developed a significant degree of expertise in the management of migration. Australia's migration program sits alongside a world-class system of settlement services<sup>38</sup> and policies designed to create an inclusive and welcoming environment.

Each year, the Scanlon Foundation conducts an annual survey of over 2,000 people Australia wide. The Mapping Social Cohesion Survey provides a detailed snapshot of attitudes that inform our level of social cohesion as well as attitudes to immigration and population issues.<sup>39</sup> The evidence suggests that, at a national level, Australia is performing well. Almost all (95 per cent) of Australians express a sense of belonging and the vast majority (90 per cent) have pride in the Australian way of life.<sup>40</sup> While sense of belonging is slightly lower for those born overseas, it is still very high at 91 per cent.<sup>41</sup>

Moreover, the Scanlon Survey finds that there is strong support for the migration program within the Australian community. More than 77 per cent of Australians have a positive attitude about skilled migration.<sup>42</sup> While other programs enjoy a lower level of support, it is still high with 77 per cent of people indicating support for the humanitarian program and 70 per cent supporting the family stream.<sup>43</sup> This is at odds with the experience of other countries. In the UK, for example, some 65 per cent of the public do not support immigration.<sup>44</sup>

Strong community support in Australia for migration undoubtedly assists in the creation of a welcoming environment for both temporary and permanent entrants. When asked in the survey how well they were settling into Australia, the vast majority of 457 visa holders indicated they were settling well (on a scale of one to ten, the average was 8.35). In general, non-English speaking workers tended to see themselves as settling "well" but not "very well". Indeed, the number of English speakers who answered "very well" was almost double the number of non-English speakers (43.4 to 22.4). Almost no survey participants answered in the negative (2.5 per cent) and no participants indicated that they were "not fitting in at all".

Survey participants were asked about their level of engagement in sports or hobbies, their local community, their home community, their local school and religious activities. The findings indicate a relatively high level of community engagement by 457 visa holders outside of the workplace.

35 Department of Immigration and Citizenship, 2011-12 Migration Program Report, <http://www.immi.gov.au/media/statistics/pdf/report-on-migration-program-2011-12.pdf>.

36 ABS 2011, *Census reveals one in four Australians is born overseas*, media release, 21 June, <http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-59?opendocument&navpos=620>.

37 ABS 2013, *Australia to reach 23 million on 23 April 2013*, media release, 23 April, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/A959C7C902683284CA257B550015D8D0?OpenDocument>.

38 UNHCR 2009, *UNHCR chief praises Australia's refugee resettlement services*, media release, 25 February, <http://www.unhcr.org/49a55ff32.html>.

39 Markus, Andrew 2012, *Mapping Social Cohesion: the Scanlon Foundation Surveys*, <http://www.arts.monash.edu.au/mapping-population/social-cohesion-report.php>

40 *ibid.*

41 *ibid.*

42 *ibid.*

43 *ibid.*

44 Markus, Andrew 2012, 'Immigration and Public Opinion', in *A Greater Australia: Population, Policies and Governance*, CEDA.

## Chapter 5: Inclusion and community

Participation in sports and hobbies at least monthly was higher for English speaking (81 per cent) than non-English speaking participants (70 per cent). While there are not commensurate data for the Australian population at large, the figures suggest that 457 visa holders have a high participation rate.<sup>45</sup> At the date of the last census, only approximately 65 per cent of Australians had participated in some form of sport in the past 12 months.<sup>46</sup>

Those from non-English speaking backgrounds were more than twice as likely to participate in religious activities on a regular (weekly) basis. This indicates that religious activities play a key role in facilitating social connections for 457 visa holders and in creating a sense of community in Australia. However, English speakers were nearly twice as likely to engage with members of their community of origin.

The survey data showed that nationally approximately 40 per cent of participants engaged with their local school at some point in the last year. This is not surprising given the number of school-aged dependent children associated with the program.

In Australia, most states and territories provide public education for free. Critically, the ACT and NSW do not provide this vital and equitable government service for free to dependent children of 457 visa holders. While the ACT does provide a waiver for some skill categories, this tends not to be those categories likely to be earning at the lower end of the spectrum. The imposition of school fees contributes to cost of living concerns, which are over 8 per cent higher in NSW than Australia-wide for 457 visa holders. It is also worth noting that the survey indicated that 457 visa holders in NSW had the lowest rates of engagement with the local school.

For 457 visa holders who are earning at or close to the threshold income of \$51,400, it is possible that the imposition of school fees for dependent children are too significant a cost to bear. It is likely that jurisdictions with fees are less attractive. Moreover, it is feasible that in some instances prohibitive costs could lead to a decision to discontinue a child's schooling.

When comparing Australia's migration support with most other nations, one type of state government support stands out above others: the provision of public schooling to children of temporary migrants is provided free of cost in the vast majority of jurisdictions.<sup>47</sup> Australia is a signatory to the United Nations Convention on the Rights of the Child, article 28 of which provides that "all children have the right to a primary education, which should be free".<sup>48</sup> It would appear that the cost imposed on 457 families for primary school education contravenes the spirit of Australia's obligations under the convention.

Nearly half (45 per cent) of those surveyed had a partner that had migrated with them. People from non-English speaking backgrounds were more likely to bring their spouse; however, their spouse was significantly less likely to be employed (51 per cent versus 70 per cent). Men who were primary visa holders were also more likely to bring a spouse; however, female spouses were 31 per cent less likely to pick up work.

As noted previously, some 70 per cent of 457 visa holders intend to stay in Australia. The survey revealed that for primary visa holders, the intention to stay in Australia was significantly influenced by the experience of their spouse and particularly by the capacity of their spouse to gain employment. Just over 72 per cent of those with a working spouse intended to stay, while only 62 per cent of migrants whose spouse was not working intended to stay. The intention to stay was also higher among those from non-English speaking backgrounds, than among English speakers.

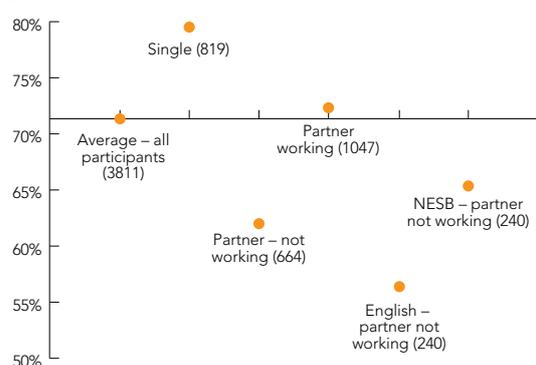
45 ABS 2012, *Sports Participation*, <http://www.abs.gov.au/ausstats/abs@.nsf/Products/4901.0~Apr+2012~Main+Features~Sports+participation?OpenDocument>.

46 *ibid.*

47 See NAB, *Education Costs for 457 Visa Holders*, 21 March 2012, <http://migrant.nabgroup.com/en/education-costs-for-457-visa-holders>.

48 UNICEF, *Convention on the rights of the Child*, [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf).

**Graph 5: Percentage of 457 visa holders who intend to stay in Australia<sup>49</sup>**



Dependent spouses and partners who arrive under the permanent migration program are eligible for settlement services including English language and some employment assistance. However, as previously noted, 457 visa holders and their dependants are not entitled to any services, including employment assistance, English language classes, settlement support and basic social programs. Given that some 50 per cent of 457 visa holders take up permanent residency, denying access to services at the beginning of their time in Australia is likely to adversely affect the long-term capacity of 457 visa holders to integrate into the Australian community.

Prolonged periods of unemployment and social isolation can have a lasting impact on confidence and capacity to contribute. Moreover, the lack of service provision to an increasingly significant group has the potential to undermine social safety nets and national cohesion. For example, the absence of services provided to women and children on temporary migrant visas who are escaping domestic and family violence has been acknowledged as a concern.<sup>50</sup> The exclusion of a growing number of 457 visa holders who transfer to permanency in our communities has an effect on the character of our neighbourhoods and on the broader social fabric.

It is worth noting that 457 visa holders make a substantive contribution to the government's revenue base. The impact from income and other non-direct taxes is currently estimated at over \$2.2bn over 3 years.<sup>51</sup> For comparison, the new Minerals Resource Rent Tax is estimated to bring in approximately \$3bn for this financial year. The fiscal contribution of temporary migrants raises important questions around the criteria for entitlement to services.

Australia has a world-class settlement infrastructure in place of permanent migrants. The Adult Migrant English Program (AMEP) provides settlement-focused English language training to eligible humanitarian entrants and migrants. Those assessed as not having functional English are provided with 510 hours of training using a national curriculum approved by the Australia Vocational Training Framework.

Further, the Federal Government funds a network of settlement services across Australia. Settlement services focus on building self-reliance and increasing understanding of Australian culture and systems and connecting to mainstream services. However, under current policy, visa class and length of residency in Australia determine eligibility. Settlement services are limited to:

- humanitarian entrants (refugees)
- family stream migrants with low English proficiency
- dependants of skilled migrants located in rural or regional areas, with low English proficiency.

Only permanent residents receive services and only during their first five years in Australia.

<sup>49</sup> Sample size included in brackets.

<sup>50</sup> Bartels, L 2010, *Emerging issues in domestic/family violence research*, Criminology Research Council, <http://www.aic.gov.au/publications/current%20series/rip/11-10/10.html>.

<sup>51</sup> ACCESS Economics Update on the Fiscal Impact of Temporary Migration. This figure is based on 2010-11 program numbers of 87,000 primary visa holders in Australia.

### Case Study

In the recent Asian Century White Paper, the Gillard Government committed that by 2025, 10 of Australia's universities will be in the world's top 100. This focus on higher education is at the heart of establishing Australia as a knowledge leader in the 21st Century. The 457 program will play a vital role in facilitating this commitment. In 2011-12, the higher education sector sponsored over 1500 visa holders on 457 visas as university lecturers. This was over a 100 per cent increase on the year before and 2.3 per cent of all visa grants.

Peter is a researcher at a Group of Eight university. He has a European background, obtained his PhD in the United States and has worked in a variety of roles, including for the World Bank. He came to Australia in 2008 on a 457 visa to undertake a three-year post-doctoral position. His background in economic development was integral to supporting new research centred on governance in the Asia-Pacific region. In describing his work environment, Peter said he could not wish for a better faculty.

"My workplace is highly supportive and I have the opportunity to work among some of the best researchers in the world as well as unmatched conditions for work and research. Up and down the corridor I work in, world-class academics occupy every office. I have the opportunity to share my skills and background with others who I also learn from."

Peter currently teaches and undertakes research. Despite this, Peter says life as a migrant in Australia can be complex. Support through networks is more difficult to attain, as they must be built from scratch, while identifying with Australian culture can be challenging.

"Racism is still prominent in Australia. The lack of diversity across leadership positions in society is startling. In the United States, your background doesn't matter. Your accent and your skin colour are irrelevant. In Australia, perhaps this is true to a lesser extent. I sense that sometimes migrants living in parallel with Australians is not 'good enough'. This comes back to attitudes around what is expected of migrants to integrate into Australia."

Peter's employer only uses the 457 program to hire academic staff. Sarah, a human resources manager, said administrative and other staff are all Australian citizens, permanent residents or do not require sponsorship. She described the 457 visa process as "seamless" and does not report any issues. She said the university advertises globally to attract world experts in their fields and that all appointments are merit-based. All staff are employed under an agreed Enterprise Agreement.

"Researchers and academics like Peter bring a wealth of experience that sometimes isn't widely available in Australia. Last year we hired 15 new academics on 457 visas with a total faculty of about 200."

Peter is in the process of becoming a permanent resident, sponsored by his employer. His experience highlights how two-step migration works in practice. Nearly 70 per cent of all employer sponsored permanent residency visas are granted to migrants who already live and work in Australia on 457 visas. Peter believes universities can play an important role in the integration of migrants to Australia.

"Meritorious hiring practices by Australian universities in a global industry ensure students are exposed to a range of perspectives and people. Hearing a French, German or Chinese lecturer and interacting with teachers from all over the world is a positive experience for young adults. Small symbols can multiply over time and help integration within society".

### **Discrimination and participation**

The survey indicated that discrimination was a significant concern. Some 18.4 per cent of those from non-English speaking backgrounds indicated that they had faced discrimination because of their skill, colour, ethnic origin or religious beliefs. This is in line with findings from national surveys. For example, the 2012 Mapping Social Cohesion survey finds that roughly 20 per cent of respondents from non-English speaking backgrounds have experienced discrimination in the last 12 months.<sup>52</sup>

Discrimination leads to a significant under-utilisation of skills and diminishes the gains associated with the program. Incidences of racism at work reduce productivity and lead to dysfunctional workplaces: previous research indicates that approximately 70 per cent of workers who experience racism take time off work as a result of the incident.<sup>53</sup> Moreover, the hidden costs of racism are significant and include social withdrawal, barriers to future settlement and health costs.<sup>54</sup>

The Scanlon Survey found that the rate of discrimination experienced was higher among men than women.<sup>55</sup> This contrasts with the findings from the 457 survey where the rate of discrimination experienced was significantly higher for women than for men. Significantly lower employment outcomes for female spouses, particularly from non-English backgrounds, also suggests a broader issue of discrimination.

Indeed, the evidence suggests that one of most significant systemic barriers to employment for new migrants is unconscious bias and discriminatory hiring practices. A recent Australian academic study found that when applying for jobs, a person with a Chinese name must submit 68 per cent more job applications than a person with a name associated with Anglo-Saxon backgrounds. Likewise, a person with a name common to the Middle East must submit 64 per cent more applications. This compares to 12 per cent more for a person with a typically Italian name.<sup>56</sup>

### **Recommendations**

- That the Federal Government extend settlement services and other services that enable social and economic participation to the dependents of 457 visa holders.
- That the NSW and ACT governments remove all education expenses associated with the dependent children of 457 visa holders.
- That the Federal Government, the ACTU and industry peak bodies work together to develop workplace and enterprise level programs to address discrimination and exploitation.

<sup>52</sup> Markus, Andrew 2012, *Mapping Social Cohesion: the Scanlon Foundation Surveys*, Scanlon Foundation. <http://www.arts.monash.edu.au/mapping-population/social-cohesion-report.php>.

<sup>53</sup> Priest N and Paradies Y 2010, *Economic Costs of Racism in Australia: Scoping Project Report*. Social Justice Discussion Papers, The Social Justice Initiative, Melbourne.

<sup>54</sup> *Ibid.*

<sup>55</sup> Markus, Andrew 2012, *Mapping Social Cohesion: the Scanlon Foundation Surveys*, Scanlon Foundation <http://www.arts.monash.edu.au/mapping-population/social-cohesion-report.php>.

<sup>56</sup> Booth L, Leigh A and Varganova E 2009, *Does Racial and Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment*, Institute for Cultural Diversity, Sydney.

## Chapter 6: History of the 457 visa

### Introduction

Until relatively recently, Australia's immigration policies emphasised permanent settlement – initially from the United Kingdom and continental Europe, and more recently from Asia and the Pacific. As Markus, Jupp and McDonald have noted, "The fundamental premise of Australian immigration policy until the 1990s was that those admitted to Australia came as permanent residents, enjoying the same rights and privileges and with the same obligations as the Australian-born. There was a conscious rejection of the 'guest worker' programs which developed in post-war Europe."<sup>57</sup>

While there were a range of temporary residence and business visitor visa classes and subclasses available in the early 1990s for business people and specialists to enter Australia to work on a temporary basis — such as temporary residents visas under the Business (Temporary) Class TB visa class<sup>58</sup> or as business visitors visas under the subclass 672: business visitor (short stay) and subclass 682: business visitor (long stay) — these visas were limited to relatively short periods<sup>59</sup> and were not widely used.

In 1993-1994, for example, there were only around 13,000 visas issued for the Exchange (subclass 411), Independent Executive (subclass 412), Executive (subclass 413) and Specialist (subclass 414) temporary resident visas.

On average, there were 12,500 of these visa holders in Australia over the period 1992-1994, with about 4,000 of these staying for two years or more.<sup>60</sup> In 1993-1994 there were 199,500 business visitor (short stay) (subclass 672) visas issued, with 95 per cent staying less than three weeks, and just 2,639 business visitor (long stay) (subclass 682) visas issued.<sup>61</sup>

Temporary resident policies and procedures in the early 1990s reflected a regulated approach where the entry of skilled labour was seen as a means to fill vacancies arising from short-term labour shortages which reflected a lack of training.<sup>62</sup> As the *Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists* stated in its 1995 report, "Policies and procedures governing the temporary entry of key business personnel were developed at a time when the objective was to achieve an Australian workforce self-sufficient in all skills."<sup>63</sup>

<sup>57</sup> Andrew Markus, James Jupp and Peter McDonald, *Australia's Immigration Revolution*, Allen & Unwin, 2009, p. 9.

<sup>58</sup> Class TB – Business (Temporary) included the subclasses of 411 (exchange), 412 (independent executive), 413 (executive), 414 (specialist), 418 (educational), 422 (medical practitioner). Other temporary resident visa classes at this time were the Cultural/ Social (Temporary) – Class TE, including the subclasses of 414 (specialist), 416 (special program), 420 (entertainment), 421 (sport), 423 (media and film staff), 424 (public lecturer), 428 (religious worker); and the Educational (Temporary) – Class TH, including the subclasses of 415 (foreign government agency), 418 (educational), 419 (visiting academic), 442 (occupational trainee).

<sup>59</sup> The subclass 672: business visitor (short stay) provided for more than three months but as a matter of policy not more than six months: Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists, *Business Temporary Entry – Future Directions*, (The Roach Report), Australian Government Publishing Service, Commonwealth of Australia, August 1995, Appendix A.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*, para 1.2.

## Chapter 6: History of the 457 visa

The policy framework at this time was underpinned by the principles that the entry of temporary entrants should not result in any financial cost to the Australian community, that such entrants should not undermine either the employment of Australian citizens and permanent residents, nor undercut their employment conditions and remuneration, and that temporary entrants should eventually be replaced by people recruited and trained locally.<sup>64</sup> These principles were reflected in policies such as the need for labour market testing — to demonstrate that the sponsor could not reasonably employ an Australian citizen or resident to undertake a particular skilled occupation — and sponsorship requirements, where the sponsor accepted certain obligations in respect of the visa holder when they were in Australia. Applicants and their dependants were required to satisfy relevant public interest criteria, including a health assessment process<sup>65</sup> and character assessment.

The current 457 temporary business visa was introduced almost two decades ago. During the intervening period, governments of differing persuasions have attempted to balance the tensions between assisting business access the skilled labour they require to satisfy Australia's labour and economic needs, and protecting Australian workers and jobs.

While the primary purpose of the 457 visa regime has been to provide entry arrangements for overseas workers to meet temporary skill shortages, it has from the outset been guided by several key considerations to minimise the impact on Australian workers and the Australian community. These principles include:

- ensuring that there are no adverse impacts on employment opportunities for Australians
- protecting pay and working conditions for Australian workers by ensuring that overseas workers are paid in accordance with Australian awards and conditions
- providing training opportunities for Australians
- ensuring that there is no net cost to the Australian community, through either Commonwealth or state budgets
- maintaining the integrity of Australia's immigration system.

As the history of the 457 visa system examined below demonstrates, the Keating, Howard and Rudd-Gillard Governments have continually reviewed and fine-tuned the policy and procedures governing the entry into Australia of temporary business visa holders.

<sup>64</sup> *ibid*, Appendix A.

<sup>65</sup> The health assessment process at this time, for applicants and dependents seeking to enter Australia for more than 12 months, required a medical examination including x-ray. For applicants and dependents seeking to enter Australia for less than 12 months, a health declaration rather than examination was usually required: *ibid*.

### The Roach Report

The Keating Labor Government took the first steps towards reforming this framework in October 1994 when it commissioned a *Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists* to review “the operation and effectiveness of policies and procedures governing the temporary entry into, and further temporary stay in, Australia of business personnel against the backdrop of the increasing globalization of business, and government policy to open the economy up to greater international competition, and make recommendations as necessary to improve policies and procedures in this field.”<sup>66</sup>

In a statement to the Senate, the then Minister for Immigration and Ethnic Affairs, Senator Nick Bolkus, outlined the rationale for the policy review, stating:

The policy objective for this government is to place Australia, through our rules and regulations in this temporary migration area, in a position to benefit both now and into the future. If we are going to benefit fully by this exchange, it is crucial that we ensure the smooth movement of key personnel into and out of this country. Policies such as those covering temporary migration need to be reviewed to ensure that they not only reflect the current demands but meet the emerging needs of the next 5 to 10 years.<sup>67</sup>

The Minister emphasised that the Committee’s work was underpinned by the “overriding need to ensure that employment rights of Australian citizens and permanent residents are paramount.”<sup>68</sup>

The Committee was chaired by Mr Neville Roach, the chief executive of Fujitsu Australia, and included both business and trade union representatives.<sup>69</sup> The Committee published a discussion paper in December 1994 which received widespread interest and response, including 70 submissions.<sup>70</sup>

The Committee of Inquiry’s report, *Business Temporary Entry – Future Directions*, known as the *Roach Report*, was released in August 1995. The report identified three major issues that had led to the review:

- It was opportune to examine Australia’s temporary entry policies and procedures in the context of the worldwide globalisation of economies, and in line with the government’s policy of internationalising the Australian economy.
- Business, economic and trade agencies were expressing concern that existing procedures “were too complex and time consuming, and impeded business in becoming internationally competitive”.
- It had been a number of years since business temporary entry policies and procedures had been reviewed to ensure best-practice principles applied.<sup>71</sup>

The 2000-02 Departmental Review into Temporary Residency in Australia later reiterated these points, but also noted that there was a need to review and update policies regarding “the growing numbers of people moving into and out of Australia associated with increasing significance of trade in services, especially in tourism, education and the financial and legal sectors.”<sup>72</sup>

66 *ibid.*, Attachment B. The Committee published a discussion paper in December 1994 which received widespread interest and response, including 70 submissions: *ibid.*, paras 2.1 and 2.8.

67 The Hon Senator Nick Bolkus (Minister for Immigration and Ethnic Affairs) 1994, Statement to the Senate, *Senate Hansard*, 12 October, pp. 1530-1531.

68 *ibid.*

69 The other Committee members were: Mr John Hall (Executive Director, International Banks and Securities Association), Mr Alan Matheson (International Officer, Australian Council of Trade Unions), Mr Ross Baldwin (Blackcomb Engineering) and Ms Pauline Mathewson (Partner of Coopers and Lybrand): The Roach Report, *op. cit.*, Attachment A.

70 *ibid.*, paras 2.1 and 2.8.

71 *ibid.*, para. 1.1.

72 Department of Immigration and Multicultural Affairs (DIMA) 2002, *In Australia’s Interests: A Review of the Temporary Residence Program*, Departmental Review into Temporary Residency in Australia: 2000-02, para 1.25, accessed at <http://www.immi.gov.au/media/publications/general/general-review.htm>.

## Chapter 6: History of the 457 visa

The *Roach Report* reflected the twin tensions of facilitating efficient and timely temporary business entry for employers and protecting the broader employment, conditions and remuneration of Australian workers. The Committee identified its primary objective “as making policy more relevant to the needs of business and streamlining procedures.”<sup>73</sup> However, it also explicitly stated that the policy framework for temporary business visas “must not provide an avenue for the recruitment of unskilled or semi-skilled workers, or for the channelling of overseas workers into low paid and low skilled work”<sup>74</sup> and that there was a “need to protect the interest of the Australian labour force by ensuring that the entry of overseas business personnel does not undermine job opportunities for Australians, or Australians working conditions and levels of remuneration.”<sup>75</sup>

The Committee’s report and recommendations addressed both the rationale underpinning temporary business migration as well as the policies and processes for facilitating that migration.

Rejecting one of the key principles underpinning the existing system, the Committee concluded that “a country of Australia’s size cannot expect to be completely self-sufficient at the leading edge of all skills in the area of key business personnel. When world trade in services is based on different countries developing specialized skills in different areas, it is not realistic for Australia to attempt to develop specialised skills in all areas.”<sup>76</sup> As such, the Committee “confirmed the role of business temporary entry as a vital component of Australia’s broader economic future and important to the way Australia is perceived internationally.”<sup>77</sup>

The Committee found that the existing policies and procedures facilitating the entry of key business personnel into Australia were “prescriptive, complex, and slow to administer”<sup>78</sup>, “cumbersome and inflexible”<sup>79</sup> and “no longer viable in the current economic environment.”<sup>80</sup>

In developing its recommendations to reform the existing system, the Committee focused on the primary principle of “benefit to Australia”, and outlined a number of features to underpin the administration of temporary business visa policies and procedures going forward. These principles included certainty, transparency and simplicity; consistency in interpretation and administration; flexibility so that business can respond quickly and smoothly; an emphasis on the purpose of activity and the ability of the applicant to carry out such activity, rather than on formal skills; streamlined and speedy processing and reduced costs to business; and appropriate rights of review.<sup>81</sup>

The Committee recommended a liberalisation of temporary business policies and procedures to ensure that Australian business could successfully compete internationally. Key to this approach was “simplified and streamlined procedures which will enable employers of good standing to bring in key business personnel quickly and smoothly.”<sup>82</sup>

73 *The Roach Report, op. cit.*, para 3.29.

74 *ibid.*, para. 3.5.

75 *ibid.*, para. 3.25.

76 *ibid.*, para. 3.4.

77 DIEA 2002, *In Australia’s Interests: A Review of the Temporary Residence Program, op. cit.*, para. 1.26.

78 *The Roach Report, op. cit.*, para 1.2.

79 *ibid.*, para. 3.20.

80 *ibid.*, para. 1.4.

81 *ibid.*, para. 1.9.

82 *ibid.*, para. 1.12.

## Chapter 6: History of the 457 visa

In terms of procedural simplicity, the Committee proposed that the existing range of temporary residence and business visitor classes and subclasses be replaced with one class for all business temporary entrants.<sup>83</sup>

The proposed arrangements involved a single visa class providing for business temporary entry for the main applicant and any accompanying dependants. Within this single visa class, the Committee proposed a number of entry policy groups, including:

- short-term entry (three months and less)
- long-term entry (more than three months up to four years)
- entry under labour agreements
- entry as an independent executive
- entry under a regional headquarters arrangement.<sup>84</sup>

The Committee proposed that this simplification of the visa framework would be accompanied by a number of streamlined processes to speed up the system and reduce costs to business. These proposals included the introduction of “key activity” criteria, whereby employers of good standing who nominated a person to perform a key activity — an activity which “is essential to the overall operations of the employer and which requires specialised knowledge either in terms of professional/specialist skills or proprietorial knowledge”<sup>85</sup> — would have their applications fast tracked and not be required to undertake labour market testing. Where a nomination was not assessed as a key activity, the application may be subject to labour market testing and skills assessment.

The Committee also supported simplified health assessments. Noting that all temporary residents had been removed from Medicare coverage as at 1 July 1995, the Committee recommended that the existing requirement for a medical examination be removed for those temporary residents entering for more than 12 months where a sponsorship was in place, as sponsorship arrangements would mean that employers had taken responsibility for health and medical costs of nominees and their dependants.<sup>86</sup> Instead, the Committee proposed that streamlined health assessment procedures be introduced for all business temporary entrants, in effect “reducing health assessments to areas of public risk only, and eliminate health assessments to ascertain conditions which have only public cost implications.”<sup>87</sup>

The Committee upheld the stance that employers must be accountable and responsible for the temporary residents they bring to Australia. The Committee’s proposals maintained sponsorship arrangements, whereby employers signed an undertaking that they would be financially responsible for obligations to the Commonwealth for sponsored nominees and dependants while in Australia (taxation, superannuation etc) and accept financial responsibility for medical and hospital costs that may be incurred in Australia by the nominees and his/her dependants, as well as obligations relating to repatriation costs for nominees and dependants. In addition, the sponsorship undertaking required compliance with Australian industrial relations laws, Australian levels of remuneration and conditions of employment and immigration requirements, including monitoring and auditing and obligations to notify the Department if a nominee has left the employment of the sponsor or no longer performed the activity specified in the application.<sup>88</sup>

83 *ibid.*, para. 1.33.

84 *ibid.*, para. 4.2.

85 *ibid.*, para. 4.21. The Committee specified that key activities did not “include unskilled or semi-skilled or skilled trades activities”: *ibid.*, para. 1.16.

86 *ibid.*, para. 4.51.

87 *ibid.*, para. 4.54.

88 *ibid.*, para. 4.12.

The Committee proposed that these sponsorship arrangements would also include an undertaking signed by employers that they accepted “as good practice the desirability of creating appropriate career opportunities for Australian citizens and permanent residents”<sup>89</sup> and “that the recruitment of labour from overseas must not counter government training policies and objectives of producing a highly skilled and flexible Australian workforce.”<sup>90</sup>

To ease the procedural burden on employers, the Committee recommended a system of standard and pre-qualified sponsorship (PQS) status, the latter involving approval for the sponsorship of any number of individuals during the validity of the sponsorship, without the need for sponsors to repeatedly demonstrate that they could meet sponsorship criteria.

In terms of monitoring and compliance, the Committee’s overall approach embraced “a considerable degree of self-regulation on the part of employers”<sup>91</sup> and recommended that the new visa system “be administered with a ‘light touch’ up front, and backed up by rigorous monitoring...to provide the ‘control’ balance to the facilitation measures.”<sup>92</sup> To this end, the Committee proposed that a comprehensive monitoring system be established to provide data on individual employers and their nominees, labour market trends, industries and occupations.<sup>93</sup>

The Committee recognised that monitoring would be meaningless without compliance and enforcement of sanctions, such as monetary fines or making employers subject to market testing and training assessments. While it did not seek to prescribe the sanctions to be applied in particular circumstances, the Committee recommended that sanctions should be applied to all sponsoring employers who failed to meet their obligations as set out in the undertakings they had signed.<sup>94</sup>

### Introduction of Temporary Business Visas

- The Keating Government accepted all of the recommendations of the *Roach Report* in September 1995 and introduced the subclass 456 visa in November 1995, referred to as the Business (Short Stay) visa.<sup>95</sup>
- However, implementation of the *Roach Report*’s recommendations was largely left to the newly elected Howard Coalition Government.

On 5 June 1996, the new Minister for Immigration and Multicultural Affairs Philip Ruddock MP announced reforms to temporary business entry in response to the *Roach Report*, to take effect from 1 August 1996.<sup>96</sup> The announcement emphasised:

- simpler entry with a new single business entry class (457); with more flexible definitions of skills
- streamlined processing of applications; with waiver of labour market testing for certain key activities, and simpler and faster health assessment
- monitoring to ensure that employers meet financial and immigration undertakings.<sup>97</sup>

Central to these reforms was the establishment of the new Temporary Business (Long Stay) Visa or subclass 457 visa, providing for longer stays in Australia — from three months to four years, with permission to travel to and enter Australia on multiple occasions during that period — for the purpose of sponsored employment and a range of business activities.

89 *ibid.*, para. 4.12.

90 *ibid.*, para. 4.12.

91 *ibid.*, para. 1.13.

92 *ibid.*, para. 5.1.

93 *ibid.*, paras 1.3 and 5.4.

94 *ibid.*, paras 5.8 and 5.11.

95 Providing for a short stay, up to three months, the 456 visa was designed for short business visits and limited to work that cannot be carried out by an Australian.

96 The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 1996, *Streamlined temporary business entry approved*, media release, 5 June, at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/ruddock\\_media96/r96021.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/ruddock_media96/r96021.htm)

97 *ibid.*

## Chapter 6: History of the 457 visa

The 457 visa was established by the *Migration Regulations (Amendment) 1996 No.76*, which inserted a new Division 1.4A into Part 1 of the Migration Regulations,<sup>98</sup> together with a new Part 457 into Schedule 2 of the Migration Regulations.<sup>99</sup>

Consistent with the key theme of the *Roach Report*, Minister Ruddock stated that the underlying principle of the changes was “benefit to Australia” and that the “... changes represent a balance between giving business more flexibility to build up international competitive links; while safeguarding employment opportunities for Australian workers.”<sup>100</sup>

To this end the new Regulations required that the Minister be satisfied that a subclass 457 visa holder would contribute to:

- the creation or maintenance of employment for Australian citizens or Australian permanent residents, or
- the expansion of Australian trade in goods or services, or
- the improvement of Australian business links with international markets, or
- competitiveness within sectors of the Australian economy.<sup>101</sup>

In safeguarding opportunities for Australian workers, the Regulations required that the Minister must also be satisfied that the employer applicant would “introduce to, utilise, or create new or improved technology or business skills in Australia, or has a satisfactory record of, or demonstrated commitment, towards training Australian citizens or Australian permanent residents in the business’s operations” and be able to fulfil increased sponsorship undertakings associated with the subclass 457 visas.<sup>102</sup>

However, the Explanatory Statement for the new Regulations emphasised that “The purpose of these provisions is to rationalise the arrangements for the temporary entry of business people and highly qualified specialists, to simplify procedures, and to introduce a degree of self-regulation for certain employers of holders of Subclass 457 visas”<sup>103</sup> — and the new provisions included a number of features, as proposed in the *Roach Report*, to provide:

- streamlined processing procedures to enable employers in Australia to be approved as standard business sponsors or pre-qualified business sponsors prior to nominating an activity<sup>104</sup> and allowing such sponsors to bypass the sponsorship part of processing once such status is obtained<sup>105</sup>
- a “key activity” concept, where positions assessed as satisfying the key activity criteria — that is, activities defined as essential to the operations of the business — were not subject to labour market testing<sup>106</sup>
- streamlined health and character processing in response to calls from business for faster processing of visa applicants<sup>107</sup>
- a monitoring regime for applicants and sponsors, to replace exhaustive checks of all sponsors and applicants before granting visas.<sup>108</sup>

98 New Division 1.4A provided for: the making of applications for approval as a business sponsor; nominations by business sponsors of activities to be undertaken in Australia by prospective holders of Subclass 457 (Business (Long Stay)) visas; approval of those applications and nominations; and revocation of approvals as a business sponsor. New regulation 1.20A (Objects of this Division) of the Migration Regulations, inserted by Regulation 4 of the *Migration Regulations (Amendment) 1996 No. 76*.

99 New Part 457 in Schedule 2 of the Migration Regulations prescribed the criteria for grant of a subclass 457 visa, to persons satisfying either the primary criteria, or the secondary criteria for members of their family units.

100 Ruddock P 1996, *Streamlined temporary business entry approved*, op. cit.

101 New regulation 1.20D (Approval of business sponsors) of the Migration Regulations, inserted by Regulation 4 of the *Migration Regulations (Amendment) 1996 No.76*.

102 New regulation 1.20D (Approval of business sponsors) of the Migration Regulations, inserted by Regulation 4 of the *Migration Regulations (Amendment) 1996 No.76*.

103 Explanatory Statement, *Migration Regulations (Amendment) 1996 No.76*, Issued by the Authority of the Minister for Immigration and Multicultural Affairs, accessed at: [http://www.austlii.edu.au/au/legis/cth/num\\_reg\\_es/mr1996n76334.html](http://www.austlii.edu.au/au/legis/cth/num_reg_es/mr1996n76334.html)

104 *ibid.*

105 DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, op. cit., para. 5.10.

106 *ibid.*, paras 5.10 and 5.21. The labour market test for the subclass 457 visa, when it applied, required the employer to have tested the labour market within the previous six months and to have done at least two of the following: advertised through local professional or trade journals and, where appropriate, the Internet or local community language newspapers; lodged the position as a vacancy with a job placement service provider; obtained advice from a recognised professional or industrial body acceptable to DEWR on the availability of specialist skills; advertised the vacancy recently in a Saturday and a weekday edition of both a metropolitan and a national daily newspaper (a total of four separate advertisements) or, if the business is outside the major metropolitan area, advertised the vacancy recently at least once in both the Saturday edition and a weekday edition of both a major local or regional and national daily newspaper (a total of 4 separate advertisements): *ibid.*, para 2.9.

107 *ibid.*, para. 2.101 and para. 2.110.

108 *ibid.*, para. 5.10.

Under these arrangements, 457 visa processing involved three stages:

1. The employer must be approved as a sponsor (either a standard or a prequalified sponsor).
2. The position must be approved as a nominated position.
3. The applicant must be approved as a suitable person for that position and must meet other visa requirements (for example health and character requirements).<sup>109</sup>

According to the later 2002 Departmental Review of the Temporary Residence Program, there was “wide praise of the policy settings” for the new 457 visa in its first years of operation: the Review noting that it was “regarded by business as a clear improvement on the visa arrangements for business persons that operated previously.”<sup>110</sup>

As the 2002 Departmental Review noted, there was a significant increase in the number of visas granted for long-stay business purposes from less than 23,000 in 1994-95 (the year before this visa was introduced) to almost 40,500 subclass 457 visas in 2000-01.<sup>111</sup>

### **Review and reform under the Howard Government**

The 457 visa framework has been subject to regular review and modification since it commenced in 1996.

#### **Review of Temporary Residence Visas – July 2000**

On 4 July 2000, Minister Ruddock announced a Review of Temporary Residence Visas “to consider how we can streamline temporary residence visa arrangements in order to both benefit Australia and make entry easier for those who are coming here to work.”<sup>112</sup>

In announcing the Review, the Minister acknowledged that “the growing importance of temporary residents in our economy, with the globalisation of the labour market and the increasing movement of people for short-term business, work and personal purposes, makes it important to look at these arrangements”.<sup>113</sup>

The Minister appointed an external reference group, chaired by Peter McLaughlin, to guide the Departmental review.<sup>114</sup> The Terms of Reference explicitly provided that the Review would build on the principles established by the 1995 report of the *Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists*, and particularly consider:

- whether the legislative and procedural framework of the temporary resident program is consistent with the policy objectives of the program
- the extent to which existing criteria and conditions can be modified to allow simplification of the visa class structure, with a view to improving client service and the efficiency of visa processing
- the opportunity to:
  - investigate and resolve areas of specific concern identified with individual visas
  - examine technical inconsistencies existing within the legislative framework for these visas
  - reduce government regulation and compliance costs to Australian business, particularly small business, and foster industry self regulation.<sup>115</sup>

<sup>109</sup> *The Roach Report*, op. cit., para. 5.12.

<sup>110</sup> DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, op. cit., para. 5.3.

<sup>111</sup> *ibid.*, para. 5.15 and Table 4.

<sup>112</sup> The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 2000, *Review of Temporary Residence Visas*, media release, 4 July, at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/ruddock\\_media00/r00072.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/ruddock_media00/r00072.htm)

<sup>113</sup> *ibid.*

<sup>114</sup> Other members of the External Reference Group were Anwar Harb, Kevin Jacobsen, the Venerable Thich Quan Ba and Dr Bruce Harris: *ibid.* According to the Departmental Review, “These people represented a wide range of community interests and brought their particular areas of expertise and experience into the review process, providing an important external perspective”: DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, op. cit., Preface (p.18).

<sup>115</sup> DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, op. cit., Preface (p.17).

The main issues raised in submissions to the Review included:

- difficulties (for clients and staff) with the “key” and “non-key” distinction
- cost (both financial and in time) and veracity of current labour market testing arrangements
- the ability for unskilled persons to use the visa
- concerns about whether all employers have been paying overseas workers Australian wages and employing them under Australian working conditions
- the high level of incomplete applications
- the effect of three-stage processing on the length of processing times.<sup>116</sup>

### **Replacement of “key” and “non-key” activities with minimum skill and salary thresholds – July 2001**

On 1 July 2001, Minister Ruddock pre-empted the completion of the Departmental Review and announced changes to the business visa system to “streamline nomination requirements for employers responding to identified labour market or skills shortages.”<sup>117</sup> Among the changes announced was the replacement of the existing concept of “key” and “non-key” activities in the sponsored long-stay business visa with minimum skill and salary thresholds “to reflect the objective of this category to bring in only highly skilled people.”<sup>118</sup>

According to the Departmental Review, the early implementation of these changes reflected the need to move quickly “to address concerns raised about the use of this visa by unskilled workers.”<sup>119</sup> The Review had found that the distinction between “key” and “non-key” activities had proven problematic for both business and the Department to implement and that there was an incentive for employers to nominate their activities as “key”, hoping to avoid labour market testing and skills assessment.<sup>120</sup>

Stakeholders had also raised concerns about the arrangements for testing the labour market when a position was classified as “non-key”. These concerns included that the required processes were viewed by many as out of date with contemporary recruitment practices; they were expensive and time-consuming for employers; and they were difficult for the Department to verify. It was also suggested that the processes did not give regard to the specialised knowledge of employers of the particular labour market they operated in — or acknowledge that employers would not seek an overseas employee if a suitable Australian was available for the position.<sup>121</sup> The Review found that “objective thresholds are more efficient and more effective than traditional labour market testing”<sup>122</sup> when high levels of skills are involved, and subsequently recommended the introduction of a skills threshold as a replacement for the labour market testing arrangements.<sup>123</sup>

The skill threshold announced by Minister Ruddock in July 2001 involved the use of the Australian Standard Classification of Occupations (ASCO) code for occupational and skill classification, which was already in use as a standard within the Independent Skilled migration category. Occupations in ASCO 1–4, the first four major occupational groups — including managers and specialist administrators, professionals,<sup>124</sup> associate professionals<sup>125</sup> and tradespersons and related workers<sup>126</sup> — were eligible for the 457 visa, whereas occupations with lower level skills levels did not meet the skills threshold and were therefore not generally eligible for this visa.<sup>127</sup> The discretionary skills assessment was retained: for cases where a decision maker had doubts about the claimed skill levels of the applicant, evidence such as a formal skills assessment could be sought.

116 *ibid.*, para 5.18.

117 The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 2001, *New Visa Processes to Help Business, Overseas Students and Skilled Migration from 1 July 2001*, media release, 1 July, accessed at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/ruddock\\_media01/r01085a.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/ruddock_media01/r01085a.htm)

118 *ibid.*

119 DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, *op. cit.*, para 5.14.

120 *ibid.*, paras 5.23 and 5.24.

121 *ibid.*, para. 5.26.

122 *ibid.*, para. 2.16.

123 *ibid.*, para. 5.28.

124 For example, engineers, accountants, lawyers, scientists, social workers, teachers, registered nurses.

125 For example, dental therapists, library technicians, chefs, futures traders.

126 For example, carpenters, electronics technicians, aircraft maintenance engineers, panel beaters.

127 This skills threshold did not apply to persons who enter under a Labour Agreement or Regional Headquarters Agreement who instead remained subject to the terms of the particular agreement and associated labour market testing requirements. See DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, *op. cit.*, para. 5.40.

The skills threshold arrangement was complemented by a requirement, during the nomination approval process, for sponsors to outline their efforts to find a suitable Australian employee for the position. According to the Departmental Review, this was “important in sending the appropriate message to employers that Australian workers are still to be given first preference for positions under these arrangements.”<sup>128</sup>

In addition to the introduction of a skills threshold, the Minister also introduced a minimum salary threshold of \$34,075, which equated with average weekly earnings. The threshold was designed to ensure that employers did not over-classify overseas workers in order to secure an appropriate skills classification, and aimed at a sufficiently high level to exclude unskilled workers.<sup>129</sup>

The Departmental Review considered that “The combination of the skill threshold and the salary threshold should ensure that the proposed position is appropriately skilled”<sup>130</sup> and envisaged that these changes would result in faster processing of 457 visas.<sup>131</sup>

### ***In Australia's Interests: A Review of the Temporary Residence Program – June 2002***

The report of the Departmental Review announced in July 2000, *In Australia's Interests: A Review of the Temporary Residence Program*,<sup>132</sup> was released in June 2002. The review covered not only the 457 visa framework, but the entire temporary resident regime and policy — including some 20 visa classes — and concluded “that the current system largely works well, especially for regular users of the visa arrangements. Nevertheless, there was broad support from all respondents for a simpler system, and for a more standardized approach to visa requirements and processes.”<sup>133</sup>

The Review's assessment of the 457 visa regime was informed by several years' operational experience, and feedback from a broad range of business and organisations with experience using the system. In addition to examining and making recommendations around the concept of “key” and “non-key” activities in determining the need for labour market testing arrangements,<sup>134</sup> as discussed above, the Review made recommendations that current arrangements to ensure that training commitments were reinforced through sponsorship undertakings be retained;<sup>135</sup> the need for improved processing arrangements to provide for speedier decisions and better client service; and the incorporation of certain occupation-specific arrangements in the more generic temporary business visa arrangements.<sup>136</sup>

The Review found that sponsors had overwhelmingly abided by their sponsorship undertakings “so enforceability has not been a major problem.”<sup>137</sup> The Review stated that employers “occasionally” breached these sponsorship requirements, such as paying overseas workers below award wages, but there were appropriate sanctions applied by the Department.<sup>138</sup> The Review concluded that Departmental mechanisms in place for monitoring and reporting on the 457 visa system — such as targeted monitoring of clients, a database of individuals/companies of concerns, statistical reporting, and the ability to work with other government agencies — should be continued.<sup>139</sup>

<sup>128</sup> *ibid.*, para. 5.29, accessed at <http://www.immi.gov.au/media/publications/general/general-review.htm>

<sup>129</sup> See DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, *op cit*, para 5.34.

<sup>130</sup> See *ibid.*, para. 5.38.

<sup>131</sup> *ibid.*, para. 5.14.

<sup>132</sup> *ibid.*

<sup>133</sup> *ibid.*, preface.

<sup>134</sup> Recommendation 15 provided: *That the “key” and “non-key” activity concept and the current labour market testing arrangements be replaced with skill and salary thresholds.*

<sup>135</sup> Recommendation 16 provided: *That as part of the nomination approval process, the sponsor is asked to provide details of the efforts they have made to fill the position from the Australian labour force.*

<sup>136</sup> Recommendation 16 provided: *That the Educational, Exchange, Media and Film Staff and Public Lecturer visas be abolished and that the generic provisions for sponsored employees (subclass 457) and the short stay business visa (subclass 456) be used.*

<sup>137</sup> *ibid.*, para. 4.61.

<sup>138</sup> *ibid.*, para. 5.51.

<sup>139</sup> *ibid.*, paras 5.50-5.65.

The Review considered that the system of three separate decisions involved in the 457 process, which provided for separate review rights to be provided at each stage, was appropriate and should be retained.<sup>140</sup> The Review also concluded that streamlined processes for certain employers, such as pre-qualified sponsor arrangements, should be retained.<sup>141</sup>

### **Improving regional access to temporary skilled labour – November 2002**

On 4 November 2002, Minister Ruddock announced changes to temporary business visas designed to “improve regional access to temporary skilled labour and provide much needed assistance for state and regional development projects.”<sup>142</sup> Employers in rural and regional areas were offered concessional arrangements to sponsor 457 visa holders, similar to those already offered to sponsor permanent migrants under the Regional Sponsored Migrant Scheme. The Minister stated that regional employers would henceforth “have a choice of sponsoring temporary or permanent workers” but emphasised that the new arrangements would not “offer employers a way to access cheap unskilled foreign labour.”<sup>143</sup> The Minister also emphasised that “Temporary workers arriving under this scheme will be closely monitored to ensure that they continue to satisfy the scheme’s requirements.”<sup>144</sup>

### **Migration Legislation Amendment (Sponsorship Measures) Act 2003 – October 2003**

Additional changes were introduced by the Migration Legislation Amendment (Sponsorship Measures) Bill 2003, introduced on 4 June 2003 and passed by the parliament on 15 September 2003. The amendments commenced on 14 October 2003.

The Bill partially responded to the 2002 Departmental Review, which had found in its examination of some 20 temporary visas, that “the requirements to be approved as a sponsor, the undertakings required of the sponsor and the sponsorship approval processes differ for different visas. The differences do not necessarily reflect different policy objectives but seem to have resulted from sponsorship requirements for different visas drifting apart over time.”<sup>145</sup> The Review had made two main recommendations in relation to sponsorship under the Migration Act: that sponsorship be a requirement for all temporary residents except under the short stay business visas or where there is an agreement in place which removes the need for sponsorship,<sup>146</sup> and that there should be a standardised sponsorship, involving standardised undertakings, for temporary resident visa sponsors.<sup>147</sup>

While the Bill attempted to standardise sponsorship requirements, as proposed by the 2002 Departmental Review, it also recognised “the differing characteristics of sponsoring organisations and the need to reflect different sponsor relationships.”<sup>148</sup>

140 *ibid.*, para. 5.88.

141 *ibid.*, para. 5.91.

142 The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 2002, *New Arrangements Boost Support for Regional Australia*, media release, 4 November, accessed at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/ruddock\\_media02/r02092.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/ruddock_media02/r02092.htm)

143 *ibid.*

144 *ibid.*

145 DIEA, *In Australia's Interests: A Review of the Temporary Residence Program*, *op. cit.*, para. 4.8.

146 *ibid.*, para. 4.17.

147 *ibid.*, para. 4.21, accessed at <http://www.immi.gov.au/media/publications/general/general-review.htm>

148 Migration Legislation Amendment (Sponsorship Measures) Bill 2003, Explanatory Memorandum, p. 2, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=1824](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=1824)

The Bill streamlined sponsorship processes by providing a framework for regulations to be made prescribing sponsorship requirements for different types of visas, including sponsorship application, eligibility and approval criteria and processes, as well as the undertakings applicable against sponsors. The Bill also allowed sanctions to be taken against sponsors of prescribed temporary visa holders if they breached their undertakings or conditions of the visa, including the ability to cancel sponsorship or impose bars on sponsors.<sup>149</sup>

The Minister prioritised regulations for the long-stay sponsored business visa (subclass 457) under the new regime, noting that there was “a need to continue to make the operations of this visa as efficient as possible so that it remains responsive to the needs of Australian industry.”<sup>150</sup>

In relation to sponsored business visas, Minister Ruddock’s Second Reading Speech specifically noted that the sponsor undertakings and sanctions provided under the Bill “will be designed to discourage any possibility of overseas employees being exploited and to make sure that all sponsor undertakings are enforceable.”<sup>151</sup>

From 1 January 2004, new streamlined visa processing arrangements were introduced to make it more convenient for skilled temporary workers and employers to apply for temporary business visas online.<sup>152</sup>

### ***New minimum salary levels and language requirements – May 2006***

On 1 May 2006, the new Minister for Immigration and Multicultural and Indigenous Affairs Senator Amanda Vanstone announced new minimum salary levels and changes relating to English language requirements for temporary overseas skilled workers, the latter to “ensure temporary skilled workers under 457 visas have at least functional levels of English.”<sup>153</sup> In addition to English proficiency requirements for licensing by the relevant Australian licensing authorities, employers would “need to attest either that their employees have sufficient command of English or that they have put in place arrangements to provide English language training for both the employees and their families.”<sup>154</sup> According to the Minister, this measure would “help to protect both foreign and Australian workers, particularly in situations where a lack of English language skills can be an occupational health and safety risk.”<sup>155</sup>

### ***Extending sponsorship to interdependent partners – June 2006***

On 30 June 2006, Minister Vanstone announced an adjustment to the subclass 457 visa to cater for interdependent partners, to come into effect on 1 July 2006.<sup>156</sup> Previously, only Australian citizens and permanent residents could sponsor interdependent partners in to Australia. The Minister stated that “While interdependent partners could enter Australia in their own right, often as visitors, the fact that couples were not treated together in the same application created some uncertainty for them and a potential loss for Australia of highly-skilled people.”<sup>157</sup>

149 The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 2003, Migration Legislation Amendment (Sponsorship Measures) Bill 2003, *Second Reading Speech*, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r1824](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r1824).

150 *ibid.* See also The Hon Philip Ruddock MP (Minister for Immigration and Multicultural Affairs) 2003, *Bill Ensures Continued Program Integrity*, media release, 15 September, accessed at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/ruddock\\_media03/r03065.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/ruddock_media03/r03065.htm).

151 Ruddock, Migration Legislation Amendment (Sponsorship Measures) Bill 2003, *Second Reading Speech*, *op. cit.*

152 The Hon Senator Amanda Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs) 2003, *Skilled Workers To Save Time Online*, media release, 31 December, accessed at [http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media\\_releases/media03/v03021.htm](http://pandora.nla.gov.au/pan/31543/20040430-0000/www.minister.immi.gov.au/media_releases/media03/v03021.htm).

153 The Hon Senator Amanda Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs) 2006, *New minimum salaries for temporary overseas skilled workers*, media release, 1 May, accessed at <http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2006/v06048a.html>.

154 *ibid.*

155 *ibid.*

156 The Hon Senator Amanda Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs) 2006, *Immigration changes to come in effect at midnight*, media release, 30 June, accessed at <http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2006/v06155.html>.

157 *ibid.*

### **Enhanced monitoring and compliance measures – October 2006**

On 30 October 2006, Minister Vanstone announced measures to significantly enhance monitoring and compliance of the temporary skilled migration (457) visa. The package provided \$17.6 million in funding over four years for the establishment and training of investigative mobile strike teams to ensure employers of temporary skilled migrants were complying with conditions of the visa, together with \$5.9 million for the Department of Immigration and Multicultural Affairs and the Department of Employment and Workplace Relations to improve negotiation and management of Labour Agreements.<sup>158</sup> In making the announcement, the Minister stated: “The overwhelming majority of employers using temporary skilled 457 workers do the right thing. These new measures will boost detection of rogue employers who can face the sanction of being barred from the temporary skilled migration programme, in addition to penalties under the Workplace Relations Act and state/territory sanctions for workplace breaches.”<sup>159</sup>

### **Announcement of stronger compliance and enforcement mechanisms – April 2007**

On 26 April 2007, the new Minister for Immigration and Citizenship Kevin Andrews MP announced changes to the 457 visa regime. The announced measures included the introduction of new civil penalties for employers who breach the law; for example, employers who breach their sponsorship obligations, such as failing to pay the minimum salary level, or use workers in unskilled jobs. The Department of Immigration and Citizenship and the Office of Workplace Services were to be given stronger powers to enforce employer compliance with the 457 visa program, including the power to conduct unannounced audits of employers and their premises and investigate breaches of the Minimum Salary Level. Formal arrangements for the fast-tracking of applications from

employers with a strong and demonstrated record of complying with the 457 visa program were introduced.<sup>160</sup> These measures were subsequently allocated \$85.3 million over four years in the 2007-08 Budget.<sup>161</sup>

A Bill, the Migration Amendment (Sponsorship Obligations) Bill 2007, which sought to give legislative effect to the new sponsorship obligations, as well as new investigative, enforcement and information exchange powers, was introduced into the Parliament on 21 June 2007.<sup>162</sup> However, the Bill was not debated in either house and lapsed when Parliament was prorogued for the 2007 Federal election.

### **New English language requirements introduced – July 2007**

A new English language requirement — announced by Minister Andrews in April 2007 — commenced on 1 July 2007, requiring employers to ensure that overseas workers they sponsor have English language skills equivalent to an average score of 4.5 in an International English Language Testing System (IELTS) test, or a higher level where required as part of licensing or registration.<sup>163</sup> According to DIAC, the English language proficiency requirement “will help to ensure overseas workers are able to respond to occupational health and safety risks, raise any concerns about their welfare with appropriate authorities and benefit Australia by sharing their skills with other workers.”<sup>164</sup>

<sup>158</sup> The Hon Senator Amanda Vanstone (Minister for Immigration and Multicultural and Indigenous Affairs) 2006, *Package to Enhance Integrity of Temporary Skilled Migration*, media release, 30 October, accessed at <http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2006/v06247.html>.

<sup>159</sup> *ibid.*

<sup>160</sup> The Hon Kevin Andrews MP (Minister for Immigration and Citizenship) 2007, *New changes for skilled temporary visa laws*, Media Release, 26 April, accessed at <http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2007/ka07030.html>.

<sup>161</sup> The Hon Kevin Andrews MP (Minister for Immigration and Citizenship) 2007, *Fact Sheet: 457 visas – ongoing management of caseload*, accessed at [http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2007/budget0708/budget0708-457\\_employer\\_sanctions.pdf](http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2007/budget0708/budget0708-457_employer_sanctions.pdf).

<sup>162</sup> See Migration Amendment (Sponsorship Obligations) Bill 2007, *Explanatory Memorandum*, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r2840](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r2840). The Bill was referred to the Senate Legal and Constitutional Affairs Committee on 21 June 2007, which subsequently tabled its report on 7 August 2007: Senate Standing Committee on Legal and Constitutional Affairs, *Migration Amendment (Sponsorship Obligations) Bill 2007 [Provisions]*, 7 August 2007, accessed at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=legcon\\_ctte/completed\\_inquiries/2004-07/migration\\_sponsorship/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/completed_inquiries/2004-07/migration_sponsorship/report/index.htm)

<sup>163</sup> Andrews, K 2007, *New changes for skilled temporary visa laws*, *op. cit.* See also The Hon Kevin Andrews MP (Minister for Immigration and Citizenship), *New English language requirements for employer sponsored temporary business visa (the subclass 457) programme commence on 1 July*, media release, 26 June, accessed at <http://pandora.nla.gov.au/pan/67564/20071110-0000/www.minister.immi.gov.au/media/media-releases/2007/ka07050.html>.

<sup>164</sup> Department of Immigration and Citizenship (DIAC), *Changes to the subclass 457 visa program English language requirements*, <http://www.immi.gov.au/skilled/skilled-workers/changes-eng-req.htm>.

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### **Joint Standing Committee on Migration – “Temporary visas... permanent benefits”**

In December 2006, the Joint Standing Committee on Migration (JSCM) adopted an inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas.

In announcing the inquiry, Committee Chair Don Randall MP stated that “Temporary skilled migrants are vital to Australia’s ongoing prosperity. The Committee therefore wants to see if the current arrangements for temporary business visas are functioning efficiently or need to be improved.”<sup>165</sup> The Terms of Reference for the inquiry reflected these goals, focusing on the adequacy of the current eligibility requirements, including English language proficiency, and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 visas and Labour Agreement — and sought to identify areas where procedures could be improved.<sup>166</sup>

The Committee’s report, ‘Temporary visas... permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program’, released in August 2007, prioritised a continuing strong focus on providing job opportunities and training for Australians but recognised — in the context of a strong economy, the low unemployment rate of skilled Australians, and the prospect of a declining rate of growth in Australia’s workforce age population — that temporary skilled migration represented “an important strategy to meet short-term skills needs in some areas.”<sup>167</sup> However, the Committee emphasised its view that the 457 was “a skilled visa—it is, and should remain, a means through which Australian businesses can employ skilled workers.”<sup>168</sup>

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<sup>165</sup> Joint Standing Committee on Migration (JSCM) 2006, New inquiry into temporary business visas, media release, 12 December, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=mig/457visas/media.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/457visas/media.htm).

<sup>166</sup> JSCM, ‘Temporary visas... permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program’, Terms of Reference, op. cit.

<sup>167</sup> *ibid.*, para. 1.1.

<sup>168</sup> *ibid.*, para. 1.36.

## Chapter 6: History of the 457 visa

While acknowledging diverging views on aspects of the 457 visa program, the Committee noted “general agreement amongst those who participated in the inquiry — across employer and union groups, state governments and industry sector representatives — that Australia currently faces a temporary skills shortage in some areas”<sup>169</sup> and observed “general support, across a diverse range of representatives, for a temporary business visa program per se”.<sup>170</sup>

While the Committee considered that “the majority of employers under the program are ‘doing the right thing’”<sup>171</sup> the report cited media attention and evidence to the Committee about alleged and proven abuses of workers under the program. Among the alleged breaches of the 457 visa program referred to in the report were:

- the underpayment of the minimum salary level
- unlawful deductions from the minimum salary for travel or medical costs etc
- non-payment for overtime or working excessive hours
- discrimination on the basis of union membership
- employment of skilled workers in unskilled roles
- payment by workers of recruitment costs or migration agent fees
- unfair termination of employment
- racial abuse and threats of physical harm
- overcharging for training and accommodation.<sup>172</sup>

The Committee also noted that a central theme emerging in evidence to the Committee “was the broad support for a stronger monitoring and compliance regime, with this being seen as a means of reinforcing the integrity of the program and reducing the risk of exploitation of 457 visa holders.”<sup>173</sup> The Howard Government’s *Migration Amendment (Sponsorship Obligations) Bill 2007*, discussed above, was announced late in the Committee’s Inquiry process. The Committee referred to the Bill favourably in the context of the above concerns about worker exploitation under the 457 program,<sup>174</sup> but did not examine the legislation in any detail.

The Committee made 25 recommendations regarding Australia’s temporary skilled migration arrangements, with a particular focus on the 457 visa. The recommendations sought “to strengthen the integrity of Australia’s temporary business visa program, maintain the program’s effectiveness to meet the needs of business, and ensure fair conditions for overseas and Australian workers.”<sup>175</sup> Among the issues covered in the Committee’s 457-specific recommendations were visa eligibility requirements including salary levels, occupational standards and English language proficiency; the need for best practice benchmarks for training requirements to be met by sponsoring employers; 457 visa compliance arrangements; and reporting practices.<sup>176</sup>

The new Rudd Labor Government responded to the JSCM report on 10 September 2009. The response delayed in part by the number of changes to the subclass 457 visa program that were under consideration or being implemented in 2008, as discussed below.<sup>177</sup>

<sup>169</sup> *ibid.*, para. 1.15.

<sup>170</sup> *ibid.*, para. 1.19.

<sup>171</sup> *ibid.*, para. 3.24.

<sup>172</sup> *ibid.*, para. 3.16.

<sup>173</sup> *ibid.*, para. 3.13.

<sup>174</sup> *ibid.*, para. 3.23.

<sup>175</sup> JSCM, *Report on 457 visa inquiry 2007*, media release, 12 September, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=mig/457visas/media.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/457visas/media.htm).

<sup>176</sup> JSCM, ‘Temporary visas . . . permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program’, List of Recommendations, *op. cit.*

<sup>177</sup> Government Response to the Report 2009, Report by the Joint Standing Committee on Migration, ‘Temporary visas . . . permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program’, 10 September, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=mig/reports.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/reports.htm).

### **Review and Reform under the Rudd-Gillard Governments**

Upon the Rudd Labor Government coming to office in late 2007, the Minister for Immigration and Citizenship Senator Chris Evans commenced a broad reform of the 457 visa process. The focus of the reforms was “on improving the integrity of the program while ensuring it continues to provide the skills needed in the economy.”<sup>178</sup>

According to Minister Evans, the Government recognised the important role that the subclass 457 visa program played in the Australian economy, stating that “it complements Australia’s labour market needs, support[s] economic growth and makes Australia more competitive in the global economy.”<sup>179</sup> However, the government was concerned that broader community confidence in the program had been tested over the previous five years, as a significant increase in the use of temporary overseas workers — in response to widespread skill shortages due to Australia’s strong economic growth — had led to the exploitation of overseas workers and the use of the program to source cheap overseas labour.<sup>180</sup>

The reform package was therefore pursued in the context of skills and labour shortages that were then being experienced, particularly in the construction and mining industries — and the perceived need to improve responsiveness and integrity of the 457 program and tackle exploitation of overseas workers, as a means to restore public confidence.

A number of different mechanisms were utilised to progress this reform, including the:

- establishment of a business-led External Reference Group to provide advice to Government on how the 457 program could be more responsive and effective
- pursuit of legislative reforms aimed at combating exploitation of 457 workers, through the Migration Legislation Amendment (Worker Protection) Bill 2008, which in part reflected the provisions of the Howard Government’s Sponsorship Obligations Bill that had lapsed with the 2007 election. The legislative package was supported by a significant commitment in the 2008-09 budget
- establishment of a Skilled Migration Consultative Panel — comprising representatives from state/territory governments, key industry bodies and unions — to contribute to the development of a package of longer-term measures aimed at improving Australia’s temporary skilled migration program
- establishment of a major review, headed by industrial relations expert Barbara Deegan, to examine ways to improve the integrity of the 457 visa system. The final report, released in October 2008, underpinned a further tranche of reforms in 2009
- establishment of a cross-agency working party to consider and implement the recommendations of these review processes.

Each of these measures is considered in detail below. The measures were accompanied by a new process for temporary business visa labour agreements under the subclass 457 visa program, implemented in February 2008, and an increase in Minimum Salary Levels from 1 August 2008.

<sup>178</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *Access with integrity – 457 visa reforms*, Speech to Australian Industry Group (AIG) Breakfast Forum, 14 September, <http://www.minister.immi.gov.au/media/speeches/2009/ce090914.htm>.

<sup>179</sup> *ibid.*

<sup>180</sup> *ibid.*

### **Establishment of Skills Australia**

Skills Australia was established by the Rudd Government in 2007 with an initial \$19.6m funding over five years. As a statutory body that advised the government on current and future demand for skills and training in the Australian economy, its work complemented the skilled migration reform agenda being pursued by the Rudd Government. Skills Australia transformed into the Australian Workforce and Productivity Agency in 2012, and now reports to the Minister for Tertiary Education, Skills, Science and Research.<sup>181</sup>

### **External Reference Group – February-May 2008**

In February 2008<sup>182</sup> Minister Evans announced the formation of an External Reference Group of industry experts<sup>183</sup> to examine how selected temporary skilled migration measures could help ease labour shortages in the medium to long term, particularly in the major infrastructure, construction, tourism and the resources sectors.<sup>184</sup> The Minister sought specific advice on ways to ensure that the subclass 457 visa program operated as effectively as possible; the current skilled labour supply situation for each of the identified sectors; current and anticipated future employment trends; and the need for overseas recruitment, including specific occupations in the identified sectors.<sup>185</sup>

An interim report by the External Reference Group was provided in March 2008, recommending that government consider establishing an accreditation system whereby “low risk” employers with a good track record of compliance with immigration and industrial relations laws could have 457 visa applications fast-tracked by the department; improvements in administration through the elimination of duplication in visa processes; and the provision of better information to employers and workers about their responsibilities and rights under the 457 visa system.<sup>186</sup>

A final report by the External Reference Group was released in May 2008, which noted the current labour market pressures and skills shortages in the Australian economy and recognised the importance of Australia’s skilled migration programs (both permanent and temporary) in addressing these pressures: “Access to global skills is crucial for the ongoing competitiveness of business in Australia.”<sup>187</sup> The report also acknowledged that “Labour market pressures are expected to increase in future due to long-term demographic and economic trends.”<sup>188</sup>

The final report included 16 recommendations across seven broad areas:

1. better long term planning
2. streamlining application and approval processes
3. improving the effectiveness of government resources
4. eliminating duplication and unnecessary administration
5. providing scope for flexibility
6. remaining competitive
7. branding.<sup>189</sup>

<sup>181</sup> The Australian Workforce and Productivity Agency, <http://www.awpa.gov.au/about-us/Pages/default.aspx>.

<sup>182</sup> The other measures were a 6,000-place increase in the Skilled Migration program in 2007-08, to be made up of permanent employer sponsored visas and General Skilled Migration visas; and changes to the Working Holiday visa program to enable people who undertake at least three months work in the construction sector in regional Australia to extend their 12-month working holiday visa by another year.

<sup>183</sup> The industry experts appointed to the reference group were Peter Coates (Chairman) – Former Chairman, Minerals Council of Australia; Chairman, Xstrata Australia; Melinda Cilento – Deputy Chief Executive, Business Council of Australia, and Tim Shanahan – Director, Energy and Minerals Initiative, University of Western Australia; Former CEO, WA Chamber of Minerals and Energy.

<sup>184</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Immigration package to ease skills shortage*, media release, 17 February, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08015.htm>.

<sup>185</sup> Visa Subclass 457 External Reference Group 2008, *Final Report to the Minister for Immigration and Citizenship*, Terms of Reference, p. 12, <http://www.minister.immi.gov.au/media/media-releases/2008/erg-final-report-april-2008.pdf>.

<sup>186</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Minister welcomes interim report on skilled migration*, media release, 26 March, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08028.htm>.

<sup>187</sup> Visa Subclass 457 External Reference Group, *Final Report*, op. cit., p. 8.  
<sup>188</sup> *ibid.*  
<sup>189</sup> *ibid.*

The recommendations included:

- developing a long-term strategy to respond to aggregate labour market and skill needs and population trends
- expanding the department's front-end support through the industry and regional outreach programs to help employers and industry lodge "decision-ready" applications
- strengthening back-office processing for temporary skilled migration visas and labour agreements to improve speed and effectiveness of processing — through the establishment of specialist teams and 'Centres of Excellence' for temporary skilled migration visa processing
- establishing an accreditation process for low-risk employers with exemplary compliance records, who would then have their applications fast-tracked
- providing comprehensive staff training to improve risk-management procedures and increase the efficiency of 457 visa processing
- increasing competition between service providers in order to improve the effectiveness and efficiency of the English language testing service
- regularly reviewing Australia's practices against comparable countries to ensure Australia's competitiveness in the international labour market; and
- evaluating the recommendations implemented by Government be undertaken two years following their introduction.<sup>190</sup>

The Government immediately accepted 14 of these 16 recommendations, the Minister noting that "The recommendations made by the ERG are designed to respond to the immediate labour market pressures facing Australian industry while complementing broader labour market skills strategies and maintaining the integrity of the temporary skilled migration program."<sup>191</sup> A further recommendation was later adopted.<sup>192</sup>

<sup>190</sup> *ibid.*

<sup>191</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Government to implement industry report on skilled migration*, media release, 5 May, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08044.htm>.

<sup>192</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship), Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s653](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s653)

In response to the release of the final report in May 2008, the Minister immediately announced the establishment from 1 July 2008 of three dedicated subclass 457 processing "Centres of Excellence" in Sydney, Melbourne and Perth, comprising specialised teams to facilitate and process 457 visa applications.<sup>193</sup> The specialised teams would particularly focus on expediting applications from identified low-risk employers. This measure was accompanied by the allocation of additional resources to clear the backlog of 457 visa applications by 30 June.<sup>194</sup>

Later in May 2008, Minister Evans announced a number of further initiatives to respond to the External Reference Group recommendations. These included the development of a comprehensive information strategy to promote awareness of rights and obligations of 457 visa holders and employer sponsors, aimed at reducing the potential for exploitation. This strategy included the production of information packs in common community languages and face-to-face information sessions for new and existing visa holders.<sup>195</sup> The Minister also announced an expanded outreach officer network to assist employers and other stakeholders to better understand the program and the application process,<sup>196</sup> and the establishment of a formal inter-agency framework between the Department of Immigration and the Department of Education, Employment and Workplace Relations to consider Labour Agreement proposals.<sup>197</sup>

<sup>193</sup> *ibid.* See also The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *New Centres of Excellence to process temporary work visas*, media release, 11 July, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08066.htm>. Senator Evans said subclass 457 visa applications were already being processed faster: "In June 2007, an average of 400 cases was processed within seven days whereas in June 2008, more than 1200 applicants were granted visas within a week."

<sup>194</sup> *ibid.*

<sup>195</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Minimum Salary Level increase for 457 visa holders*, media release, 23 May, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08050.htm>.

<sup>196</sup> *ibid.* See also Visa Subclass 457 External Reference Group, *Final Report*, op. cit., Recommendation 2 and discussion at p. 24.

<sup>197</sup> *ibid.* See also Visa Subclass 457 External Reference Group, *Final Report*, op. cit., Recommendation 3.

### ***Increased consultation requirements for labour agreements – February 2008***

In February 2008, Minister Evans also announced a new process for temporary business visa labour agreements under the subclass 457 visa program. The new process, requiring employers seeking labour agreements to consult with relevant industrial stakeholders — including peak bodies, professional associations and unions — about the proposed agreement, sought to increase transparency in the negotiation and approval of labour agreements.<sup>198</sup>

This change reflected one of the External Reference Group recommendations, which encouraged a more transparent process for Labour Agreements — while also protecting the commercial interests of the parties to the agreement — to encourage community acceptance of their wider use.<sup>199</sup>

### ***Legislative reform – Migration Legislation Amendment (Worker Protection) Act 2008***

In what was described as “the first stage of a series of reforms aimed at restoring integrity and public confidence in the 457 program”, the Government announced a \$19.6 million commitment in the 2008-09 Budget to improve the processing and compliance of the temporary skilled migration program.<sup>200</sup>

Minister Evans subsequently released a discussion paper seeking stakeholder feedback on proposed reforms to the 457 visa regime in June 2008.<sup>201</sup> The discussion paper proposed legislation to clarify sponsor obligations and provide further fair and transparent mechanisms for temporary workers from overseas, and focused on four main areas:

- redefining sponsorship obligations for Subclass 457 and establishing a sponsorship obligations framework for a range of other subclasses
- expanding powers to monitor and investigate possible non-compliance with those obligations
- enhancing measures to address identified breaches of obligations
- improving information sharing between government agencies at all levels.<sup>202</sup>

The discussion paper framed the 457 reforms as “focused on making the program more responsive to labour market needs, while protecting the employment and training opportunities of Australians and the rights of overseas workers.”<sup>203</sup>

198 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *New process for temporary business visa labour agreements*, media release, 20 February, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08017.htm>.

199 Visa Subclass 457 External Reference Group, *Final Report*, op. cit., Recommendation 11 and discussion at pp. 35-36.

200 The working group also included Deputy Prime Minister, the Treasurer and the Minister for Trade: The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Budget 2008-09 - Record skilled migration program to boost economy*, media release, 13 May, <http://www.minister.immi.gov.au/media/media-releases/2008/ce01-buget-08.htm>.

201 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Proposed new laws to reform 457 visa program*, media release, 30 June, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08058.htm>.

202 Department of Immigration and Citizenship 2008, *Discussion Paper: Business (Long Stay) Subclass 457 and related temporary visa reforms*, p.2, <http://www.minister.immi.gov.au/media/media-releases/2008/discussion-paper-for-legislation.pdf>.

203 *ibid.*

The subsequent Bill, the Migration Legislation Amendment (Worker Protection) Bill 2008 was introduced into the Parliament in September 2008. The Bill introduced a new framework for the sponsorship of non-citizens seeking entry to Australia. The Government sought to strengthen the integrity of temporary working visa arrangements through four main measures:

- providing the structure for better defined sponsorship obligations for employers and other sponsors
- improved information sharing across all levels of government
- expanded powers to monitor and investigate possible non-compliance by sponsors
- introducing meaningful penalties for sponsors found in breach of their obligations.<sup>204</sup>

While the new framework was initially to apply only to the 457 visa regime, it was envisaged that it could in time cover all visas where sponsorship was required.<sup>205</sup>

The Parliamentary Library assessed that while the Bill was “similar in many respects to the Sponsorship Obligations Bill in that they both expand the powers to monitor and investigate, and create punitive penalties for non-compliance, there are some significant differences. The most notable is that this Bill, unlike its predecessor does not attempt to elevate key sponsorship obligations into the Migration Act.”<sup>206</sup>

In providing scope for better defined sponsorship obligations, the Bill instead proposed to amend the *Migration Act 1958* to provide that sponsorship obligations would be contained in the *Migration Regulations 1994*. The Government sought a high degree of flexibility, particularly to take account of recommendations that may arise from the various reviews it had in place.<sup>207</sup> As such, the Bill did not itself specify the obligations to which particular classes of sponsors would be subject, or when those obligations would apply or how they would be satisfied, but instead provided that these matters would be prescribed in the Regulations. Under these arrangements, a sponsor would be required to satisfy sponsorship obligations in the manner (if any) and within the period (if any) prescribed by the Regulations and different kinds of sponsorship obligations may be prescribed for different kinds and classes of visa.<sup>208</sup>

While sponsorship obligations were not spelt out in the Bill, Minister Evans stated that “any sponsorship obligations that are prescribed in the Migration Regulations will:

- lead to effective and efficient identification of non-compliance — this could be done, for example, by obliging sponsors to cooperate with monitoring by the Department of Immigration and Citizenship
- discourage inappropriate use of temporary skilled visa programs — this could be done, for example, by obliging sponsors to reimburse the Commonwealth for location, detention and removal expenses should the visa holder abscond
- provide an effective price signal to encourage the hiring and training of Australian citizens and permanent residents and, most importantly
- protect overseas workers from exploitation.”<sup>209</sup>

<sup>204</sup> The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s653](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s653)

<sup>205</sup> *ibid.*

<sup>206</sup> Elibritt Karlsen, Laws and Bills Digest Section, Parliamentary Library, Migration Legislation Amendment (Worker Protection) Bill 2008, *Bills Digest*, 31 October 2008, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s653](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s653)

<sup>207</sup> Evans, C 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, *op. cit.*

<sup>208</sup> Proposed section 140H.

<sup>209</sup> Evans, C 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, *op. cit.*

## Chapter 6: History of the 457 visa

In addition to repealing and replacing existing provisions for sponsorship undertakings, the Bill proposed changes to existing sponsorship obligations, including:

- approved sponsors will be required to satisfy their obligations automatically, by operation of law as opposed to when they have consented in writing and the visa has been granted, as was previously the case<sup>210</sup>
- a person who is party to a “work agreement” (as defined) will be expressly subject to the new sponsorship regime<sup>211</sup>
- all existing partners of a partnership or members of an unincorporated association’s committee of management at any given time are required to satisfy a sponsorship obligation, where previously new partners or new members of a committee could elect whether to be bound by an obligation.<sup>212</sup>

The second element of the Bill was a number of amendments to improve information sharing by expanding the range of circumstances in which personal and other information regarding sponsored visa holders (or former sponsored visa holders) and approved sponsors (or former approved visa holders) could be disclosed to the other party or to prescribed Commonwealth, state or territory government agencies.<sup>213</sup> The Bill particularly proposed amendments to allow the Commissioner of Taxation to disclose tax information of visa holders, former visa holders, approved sponsors, or former approved sponsors to the Department of Immigration and Citizenship in order ensure correct salary levels are being paid to visa holders.<sup>214</sup> According to Minister Evans, these amendments would “ensure that the three parties involved in the program will be adequately informed of each other’s circumstances” and “facilitate a cooperative whole of government approach to business compliance.”<sup>215</sup>

The third element of the Bill was to provide for expanded investigation powers to promote compliance with sponsorship obligations. The Bill sought to establish a monitoring regime which provided for the appointment of inspectors, appointed by the Minister for Immigration and Citizenship, with powers substantially the same powers as Workplace Inspectors under the *Workplace Relations Act 1996*. Inspectors were empowered to conduct site visits — but not enter premises with force; inspect things; conduct interviews; and require production of relevant documents from sponsors in writing within specified times periods.<sup>216</sup> Under the Bill, failing to comply with an inspector’s written request to produce a document or thing at a specified place or within a specified period (of not less than 7 days) was to be made an offence punishable by a maximum 6 months’ imprisonment.<sup>217</sup>

The proposed measures would substantially increase the mechanisms available to Departmental officials to monitor the compliance of business sponsors with their sponsorship obligations, which had to that time focused on education and awareness raising activities, desk-based audits, interviews and site visits. Furthermore, while Departmental officers could request permission to enter premises, sponsors could lawfully refuse entry to Departmental officers. Minister Evans asserted that the improved information sharing and expanded investigative powers, as proposed in the Bill, would “better equip government to identify non-compliance without unduly imposing on business.”<sup>218</sup>

The fourth element of the Bill was to introduce new civil penalties that may apply to sponsors found to be in breach of their sponsorship obligations.

210 Proposed section 140H.

211 Proposed section 140H(2).

212 Proposed Subdivision G of Division 3A of Part 2.

213 Migration Legislation Amendment (Worker Protection) Bill 2008, *Explanatory Memorandum*, p.2, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s653](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s653)

214 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *New laws to protect overseas workers*, media release, 24 September, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08091.htm>.

215 Evans, C 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, *op cit*.

216 *ibid*; Migration Legislation Amendment (Worker Protection) Bill 2008, *Explanatory Memorandum*, p.2, *op cit*; Karlsen, Migration Legislation Amendment (Worker Protection) Bill 2008, *Bills Digest*, *op cit*.

217 Proposed section 140Z.

218 Evans, C 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, *op cit*.

Prior to the Worker Protection Bill, Departmental officers had a range of measures available to sanction sponsors, including requiring the taking or enforcing of a security bond,<sup>219</sup> cancelling a sponsorship approval<sup>220</sup> or imposing a variety of bars on a sponsor (for example, a bar for a specified period from sponsoring more people under one or all existing approvals).<sup>221</sup> According to Minister Evans, these administrative sanctions had “proven insufficient to encourage compliance in all circumstances, particularly amongst sponsors who only ever intend to use the relevant visa program once.”<sup>222</sup>

The Bill maintained and enhanced this existing sanction and enforcement regime, and introduced a civil penalties framework to the *Migration Act* for the first time.<sup>223</sup> These provisions allowed civil legal action to be taken against sponsors for failure to satisfy their sponsorship obligations, with a maximum penalty of \$6,600 for an individual or \$33,000 for a body corporate. The Bill also proposed the making of regulations to enable a person who was alleged to have been in breach of their sponsorship obligations to have the option of being issued an infringement notice and paying a specified penalty rather than having proceedings instituted against them. The maximum penalty per infringement notice would not exceed one-fifth of the maximum prescribed penalty.<sup>224</sup> Minister Evans asserted that these new civil sanctions would “give the department another tool for effectively managing non-compliance and preventing the exploitation of workers from overseas.”<sup>225</sup>

The *Migration Legislation Amendment (Worker Protection) Act 2008* passed the Parliament in December 2008 and commenced 14 September 2009. According to the Explanatory Memorandum, the nine months delay in commencement of the Act was to “allow the recommendations of various review and consultation processes to be taken into account in drafting the regulations, policies and procedures that will support the new provisions on commencement.”<sup>226</sup>

### **Skilled Migration Consultative Panel established – July 2008**

In July 2008, Minister Evans announced the establishment of a Skilled Migration Consultative Panel to provide advice to Government in the latter half of 2008, as it developed a package of longer-term measures aimed at improving Australia’s temporary skilled (457 visa) migration program. The Consultative Panel was made up of representatives of the New South Wales, Victorian, Queensland and Western Australian state governments, the Australian Chamber of Commerce and Industry, the Australian Industry Group, the Business Council of Australia, the Australian Council of Trade Unions and the Minerals Council of Australia.<sup>227</sup>

Under their terms of reference, the Consultative Panel was to consult with their members and constituents in order to:

- consider and provide advice to Government on matters referred regarding possible skilled migration policy changes
- consider and provide advice on issues referred by industrial relations expert Barbara Deegan, who is conducting a review of the integrity of the 457 visa program
- provide 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.<sup>228</sup>

219 Under then section 269 of the *Migration Act 1958*.

220 Under then section 137B of the *Migration Act 1958*.

221 Under sections 140L, 140J and 140K of the *Migration Act 1958*.

222 Evans, C 2008, *Migration Legislation Amendment (Worker Protection) Bill 2008, Second Reading Speech, op cit.*

223 Karlsen, *Migration Legislation Amendment (Worker Protection) Bill 2008, Bills Digest, p.12, op cit.*

224 Evans, *Migration Legislation Amendment (Worker Protection) Bill 2008, Second Reading Speech, op cit.*; *Migration Legislation Amendment (Worker Protection) Bill 2008, Explanatory Memorandum, op cit.*; Karlsen, *Migration Legislation Amendment (Worker Protection) Bill 2008, Bills Digest, op cit.*

225 Evans, C 2008, *Migration Legislation Amendment (Worker Protection) Bill 2008, Second Reading Speech, op cit.*

226 *Migration Legislation Amendment (Worker Protection) Bill 2008, Explanatory Memorandum, op cit., p.4.*

227 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Panel of experts to advise on changes to 457 visa program, media release, 8 July, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08064.htm>.*

228 *ibid.*

The consultative panel was also charged with examining how the temporary 457 visa program could best integrate with the employer and state-sponsored permanent skilled migration program.<sup>229</sup> Minister Evans stated that the panel “will provide advice and 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.”<sup>230</sup>

### **The Deegan Review – October 2008**

In April 2008, the Rudd Government commissioned a major review to investigate concerns raised about the 457 visa program — including the exploitation of migrant workers, salary levels and English language requirements — and provide options to improve the integrity of the scheme.<sup>231</sup> The Government appointed industrial relations commissioner Barbara Deegan to undertake the review, supported by a working party of industry and trade union leaders, and flagged an extensive consultation program with overseas workers, union and industry representatives as well as relevant Commonwealth, state and territory agencies.<sup>232</sup> It was intended that the review would complement the work being undertaken by the External Reference Group, established in February.

In announcing the Review, Minister Evans highlighted the skills and labour shortages being experienced at that time and emphasised that the Government was “working with industry to improve the efficiency of our skilled migration program while ensuring we continue to provide employment and training opportunities for Australian workers.”<sup>233</sup>

The terms of reference for the 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;
- the opportunities for labour agreements to contribute to the integrity of the temporary skilled migration program.<sup>234</sup>

As part of the review, three issues papers were released for public comment:

- The first issues paper on minimum salary levels and labour agreements was released in July 2008.<sup>235</sup>
- The second issues paper, released in August 2008, considered English language requirements and Occupational Health and Safety issues.<sup>236</sup>
- The third issues paper, on integrity and exploitation issues, was released in September 2008.<sup>237</sup>

The issues papers provided the basis for feedback from industry, union and government stakeholders. More than 150 submissions were received by the review, which held consultations with employers, peak industry bodies, unions, government agencies, visa holders and academics in all states and territories.<sup>238</sup>

229 *ibid.*

230 Evans, C 2008, Migration Legislation Amendment (Worker Protection) Bill 2008, *Second Reading Speech*, *op cit*.

231 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *IR expert to oversee temporary migration review*, media release, 14 April, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08035.htm>.

232 *ibid.*

233 *ibid.*

234 *ibid.*

235 DIAC 2008, *Visa Subclass 457 Integrity Review: Issues Paper #1: Minimum Salary Level/Labour Agreements*, accessed at <http://www.immi.gov.au/skilled/457-integrity-review.htm>.

236 DIAC 2008, *Visa Subclass 457 Integrity Review: Issues Paper #2: English Language Requirement / Occupational Health and Safety*, accessed at <http://www.immi.gov.au/skilled/457-integrity-review.htm>.

237 DIAC 2008, *Visa Subclass 457 Integrity Review: Issues Paper #3: Integrity/Exploitation*, accessed at <http://www.immi.gov.au/skilled/457-integrity-review.htm>.

238 Deegan, B 2008, *Visa subclass 457 integrity review: final report*, accessed at [http://www.immi.gov.au/skilled/skilled-workers/\\_pdf/457-integrity-review.pdf](http://www.immi.gov.au/skilled/skilled-workers/_pdf/457-integrity-review.pdf).

## Chapter 6: History of the 457 visa

The final report by Barbara Deegan was completed in October 2008<sup>239</sup> and publicly released on 14 November 2008.<sup>240</sup> The report was referred to the Skilled Migration Consultative Panel, to provide feedback and advice to Government on the report.<sup>241</sup>

The Review determined that concerns about exploitation of 457 visa workers were well-founded, particularly in relation to visa holders at the lower end of the salary scale,<sup>242</sup> and that the rate of incidents reported to relevant authorities were only “a very small part of the overall problem.”<sup>243</sup>

According to Minister Evans, the Review found that the subclass 457 program “had systemic weaknesses, including:

- the use of a Minimum Salary Level (MSL) and not market salary rates which allowed overseas workers to be employed on wages below Australians doing the same job
- a failure to address the vulnerability of people in lower skilled occupations from non-English speaking countries
- a lack of transparency amongst government agencies over where 457 visa holders are employed
- fraudulent claims of skill levels and capabilities that often saw overseas workers then trapped in low skilled jobs.”<sup>244</sup>

The Review made a total of 68 recommendations aimed at improving the integrity of the 457 visa system, “thereby ensuring it has ongoing public support.”<sup>245</sup> Among the Review recommendations were that:

- minimum salary levels should be progressively abolished in favour of other mechanisms, including market rates of pay for all temporary visa holders on salaries less than \$100,000
- regional concessions should be removed from the Subclass 457 visa program
- two new lists of skilled occupations for which temporary visas may be granted should be developed by DEEWR, in consultation with DIAC and industry parties — with only occupations requiring genuine skill (professional, semi-professional and trades) included on the lists
- an accreditation system or risk matrix should be developed to ensure rapid processing of low-risk visa applications, allowing for greater focus to be given to the rigorous examination and ongoing monitoring of high risk applications
- more comprehensive information on pathways to permanent residency should be provided on the DIAC website to remove the perception that the Subclass 457 visa is a guarantee of permanency and counteract misleading information supplied by agents or sponsors
- a limit of eight years should be introduced for people in Australia on a Subclass 457 visa (e.g. two four-year visas or four two-year visas etc.), while providing a pathway to permanent residency for those who have the required language skills. Temporary visa applicants must go offshore before reapplying for a visa after the eight-year period

239 *ibid.*

240 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2008, *Integrity review of temporary overseas worker scheme released*, media release, 14 November, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08108.htm>.

241 *ibid.*

242 Deegan, B 2008, *Visa subclass 457 integrity review: final report*, *op. cit.*, p. 23.

243 *ibid.*, p. 24.

244 Evans, C 2009, *Access with integrity – 457 visa reforms*, *op. cit.*

245 Deegan, B 2008, *Visa subclass 457 integrity review: final report*, *op. cit.*, p. 8.

- the current English language requirements should be retained for all occupations included on the new standard list of occupations with the exception that applicants should also be found to have met their requirement should they achieve an average score of 4.5 without reference to the written component
- the Government should institute a levy from employers for each Subclass 457 visa holder they sponsor, to be used to fund the provision of services to visa holders and removal costs if required
- the government should provide Medicare coverage of public health costs to Subclass 457 visa holders and their dependants by means of the proposed employer levy; in the alternative, it should become a visa obligation for all Subclass 457 visa holders to maintain public health cover for themselves and their dependants.<sup>246</sup>

### **Departmental Working Group**

The establishment of a departmental working party was flagged by Minister Evans during the 2008-09 Budget process.<sup>247</sup> The Subclass 457 Inter-Departmental Committee (IDC) comprised representatives from the Department of Immigration and Citizenship, the Department of Education, Employment and Workplace Relations, the Department of Foreign Affairs and Trade, the Treasury, the Department of the Prime Minister and Cabinet, and the Department of Finance and Deregulation.<sup>248</sup> 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."<sup>249</sup>

### **Draft employer obligations – February 2009**

In February 2009 the Government released draft regulations outlining new sponsorship obligations for Subclass 457 visas, drafted following the Deegan *Integrity Review*. The draft regulations considered issues including the payment of a minimum salary to Subclass 457 visa holders, the payment of return travel costs for visa holders and their spouses, and requirements for sponsor cooperation, with inspectors exercising powers under the *Worker Protection Act*. Minister Evans stated that the Skilled Migration Consultative Panel would consider the regulations and provide feedback to government.<sup>250</sup>

### **Reforms to 457 visa program – announced April 2009**

Minister Evans announced a package of further reforms to the 457 visa regime on 1 April 2009, representing "fundamental and long-term improvements to the 457 visa program."<sup>251</sup> The changes reflected both the recommendations from the Deegan Review and the views of stakeholders on the Skilled Migration Consultative Panel. In announcing the reforms, the Minister stated that the reforms were aimed at ensuring that the 457 visa program "continues to provide industry with needed skills, while not undermining local training and employment opportunities."<sup>252</sup>

246 *ibid.*, pp. 8-16.

247 The working group also included the Deputy Prime Minister, the Treasurer and the Minister for Trade: The Hon Senator Chris Evans 2008 (Minister for Immigration and Citizenship) *Budget 2008-09 - Record skilled migration program to boost economy*, media release, 13 May, <http://www.minister.immi.gov.au/media/media-releases/2008/ce01-buget-08.htm>.

248 Government Response to the Report, Report by the Joint Standing Committee on Migration, 'Temporary visas . . . permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program', *op cit*, p.2.

249 *ibid.*, pp. 2-3.

250 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *Government releases draft employer obligations for overseas workers*, media release, 12 February, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09017.htm>.

251 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *Government announces changes to 457 visa program*, media release, 1 April, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09034.htm>.

252 *ibid.*

## Chapter 6: History of the 457 visa

The seven measures announced by the Minister were:

1. The indexation of the minimum salary level (MSL) for all new and existing 457 visa holders by 4.1 per cent on 1 July 2009, in line with all employees' total earnings last year as reported by the ABS. This ensures that the wages of overseas workers keep pace with local wages.
2. The implementation of a market-based minimum salary for all new and existing 457 visa holders from mid-September 2009, to ensure overseas workers are not exploited and local wages and conditions are not undermined.
3. Increasing the existing minimum language requirement from 4.5 IELTS to 5 IELTS for 457 visa applicants in trade occupations and chefs, to address concerns about the exploitation of workers from non-English speaking countries and align the 457 visa English language standard with the permanent sponsored visa for trades' occupations.
4. Progressively introducing formal skills assessment from 1 July 2009 for 457 visa applicants from high risk immigration countries in trade occupations and chefs. The Government will consult with stakeholders in finalising an assessment framework that reflects Australian standards and meets the expectations of Australian workplaces.
5. Introducing a requirement that employers seeking access to the 457 visa program have a strong record of, or demonstrated commitment to, employing local labour and non-discriminatory employment practices. This will help address concerns that some employers may discriminate against local labour in hiring overseas workers.
6. The development of training benchmarks to clarify the existing requirement on employers to demonstrate a commitment to training local labour.
7. The extension of the labour agreement pathway to all ASCO 5–7 occupations, to ensure that employers using the 457 visa program to access these occupations satisfy obligations on local training and employment.<sup>253</sup>

Minister Evans considered that the introduction of market rates for 457 visa holders was "perhaps the most important of the changes...as it ensures the proper price signals are in place for employers to find local workers first. The principle is that subclass 457 visa holders will be paid the same as an Australian worker doing the same job in the same workplace."<sup>254</sup> Employers paying less than the market salary rate to existing Subclass 457 visa holders, as at September 2009, were given until 1 January 2010 to commence paying market rates.<sup>255</sup> An associated provision, which also came into effect in September 2009 by virtue of the commencement of the Worker Protection legislation, enabled the Australian Taxation Office to disclose information to the Department in order to ensure correct salary levels were being paid to visa holders.<sup>256</sup>

The introduction of market salary requirements led to significant increases in salaries for workers on 457 visas. In 2008-09, the year before this change was legislated, the average nominated base salary was \$77,500. One year later in 2009-10, the average salary jumped to \$86,400.<sup>257</sup>

In the context of the move to market-based wages, the government adopted — among the new set of sponsorship obligations that applied to both sponsors and visa holders from September 2009 — the recommendation of the Deegan Review was that 457 visa holders take out private health insurance.<sup>258</sup> Minister Evans emphasised that the introduction of a market-based minimum salary for temporary overseas workers from mid-September 2009 would ensure that overseas workers, who were ineligible for benefits and payments such as Family Tax Benefit (FTB), and were liable for private health insurance, were still able to "earn enough to sustain a reasonable standard of living."<sup>259</sup>

254 Evans, C 2009, *Access with integrity – 457 visa reforms*, op. cit.

255 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *New worker protection laws will allow tax checks*, media release, 14 September, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09084.htm>.

256 *ibid.*

257 Subclass 457 – Temporary Work (Skilled) Visa Statistics: <http://www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm>

258 Evans, C 2009, *Access with integrity – 457 visa reforms*, op. cit.

259 *ibid.*

253 *ibid.*

The increase in the English language requirements for all trades and chefs and lower skilled occupations, in effect from 14 April 2009, was aimed at ensuring that “overseas workers are better able to understand their rights and seek assistance if they feel they are being exploited.”<sup>260</sup> According to Minister Evans, the rationale for the introduction of formal trade assessments, from 1 July 2009, was “to ensure that overseas workers have the skills they claim”,<sup>261</sup> while requiring ASCO 5-7 occupations to be sponsored through labour agreements would “better control the access to semi-skilled overseas workers in regional areas.”<sup>262</sup>

Minister Evans considered that the combination of changes announced in April 2009, and the legislative provisions in the *Worker Protection Act* which came into effect in September 2009 represented “a fundamental reform to the subclass 457 program, with the aim of both maintaining access to skills while ensuring that the public has confidence in the system.”<sup>263</sup>

While application rates for Subclass 457 visas had begun to decline in late 2008, reflecting in part the change in economic conditions associated with the Global Financial Crisis,<sup>264</sup> the government attributed the significant drop in overseas workers coming to Australia in 2009 on the integrity measures it had introduced “to protect local jobs”<sup>265</sup> and “ensure that the wages and working conditions of Australians are not undermined.”<sup>266</sup>

### **Introduction of Enterprise Migration Agreements – May 2011**

In the 2011-12 Budget, the new Minister for Immigration and Citizenship, Chris Bowen MP, announced the introduction of a new temporary migration initiative: Enterprise Migration Agreements (EMAs), aimed at addressing the skill needs of the resources sector.<sup>267</sup> The introduction of EMAs had been recommended by the National Resources Sector Employment Taskforce, established in November 2009 “to help secure the more than 70,000 additional skilled workers needed for major resources projects over the next five years.”<sup>268</sup> Minister Bowen stated that the new EMAs would “allow major resource projects to gain access to overseas labour for genuine skills vacancies that cannot be filled from the Australian labour market.”<sup>269</sup>

According to Minister Bowen’s announcement, EMAs would be available to projects with capital expenditure of \$2 billion or more and a peak workforce of 1,500 workers. To be approved for an EMA, projects will “need to develop a comprehensive training plan, demonstrating how the project will invest in the up-skilling of Australians to meet future skills needs in the resources sector... This plan will need to set measurable targets for training that develops skills in occupations where there are known or anticipated shortages.”<sup>270</sup>

The Government announced in May 2012 that the first EMA had been granted to a new iron ore mining Roy Hill project in the Pilbara region of Western Australia.<sup>271</sup>

260 Evans, C 2009, Access with integrity – 457 visa reforms, op. ci

261 *ibid.*

262 *ibid.*

263 *ibid.*

264 Application rates for Subclass 457 visas in January 2009 were 31 per cent lower than in September 2008: Evans, *Government releases draft employer obligations for overseas workers*, op. cit.

265 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *Temporary overseas worker numbers falling*, media release, 25 May, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09043.htm>.

266 The Hon Senator Chris Evans (Minister for Immigration and Citizenship) 2009, *Big drop in temporary overseas workers*, Media Release, 12 August, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09071.htm>.

267 The Hon Chris Bowen MP (Minister for Immigration and Citizenship) 2011, *New Temporary Migration Agreements to Further Address Skills Demand*, media release, 10 May, <http://www.minister.immi.gov.au/media/cb/2011/cb165283.htm>.

268 See National Resources Sector Employment Taskforce, <http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/NationalResourcesSectorWorkforceStrategy/NationalResourcesSectorEmploymentTaskforce/Pages/default.aspx>.

269 Bowen, C 2011, *New Temporary Migration Agreements to Further Address Skills Demand*, op. cit.

270 *ibid.*

271 The Hon Chris Bowen MP (Minister for Immigration and Citizenship) 2012, *First Enterprise Migration Agreement approved*, joint media release with the Hon Martin Ferguson AO MP, Minister for Resources and Energy, 25 May, <http://www.minister.immi.gov.au/media/cb/2012/cb187050.htm>.

## Chapter 6: History of the 457 visa

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### **Additional commitments to improve 457 visa processing – May 2011**

Minister Bowen also announced a commitment to halve processing times for 457s in the 2011-12 Budget.<sup>272</sup> Noting that processing times for 457 visas had reduced by 30 per cent over the previous five years, Minister Bowen stated that the Government's goal was to "deliver a 10-day median processing time for applications which are complete at the time they are lodged."<sup>273</sup> To this end, the Minister announced the establishment of a new processing centre in Brisbane and additional funding of \$10 million.<sup>274</sup>

### **New accreditation scheme for 457 sponsors – November 2011**

The establishment of an accreditation process for low-risk employers with exemplary compliance records to have their applications fast-tracked had been a recommendation of the External Reference Group in March 2008. In September 2009, Minister Evans flagged that the accreditation process then being developed by the Department and the Skilled Migration Consultative Panel would mean that "Accredited business sponsors would have a higher level of trust as a result of their history of compliance with immigration requirements and sponsorship undertakings. Accredited business sponsors would receive faster processing and undergo less monitoring. Accreditation should provide efficiencies for both DIAC and business sponsors and enables DIAC to spend more time on higher risk applicants."<sup>275</sup>

The new accreditation scheme for 457 sponsors was subsequently announced by Minister Bowen in November 2011.<sup>276</sup> To qualify for accredited status, businesses would need to have a long history of dealing with the Department and an excellent compliance record, as well as being an active 457 visa sponsor for the previous three years and a commitment to ensuring at least 75 per cent of their domestic workforce was Australian.<sup>277</sup> Accreditation would enable access to priority processing and approval for six years, rather than three, and contribute to faster processing times.<sup>278</sup>

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272 Bowen, C 2011, *New Temporary Migration Agreements to Further Address Skills Demand*, op. cit.

273 *ibid.*

274 DIAC, 'Additional funding for 457 visa processing', <http://www.immi.gov.au/skilled/457-additional-funding.htm>.

275 Evans, C 2009, *Access with integrity – 457 visa reforms*, op. cit.

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276 The Hon Chris Bowen MP (Minister for Immigration and Citizenship) 2011, *New accreditation scheme for 457 visas*, media release, 2 November, <http://www.minister.immi.gov.au/media/cb/2011/cb179959.htm>.

277 *ibid.*

278 *ibid.*

## Chapter 6: History of the 457 visa

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### **Further reforms to the subclass 457 program – February 2013**

Shortly after becoming Minister for Immigration and Citizenship, Brendan O'Connor MP announced that the 457 program would "be reformed in response to the changing needs of the Australian economy and domestic employment market."<sup>279</sup> Citing concerns that the 457 program was "out of step" with genuine skills shortages in some industries, and that some employers were using 457 visas to discriminate against locals, the Minister announced a series of proposed changes:

- employers must demonstrate that they are not nominating positions where a genuine shortage does not exist;
- the English language requirements for certain positions have been raised;
- the enforceability of existing training requirements for businesses that use the program will be strengthened;
- the market salary exemption will rise from \$180,000 to \$250,000;
- on-hire arrangements of 457 Visa workers will be restricted;
- compliance and enforcement powers will be beefed up to stop employers who have routinely abused the 457 system;
- stakeholders will be consulted to ensure market rate provisions more effectively protect local employment.<sup>280</sup>

To date, details regarding these proposed changes have not been forthcoming.

### **Fair Work Ombudsman to monitor and enforce compliance with 457 visa conditions – March 2013**

In March 2013 Minister O'Connor and the Minister for Employment and Workplace Relations announced that the Government would complement the Department's existing compliance activities by giving powers to Fair Work Ombudsman inspectors to monitor and enforce compliance with 457 visa conditions, to ensure workers are employed in the right jobs and are receiving market salary rates.<sup>281</sup> The 300 Fair Work Ombudsman inspectors would specifically monitor 457 visa holders to ensure that they were being paid at the market rates specified in their approved visa, and that the job they were undertaking matched the job title and description approved in their visa.<sup>282</sup>

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<sup>279</sup> The Hon Brendan O'Connor MP (Minister for Immigration and Citizenship) 2013, *Reforms to the temporary work (skilled) (subclass 457) program*, media release, 23 February, <http://www.minister.immi.gov.au/media/bo/2013/bo193683.htm> ,

<sup>280</sup> *ibid.*

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<sup>281</sup> The Hon Brendan O'Connor MP (Minister for Immigration and Citizenship) 2013, *Fair Work inspectors to monitor rogue 457 employers*, joint media release with the Hon Bill Shorten MP, Minister for Employment and Workplace Relations, 18 March, <http://www.minister.immi.gov.au/media/bo/2013/bo194313.htm>

<sup>282</sup> *ibid.*

## Chapter 7: International comparisons of temporary migration

The substantial increase in the use of temporary migration in Australia over the past decade has similarly been evident in other Organisation for Economic Co-operation and Development (OECD) countries and reflects the broader phenomenon of globalisation. Indeed, the OECD has said that “The migration of people across national borders is part and parcel of the globalisation process.”<sup>283</sup>

Despite significant drops in temporary migration in recent years in response to the GFC, as discussed above, the OECD’s recent *International Migration Outlook 2012* report estimates that size of temporary worker migration flows now stands at about 1.9 million.<sup>284</sup>

As noted in a 2006 paper prepared for the Population Division of the United Nations Secretariat, there is renewed interest in temporary migration programs as they are perceived to have advantages over other more permanent forms of migration:

“Temporary migration, to start with, is viewed as contributing to greater flexibility in the labour market. For many countries this is of considerable importance given their ageing workforces, the demands of industry for new skills, and the tendency of people to become less mobile as societies become more prosperous. Secondly, compared to permanent immigration, liberalizing temporary admissions is politically easier to sell to electorates that have come to feel threatened by more immigration. And thirdly, some societies have experienced increasing difficulties with integrating long-settled immigrant communities, hence they opt for solutions that would not compound their problems.”<sup>285</sup>

Internationally, there are a broad range of temporary migration programmes and policies in existence, covering workers including (but not limited to): frontier workers; seasonal workers; contract workers; guest workers; professionals and technical workers; intra-company transferees; working holiday makers; occupational trainees; apprentices; young professionals covered by agreements on exchange of trainees; entertainers/performers/sports people; service providers/sellers; installers; self-employed; international students; visiting researchers and au pairs.<sup>286</sup>

When it comes to skilled workers, the OECD has observed that while most skilled workers migrate from developing countries to OECD, there is also “important intra-regional migration of the highly skilled in Europe, the Americas and Asia... suggesting more a pattern of ‘brain circulation’ than one of ‘brain drain’.”<sup>287</sup> The OECD has noted that transfers of staff within multinational companies, in the form of intra-company transfers, have also contributed to the increase in mobility of highly qualified workers.<sup>288</sup>

For more advanced economies like Australia, temporary economic migration policies are seen “as one of the means available to adjust to labour shortages while remaining competitive in the global market for commodities, and to deal with the intractable problems of illegal migration.”<sup>289</sup> Issues around managing ageing populations and declining work forces are also of significance.<sup>290</sup>

283 Organisation for Economic Co-operation and Development (OECD), 2002, ‘International Mobility of the Highly-Skilled’, *Policy Brief – OECD Observer*, p.1, accessed at <http://www.oecd.org/science/inno/1950028.pdf>

284 Organisation for Economic Co-operation and Development (OECD), 2012, *International Migration Outlook 2012*, OECD Publishing, p.22, accessed at [http://dx.doi.org/10.1787/migr\\_outlook-2012-en](http://dx.doi.org/10.1787/migr_outlook-2012-en)

285 Manola Abella, 2006, *Policies and Best Practices for Management of Temporary Migration*, International Symposium on International Migration and Development, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, Turin, Italy, 28-30 June 2006, UN/POP/MIG/SYMP/2006/03, 9 June, p.1.

286 *ibid*, p.5. See also Jonathan Chaloff and Georges Lemaitre, 2009, *Managing highly-skilled labour migration: A comparative analysis of migration policies and challenges in OECD countries*, OECD Report Social, Employment and Migration Working Papers No. 79, Directorate for Employment, Labour and Social Affairs, DELSA/ELSA/WD/SEM(2009)5, 18 March, p.18, accessed at <http://www.oecd.org/els/mig/46656535.pdf>

287 OECD, ‘International Mobility of the Highly-Skilled’, op cit, p.1.

288 *ibid*, p.2.

289 *ibid*, p.1.

290 *ibid*, p.21.

## Chapter 7: International comparisons of temporary migration

As in Australia, schemes to attract highly-skilled temporary migrants have been introduced in countries including the United States, the United Kingdom and Germany to allow for temporary admission when “procedures countries usually follow for admission of permanent migrants simply take too long to be of relevance to employers.”<sup>291</sup> Like in Australia, these temporary programs in settlement countries are employer-driven, where an employer must make a job offer before a high-skilled immigrant is allowed to enter the country for work purposes.<sup>292</sup>

While the OECD states that “most temporary migrants return or, at least, are expected to return to their countries of origin”<sup>293</sup>, temporary migration policies in a number of countries have been utilised to create a pool of potential high caliber permanent migrants. In common with Australia, policies in the United States, New Zealand and the United Kingdom have introduced policies allowing for transition from temporary to permanent residence status. According to the OECD, in the United States and New Zealand, status changes have become the principal means of recruiting permanent labour migrants, with over 70 per cent of these involving changes from a temporary status.<sup>294</sup>

Similarly, a large number of countries have established pathways for temporary international students / graduates to transition to permanent residency. The OECD notes that while these pathways are more limited in European OECD countries, “In OECD countries with a long-standing selection policy, *i.e.* Australia, Canada and New Zealand, foreign graduates have emerged as one of the key sources for highly-skilled migration.”<sup>295</sup>

According to the 2006 paper prepared for the Population Division of the United Nations Secretariat, policy objectives evident in temporary economic migration programs across the world include increasing labour market flexibility; supporting specific industries/economic sectors facing labour shortages; increasing a country’s competitive edge in certain industries; minimising displacement of local labour and supporting multinationals – factors all reflected in Australia’s policy settings.

Similarly, the more specific policy objectives identified by the OECD in relation to the migration of highly skilled workers – to respond to market shortages; to increase the stock of human capital; and to encourage the circulation of the knowledge embodied in highly skilled workers and promote innovation<sup>296</sup> – all resonate in Australia’s 457 program.

Many of the mechanisms utilised by countries in managing temporary migration programs – such as point systems, labour market testing, priority occupation lists and employment of labour inspectors to safeguard the interests of overseas workers – have at various times featured in Australia’s policy mix.

It is clear therefore, that the utilisation of temporary skilled migrants in Australia, and the mechanisms employed to manage that migration, are aligned with international developments and in comparable economies.

Australia’s temporary skilled migration program, however, can be considered one of the most progressive in the world.<sup>297</sup>

Compared to other countries, Australia has relatively relaxed regulatory requirements and offers generous family provisions for prospective migrants – in particular the provision of full work rights to partners of primary visa holders.

<sup>291</sup> *ibid.*, p.16.

<sup>292</sup> Chaloff and Lemaitre, *Managing highly-skilled labour migration: A comparative analysis of migration policies and challenges in OECD countries*, *op cit*, p.19.

<sup>293</sup> *ibid.*, p.18.

<sup>294</sup> *ibid.*, p.36.

<sup>295</sup> *ibid.*, p.25. The OECD report notes that “Although international students are a potential source of highly skilled labour migrants for OECD countries, there is no systematic data as yet on stay rates. Results from a number of countries suggest that at best 15-20 per cent of graduates may be staying on (OECD, 2007), with differences by country of origin”: *ibid.*, p.38. See also the discussion of these trends in OECD, *International Migration Outlook 2012*, *op cit*, pp.108-109.

<sup>296</sup> OECD, ‘*International Mobility of the Highly-Skilled*’, *op cit*, p.5.

<sup>297</sup> The information below is intended as a summary and indication, not as immigration advice.

## Chapter 7: International comparisons of temporary migration

Below we provide a brief overview of temporary labour migration schemes in other jurisdictions. As in Australia, regulatory arrangements governing temporary skilled migration can shift rapidly and so the features outlined below are liable to date quickly. In particular, the United States Senate is currently debating a Bill that would significantly overhaul their temporary migration program.

As migration policy can draw on myriad different tools and instruments, with multiple approval processes, different lists, and various visa categories and criteria – drawing comparisons between different national systems is a complex process. In addition, as each jurisdiction defines their migration streams or cohorts in accordance with their own internal policy logic, it can be difficult to make comparisons. For example, in some countries migration streams with work rights, such as international students and working holidaymakers, are seen as the primary tool to enable temporary migrant employment.

### Canada

Canada's Temporary Foreign Worker Program allows for skilled and semi-skilled workers to enter Canada to work.<sup>298</sup> Like Australia, an employer must sponsor migrants under this program. However, unlike Australia, in the event that the migrant wishes to change jobs, they must apply for a new visa. In 2012, a total of 213,516 temporary work visas were granted.<sup>299</sup>

Canada has a federated immigration system. While the Federal Government establishes immigration policy, provincial governments can require additional approvals. For instance, in Quebec, some positions require additional work permits. Dependents in Canada can gain work rights; however, it is not an automatic process as in Australia, spouses or partners must apply for their own work permit.

Further, migrants must be filling a position of shortage, as defined by the government and must have similar wages to other Canadian workers as in Australia. Canada requires that employers undertake labour market testing. A "Labour Market Opinion" must be granted prior to approval to ensure each position is externally advertised. In addition, the employment of migrants should expand job opportunities for Canadians and migrants should be able to transfer their skills.<sup>300</sup>

Unlike Australia, Canada does allow sponsorship of semi-skilled workers. These positions are valid for a shorter period (one to two years) but allow low-skilled industries, such as agriculture, to use the temporary worker program.<sup>301</sup> Canada also has a large permanent migration program. Temporary migrants are allowed to transition to permanent residency and, like Australia, it is a relatively straightforward process.

298 Canadian information: <http://www.cic.gc.ca/english/work/>.

299 Quarterly Administrative Data Release: <http://www.cic.gc.ca/english/resources/statistics/data-release/2012-Q4/index.asp>.

300 Apply – Hire Temporary Foreign Workers: <http://www.cic.gc.ca/english/work/employers/hire-how.asp>

301 Guidebook for Employers: How to hire a temporary foreign worker: <http://www.cic.gc.ca/english/resources/publications/tfw-guide.asp>.

## Chapter 7: International comparisons of temporary migration

### New Zealand

New Zealand has several categories for temporary migrants. These relate to accredited employers, long-term skill shortages and essential skills. Approximately 20,000 primary visas were granted in 2012-13.<sup>302</sup>

All of these categories require sponsorship from an employer and the grant of a new visa in the event that a migrant changes employer. To employ foreign labour the position must either be eligible under the Long-term Skill Shortages List or the Intermediate Skill Shortage List.<sup>303</sup> Employers are not required to undertake labour market testing unless they hire an occupation that is not on either occupation list.<sup>304</sup>

New Zealand requires a minimum salary for most temporary visas as opposed to a "market salary", like Australia and Canada. Partners are able to work and study; however, they require a work permit of their own. After two years in New Zealand, temporary migrants can apply to transition to permanent residency.

### The United Kingdom (UK)

Immigration is a highly contested political issue in the UK. The current government has committed to reducing overall migration, particularly through temporary migration streams, such as temporary workers and post-study international students. This has resulted in significant reform and a tightening of regulations.<sup>305</sup> As a member of the European Union (EU), other EU nationals can work and live in the UK indefinitely. This changes the context of non-EU temporary migration and this must be considered in any assessment of the impact of migration policy on the UK labour market.

Temporary work migrants in the UK are classified under 'Tiers'.<sup>306</sup> Relevant temporary skilled work visas are classified under Tier 1 and Tier 2. Tier 1 visas are temporary independent visas that do not require an employer. These are currently capped at 600 per month.<sup>307</sup> Tier 2 visa holders must have an employer. They are valid for three years with possible extension. The position must be skilled, must be paid the appropriate salary rate and employers are required to labour market test unless the position is on the relevant occupation list. These visas are capped at 20,700 per year.<sup>308</sup> To sponsor a Tier 2 visa, an employer must be granted a sponsor licence. Unlike in Australia, all sponsors are listed on a public register.<sup>309</sup> These workers are also eligible for permanent residency after a period of five years. Spouses must be able to speak a certain level of English to have work and study rights; however, they may be required to apply for a work-permit.<sup>310</sup>

302 New Zealand information: <http://www.immigration.govt.nz/employers/default.asp>

303 Visa options for employing migrants: <http://www.immigration.govt.nz/employers/employ/temp/>

304 *Ibid*

305 Immigration and asylum policy: Government plans and progress made – Commons Library Standard Note (House of Commons Library) <http://www.parliament.uk/briefing-papers/SN05829>

306 Quick guide to the points-based system: <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/quick-guide-pbs/>

307 Immigration limit for Tier 1 (General) of the points-based system: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsfragments/27-intro-limit-for-t1-pbs>

308 How do I sponsor a migrant worker? <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/>

309 Register of Sponsors Licensed Under the Points-base System: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/pbsregisterofsponsors>

310 United Kingdom information: <http://www.ukba.homeoffice.gov.uk/business-sponsors/points/>

## Chapter 7: International comparisons of temporary migration

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### **The United States (US)**

United States immigration policy has traditionally focused on country of origin and family ties.<sup>311</sup> The 'Temporary (non immigrant) Workers' program predominantly comprises two main visa classes, the H1B and the H2A. The H1B visa is for workers in a speciality occupation, similar to the 457 visa.<sup>312</sup> It is currently capped at 60,000 annually; however, there are several broad exemptions that mean the total number of visa grants are about 129,000 in 2011.<sup>313</sup> Universities and non-profit research centres are exempt from the cap, and are large users of the program. The visas are valid for up to three years and further extensions are possible. However, there is no guarantee of permanent residency. Further, unlike most other countries, spouses do not have work rights. Employers must complete a form of labour market testing. Traditionally, there has been a heavy focus on migrant wages in an effort to ensure displacement and adverse wage pressure does not affect US citizens.<sup>314</sup>

The US, like Canada, also has a semi-skilled work program, the H2A visa for seasonal agriculture workers. The program is uncapped and a total of approximately 55,000 of these visas were granted in 2011. There are significant restrictions on the use of this program and it could be considered overly complex and bureaucratic. Labour market testing is extensive. Like the H1B visa, there is no link to any type of permanent residency.<sup>315</sup>

Australian citizens hold a unique right to migrate temporarily to the US. This was acquired in the US-Australia Free Trade Agreement signed by the Howard Government.<sup>316</sup>

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311 United States information: [http://www.uscis.gov/portal/site/uscis \(select 'Temporary \(Nonimmigrant\) Workers'](http://www.uscis.gov/portal/site/uscis(select%20Temporary%20(Nonimmigrant)%20Workers)

312 <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=73566811264a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD>

313 United States Department of Labor: Office of Foreign Labor Certification Performance Data: <http://www.foreignlaborcert.doleta.gov/performance/data.cfm>

314 United States Department of Labor: Overview of the H1B <http://www.foreignlaborcert.doleta.gov/h-1b.cfm>

315 H2A Temporary Agricultural Workers: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD>

316 Australia-United States Free Trade Agreement: <http://www.dfat.gov.au/fta/ausfta/final-text/>

# Conclusion

The mobility of people around the globe has had a transformative effect here at home, enabling the development of a temporary skilled migration program which improves the lives of Australians, migrants and the citizens of their home nations.

Looking back 30 years, management of migration to Australia was fairly straightforward. People arrived from overseas to become permanent residents, and subsequently citizens, of Australia. There were very few temporary visas granted, with the exception of tourists and a small stream of business visitors.

In contrast, the last decade in particular has seen a quiet revolution in the way Australia manages migration. Three reforms have driven this transformation.

Firstly, the composition of the permanent migration program has shifted from less than a third to more than two-thirds skilled migration. Much more rigour has been placed around the points test process and the composition of the critical skills list. This has helped to ensure the program is both calibrated to address skills shortages and responsive to emerging trends.

Secondly, the permanent migration program is moving towards a demand-driven model. Where once the permanent migration program was set solely by the Federal Government, some of the decision-making process has now been devolved down to the firm level. A section of the intake is now determined directly by the choices of individual companies bidding for specific individuals.

The third and arguably most fundamental transformation has been the explosion in the growth of temporary skilled migration. The 457 program has become critical to maintaining our position as a regional hub, and particularly in boosting our capacity in the high-skill service sectors. As globalisation pushes each nation towards a greater degree of economic and industry specialisation, flexibility and the ability to rapidly upscale capacity are highly prized. Migration has been key to Australia's population policy for decades, but increasingly it is also central to our prospects for economic growth and sustainability. The 457 visa program has become a sophisticated labour market instrument in the economic toolkit available to governments.

The 457 program does not operate in isolation. Appreciating the function and role of the 457 program necessitates an examination of its interaction with Australia's permanent migration program. Temporary skilled migration feeds the demand-driven features of Australia's skilled migration scheme. By encouraging a transition to permanent migration through employer sponsorship Australia has developed a two-step migration process. As such, we have created migration processes that draw industry and firms into the process of selection and settlement of migrants. While this has increased the productive benefit of migration, the changes have also meant a diminution in services for those choosing to settle.

Yet the rapid growth of the program has seen policy planning fall short. The focus has been on regulation and not on wider considerations concerning the role of migration in broader economic policy and in maintaining the social wage and welfare contract. There is a constant need to re-evaluate and to reform, not just the program, but also the relationship of the state to those who come to contribute.

# Conclusion

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Temporary migration presents governments the world over with significant policy challenges. It tests the notion that citizenship is the gold standard for entitlement to services. In an era characterised by people movement, how does the state deal with population flows that are less than permanent and more than fleeting?

The rise of temporary skilled migration in Australia requires a review of the criteria that determine entitlements to services. Ensuring social safety nets and increasing participation does not just benefit the recipient, provision of services affects the broader social setting. In a world where people movements are accelerating and where prosperity is tied to facilitating movement, Australia will need to reflect further on how and to whom we deliver services, and how we ensure we continue to attract the skills we need.

## Appendix A – Data Tables

**Table 5. Reasons why applied for 457 visa to work in Australia**

Base: Total sample	3,812
To further my career and expand my work experience	48%
I want to live in Australia / become a permanent resident	48%
457 visa was organised by my employer	39%
Australia's features (such as beaches, climate, lifestyle, etc)	34%
Better future for me or my family	29%
I wanted to try working in Australia	29%
Better work conditions / pay entitlements	24%
A higher standard of living	24%
More job opportunities in Australia	23%
Australia is an English speaking country	18%
Visited Australia before (not study-related)	14%
Previously studied in Australia	12%
I was offered a transfer by my employer to fill a position in Australia	12%
So my employer will sponsor me for permanent residency once 457 visa expires	10%
Quality of education/training	10%
I previously held a temporary visa for Australia, and wanted to return	9%
I have family in Australia	8%
My partner is from Australia	7%
I frequently move between countries as part of my job	4%
Easier migration requirements than other countries	2%
Lower migration fees	*%
Other reason	3%

*Multiple Response (adds to more than 100% average response per person = 4)*

## Appendix A – Data Tables

**Table 6: How satisfied are you with your current job in terms of...**

Statements (randomized)	Very Satisfied	Satisfied	Neither	Dissatisfied	Very Dissatisfied
<b>Base: Non English Speakers (1,884)</b>					
Your earnings	17.6%	59.7%	13.6%	6.9%	1.9%
How interesting the job is	38.0	50.9	7.5	2.7	0.7
Your relationship with fellow workers	42.1	50.4	5.4	1.6	0.4
Your relationship with your employer	40.0	49.3	7.3	2.4	1.0
Employment conditions (access to leave, family friendly employer, flexible hours)	37.8	48.0	8.8	3.9	1.6
Prospects for promotion	17.9	47.4	19.6	6.7	6.0
Work/life balance	26.5	53.9	12.3	5.4	1.9
How well it uses your skills and training	34.1	52.2	7.7	4.3	1.3
The amount of training you receive	21.4	49.7	16.1	7.9	4.5
Opportunity to train and develop other workers	24.3	50.3	15.0	4.0	5.6
<b>Base: English Speakers (1,927)</b>					
Your earnings	19.0%	56.7%	11.8%	10.1%	2.4%
How interesting the job is	34.9	51.0	9.1	3.8	1.3
Your relationship with fellow workers	47.7	45.8	4.5	1.7	0.2
Your relationship with your employer	40.4	47.2	7.7	3.0	1.5
Employment conditions (access to leave, family friendly employer, flexible hours)	37.8	45.9	9.3	5.1	1.8
Prospects for promotion	20.7	44.7	18.9	10.4	4.8
Work/life balance	25.9	49.5	12.5	9.6	2.6
How well it uses your skills and training	32.7	51.8	7.6	5.6	2.3
The amount of training you receive	19.9	45.9	18.4	11.2	4.6
Opportunity to train and develop other workers	25.4	47.3	16.9	5.5	4.8

## Appendix A – Data Tables

**Table 7: Future intentions when 457 visa expires**

Q. When your current 457 visa expires, which of the following are you most likely to do?

	Total	NESB	English Speaking
	3811	1884	1927
	%	%	%
Apply for another 457 visa	6.1	6.9	5.2
<b>Apply for a permanent residency</b>	<b>71.3</b>	<b>71.0</b>	<b>71.6</b>
Go back to your home country	6.4	5.7	7.0
Move to a different country	2.0	2.2	1.8
Go to wherever your work sends you	3.6	4.9	2.3
Other	4.4	3.6	5.2
Don't know	6.2	5.6	6.8

**Table 8: How settling into Australia?**

Q. How well do you feel you are settling into Australian society?

	Total	NESB	English Speaking
Base: Total Sample	3,803	1,878	1,925
	%	%	%
1 Not at all	0.0	0.0	0.0
2	0.3	0.3	0.3
3	1.1	1.4	0.8
4	1.4	1.9	1.0
5	3.8	5.1	2.6
6	5.6	7.8	3.4
7	13.4	16.8	10.0
8	22.7	25.4	20.2
9	18.6	18.9	18.3
10 Very well	33.1	22.4	43.4
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Average rating</b>	<b>8.35</b>	<b>8.0</b>	<b>8.7</b>

## Appendix A – Data Tables

**Table 9a: Training facilitation (by language)**

Q. Do you train or develop other workers?			
	Total	NESB	English Speaking
Base: Total Sample	3,811 %	1,884 %	1,927 %
Yes	76.0	75.3	76.8
No	21.4	21.1	21.6
Don't know	2.6	3.6	1.7
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Table 9b: Training facilitation (by gender)**

	Total	Male	Female
Base: Total Sample	3,811 %	2,454 %	1,357 %
Yes	76.0	79.0	70.7
No	21.4	18.6	26.4
Don't know	2.6	2.4	2.9
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Table 10a: Working conditions (by language)**

Q. Do you feel that the working conditions at your company are equal to your Australian colleagues?			
	Total	NESB	English Speaking
Base: Total Sample	3,811 %	1,884 %	1,927 %
Yes	88.3	85.0	91.5
No	6.8	8.6	5.0
Don't have Australian colleagues	1.5	1.5	1.5
Don't know	4.4	4.9	2.0
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## Appendix A – Data Tables

**Table 10b: Working conditions (by gender)**

	Total	Male	Female
Base: Total Sample	3,811 %	2,454 %	1,357 %
Yes	88.3	88.9	89.1
No	6.8	7.3	5.8
Don't have Australian colleagues	1.5	1.8	1.0
Don't know	4.4	3.0	4.1
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### *Partner Status and Labour Participation*

**Table 11**

Q. Do you currently have a partner living with you in Australia?

	Total	NESB	English Speaking
Base: Total Sample	3,811 %	1,884 %	1,927 %
Yes	66.6	66.0	67.2
No	34.4	34.0	32.8
Don't know	0.0	0.0	0.0
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Q. Did this partner migrate with you?

	Total	NESB	English Speaking
Base: Total Sample	2,537 %	1,243 %	1,294 %
Yes	67.7	71.0	64.6
No	32.3	29.0	35.4
Don't know	0.0	0.0	0.0
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Q. Does this migrating partner work?

	Total	NESB	English Speaking
Base: Total Sample	1,718 %	882 %	836 %
Yes	60.9	51.1	71.3
No	38.7	48.1	28.7
Don't know	0.4	0.8	0.0
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## Appendix A – Data Tables

### Satisfaction with the 457 program in general

**Table 12**

Q. Overall, how satisfied or dissatisfied are you with the 457 program

Statements (randomized)	Very Satisfied	Satisfied	Neither	Dissatisfied	Very Dissatisfied
Base: Non English Speakers (1,884)	31.5%	52.4%	9.6%	4.5%	1.1%
Base: English Speakers (1,927)	33.4%	53.4%	8.0%	4.1%	0.9%
Base: Male (2,454)	33.6%	52.2%	7.9%	4.4%	1.3%
Base: Females (1,357)	30.4%	54.1%	10.4%	4.0%	0.5%

### Employer obligations

**Table 13**

Q. Do you feel that your employer is meeting these (employer) obligations?

	Total	NESB	English Speaking
Base: Total Sample	3,811 %	1,884 %	1,927 %
Yes	89.2	87.4	91.0
No	4.8	5.5	4.1
Don't know	6.0	7.1	4.9
Total	100%	100%	100%

# Appendix A – Data Tables

## Social Inclusion

**Table 14**

Q. Since coming to Australia, how often have you undertaken the following?

NESB (1884)	Weekly or more often	1-2 times a month	Once every 2-3 months	Once every 4-6 months	Once a year	Less often than once a year	Never	Don't Know
Religious Activities	14.60%	9.98%	7.17%	6.00%	6.05%	5.47%	48.09%	2.65%
Local School	2.23%	6.21%	7.06%	6.53%	6.16%	6.48%	59.50%	5.84%
Home Community	6.95%	18.37%	18.05%	14.49%	12.63%	8.70%	19.16%	1.65%
Local Community	4.94%	15.55%	20.01%	16.35%	11.36%	6.79%	22.45%	2.55%
Sports/Hobbies	48.41%	21.66%	9.61%	7.48%	2.81%	2.28%	6.37%	1.38%
English (1927)	Weekly or more often	1-2 times a month	Once every 2-3 months	Once every 4-6 months	Once a year	Less often than once a year	Never	Don't Know
Religious Activities	6.80%	5.29%	3.74%	6.95%	7.32%	7.42%	61.34%	1.14%
Local School	2.80%	5.45%	7.47%	6.02%	4.93%	4.36%	67.20%	1.76%
Home Community	12.97%	19.88%	14.17%	11.88%	8.30%	6.07%	25.84%	0.88%
Local Community	8.61%	22.11%	23.25%	17.23%	9.24%	4.10%	14.79%	0.67%
Sports/Hobbies	60.30%	21.17%	7.16%	5.03%	1.35%	1.04%	3.74%	0.21%

**Table 15**

Q. Have you experienced discrimination in Australia because of your skin colour, ethnic origin or religious beliefs?

	Yes	No	Don't know
NESB	18.4%	77.4%	4.2%
English-speaking	13.0%	85.6%	1.4%
Male	14.8%	81.9%	3.4%
Female	17.2%	81.0%	1.8%

## Appendix A – Data Tables

### Difficulty in finding suitable employees

**Table 16**

Q. Do you find it difficult to hire or employ workers from the local labour market?

Firm size – difficulty finding local workers

Base sample: 1593	10 or less (362)	11-50 (586)	51-199 (309)	200+ (336)
Yes, very	53.0%	43.2%	37.9%	35.7%
Yes, somewhat	31.5%	37.9%	46.6%	48.5%
No	14.1%	17.7%	12.9%	14.3%
Don't know	1.4%	1.2%	2.6%	1.5%

Q. Which roles do you have particular difficulty hiring people for?

Firm size – Roles difficult to fill (multiples accepted)

	10 or less	11-50	51-199	200+
All roles	1.9%	2.4%	1.9%	0.9%
Managers	8.0%	9.2%	10.7%	9.5%
Professional	30.9%	33.6%	42.7%	50.9%
Trades	32.9%	26.5%	23.3%	21.7%
Community	5.0%	4.4%	10.0%	14.0%
Admin	2.8%	3.2%	3.2%	3.0%
Sales	3.0%	3.8%	2.6%	2.1%
Machinery	2.2%	2.6%	1.9%	2.7%
Labourers	3.9%	3.4%	2.9%	3.6%
Other	6.9%	8.5%	7.8%	6.3%
Don't know	0.3%	0.2%	0.0%	0.6%

	NSW	WA	VIC	QLD	SA	NT	ACT	TAS
All roles	2.5%	0.5%	1.5%	2.1%	5.6%	7.1%	0.0%	5.9%
Managers	9.2%	7.7%	9.5%	10.5%	2.8%	28.6%	9.4%	5.9%
Professional	37.6%	31.4%	42.1%	35.4%	44.4%	71.4%	21.9%	70.6%
Trades	25.3%	42.7%	18.5%	30.4%	36.1%	100.0%	3.1%	11.8%
Community	7.4%	5.9%	8.8%	6.3%	11.1%	28.6%	3.1%	0.0%
Admin	5.4%	2.3%	2.2%	2.5%	0.0%	7.1%	3.1%	0.0%
Sales	4.9%	0.5%	3.3%	1.7%	0.0%	7.1%	0.0%	0.0%
Machinery	1.8%	3.6%	2.0%	3.4%	2.8%	0.0%	3.1%	0.0%
Labourers	2.2%	5.9%	3.0%	4.6%	0.0%	0.0%	6.3%	5.9%
Other	8.7%	5.5%	8.2%	6.3%	8.3%	7.1%	6.3%	0.0%
Don't know	0.0%	0.0%	0.2%	1.3%	0.0%	0.0%	0.0%	0.0%

## Appendix A – Data Tables

Q. Why do you find it difficult to find employees in the local labour market?	
No local workers with right skills	54.9%
No Australians with right skills	33.5%
Better paid jobs in other industry	11.4%
Remote location business	8.9%
Australian's don't like	8.3%
Australian's have poor attitude	5.1%
Other employers (same industry) offer better paid jobs	5.0%
Better paid jobs in other locations	3.7%
Too much travel	2.6%
Other	2.5%
Need workers who speak other languages	1.4%
Too physically demanding	1.2%
Not enough locals	0.7%
Locals unreliable	0.6%
Locals want more pay	0.4%
Locals prefer own business	0.4%
Need short-term labour	0.3%
Q. When you are recruiting skilled workers and you cannot find someone who matches your preferred job specifications, typically, what are your next steps?	
Seek o/s workers	33.5%
Recruitment agency	24.3%
Seek/LinkedIn	14.4%
Up-skill internal staff	14.2%
Position on hold	10.3%
Keep looking	9.7%
Seek local workers from other businesses	9.1%
Broaden job specs	6.4%
Don't know	5.2%
Other	5.0%
Networking	4.1%
Graduates	1.3%
Increase salary	1.1%
Search internet	0.5%
Incentives	0.4%
Professional Associations	0.3%

## Appendix A – Data Tables

Q. Overall, how satisfied or dissatisfied are you with the 457 visa program?				
	10 or less	11-50	51-199	200+
Very satisfied	43.4%	37.3%	43.0%	33.6%
Satisfied	40.3%	48.2%	43.4%	53.3%
Neither	7.2%	7.4%	6.8%	6.8%
Dissatisfied	3.3%	3.8%	5.8%	4.5%
Very Dissatisfied	4.4%	1.5%	0.0%	1.2%
Don't know	1.4%	1.9%	0.6%	0.3%
Refused	0.0%	0.0%	0.3%	0.3%

Q. When comparing your 457 visa workers to similar Australia workers are you generally...?				
	10 or less	11-50	51-199	200+
Much more satisfied – 457 workers	22.2%	14.6%	10.5%	7.2%
Slightly more satisfied – 457 workers	17.0%	14.1%	14.4%	6.0%
Equally satisfied	50.6%	60.3%	66.0%	71.4%
Slightly more satisfied – Australians	2.0%	3.7%	4.2%	6.3%
Much more satisfied – Australians	4.3%	2.4%	1.0%	2.7%
Don't know	2.8%	4.4%	3.6%	5.7%
Refused	1.1%	0.5%	0.3%	0.6%

Q. Thinking about the 457 visa employees you have hired in the last 2-3 years, how did you go about finding these employees?	
Referral from networks	29%
Approached by Employee	26%
Internet ad	24%
Recruitment agency	19%
Other	11%
O/s Transfer	8%
Upgraded visa to 457	7%
Newspaper ad	7%
Unsolicited CV	3%
Migration Agent	1%
LinkedIn	1%
Social Media	1%
DIAC Expo	0%

*Multiple responses (adds to more than 100%, average response per person = 1.4)*

## Appendix A – Data Tables

Q. Thinking about the 457 visa employees you have hired in the last 2-3 years, how did you go about finding these employees? (continued)

	10 or less	11-50	51-199	200+
Referral from networks	30%	28%	32%	26%
Approached by Employee	26%	26%	24%	27%
Internet ad	20%	22%	26%	30%
Recruitment agency	8%	19%	21%	29%
Other	11%	10%	11%	12%
O/s Transfer	4%	6%	10%	14%
Upgraded visa to 457	9%	7%	7%	8%
Newspaper ad	7%	6%	7%	8%
Unsolicited CV	2%	3%	3%	2%
Migration Agent	1%	1%	1%	1%
Social Media	1%	0%	1%	1%
LinkedIn	1%	1%	1%	1%
DIAC Expo	0%	0%	0%	1%

Q. Which of the following factors are important when assessing potential skilled migrants?

Strong English skills	89%
Personality and values	87%
Strong skills in teamwork and people management	85%
Qualifications Recognised	83%
Unique industry experience	80%
Unique specialisation	71%
Availability to work almost immediately	56%
Candidate's visa status	53%
Family life	42%
Australian work experience	29%
Other	1%
Don't know	1%

*Multiple responses (adds to more than 100%, average response per person = 6.7)*

## Appendix A – Data Tables

Q. In your experience, what do you think are the benefits, if any, of sponsoring 457 workers?  
(ave. 1.8)

	10 or less	11-50	51-199	200+
Filled Vacancy	45.3%	48.8%	54.7%	58.9%
Highly skilled worker	31.8%	32.3%	36.9%	33.3%
Hardworking / better attitude	23.5%	18.8%	17.5%	11.6%
Relevant work experience	9.1%	10.2%	10.7%	13.4%
Passed on skills to others	11.9%	13.0%	18.4%	22.0%
Get on well with others	2.8%	3.2%	2.3%	3.0%
Require little training	3.0%	3.8%	3.2%	5.1%
Increased loyalty	19.3%	20.3%	16.8%	17.0%
Non-ongoing basis	0.6%	0.5%	0.6%	0.3%
Lower cost	0.0%	0.7%	0.3%	0.9%
Train others	1.1%	2.0%	1.9%	1.2%
Short recruitment period	0.6%	1.2%	1.0%	1.5%
Suits company	1.7%	1.4%	0.6%	1.2%
Great control of employee	2.2%	2.2%	2.3%	3.6%
Non-ongoing basis	0.6%	0.7%	0.0%	1.5%
Transfer existing workers from o/s	2.8%	3.8%	4.9%	7.1%
No benefits	7.7%	6.0%	2.6%	0.9%
Cultural diversity	3.3%	3.8%	6.8%	6.0%
Worker benefits	3.0%	1.5%	1.3%	1.5%
More workers to choose from	1.4%	3.1%	1.6%	1.5%

## Appendix A – Data Tables

Q. How likely would you be to use a 457 sponsorship in the future?						
	Very Likely	Likely	Unlikely	Very unlikely	Don't know	Refused
All employers	48.0%	29.1%	7.5%	3.0%	12.2%	0.2%
10 or less	35.9%	31.8%	9.4%	6.9%	15.7%	0.3%
11-50	45.2%	29.4%	9.9%	1.9%	13.3%	0.2%
51-199	50.8%	32.4%	4.9%	2.6%	9.4%	0.0%
200+	62.8%	22.6%	3.9%	1.2%	9.2%	0.3%
NSW	47.7%	30.4%	5.8%	2.7%	12.8%	0.7%
WA	57.7%	24.1%	8.2%	1.4%	8.6%	0.0%
VIC	44.9%	29.4%	8.7%	3.8%	13.0%	0.0%
QLD	44.3%	31.6%	6.8%	3.4%	13.9%	0.0%
SA	58.3%	25.0%	2.8%	2.8%	11.1%	0.0%
NT	53.1%	21.9%	15.6%	3.1%	6.3%	0.0%
ACT	42.9%	35.7%	7.1%	0.0%	14.3%	0.0%
TAS	64.7%	23.5%	5.9%	0.0%	5.9%	0.0%
Accommodation and food services	61.1%	22.1%	8.0%	1.8%	7.1%	0.0%
Administrative and Support Services	48.6%	27.0%	5.4%	0.0%	18.9%	0.0%
Agriculture, Forestry and Fishing	53.7%	31.7%	7.3%	0.0%	7.3%	0.0%
Arts and Recreation Services	44.2%	20.9%	14.0%	7.0%	14.0%	0.0%
Construction	45.3%	38.0%	6.0%	3.3%	6.7%	0.7%
Education and Training	42.2%	31.0%	7.8%	3.4%	15.5%	0.0%
Electricity, Gas, Water and waste services	42.6%	31.9%	10.6%	4.3%	10.6%	0.0%
Financial and Insurance Services	33.3%	44.4%	5.6%	5.6%	11.1%	0.0%
Health Care and Social Assistance	55.2%	28.6%	5.0%	3.1%	8.1%	0.0%
Information media and telecommunications	48.0%	23.5%	7.1%	4.1%	17.3%	0.0%
Manufacturing	42.9%	24.5%	8.8%	3.4%	19.7%	0.7%
Mining	79.5%	15.9%	0.0%	0.0%	2.3%	0.0%
Other Services	54.5%	13.6%	0.0%	13.6%	18.2%	0.0%
Professional, Scientific and Technical Services	45.5%	29.9%	9.4%	2.0%	12.7%	0.4%
Public Administration and Safety	42.9%	38.1%	0.0%	0.0%	19.0%	0.0%
Rental, Hiring and Real Estate Services	33.3%	22.2%	11.1%	0.0%	33.3%	0.0%
Retail Trade	37.2%	29.5%	12.8%	5.1%	15.4%	0.0%
Transport, Postal and Warehousing	54.3%	28.6%	8.6%	2.9%	5.7%	0.0%
Wholesale Trade	36.0%	44.0%	4.0%	0.0%	16.0%	0.0%

(Note: as there were no responses for 'Not Sure' it has been removed from the table)

## Appendix A – Data Tables

Q. What are the problems, if any, with sponsoring 457 workers?								
	NSW	WA	VIC	QLD	SA	NT	ACT	TAS
Visa admin issues	29.8%	27.3%	29.7%	28.7%	38.9%	37.5%	28.6%	35.3%
No problems	35.8%	31.8%	34.9%	36.3%	30.6%	18.8%	35.7%	29.4%
Leave before visa expires	9.8%	6.4%	9.7%	7.2%	8.3%	6.3%	0.0%	29.4%
Cultural integration	7.4%	9.1%	8.2%	6.8%	2.8%	9.4%	7.1%	0.0%
Poor English	3.1%	6.4%	5.5%	5.5%	2.8%	15.6%	7.1%	0.0%
Difficult for workers	2.9%	1.4%	3.0%	4.2%	5.6%	6.3%	0.0%	11.8%
Other	3.8%	8.2%	3.8%	5.1%	0.0%	12.5%	0.0%	0.0%
Too expensive	5.4%	3.2%	4.0%	5.5%	0.0%	3.1%	7.1%	0.0%
4 years not long enough	4.0%	0.9%	1.5%	2.1%	2.8%	0.0%	0.0%	11.8%
Skills not appropriate	0.9%	1.8%	2.0%	0.4%	0.0%	0.0%	14.3%	0.0%
Unable to conduct trials	1.6%	4.1%	2.5%	1.7%	2.8%	6.3%	0.0%	0.0%
Difficult process	4.0%	2.3%	2.2%	2.5%	2.8%	3.1%	0.0%	0.0%
Expectations of PR	0.7%	1.4%	1.3%	1.3%	0.0%	0.0%	7.1%	0.0%
Lack of info re: 457s	2.2%	0.0%	1.0%	0.8%	5.6%	0.0%	0.0%	0.0%
More training than Aust. Req.	0.4%	0.9%	0.5%	0.4%	0.0%	0.0%	7.1%	0.0%
Difficult to get registration	0.4%	0.0%	0.3%	1.3%	0.0%	0.0%	0.0%	5.9%
Difficulties with other workers	0.2%	1.4%	0.3%	0.4%	5.6%	0.0%	0.0%	0.0%
Too much responsibility	1.1%	1.8%	0.8%	0.8%	0.0%	3.1%	0.0%	0.0%
Don't know	0.7%	2.7%	0.5%	1.7%	0.0%	0.0%	0.0%	0.0%
Poor work ethic	1.1%	0.9%	0.8%	1.3%	0.0%	0.0%	0.0%	0.0%
Limited work experience	0.7%	0.5%	0.5%	0.4%	0.0%	0.0%	0.0%	0.0%
Training requirements	0.4%	0.5%	0.2%	0.8%	0.0%	0.0%	0.0%	0.0%
Refused	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

## Appendix A – Data Tables

Q. What are the problems, if any, with sponsoring 457 workers? (continued)				
	10 or less	11-50	51-199	200+
Visa admin issues	28.2%	30.9%	30.7%	28.3%
No problems	37.8%	34.5%	33.0%	31.8%
Leave before visa expires	8.8%	8.2%	11.0%	8.0%
Cultural integration	6.4%	5.8%	9.7%	10.7%
Poor English	2.8%	5.6%	4.5%	6.8%
Difficult for workers	1.9%	2.9%	3.6%	4.5%
Other	3.3%	4.3%	5.2%	6.3%
Too expensive	4.7%	3.6%	4.9%	5.1%
4 years not long enough	3.3%	2.0%	2.3%	1.8%
Skills not appropriate	1.4%	1.4%	1.6%	1.5%
Unable to conduct trials	1.9%	2.6%	1.6%	3.3%
Difficult process	0.8%	3.6%	1.9%	4.2%
Expectations of PR	0.8%	1.4%	0.6%	1.5%
Lack of info re: 457s	2.5%	1.0%	0.6%	0.9%
More training than Aust. Req.	1.1%	0.2%	0.3%	0.9%
Difficult to get registration	0.6%	0.3%	0.6%	0.6%
Difficulties with other workers	0.8%	0.5%	0.3%	0.6%
Too much responsibility	1.4%	0.9%	1.3%	0.9%
Don't know	1.1%	0.9%	1.3%	0.9%
Poor work ethic	1.7%	1.2%	0.3%	0.3%
Limited work experience	0.3%	0.3%	1.6%	0.0%
Training requirements	0.8%	0.3%	0.3%	0.0%
Refused	0.0%	0.0%	0.0%	0.0%

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