

ROBUST NEW FOUNDATIONS

A Streamlined, Transparent and Responsive System for the 457 Programme

An Independent Review into Integrity in the Subclass 457 Programme

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Letter from the panel lead

Senator the Hon. Michaelia Cash,

Assistant Minister for Immigration and Border Protection,

Parliament House,

CANBERRA A.C.T. 2600

Dear Minister,

I should first like to thank you for requesting me to lead the panel charged with the task of considering the integrity of, and potential improvements to, the 457 programme. It has been a privilege to conduct this assignment, and, as a migrant myself, to have been able to give something back to the country which has been so kind to me over the last 27 years.

We have cast our net wide. We have spoken personally with over 150 organisations and individuals around the country, and carefully read through nearly 200 submissions. Some of the people we consulted may have been somewhat taken aback that we had troubled to travel to their workplaces and offices, but our maxim was "if you don't go, you don't know". We have greatly appreciated the seriousness and constructiveness of those we have met and whose submissions we have considered. We have spent months in detailed, daily discussions with each other, and with the hard-working departmental staff providing support to the project. If we have left a stone unturned, I believe it is possibly a rather small and remote one.

Throughout the whole process, our watchword has been balance: balance between recommendations which encourage flexibility and productivity, and those which strengthen the integrity of the programme; between radical actions and maintenance, in large measure, of the status quo; and between carrot and stick. We were very much alive to the need to make the programme serve the interests of the nation as a whole. It must be said that, accordingly, although we have gone quite a long way to meeting many of the requests presented to us, there will be sections among the interested parties that do not receive from this report everything they have asked for, or suggested, or insisted on – an inevitable outcome when a sensible balance is being sought.

However, having said that, we have found it remarkable that there has been such a degree of common ground among the stakeholders. We found existing agreement on many basic tenets, and on a sizeable number of the new measures we are proposing.

Those new measures are numerous. In some cases, they simply represent adjustments to existing arrangements; in others, they point in a new direction. All of them are constructive in intent and, I believe, are based on logic, imagination and experience.

In conclusion, I should like to thank my fellow panel members, Jenny Lambert, Katie Malyon and Peter McDonald, for the acumen, experience and dedication they have brought to the project over the past four months, and, as well, Martin Bowles, Secretary of the Department of Immigration and Border Protection, for his thoughtful and considered approach to immigration matters. His availability and insights were most helpful.
The members of the departmental secretariat team, under the firm, good-humoured leadership of Karin Maier, have been remarkably patient and productive throughout, and I have greatly appreciated their contribution.

A well-administered 457 programme is a key to Australia's economic prosperity and to its success as a society. Our aim throughout has been to make a meaningful contribution to that end.

Yours sincerely,

John Azarias

Panel Lead

Executive Summary

On 25 February 2014, the Assistant Minister for Immigration and Border Protection, Senator the Hon Michaelia Cash, announced that a four-person panel had been formed to prepare a report into the Temporary Work (Skilled) subclass 457 visa programme ("457 programme"). The Terms of Reference required the panel to recommend a system that, operating in the national interest, was sound and resistant to misuse (the "integrity" goal), and, at the same time, flexible and able to respond quickly to economic and business changes (the "productivity" goal).

We conducted our work over a four-month period, read 189 submissions and met over 150 stakeholders around the country. This report, as commissioned by the Minister, is the result of that work and those contributions.

Our starting point has been the conviction that it is possible to find constructive common ground among the diverse range of stakeholders in the 457 programme.

When we began our work, broad agreement on several basic tenets already existed in the community and in the political sphere. For instance, there was general consensus that employers have a legitimate need to employ skilled overseas workers; that the main rationale for employing such workers is to fill gaps in the Australian workforce; that overseas workers should not displace Australians; that Australian workers should be trained; and that the employment rights and workplace entitlements of 457 visa holders should be the same as those of Australian workers. Starting from those generally accepted positions, we went on to develop and work from a set of five guiding principles.

The concept underlying all these principles was that very considerable economic and social benefits would accrue to the nation, as it increasingly operates in a global economy, from having a carefully-designed, robust and efficient temporary visa system in place.

The five principles are:

1. Respect by all parties for both the rights and the obligations of 457 visa holders;
2. Transparency, responsiveness and factual evidence as bases for determination of the 457 occupation list;
3. Encouragement of productivity and discouragement of misuse through the streamlining and refining of departmental processes;
4. Simplicity in, and national benefit from, the employer training requirement; and
5. Strength of monitoring and sanctions.

Each of the five principles then generated its own set of recommendations, but to make all of them work in practice, there was one requirement, namely, the need for close, frequent, practical, formalised and targeted interaction among the government departments dealing, in one way or another, with the 457 programme.

These five principles form the basis of this whole report.

To understand how these principles were arrived at in the first place, it is necessary to have some acquaintance with the background of the 457 programme. In the last twelve years, no less than six reports on the programme have been issued, a clear indication that it faces a politically and economically divided environment. In a nutshell, on the one side are those, largely business owners, who need overseas workers to supplement their workforces, while on the other are those, mainly unions, who seek primarily to safeguard the job opportunities and entitlements of workers in Australia.

Over the years, several requirements have been developed by governments to manage this variance of views. Devised with the best of intentions, some of these requirements have turned out to be too blunt, others to have overshot their intended mark, still others to have been too opaque, and many have had unintended consequences. So our aim was to seek to rectify these shortcomings and create a more robust, transparent and responsive programme that takes all stakeholders' interests into account, builds on existing structures, and at the same time introduces sensible, carefully chosen and generally acceptable new measures.

Recommendations for putting into practice each of the five principles above are set out in some detail in the report.

Taking each of the principles in turn and summarising the panel's proposals:

1. *Respect by all parties for both the rights and the obligations of 457 visa holders*

With respect to the rights of 457 visa holders, one change we recommend (Recommendation 12.1) is that documents from the Department of Immigration and Border Protection ("the department") and the Fair Work Ombudsman ("FWO") which outline the rights and entitlements of 457 visa holders should always be included as part of the 457 visa holder's signed employment contract. There was also broad agreement among stakeholders, supported by this panel, that the FWO inspectors, who monitor adherence by employers to national workplace laws, should continue scrutinising sponsors employing 457 visa holders.

With respect to the obligations of 457 visa holders, we believe that collaboration between the department and the Australian Tax Office ("ATO") should be modelled on the relationship between the ATO and the Department of Human Services ("DHS").

In that connection, we recommend (Recommendation 18.2) that an obligation be imposed on 457 visa holders to provide their Australian tax file number to the department. This would enable an easier matching of data between the department and the ATO. If this exchange of information requires legislative change, then that should be pursued by the government. These changes would go a long way to ensuring that income information can be cross checked.

2. *Transparency, responsiveness, and factual evidence as bases for determinations of the 457 occupation list*

The two core questions which this set of recommendations seeks to answer are: how do we ensure that the occupations that sponsors seek to recruit for are genuinely skilled ones? And, how can the Australian public be certain that Australians have been given first opportunity to fill these jobs?

Currently, the Australian Bureau of Statistics ("ABS") identifies 998 Australian occupations, of which 640 are classified as skilled, and are used as the basis for any employer seeking to recruit a 457 visa holder. For the purposes of this inquiry, there are at least two problems with this system: the ABS list was never intended as a basis for any targeted immigration action, being simply a general categorisation of Australian occupations, and it is updated only infrequently by the ABS, with the result that it cannot by its nature reflect the rapidly-evolving needs of the Australian labour market.

Governments have devised two ways round these problems. First, the list is slightly amended, by government fiat, but on an ad hoc and non-transparent basis. Second, subject to exemptions, sponsors are required first to test the local market to see if there are any Australians who meet the employer's requirements. However, as the Organisation for Economic Co-operation and Development ("OECD") has pointed out[1], employer-conducted labour market testing is "not fully reliable". It would be far more reassuring for the public if there existed a transparent, responsive, and evidence-based approach to determining skilled occupations eligible for the 457 programme.

In submissions and interviews, both employers and employees expressed dissatisfaction with the current system, employers because they say it is inflexible and does not reflect the rapidly-changing nature of the Australian labour market, and employees because they say it is too easily subverted and, in practice, can turn into a free-for-all, to the disadvantage of Australians.

The solution we propose for Australia has several aims: tripartite participation, resulting in transparency to all stakeholders, rapidity of response, and the use of factual evidence rather than poorly substantiated claims as a basis for decisions on the 457 occupation list.

[1] OECD, International Migration Outlook: SOPEMI 2009, OECD Publishing, 2009, p. 134.

We recommend (Recommendation 1.1) the formation of a tripartite ministerial advisory council.

One of the council's main tasks will be to make recommendations on the occupations that should be included in the department's 457 occupation list. To start with, the council will bring together evidence from all the government departments with labour market expertise: the Departments of Employment, Industry, Health, Education, and, of course, Immigration and Border Protection. After analysing the factual evidence, the council will take all stakeholders' views into account and present options to the Minister.

Of course, it is recognised that the ministerial advisory council may not always reach consensus, but there is considerable benefit in airing and discussing matters which might otherwise have festered and remained opaque. Finally, the Minister will make his or her determination on amendments to the 457 occupation list and on occupations that may need to be flagged for specific action.

This proposal has several advantages. It replaces two flawed requirements, the lack of responsiveness of the current occupations list and the inadequacy of labour market testing, with a system which is transparent to all stakeholders; which benefits from their full participation and buy-in; which responds quickly to the dynamic changes in the Australian labour market; which is based on factual evidence rather than poorly substantiated claims; which is objectively analysed by technical experts; and which considerably reduces government silos.

Once the system is up and running, employers will have the flexibility, responsiveness and certainty they need, and their regulatory burden should accordingly be lessened, with no concomitant risk to the community; and stakeholders, including the Australian public, will be more confident about the integrity of the programme.

The result should be clear and mutually acceptable answers to the two questions above: which occupations should be the ones for which 457 visa holders can be recruited, and how the public can be sure that the occupations for which employers seek to recruit 457 visa holders are genuinely those where there is a shortage of Australians.

3. *Encouragement of productivity and discouragement of misuse through the streamlining and refining of departmental processes*

The proposals under principle 1 (in particular, its focus on the department's exchange with the ATO, which will result in robust salary figures), and principle 2 (in particular, the development of a robust 457 occupations list) provide a strong basis for the implementation of principle 3, the streamlining of the evaluation and approvals process.

A combination of characteristics applying to *individuals* (salary level and approved occupation) with characteristics applying to *sponsors* (business turnover and length of approved sanction-free sponsorship) is the feature that makes it possible, under our recommended scheme, to streamline the approvals process.

We recommend (Recommendation 13.1) that three approval streams be created by the combination of the individual and the sponsor characteristics. It should be noted that the figures set out in the following three paragraphs constitute only a basis for further discussion and determination by the government.

Under stream 1, the *sponsoring company* should have a turnover of over $4M, should have been an approved sponsor for more than four years and have a totally sanction-free track record of approved sponsorship; the *individual* should be nominated in certain, specific occupations from the proposed new list of occupations - *Occupation List 1*[2], and be paid a base salary of more than $129 300 p.a.[3] If all these five characteristics are met, then the sponsor would be granted streamlined approval to recruit that 457 worker. If fewer than five characteristics are met, the application goes to either stream 2 or stream 3.

Under stream 2, the *sponsoring company* should have a turnover of at least $1m, have had no sanctions for the last four years, and have been an approved sponsor for more than one year: and the *individual* should be nominated in one of the occupations in the proposed new list of occupations - *Occupation List 2*, and be paid a base salary between $96 400 p.a. and $129 300 p.a. If all five, stream 2 (or a combination of stream 1 and stream 2) characteristics are met, the application will receive more scrutiny than those of stream 1, but less than those of stream 3.

Scrutiny of stream 3 applications will be more rigorous than that of the other streams. stream 3 will capture all applications not eligible for the other streams.

This streaming proposal, created after extensive discussions with the department, is innovative in two ways.

The first is that it combines, for the first time, company and nominee characteristics to form a single matrix as a basis for assessment. The characteristics already exist, although they are currently applied one by one, so we believe that the programme will be strengthened by considering them in combination. The second is that it exempts stream 1 and, potentially, many stream 2 applicants from the time-consuming and wasteful need to provide evidence of compliance with numerous requirements which could well be irrelevant to the applicant's case. It thus reduces unnecessary delays and compliance costs for the applicant without removing important obligations.

[2] As discussed in section titled *Streamlined Approach*.
[3] Current high income exemption threshold in the *Fair Work Act* 2009.

There are other requirements that have been developed over the years and which are part of the present system. These include the Market Salary Requirement, the Temporary Skilled Migration Income Threshold requirement, the Skills Assessment Requirement and the Genuineness Requirement. Under our proposed system, these requirements would essentially remain in place, but would be applied largely to applicants in stream 3, which has in the past proved the most problematical.

We made additional recommendations relating to the visa requirements.

We recommended that the English Language Requirement should be somewhat eased, from a *minimum* of 5 across the four competencies (reading, writing, speaking and listening) to an *average* of 5 (Recommendation 7.1); that the Temporary Skilled Migration Income Threshold should be retained at the current level until it is reviewed within two years (Recommendation 5.1); and that the Market Salary Rate Framework, the Genuineness Requirement and the Skills Assessment Requirement for selected occupations should remain unchanged as core components of the 457 programme.

If problems were to arise with any of the characteristics used to determine the streams (e.g. if $129 300 p.a. turns out to be too low), or with any of the programme requirements (e.g. if it emerges that a more stringent English requirement should be imposed, or that it should apply to stream 2 as well as stream 3), the tripartite ministerial advisory council would provide the ideal forum for any of the stakeholders to raise the issue in open discussion. So the ministerial advisory council would provide transparency and responsiveness not only with respect to the occupation list, but also with respect to the parameters (sponsor characteristics and 457 programme requirements) that are used in the streamlining process.

4. *Simplicity in, and national benefit from, the employer training requirement*

Broadly speaking, the community has supported the importation of temporary skilled workers. One proviso for the community, though, has been that Australian sponsoring companies should offer training opportunities for Australian workers. Accordingly, the 457 programme has required sponsors to demonstrate their commitment to training Australian workers. The intent behind this measure has been to ensure that employing 457 visa holders is not seen as an alternative to training Australians.

Under the current system, sponsoring companies are required to meet one of two training "benchmarks", either by making an annual contribution of at least two per cent of their yearly payroll to an industry training fund, or by spending, each year, at least one per cent of their annual payroll on providing training for their Australian employees.

We found that there was strong support for the principle that sponsors should make a contribution to training Australians in return for being able to sponsor 457 visa holders.

However, we also found that there was little support by either sponsors or labour representatives for the current training benchmarks, whose success in achieving the desired outcomes was repeatedly questioned, and whose application was considered to be overly complex.

As a result, we recommend that the current training benchmarks be abolished, and that they be replaced by an annual training contribution that would be *payable to government.* Every year sponsors would pay a fixed amount, say, $400, for each 457 visa holder in their employ. For the first year, however, the contribution would be scaled to the size of the business. The funds would be administered by government to train Australian workers (Recommendation 6.1).

This recommendation is based on the concept of a "social licence", that is, the idea that, in return for the privilege (the "licence") of being able to recruit an overseas worker, the sponsor should contribute to a national (or "social") benefit.

5. *Strengthening of monitoring and sanctions*

Deregulation and liberalisation require robust monitoring and sanctions if they are not to be exploited unscrupulously and lead to the whole system being compromised. Robust monitoring does not necessarily mean that every piece of data has to be laboriously checked. Here, the methods of the ATO provide an excellent model. The ATO does not check every detail of every tax return. Instead, it identifies discrepancies and non-compliance by carrying out risk-tiering, data matching and analysis behind the scenes. While the department does apply this approach to some extent, it can - and should - do more.

Therefore, we recommend that for the 457 programme, an approach similar to the ATO's be adopted by the department (Recommendation 18.1). This would entail a significant upgrade of the department's IT systems (Recommendation 22).

We also recommend extensive workshops with the ATO to enable the department to learn best practice.

Additionally, we recommend that resources be directed to education (Recommendation 16), and to legal pursuits (Recommendation 21.1) and, further, that any sanctions which may result from increased compliance activity be widely publicised (Recommendation 21.2).

All of these extra monitoring and compliance measures require significant additional investment (Recommendation 17) but without that expenditure and effort, the whole programme risks being discredited.

To sum up, there is broad consensus in the community, in the political sphere and in the panel itself, that in a globalised world, Australia needs at times to bring in skilled workers; that overseas workers should not displace Australians; and that any programme bringing overseas workers in should involve the training of Australians. Building on these concepts, we have started from a conviction that it is possible to find constructive common ground, and a balance, between the diverse range of stakeholders in the 457 programme.

We have:

- developed a new tripartite governance structure for the programme which is designed to encourage transparency, engagement and consequently trust among all parties;
- identified ways of taking the heat out of the debate by the structured use of facts and evidence;
- evolved a streamlined but fair and balanced system for managing approvals;
- introduced a new, simplified, government-run system for funding training of Australians, especially apprentices and those who are disadvantaged;
- not forgotten the need for stringent monitoring and sanctions; and,
- created new ways and possibilities for government agencies to work better together in the national interest.

In doing so, we have aimed to be both balanced and constructive.

At one point during the inquiry, a senior figure told the panel: “Australians like soundly designed and firmly operating structures. If immigration is not governed by a strong and orderly system, Australians become very uncomfortable and withdraw their support”.

What we have sought to do in this report is to design robust foundations for the 457 programme, foundations that are co-operatively built on common ground, that are well-balanced, and that derive their strength from simplicity and flexibility. A house resting on strong foundations is long-lasting and prosperous, its inhabitants are content, and its neighbourhood is reassured – exactly what a carefully-designed, robust 457 programme should achieve for Australia.

Report Recommendations

Recommendation 1 (Core solutions – page 49)

1.1 That, in lieu of the existing Ministerial Advisory Council on Skilled Migration, a new tripartite ministerial advisory council, which is not necessarily prescribed in legislation, be established to report to government on skilled migration issues.

1.2 That the new ministerial advisory council be supported by a dedicated labour market analysis resource.

Recommendation 2 (Core solutions – page 49)

2. Acknowledging that, as the OECD has pointed out, employer-conducted labour market testing is not "fully reliable", and in the Australian context has proven ineffective, that the current legislative requirement for labour market testing be abolished.

Recommendation 3 (Core solutions – page 49)

3.1 That the Consolidated Sponsored Occupations List be retained as a list of occupations which are at Skill Level 3 and above, and that the Consolidated Sponsored Occupations List should be able to be amended by two means: first, the addition of skilled occupations which can be shown to exist in the community but which may not be on the ANZSCO list; and,second, the refinement of the Consolidated Sponsored Occupations List in cases where there may be integrity or appropriateness concerns. Any occupations not on the list, which are usually referred to as semi-skilled, may be addressed as part of the Labour Agreement regime.

3.2 That the new ministerial advisory council provide advice on those occupations where some concern exists and recommend additional requirements or limitations on occupations and/or regions.

Recommendation 4 (Market Salary Rate – page 52)

4. That the market rate framework continue to operate as a core component of the 457 programme, but that the earnings threshold above which there is an exemption from the need to demonstrate the market rate should be aligned with the income level above which the top marginal tax rate is paid (currently at $180 000).

Recommendation 5 (Temporary Skilled Migration Income Threshold – page 54)

5.1 While there is an argument for abolishing the Temporary Skilled Migration Income Threshold, that it nevertheless be retained to allow for streamlining within the wider programme, and that concessions to the Temporary Skilled Migration Income Threshold be afforded under Labour Agreements, Enterprise Migration Agreements and Designated Area Migration Agreements, as appropriate.

5.2 That the current Temporary Skilled Migration Income Threshold be retained at $53 900 p.a. but that it not undergo any further increases until it is reviewed within two years.

5.3 That the two roles currently performed by the Temporary Skilled Migration Income Threshold (that is, acting as a determination of the eligibility of occupations for access to the scheme and as an income floor) be more clearly articulated in the 457 programme, and that consideration be given to accepting the eligibility threshold as up to 10 per cent lower than the Temporary Skilled Migration Income Threshold.

5.4 That the government give further consideration to a regional concession to the Temporary Skilled Migration Income Threshold, but only in limited circumstances where evidence clearly supports such concession.

5.5 That in circumstances where the base rate of pay is below the Temporary Skilled Migration Income Threshold, the current flexible approach adopted by the department, taking into account guaranteed annual earnings to arrive at a rate that meets the minimum requirement of Temporary Skilled Migration Income Threshold be continued and made more visible to users of the programme and their professional advisors.

Recommendation 6 (Training benchmarks – page 57)

6.1 That the current training benchmarks be replaced by an annual training fund contribution based on each 457 visa holder sponsored, with the contributions scaled according to size of business.

6.2 That any funding raised by way of a training contribution from sponsors of 457 visa holders be invested in:

a) training and support initiatives, including job readiness, life skills, and outreach programmes for disengaged groups, particularly youth who have fallen out of the school system;
b) programmes allowing employers to take on apprentices/trainees from target groups, including Indigenous Australians and those in rural and regional areas;
c) mentoring programmes and training scholarships aimed at providing upskilling opportunities within the vocational training and higher education sectors that address critical skills gaps in the current Australian workforce. Target sectors include those industries, such as nursing and the IT sector, that rely heavily on 457 workers; and,
d) training and support initiatives for sectors of critical national priority. Target sectors include industries experiencing significant increase in labour demands, such as the aged care and disability care sectors.

6.3 That funds raised through the training contribution be dedicated to this training role and that the government reports annually on how these monies are spent by the Department of Industry.

6.4 That there be a new sponsor obligation to ensure that the cost to the sponsor of the training contribution cannot be passed onto a 457 visa holder or third party.

Recommendation 7 (English language requirement – page 63)

7.1 That the English language requirement be amended to an average score.
For example, in relation to International English Language Testing System, the 457 applicant should have an average of 5 across the four competencies (or the equivalent for an alternative English language testing provider).

7.2 That greater flexibility be provided for industries or businesses to seek concessions to the English language requirement for certain occupations on a case by case basis, or under a Labour Agreement, Enterprise Migration Agreement or Designated Area Migration Agreement, as appropriate.

7.3 That consideration be given to alternative English language test providers.

7.4 That consideration be given to expanding the list of nationalities that are exempt from the need to demonstrate they meet the English language requirement.

7.5 That instead of the current exemption which requires five years continuous study, five years cumulative study be accepted.

Recommendation 8 (Genuine position requirement – page 67)

8.1 That there be targeted training for decision-makers in relation to the assessment of the genuine position requirement.

8.2 That before decision-makers refuse a nomination on the basis of the genuine position requirement, the sponsor be invited to provide further information to the decision-maker.

Recommendation 9 (Skills assessments – page 68)

9. That the government should explore how skills assessments could more appropriately recognise a visa applicant's experience.

Recommendation 10 (Sponsorship – page 70)

10.1 That Standard Business Sponsors should be approved for five years and start-up business sponsors for 18 months.

10.2 That as part of the government’s deregulation agenda, the department should develop a simplified process for sponsor renewal.

10.3 That the department consider combining as many sponsorship classes as possible.

10.4 That when more detailed information is available, the department should investigate the alignment of overseas business and Labour Agreement sponsorship periods with the general Standard Business Sponsorship approval period.

10.5 That the timeframe for the sponsor to notify the department of notifiable events as set out in legislation should be extended to 28 days after the event has occurred.

10.6 That the department should explore options that would enable the enforcement of the attestation relating to non-discriminatory employment practices.

10.7 That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework.

Recommendation 11 (Fees – page 73)

11. That the government should review the fee structure, especially for secondary visa applicants and visa renewal applications.

Recommendation 12 (Information provision – page 75)

12.1 That sponsors be required to include as part of the signed employment contract:

a) a summary of visa holder rights prepared by the department; and,
b) the Fair Work Ombudsman's *Fair Work Information Statement*.

12.2 That improvements be made to both the accessibility and content on the department's website specific to 457 visa holder rights and obligations, and utilising the department's significant online presence more effectively to educate 457 visa holders on their rights in Australia.

Recommendation 13 (A streamlined approach – page 76)

13.1 That consideration be given to creating streamlined processing within the existing 457 programme as a deregulatory measure. To maintain programme integrity, streamlining should be built around risk factors including business size, occupation, salary and sponsor behaviour.

13.2 That should the recommended nomination and visa streamlining outlined in this report be implemented, the department should investigate a redefined accredited sponsor system. Current accredited sponsors should retain their priority processing benefits until their sponsorship ceases; however, no further sponsors should be afforded accredited status until a new system is implemented.

Recommendation 14 (Labour Agreements – page 80)

14.1 That Labour Agreement negotiation times be significantly improved to enable a demand-driven and responsive pathway for temporary migration, where the standard 457 programme arrangements are not suitable.

14.2 That to enable the Labour Agreement pathway to be more open and accessible for additional industry sectors, consideration be given to the development of other template agreements that will address temporary local labour shortages in industries of need.

Recommendation 15 (Pathways to permanent residence – page 82)

15.1 That 457 visa holders be required to work for at least two years in Australia before transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme, and that consideration be given to the amount of time required with a nominating employer being at least one year.

15.2 That consideration be given to reviewing the age restriction on those 457 visa holders transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme.

15.3 That consideration be given to facilitating access for partners of primary sponsored 457 visa holders to secure permanent residence under the Temporary Residence Transition stream.

Recommendation 16 (Role of education – page 88)

16. That consideration be given to the allocation of more resources to programmes aimed at helping sponsors understand and comply with their obligations, whether those programmes are delivered directly to sponsors or through the migration advice profession.

Recommendation 17 (Monitoring – page 89)

17. That greater priority be given to monitoring, and that the department continue to enhance its compliance model to ensure those resources are applied efficiently and effectively.

Recommendation 18 (Inter-agency cooperation – page 91)

18.1 That there be greater collaboration between the department and the Australian Taxation Office to uphold integrity within the 457 programme and minimise the burden on employers.

18.2 That a change to 457 visa conditions be introduced to place an obligation on the visa holder to provide the department with their Australian tax file number.

Recommendation 19 (Fair Work Ombudsman – page 93)

19.1 That the Fair Work Ombudsman's current complementary role in monitoring compliance and referral of findings to the department for action should continue.

19.2 That the department should provide information in real time that is both current and in a format compatible with that of the Fair Work Ombudsman.

Recommendation 20 (Fair Work Commission – page 95)

20.1 That the department monitor decisions of the Fair Work Commission, so as to determine if sponsors have breached obligations or provided false and misleading information.

20.2 That the department require sponsors, when lodging a new nomination application to certify that there has been no change to the information provided to the department in relation to whether the business or an associated entity has been subject to "adverse information" as that term is defined in the legislation.

Recommendation 21 (Sanctions – page 96)

21.1 That dedicated resourcing be made available to the department to enable the investigation and prosecution of civil penalty applications and court orders.

21.2 That the department disclose greater information on its sanction actions and communicate this directly to all sponsors and the migration advice profession as well as placing information on the website.

Recommendation 22 (Systems enhancements – page 100)

22. That the department investigate the feasibility of system improvements that facilitate greater linkages with information held by other government agencies.

Operation of the 457 visa programme

Historical context

The 457 programme was established in 1996 in response to an inquiry, chaired by Mr Neville Roach[4], into Australia's temporary entry arrangements for business people and highly skilled specialists. Government policy at this time was focused on internationalising the Australian economy, and it was recognised that Australia's existing visa arrangements were complex, time consuming and had an adverse impact on Australia's ability to be well positioned within a globalised economy. It was in this context that the inquiry examined:

> '*the operation and effectiveness of policies and procedures governing the temporary entry into, and further temporary stay in, Australia of business personnel against the background of the increasing globalisation of business, and Government policy to open the economy up to greater international competition.*'[5]

The inquiry found that temporary business migration was beneficial to Australia, and recommended that the entry of business people to Australia be simplified – replacing a number of temporary visa subclasses with a single visa and a more streamlined visa application process.[6]

The 457 programme was introduced with the aim of providing a 'streamlined' visa enabling businesses to sponsor highly-skilled workers, with the aim of contributing to productivity growth in Australia. Central to the vision of the programme was the intent of supplementing, not replacing, skilled labour in the Australian workforce. The programme was also established with settings that sought to avoid adverse consequences for the Australian labour market, and to protect temporary visa holders from exploitation. Changes in law and policy since 1996 have generally sought to respond to these aims and to strike an appropriate balance between them.

Nevertheless, the 457 programme has remained contentious and subject to criticism, particularly in the light of the growth exhibited by the programme in the decade following its introduction. Initially, the programme was largely used to facilitate the temporary entry of highly-skilled senior executives and specialists. However, the skill shortages experienced in the Australian labour market in the 2000s led to an expansion of the use of the 457 programme across a broader range of skilled occupations, including trades.

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[4] Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists, *Business Temporary Entry – Future Directions*, Australian Government Publishing Service, Commonwealth of Australia, August 1995 ("the Roach Report").

[5] Ibid, Attachment B.

[6] The introduction of the 457 programme replaced the following temporary visa classes:
Subclass 412, Independent Executive; Subclass 413, Executive; Subclass 414: Specialist; Subclass 672, Business Visitor (Short Stay) (not more than 3 months); Subclass 682, Business Visitor (Long Stay) (more than 3 months but not more than 6 months).

This expanded use of the programme created new problems related to the need to identify skill shortages within the Australian workforce. Questions were also raised as to whether or not Australian jobs were being taken by 457 visa holders. The issues arising from the changed use of the programme were addressed by the seminal 2008 review of the programme conducted by industrial relations commissioner Barbara Deegan ("the Deegan Review") [7].

Over time, more 457 visa applications have been lodged onshore mainly by skilled graduates, students and working holiday makers. In 2012-13, over half of all primary[8] 457 visa applicants were in Australia at the time of their 457 visa application. This trend has continued in the 2013-14 financial year to date. Thus it is clear that the programme has changed over time. Moreover, the 457 programme's place in the context of skilled migration has also changed over time, with the 457 visa becoming an important source of applicants for permanent residence.

Quotes from public submissions

The 457 visa scheme is a very important part of Australia's economic policy settings and is undoubtedly a major factor in Australia's successful economic performance…the 457 visa scheme is very important for promptly filling roles with temporary skilled migrants where there are genuine skills shortages…Skilled workers on 457 visas create critical relationships and links with the rest of the global economy that facilitate future trade and investment.

Business Council of Australia

Our interest in the 457 visa program, and the debate that surrounds it, has always been driven by three key, interrelated, priorities. The first is to maximise jobs and training opportunities for Australians…and ensure they have the first right to access Australian jobs.

The second is to ensure that the overseas workers who are employed under the 457 visa program to meet genuine skill shortages that can't be filled locally are treated well, that they receive their full and proper entitlements, and they are safe in the workplace – and if this does not happen, they are able to seek a remedy just as Australian workers can do, including by accessing the benefits of union membership and representation.

The third is to ensure that employers are not able to take the easy option and go down the 457 visa route, without first investing in training and undertaking genuine testing of the local labour market. This is also about ensuring those employers who do the right thing are not undercut by those employers who exploit and abuse the 457 visa program and the workers under it.

Australian Council of Trade Unions

[7] Barbara Deegan, *Visa Subclass 457 Integrity Review – Final Report ("The Deegan Review")*, October 2008.
[8] The primary visa applicant is the principal applicant for the visa. Secondary 457 visa applicants are members of the family unit of the primary applicant.

The 457 programme has been subject to six separate inquiries and reviews (see Table 21 at Appendix 3). There have also been other reviews conducted that have addressed the 457 programme, including the 1999 report, *Business Entry in a Global Economy: Maximising the Benefits*. Consistent themes across these reviews have been the provision of employment and training opportunities for Australians; streamlined processing and the reduction of red-tape; protecting Australian terms and conditions of employment; the skill levels of sponsored occupations; and ways of protecting 457 visa holders from exploitation.

Despite the frequency of changes to the programme's operation, the 457 programme has continued to have bipartisan support.

Most recently, the programme underwent a range of reforms in 2013 as a result of a number of trends observed in the 2011-12 and 2012-13 programme years. [9] The changes made to the 457 programme on 1 July 2013 included:

- requiring sponsors to meet the programme's 'training benchmarks' annually for the three-year term of approval of the sponsorship (six years if the sponsor is accredited[10]);
- introducing a 'genuineness' criterion in the assessment of 457 visa nominations;
- introducing a further assessment around the number of 457 workers that a business can sponsor;
- removing occupation-based exemptions to the English language requirement;
- strengthening the 'market rate' assessment provisions;
- increasing the market salary assessment exemption level from $180 000 per annum to $250 000;
- clarifying that unintended employment relationships (including on-hire and sham contracting arrangements) are not permissible under the 457 programme;
- strengthening the obligation not to recover certain costs from 457 visa applicants or third parties by requiring sponsors to be solely responsible for certain costs; and,
- limiting the sponsorship term for start-up businesses to 12 months.

Labour market testing was also announced in the 1 July 2013 reform package and implemented on 23 November 2013.

As at 31 May 2014 there were 108 535 overseas workers in Australia employed on primary 457 visas, working in a broad range of skilled occupations.[11] In 1993-94 the most comparable visas that it replaced (412, 413 and 414 visas) together saw approximately 13 000 primary visas granted.

[9] A 'programme year' is the same as the Australian Financial Year, which is 1 July - 30 June.
[10] An 'accredited sponsor' can be approved as a sponsor for six years rather than three and can receive priority processing of their nominations and visa applications.
[11] Department of Immigration and Border Protection, 'Subclass 457 quarterly report: quarter ending at 31 May 2014'.

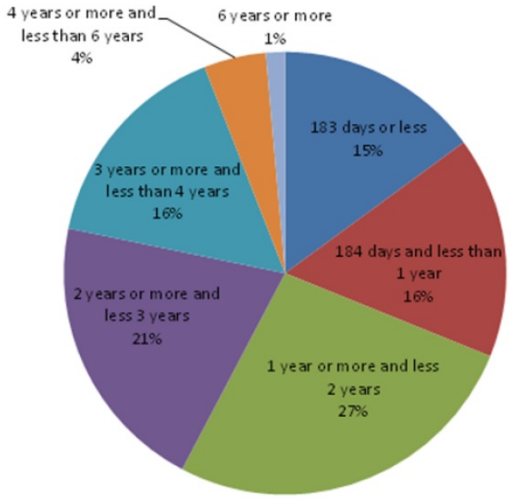
As mentioned above, significant numbers of 457 visa holders also move to permanent residence and this trend has increased over time. In recognition of this, in July 2012, the former government introduced a streamlined and simplified pathway to permanent residence which included amongst other changes the Temporary Residence Transition stream for 457 visa holders. This allows 457 visa holders to be nominated for permanent residence by their employer if they have worked for that employer for at least two years and the employer wants to offer them a permanent position in that occupation.

The programme in a contemporary setting

Through the course of the consultation process, the panel met with numerous stakeholders and heard strong support for the programme. The business sector values the flexibility that the programme offers to fill genuine workforce shortages. The trade unions voiced support for the 457 programme while highlighting the programme's ability to ensure that Australian jobs are being protected and concerns around overseas worker vulnerability. Visa holders have also provided comments on the department's Migration Blog in support for the programme stating that it offers better opportunities for themselves and their families, while allowing Australia to access the expertise that it needs to meet local industry demands.

But it is also clear from coverage in the media and through our consultation process that many Australians who are struggling to find work perceive 457 visa holders as a threat. We have heard that overseas workers are "stealing Australians' jobs" and that citizens and permanent residents, in particular Australia's youth, can become victims of the 457 programme.[12] However, the evidence put to us lends little support to these more negative views that have formed around the programme.

Chart 1 – Length of time on visa for subclass 457 visa holders where the visa was granted between 1 August 1996 and 31 May 2010



[12] Migration Blog, comment Rehman, April 2014.

The temporary nature of the visa is indicated in Chart 1 on the previous page, which shows that within three years of their visa grant, the vast majority of visa holders either leave Australia or move to another visa type including permanent residence visas. Movement to permanent residence remains a minority outcome for 457 visa holders.

This points to the globalisation of economies and the international mobility of skilled workers who do not necessarily want to remain in Australia permanently.
As Dr Joanna Howe reports[13]:

> *'The shift to temporary labour migration visas reflects the increased movement of people around the world for economic purposes. The World Bank estimates that moving an additional 14 million workers from low income to high income countries would increase global income by $350 billion,[14] and the Global Commission on International Migration recommends 'carefully designed temporary migration programs as a mean of addressing economic needs of both countries of origin and destination'.[15]*

At the same time, it should be recognised that the flow of skilled people is two-way. Stakeholders, especially in the Engineering sector, have observed that many skilled Australians travel overseas to live and work. The turnover of 457 visa holders also demonstrates that the programme is addressing short term skill shortages, and much of the evidence presented through the consultation process tells us that the 457 programme is beneficial for the Australian economy and good for economic growth. The flexibility of the programme means that it can contribute to productivity by swiftly responding to short-term skills shortages.

Beyond the various arguments for and against the 457 programme, the consultation process has confirmed that there is a clear need in the Australian labour market for a temporary migration pathway to allow businesses to meet their skill shortages and address the genuine gaps that exist in the Australian workforce.

Yet the 457 programme does much more than this. The programme helps to give effect to Australia's international trade obligations, and by doing so encourages trade and foreign investment in Australia. This is achieved by enabling overseas businesses to bring skilled workers to Australia to establish an Australian operation, or to fulfil a contractual obligation in Australia. By allowing businesses to acquire skills and technological expertise that are not available in Australia, the 457 programme increases Australia's capacity for international competiveness and facilitates the forging of trade and international business links.

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[13] Dr Joanna Howe, '*Is The Net Cast Too Wide? An Assessment of Whether the Regulatory Design of the 457 visa meets Australia's Skill Needs', Federal Law Review*, vol 41, p.p. 1-2.
[14] World Bank, *Global Economic Prospect 2016: Economic Implications of Remitances and Migration, World Bank, Washington DC, 2005, p31.*
[15] Global Commission on Internation Migration, *Migration in an Interconected World: New Directions for Action,* Global Commission on International Migration, Geneva, 2005, PC.

Other relevant skilled migration avenues

While the 457 programme is focused on providing access for employers to sponsor overseas skilled workers, there are other custom designed arrangements that can be negotiated to assist business in accommodating specialised needs. Enterprise Migration Agreements ("EMAs") were announced in the 2011 – 2012 budget[16] and could be described as a custom-designed, project-based migration arrangement. EMAs were intended to provide the resource sector with streamlined access to temporary skilled workers for resource development projects. It appears that there have been substantial barriers in negotiating these agreements given that none have been established to date.

Regional Migration Agreements were also announced at this time and were intended to be customised, geographically based agreements to assist regional businesses in addressing their skill shortages. Through discussions with the department, we understand that no regional agreements were entered into and have already been replaced by Designated Area Migration Agreements ("DAMAs"), designed to address unique labour market needs of specific locations.

Quotes from public submissions

The DAMA program has the potential to address many of the issues for Northern Territory …the keys for such outcomes will be the simplicity of procedures and processes and the flexibility in their operation. The danger remains that the processes and procedures that are put in place will present similar bureaucratic/red tape barriers for SMEs seeking to access the DAMA as those that exist in the current Subclass 457 program.

Northern Territory Government, Department of Business

Years after their introduction, there has never been an operational EMA in place… EMAs represent an important migration initiative and workforce planning strategy for resource industry employers. AMMA was and still is a vocal supporter of EMAs but maintains they will be of little use without a timely approval process that minimises red tape on employers and which rules out political interference in the scheme at the behest of third parties.

Australian Mines and Metals Association

Labour Agreements are an additional mechanism that can be used by businesses to employ overseas workers where no other visa programme meets the employer's needs. They are most commonly used by companies seeking specialised semi-skilled labour or by companies in the on-hire and meat industries. Labour Agreements are best understood as a form of negotiated contract to employ overseas workers when employers cannot find locals to do the work. This is often the case in remote areas, in niche occupations that few Australians are qualified in, and where Australian workers are not available. Typically, these are also the kind of occupations that are not covered by the standard 457 programme, which is only for skilled workers.

[16] Australian Government Budget 2011-12, Budget Paper no.2, Part 2: Expense Measures, www.budget.gov.au/2011-12/content/bp2/html/bp2_expense-14.htm.

This raises a key area of confusion that we have become aware of through the consultations. Under Labour Agreements semi-skilled workers can be granted a 457 visa, which raises an apparent inconsistency because, as we have noted, the standard 457 programme is for skilled workers. Although this apparent inconsistency does not undermine the legitimacy of the 457 programme, it is an issue that we think warrants further consideration in the future. We will return to the issue of the Labour Agreement stream later in the report.

In addition to its place in the temporary programme, the 457 programme should also be viewed within the context of Australia's broader migration programme. Temporary migration has grown globally as people have become increasingly mobile and look to take up opportunities in an international market place. As a result, the interaction between the full range of Australia's migration programmes needs to be taken into consideration as we set out to review the 457 programme and its integrity settings.

Other temporary visa programmes, such as the Student, Skilled Graduate and Working Holiday Maker programmes have influenced the characteristics of the 457 programme. Recently there has been an increase in the numbers of these groups applying for 457 visas while in Australia. Indeed, many of the comments received on the department's Migration Blog addressed the migration pathways available to Student visa holders. This pattern alerts the panel to the need for policy and integrity settings in the 457 programme that are robust, flexible and responsive enough to accommodate evolving migration pathways.

Quote from public submissions

I initially came to Australia with no expectations of remaining indefinitively. However once I completed my Masters Degree I was offered a position with a financial services company and I have been here since. I have been a lawful temporary resident of this country for 6 years. I have paid my duties and my taxes. I have built close relationships, have a large network of friends and a partner with whom I have been for over 3 years in a defacto relationship. I contribute to this country as much as any other citizen. I made the decision a while ago that I would want to stay permanently in Australia. The 457 visa programme is the fairest way I have to be able to become a Permanent Resident.

Comment on Migration Blog from John

Over the course of the consultation process we have had the opportunity to reflect on the nature of the 457 programme and what in its settings impedes transparency, clarity and flexibility. In particular we have given thought to the overall purpose and objectives of the programme. These discussions have provided an opportunity to re-consider the two fundamental objectives that have historically been set for the 457 programme.

These objectives state that the broad intent of the 457 programme is to:

- enable businesses to sponsor a skilled overseas worker if they cannot find an appropriately skilled Australian citizen or permanent resident to fill a skilled position; and,
- ensure that working conditions of sponsored visa holders are no less favourable than those provided to Australians, and that overseas workers are not exploited.

It is our view that the first objective encapsulates the general public's understanding of the programme. The second is essential to support the rights and conditions of 457 workers. These two objectives have ongoing value, and the integrity of the programme should be measured against them. In supporting their retention, we reinforce a belief that the standard 457 programme is for *skilled* workers, which rejects the views of those who submitted that the programme should be opened to semi-skilled occupations.

A statistical overview of 457 programme use

The number of primary 457 visa grants remained relatively flat at around 15 000-20 000 over the first eight years of operation of the scheme, from 1996-97 to 2003-04 (Chart 2 and Table AS1 at Appendix 8). This was a period when the visa was used primarily for higher level skills and the demand for these skills remained relatively constant. In the boom years from 2004-05 to 2008-09, the number of 457 visa grants increased substantially, with a peak for primary visa grants of 55 796 in 2007-08.

In these years, there was strong demand from the resources and related sectors with demand extending to a wide range of trade occupations. With the onset of the global financial crisis, employers sharply reduced their demand for temporary skilled workers and the number of primary grants fell back to 33 761 in 2009-10. The number of grants then increased sharply reaching historical peaks in the years, 2011-12 and 2012-13 at around 66 000 primary visa grants in each year. As discussed below, this sharp increase was in part associated with occupations and industries that gave rise to some controversy about the levels of integrity of the programme. As a result, legal and administrative changes were introduced from 1 July 2013. While it is too early to be prescriptive, it seems that these changes have led to a very sharp fall (about 23 per cent on a full year basis) in the number of visa grants in the first 11 months of 2013-14 compared with the previous year.

Chart 2 – Total subclass 457 visas granted between 1996-97 and 2013-14 [17]

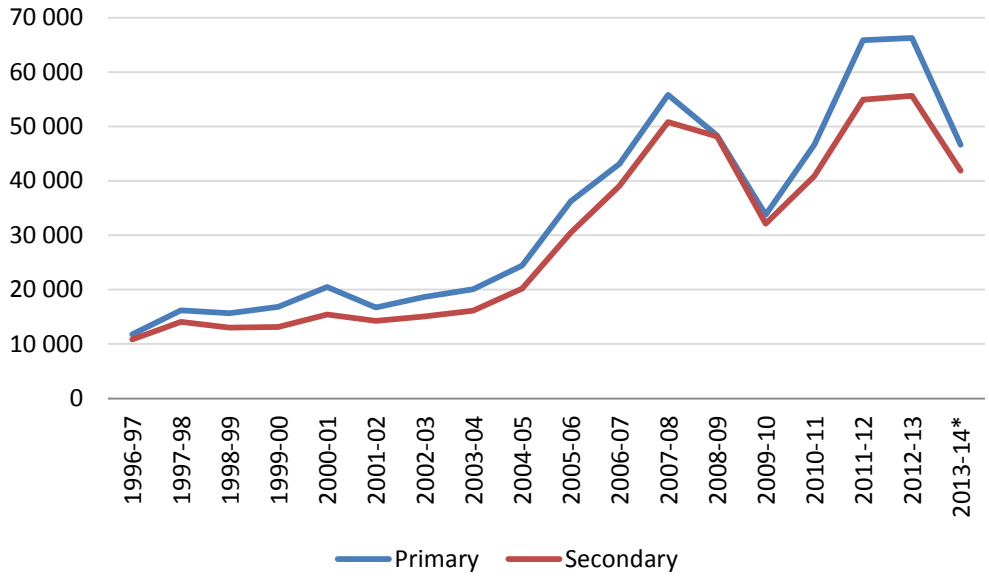


Chart 2 also shows that the number of secondary 457 grants to partners or dependent children of the primary visa holder has generally been slightly lower than the number of primary grants. However, in the two peak years of 2011-12 and 2012-13, there was a greater divergence suggesting that there were more unaccompanied visa grants made in these years.

[17] As at 31 May 2014.

Monthly trends in visa applications

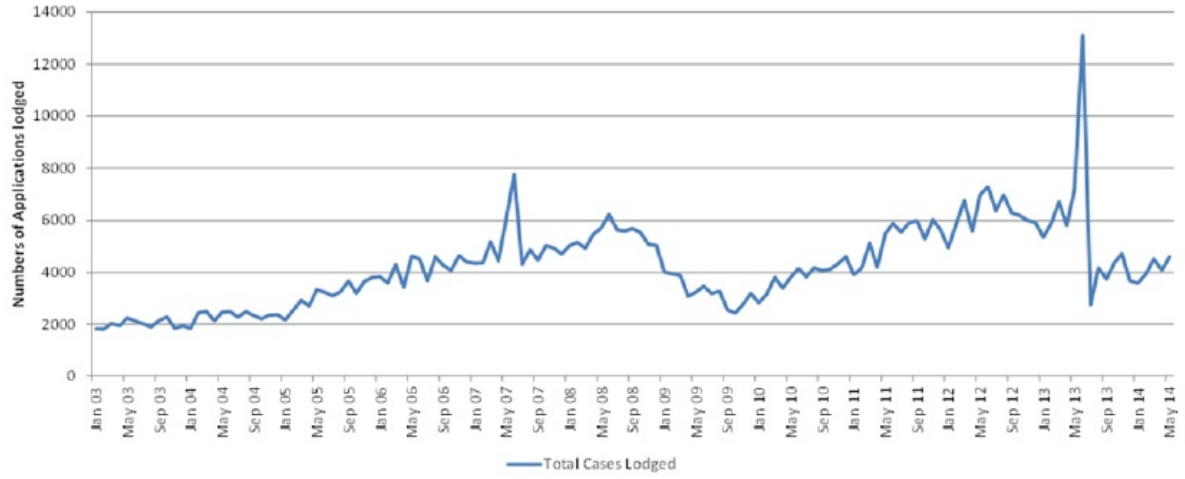
There are small seasonal fluctuations in the number of 457 visa applications as shown in Chart 3. However, two very sharp peaks stand out in this chart in June 2007 and June 2013. In both cases, these peaks occurred immediately in advance of changes to the 457 programme. The peak in June 2007 preceded the introduction for the first time of English language testing, requiring a 457 visa applicant to score at least 4.5 average band score in the International English Language Testing System ("IELTS"). The very large peak in applications in June 2013 was clearly associated with the presaged changes to the programme that, at the time, were to commence in the following month.

The trends in applications following the two peaks were quite different. Following the June 2007 peak, the monthly number of applications fell back to its level before the peak and increased throughout the year, 2007-08. This suggests that users adjusted relatively quickly to the new English language requirement. In contrast, following the June 2013 peak, monthly applications fell to a level well below the monthly pre-June 2013 numbers and have remained at this lower level ever since. This suggests that the changes made from 1 July 2013 have had a longer lasting impact on the number of applications.

As many legal and administrative changes were made from 1 July 2013, it is not easy to specify to what extent these changes have had this lasting impact on applications but falls in the number of grants were evident across all occupations (Table AS3 at Appendix 8). It is worth noting that many of the submissions to the review made reference to the disincentive associated with the substantial increase in fees from 1 July 2013.

Beyond this possibility, some of the largest falls in grants from 2012-13 to 2013-14 were in a small number of occupations specifically targeted by the 1 July reforms. The number of grants in three engineering-related occupations (code 23: Design, Engineering, Science and Transport Professionals; code 31: Engineering, ICT and Science Technicians and; code 32: Automotive and Engineering Trades Workers) fell from a total of 15 118 grants in 2012-13 to 8 294 in the first 11 months of 2013-14. And, the number of grants to Office Managers and Program Administrators (code 51) fell from 2 495 to 844 in the same time frame (Table AS3 at Appendix 8). These two occupation groupings accounted for 25 per cent of the total decline in grants from 2012-13 to 2013-14.

Chart 3 – Subclass 457 primary applications lodged



Grants by location in Australia

In the peak year for grants, 2012-13, the rank order of grants by state and territory was New South Wales (35.5 per cent), Western Australia (21.6 per cent), Victoria (21.2 per cent), Queensland (16.3 per cent), South Australia (2.9 per cent), ACT (1.4 per cent), NT (1.4 per cent) and Tasmania (0.6 per cent) (Table 1).

Between 2009-10 and 2012-13, the two resources states of Western Australia and Queensland experienced a 140 per cent increase in the number of visa granted while the rise for Australia as a whole was 42 per cent. Between 2012-13 and the first 11 months of 2013-14; however, the opposite has been the case with the number of grants falling in Western Australia by 46 per cent and in Queensland by 34 per cent compared to a national fall of 30 per cent and around 24 per cent in New South Wales and Victoria.

This strongly suggests that the national fluctuations in grants over the past few years have been associated with fluctuations in demand for temporary skilled workers in the resources industry. The large falls for the engineering-related occupations, therefore, may be due to falls in demand in the resources sector and not, as speculated above, to the targeting of engineering related occupations in the 2013 reforms.

Grants are heavily concentrated in the metropolitan areas. In the first 11 months of 2013-14, 92 per cent of all grants in New South Wales were in Sydney and 91 per cent of all grants in Victoria were in Melbourne. Even in Western Australia, 83 per cent of all grants were in Perth. The issue here is whether the low usage of the 457 visa outside the cities is due to a lower level of demand or, as we have heard in submissions, the difficulty of accessing the visa in regional areas and occupations.

Table 1 Subclass 457 visa granted between 1 July 2005 and 31 May 2014 by nominated position location

Primary Applicants	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
NSW	12 594	14 534	19 376	14 472	12 332	16 713	21 864	23 476	17 639
VIC	7 302	9 403	11 392	10 659	8 292	11 178	13 351	14 044	11 092
WA	5 889	8 082	11 712	10 401	5 683	9 073	15 553	14 318	7 778
QLD	6 526	7 748	9 294	8 484	4 557	6 601	10 816	10 261	6 734
SA	1 446	1 458	1 906	2 132	1 429	1 479	1 759	1 911	1 467
NT	624	773	893	989	500	498	936	896	902
ACT	423	555	586	644	594	700	1 092	925	757
TAS	361	386	442	459	286	292	277	370	246
Primary Total	**35 165**	**42 939**	**55 601**	**48 240**	**33 673**	**46 534**	**65 648**	**66 201**	**46 615**
Secondary Applicants	**2005-2006**	**2006-2007**	**2007-2008**	**2008-2009**	**2009-2010**	**2010-2011**	**2011-2012**	**2012-2013**	**2013 to 31 May 2014**
NSW	8 197	11 247	14 326	11 754	9 648	12 704	15 614	18 674	15 209
VIC	5 401	8 215	10 259	9 542	7 259	9 199	10 223	11 727	10 174
WA	4 848	7 865	12 139	12 107	6 395	9 049	13 354	12 029	7 345
QLD	4 626	7 889	9 738	9 708	5 185	6 396	9 550	9 149	6 380
SA	1 299	1 870	2 137	2 433	1 408	1 613	1 676	1 784	1 389
ACT	365	520	552	704	655	662	972	839	622
NT	357	540	767	938	798	618	793	648	530
TAS	356	386	444	535	295	379	265	300	188
Secondary Total	**25 449**	**38 532**	**50 362**	**47 721**	**31 643**	**40 620**	**52 447**	**55 150**	**41 837**

Source: Department of Immigration and Border Protection, 2014 (BE7421.03)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: For secondary applicants, the nominated position location is based on the primary applicant

Grants by occupation

Table AS3 at Appendix 8 shows the trends in grants by occupation for all occupations at the two-digit Australian and New Zealand Standard Classifications of Occupations ("ANZSCO") level for the years 2005-06 to 2013-14. Over the whole period, there have been more than 58 000 primary grants to Business, Human Resource and Marketing Professionals (code 22) and to Design, Engineering, Science and Transport Professionals (code 23). There were about 54 000 grants to ICT Professionals (code 26) and to Health Professionals (code 25). Thus, in keeping with a skilled migration programme, the four largest groups were all professional occupations. Trends over time are also evident in this table.

Table 2 Subclass 457 Primary visa granted between 1 July 2005 and 31 May 2014 by nominated occupation (ANZSCO Unit Group) - Top 20 nominated occupations (ANZSCO Unit Group) in 2013-14 to 31 May 14

Rank	Nominated Occupation (ANZSCO Unit Group)	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
1	2613 Software and Applications Programmers	3 456	5 227	6 576	5 269	4 560	5 160	5 341	4 560	3 725
2	3514 Cooks	824	1 010	940	552	205	539	1 561	3 041	2 482
3	1411 Cafe and Restaurant Managers	178	226	458	301	196	293	636	1 903	1 945
4	2531 Generalist Medical Practitioners	1 660	2 801	3 241	2 858	2 333	2 352	2 662	2 419	1 879
5	2251 Advertising and Marketing Professionals	959	1 027	1 304	1 155	949	1 410	1 808	1 928	1 655
6	2611 ICT Business and Systems Analysts	147	179	187	167	447	1 383	1 957	2 069	1 596
7	2421 University Lecturers and Tutors	411	585	685	572	527	842	1 658	1 780	1 450
8	2544 Registered Nurses	1 712	2 203	2 863	3 459	2 509	2 004	2 977	2 709	1 330
9	2211 Accountants	378	463	910	653	727	1 129	1 305	1 502	1 129
10	2247 Management and Organisation Analysts	439	612	847	649	934	1 485	1 744	1 379	1 101
11	3125 Mechanical Engineering Draftspersons and Technicians	317	428	611	748	551	748	1 232	1 356	1 074
12	1492 Call or Contact Centre and Customer Service Managers	210	194	300	215	190	231	437	1 282	1 045
13	1311 Advertising, Public Relations and Sales Managers	702	707	816	620	488	733	1 015	1 066	1 005
14	3513 Chefs	939	1 027	1 372	1 173	338	391	871	1 091	969
15	3212 Motor Mechanics	557	679	1 030	840	248	518	1 308	1 489	862
16	5111 Contract, Program and Project Administrators	624	758	1 132	1 020	705	1 305	2 394	2 493	844
17	1351 ICT Managers	120	150	198	189	268	756	798	876	699
18	3312 Carpenters and Joiners	216	257	434	342	221	499	932	1 120	699
19	2231 Human Resource Professionals	618	766	1 085	811	570	927	1 146	905	644
20	2632 ICT Support and Test Engineers	0	0	0	0	0	377	654	706	587

Source: Department of Immigration and Border Protection, 2014 (BE7421.09)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: ANZSCO was introduced in DIBP on 1 July 2010. Applications lodged prior to that date using the Australian Standard Classification of Occupations (ASCO) 2nd Edition have been converted to an ANZSCO code using a standard DIBP mapping approved by the ABS.

Table 2 provides information on the top 20 occupations in the 457 programme at a 4-digit occupation level for primary visa grants from 2005-06 to 2013-14. The largest numbers of grants over the whole period have been to Software and Applications Programmers (43 874), Generalist Medical Practitioners (22 205) and Registered Nurses (21 766).

While the number of grants in these occupations levelled off from 2010-11 to 2012-13, in these years, there was a large surge in grants to occupations in the food industry for Cooks, Café and Restaurant Managers and Chefs. For Cooks and Chefs, this trend represented resurgence to levels seen in earlier years, 2006-07 and 2008-09.

The downturn in grants to these occupations in the years of the global financial crisis seems to have been particularly severe. Immediately prior to 2013-14, there was also a surge in grants to University Lecturers and Tutors, Mechanical Engineering Draftspersons and Technicians, Motor Mechanics, Carpenters and Joiners and a range of management occupations.

Falls between 2012-13 and 2013-14 have been largest for nurses, all of the trades occupations, and for Contract, Program and Project Administrators. The 2013 reforms were targeted at reducing the numbers of nurses and generic program and project managers.

Grants by industry

Grants across time by industry are shown in Table 3. Due to the predominance of General Medical Practitioners and Registered Nurses in the programme over the last nine years, the largest industry user by visas granted was the Health Care and Social Assistance Industry with more than 60 000 grants over this period.

The next biggest users were the Construction Industry (48 565), Information Media and Telecommunications (44 092) and Other Services (42 471).

From 2009-10 to 2012-13, there were large surges in the Accommodation and Food Services Industry, in Construction (much of this being mining–related), in the Information, Media and Telecommunications Industry, in the Professional, Scientific and Technical Industry and in Other Services.

Table 3 Subclass 457 Primary visa granted between 1 July 2005 and 31 May 2014 by sponsor industry (self identified)

Sponsor Industry (self identified)	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
Accommodation and Food Services	2 086	2 508	3 124	2 513	992	1 537	3 645	6 732	5 784
Administrative and Support Services	0	0	0	328	301	204	254	267	248
Agriculture, Forestry and Fishing	1 071	791	933	851	362	366	633	875	634
Arts and Recreation Services	535	552	933	703	577	734	779	641	400
Construction	3 472	4 168	5 673	5 475	3 253	5 760	8 794	7 713	4 257
Education and Training	1 956	1 998	2 512	2 500	2 045	2 773	3 411	3 454	2 638
Electricity, Gas, Water and Waste Services	809	763	930	930	478	714	1 051	1 194	787
Financial and Insurance Services	1 272	1 739	3 016	1 884	2 000	2 620	2 512	2 352	1 568
Health Care and Social Assistance	4 688	6 534	8 452	8 568	6 353	6 100	7 744	7 251	4 712
Information Media and Telecommunications	3 046	4 101	4 695	3 935	3 733	5 339	7 366	6 634	5 243
Manufacturing	3 979	4 249	5 211	4 271	1 877	2 405	3 977	3 663	2 103
Mining	2 740	3 511	4 886	4 237	2 483	3 607	6 209	4 584	2 450
Other Services	2 604	3 007	3 880	2 592	2 883	5 566	7 419	8 049	6 471
Professional, Scientific and Technical	0	0	0	70	878	2 446	4 797	5 465	4 488
Public Administration and Safety	449	792	717	832	890	521	503	558	351
Rental, Hiring and Real Estate Services	3 976	4 071	5 899	4 380	2 106	2 426	1 432	363	268
Retail Trade	1 182	1 223	1 936	1 693	916	1 232	2 211	3 064	2 283
Transport Postal and Warehousing	614	735	1 084	904	452	607	791	947	777
Wholesale Trade	1 118	877	1 219	1 158	688	938	1 298	1 526	1 038
Not Recorded	632	1 499	696	552	494	762	1 074	949	151
Total	36 229	43 118	55 796	48 376	33 761	46 657	65 900	66 281	46 651

Source: Department of Immigration and Border Protection, 2014 (BE7421.15)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: ANZSIC 2006 was introduced in DIBP October 2008. Applications lodged prior to that date using the ANZSIC 1993 have been converted to the most similar ANZSIC 2006 code. However, two new industry codes were added to ANZSIC 2006 and data based on lodgements prior to October 2008 will not show those industries. The industries concerned are 'Administrative and Support Services' and 'Professional Scientific and Technical'.

Table 4 provides a broad profile of the top 30 sponsors of 457 visa holders by the number of visas granted in the 12 months to the end of May 2014. The table provides a general idea about how the programme functions 'at the top end' to allow sponsors to bring in large numbers of visa holders to Australia in a short timeframe to meet short-term skill shortages.

Table 4 Top 30 sponsors (identified as sponsor industry and sponsor ABN entity type) for Subclass 457 Primary visa applications granted between 1 June 2013 and 31 May 2014

Rank	Sponsor Industry (self identified)	ABN Entity Type	457 Primary visa granted
1	Information Media And Telecommunications	Other Incorporated Entity	1 118
2	Professional, Scientific And Technical	Other Incorporated Entity	1 045
3	Professional, Scientific And Technical	Australian Public Company	690
4	Other Services	Other Incorporated Entity	599
5	Other Services	Australian Private Company	574
6	Information Media And Telecommunications	Australian Private Company	525
7	Information Media And Telecommunications	Other Incorporated Entity	454
8	Health Care And Social Assistance	State Government Entity	307
9	Health Care And Social Assistance	State Government Entity	304
10	Education And Training	Other Unincorporated Entity	256
11	Information Media And Telecommunications	Australian Private Company	244
12	Construction	Australian Private Company	219
13	Health Care And Social Assistance	State Government Entity	218
14	Professional, Scientific And Technical	Other trust	217
15	Education And Training	Other Incorporated Entity	207
16	Health Care And Social Assistance	Australian Private Company	202
17	Professional, Scientific And Technical	Other trust	202
18	Mining	Australian Private Company	200
19	Health Care And Social Assistance	State Government Entity	194
20	Construction	Australian Private Company	193
21	Education And Training	Other Incorporated Entity	163
22	Other Services	Australian Public Company	162
23	Construction	Other Incorporated Entity	160
24	Financial And Insurance Services	Australian Private Company	148
25	Information Media And Telecommunications	Other Incorporated Entity	137
26	Health Care And Social Assistance	Territory Government Entity	132
27	Education And Training	Other Incorporated Entity	131
28	Education And Training	Other Incorporated Entity	125
29	Education And Training	Other Incorporated Entity	124
30	Mining	Australian Private Company	122

Source: Department of Immigration and Border Protection, 2014 (BE7454.01)
Note 1: Figures are subject to variation

Some caution is warranted when reviewing industry data as sponsors self-identify with an industry classification when lodging a sponsorship and as such, the industry classification shown is based on what the sponsor has recorded. Businesses may self-identify as 'Other Services' where they operate in more than one industry, or where they cannot easily categorise their industry against the provided options which are based on the Australian and New Zealand Standard Industrial Classification ("ANZSIC") system administered by the ABS.

Grants onshore: previous visa type

In recent years, there has been an increasing trend for 457 visa applications to originate from persons onshore (within Australia) as opposed to offshore. This could indicate that employers are using the 457 programme to hire or continue the employment of a non-citizen on another temporary visa type. Statistics in Table 5 show the large rises in the number of 457 grants onshore to former students and working holiday makers.

In the 2012-13 programme year, the number of primary visa applications lodged in Australia was 32 523, around 49 per cent of all grants that year and 17 per cent higher than the number granted onshore in 2011-12. In the 11 months to 31 May 2014, 67 per cent of the onshore visa grants (and 34 per cent of all grants) were made to persons on Working Holiday visas, Student visas or Temporary Graduate visas. These were with mostly persons with vocational qualifications nominated for positions in non-trade occupations.
The number of 457 visa holders re-applying from onshore has fallen substantially from its peak in 2007-08 and 2008-09. As described below, this may reflect an increasing movement of 457 visa holders on to permanent residence visas.

Table 5 Subclass 457 Primary visa granted by client location between 1 July 2001 and 31 May 2014 by last visa held (visa category)

Financial Year of Visa Grant	457 Visa	Student Visa	Temp Grad Visa	Temp Resident Visa	Working Holiday Maker Visa	Visitor Visa	Other Visas	Not-Known	Onshore Total	Offshore Total
2001-02	3 824	499		150	2 090	4 139	6	205	10 913	5 787
2002-03	4 742	510		292	2 255	3 981	7	346	12 133	6 540
2003-04	5 029	596		366	2 466	3 866	10	161	12 494	7 607
2004-05	5 243	836		330	2 585	3 657	2	99	12 752	11 649
2005-06	6 092	1 377		1 035	2 768	3 846	10	104	15 232	20 997
2006-07	8 114	1 785		979	2 547	4 087	14	37	17 563	25 555
2007-08	10 121	2 341		915	4 059	4 676	14	27	22 153	33 643
2008-09	10 065	2 490	1	647	3 993	3 745	7	17	20 965	27 411
2009-10	6 042	1 984	26	302	3 620	3 174	90	32	15 270	18 491
2010-11	5 915	2 900	176	250	5 711	3 988	186	68	19 194	27 463
2011-12	6 880	5 953	642	383	8 734	4 762	249	117	27 720	38 180
2012-13	6 532	9 512	2 243	304	9 523	4 012	198	199	32 523	33 758
2013 to 31 May 2014	4 813	7 355	2 454	465	6 228	2 399	145	168	24 027	22 624

Source: Department of Immigration and Border Protection, 2014 (BE7451.11)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: Unknown represents the number of subclass 457 visa granted where the system shows the application is onshore and there is an unmatched previous visa grant
Note 4: Data prior 1 July 2001 is in summarised format and the link to previous visa grant is not available

Number of 457 visa holders in Australia

The number of 457 visa holders grew by 37 per cent from 31 May 2011 to the end of May 2012 and by 10.6 per cent from 31 May 2012 to the end of May 2013. However, growth of the number of visa holders onshore stagnated between May 2013 and May 2014 (see Table 6).

Table 6 Subclass 457 visa holders in Australia at 31 May 2007-14

Snapshot Date	Primary	Secondary	Total
31-May-14	108 535	89 043	197 578
31-May-13	106 681	85 566	192 247
31-May-12	90 278	72 985	163 263
31-May-11	72 266	62 081	134 347
31-May-10	69 506	62 305	131 811
31-May-09	78 055	71 604	149 659
31-May-08	72 364	62 817	135 181
31-May-07	57 386	47 920	105 306

Source: Department of Immigration and Border Protection, 2014 (BE7451.06)
Note 1: Figures are subject to variation
Note 2: Excludes Independent Executives

In the ANZSCO classification system at the four-digit classification level, holders of primary 457 visas were employed in 268 different occupations at 30 June 2011.

To provide some perspective, the number of 457 visa holders in these 268 occupation groups can be compared with the total number of workers in Australia in the same occupation group at the 2011 Population Census (listed in Table 7).

- For 29 of these occupations, 457 primary visa holders made up three or more per cent of total employment in that occupation;
- For 17 of these occupations, 457 visa holders made up between two and three per cent;
- For 47 of these occupations, 457 visa holders made up between one and two per cent; and
- For the remaining 175 occupations, 457 visa holders made up less than one per cent of total employment in that occupation.

Table 7 Primary Subclass 457 visa holders as a percentage of total Australian employment by ANZSCO occupation groups, 2011

ANZSCO code	ANZSCO Occupation Group	Total employment in the 2011 Census	457 visa holders at 30 June 2011	% of 457 visa holders to total employment
2339	Other Engineering Professionals	6 014	979	16.3
3125	Mechanical Engineering Draftpersons and Technicians	4 756	713	15.0
2331	Chemical and Materials Engineers	2 388	265	11.1
2344	Geologists and Geophysicists	8 913	943	10.6
2249	Other Information and Organisation Professionals	17 008	1 768	10.4
2613	Software and Applications Programmers	61 350	6 014	9.8
2531	Generalist Medical Practitioners	43 430	4 081	9.4
2345	Life Scientists	5 428	407	7.5
2332	Civil Engineering Professionals	32 069	1 952	6.1
3111	Agricultural Technicians	1 916	114	6.0
2611	ICT Business and Systems Analysts	20 647	1 212	5.9
2336	Mining Engineers	8 979	508	5.7
2334	Electronics Engineers	3 263	182	5.6
1399	Other Medical Practitioners	8 619	477	5.5
3125	Electronic Engineering Draftpersons and Technicians	4 569	252	5.5
1399	Other Specialist Managers	43 046	2 324	5.4
2335	Industrial, Mechanical and Production Engineers	18 839	1 014	5.4
2632	ICT Support and Test Engineers	7 002	367	5.2
2251	Advertising and Marketing Professionals	45 455	2 294	5.1
3123	Electrical Engineering Draftpersons and Technicians	8 340	424	5.1
1332	Engineering Managers	18 111	872	4.8
2531	Psychiatrists	2 586	124	4.8
2252	ICT Sales Professionals	12 380	541	4.4
2349	Other Natural and Physical Science Professionals	6 378	261	4.1
2312	Marine Transport Professionals	7 900	318	4.0
3122	Civil Engineering Draftspersons and Technicians	10 214	397	3.9
2247	Management and Organisation Analysts	46 874	1 678	3.6
1325	Research and Development Managers	9 301	325	3.5
2333	Electrical Engineers	12 774	429	3.4

The top 10 citizenship countries for visa holders in Australia at the end of May 2014 can be seen in Table 8. Around three out of every 10 visa holders in Australia at this date were from the United Kingdom (20.8 per cent) or Ireland (8.5 per cent), nearly one in five were from India (18.4 per cent) and around 1 in 20 were from each of the Philippines, the United States of America or the People's Republic of China. These six countries accounted for almost two-thirds (64.5 per cent) of all 457 visa holders in Australia at this time.

Table 8 Subclass 457 visa holders in Australia at 31 May 2014 - Top 10 citizenship countries

Rank	Citizenship Country	Primary	Secondary	Total	% of total
1	United Kingdom	23 147	17 864	41 011	20.8
2	India	19 111	17 321	36 432	18.4
3	Ireland, Republic of	11 249	5 627	16 876	8.5
4	Philippines	7 807	5 715	13 522	6.8
5	United States of America	5 271	4 785	10 056	5.1
6	China, Peoples Republic of	5 878	3 735	9 613	4.9
7	South Africa	1 975	3 389	5 364	2.7
8	Korea, South	2 440	2 568	5 008	2.5
9	France	2 329	1 717	4 046	2.0
10	Canada	2 432	1 601	4 033	2.0

Source: Department of Immigration and Border Protection, 2014 (BE7451.07)
Note 1: Figures are subject to variation
Note 2: Exclude Independent Executives

It should be noted that workers and their families on 457 visas are only a small proportion (11 per cent) of the overall population of temporary residents in Australia at any one point in time (Table 9). Though a relatively small group (less than one per cent of Australia's total population), public awareness of their presence and their perceived impact on the labour market is much higher than total numbers would suggest.

Table 9 Temporary visa holders in Australia at 31 May 2014 by visa category

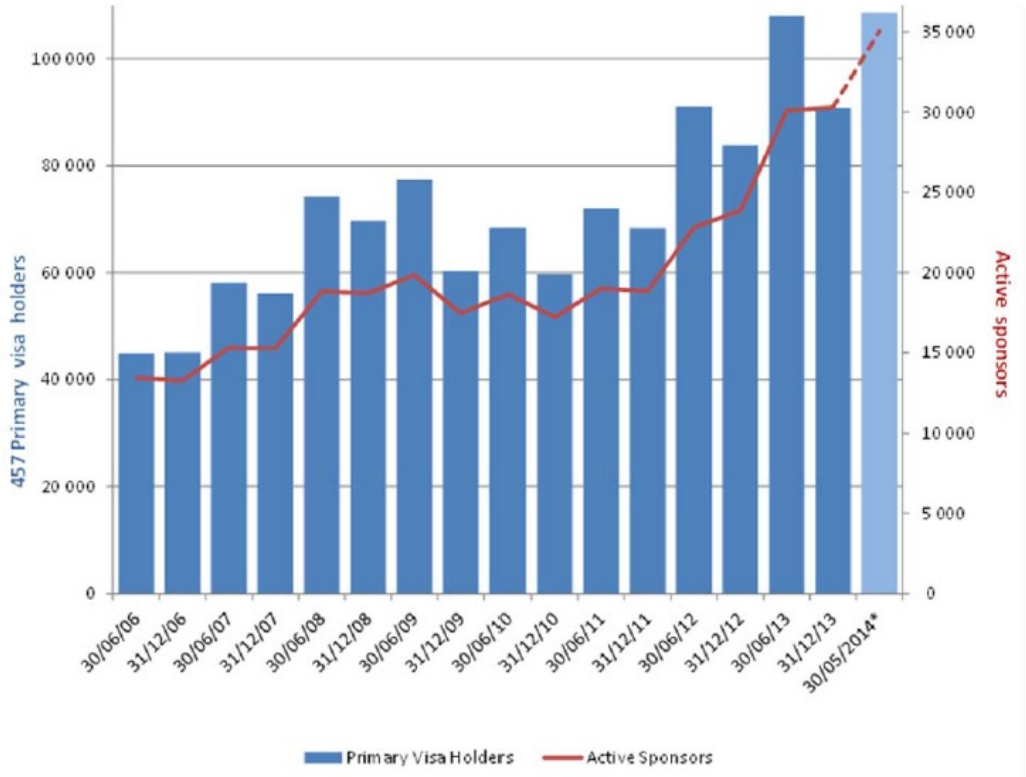
Visa Category	Primary	Total
Visitor visa holders	206 045	206 133
Bridging visa holders	91 364	93 095
Student visa holders	330 833	379 041
Temporary graduate (subclass 485) visa holders	19 947	25 606
Temporary skilled (subclass 457) visa holders	108 541	197 590
Other temporary visa holders	25 682	32 459
Working holiday maker visa holders	159 096	159 096
New Zealand (subclass 444) visa holders	653 498	653 498
Total	1 595 006	1 746 518

Source: Department of Immigration and Border Protection, 2014 (BE7454.02)

Numbers of sponsors

There has been considerable recent growth in the number of sponsors of 457 visa holders since 31 December 2011 (Chart 4). At 31 May 2014, there were just over 35 000 active sponsors employing around 108 535 workers on 457 visas. This means that, on average, sponsors employed three 457 visa holders but this average is low because there were around 18 000 sponsors (just over 50 per cent of all sponsors) that were sponsoring only one 457 visa holder. Many of the employers that are sponsoring only one visa holder are in the Accommodation and Food Services, 'Other Services' or Construction industries which have a higher proportion of workers in ANZSCO skill level 3 occupations. Historically, however, professional occupations have predominated amongst the workers nominated and a picture of the largest sponsors has been provided in Table 4.

Chart 4 - Subclass 457 active sponsors and numbers of primary visa holders in Australia 2006-2014



457s in the Employer Nominated Permanent Residence Streams

Table 10 indicates that former 457 visa holders have always made up the bulk of annual grants of Employer Nominated Permanent Residence visas. In the 11 months to 31 May 2014, 61 per cent of Employer Nominated Permanent Residence visas were granted to former 457 visa holders. This proportion has been as high as 80 per cent in 2009-10 and as low as 53 per cent in 2004-05.

Table 10 Migration programme outcome 2004-2005 to 2013-2014 - Employer Nominated only by last substantive

Location	Change of Status	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
Offshore	**Total**	2 596	3 223	3 591	4 926	5 228	5 265	5 284	8 726	11 362	7 472
Onshore	**No visa indicated**	1 375	1 059	573	432	710	734	932	1 205	2 987	2 417
	Other	1 023	871	820	842	1 097	937	844	773	743	968
	SC - 417	143	121	114	135	248	493	771	1 014	972	801
	SC - 457	6 910	8 764	10 674	16 550	29 485	32 597	33 850	30 366	25 294	27 782
	SC - 485					6	135	306	859	2 276	3 734
	Student	301	425	479	632	1 049	687	2 190	3 443	3 906	2 369
	Visitor	676	763	334	245	203	139	168	168	200	271
	Onshore Total	10 428	12 003	12 994	18 836	32 798	35 722	39 061	37 828	36 378	38 342
Employer Nominated Total		13 024	15 226	16 585	23 762	38 026	40 987	44 345	46 554	47 740	45 814
Note: Last substantive is applicable only to persons onshore at time of Employer Nominated Permanent Resident Visa grant											

Commentary

Major changes were made to the 457 programme from 1 July 2013 based primarily upon:

1. the fact that 457 grants were increasing faster than the trend in job vacancies in Australia as indicated by the Australia and New Zealand Banking Group ("ANZ") index of job advertisements; and,
2. a number of cases of improper use of the visa brought forward particularly by the union movement.

Claims and counter claims were then made about the integrity of the system, most of which were not based on solid evidence.

A number of the changes that were made to the administration of the system in mid-2013 can be justified in their own right as appropriate regulatory approaches, irrespective of the statistical evidence. Also, it is not possible here to provide a definitive view on whether or not the evidence confirms the bases upon which some of the changes were made. It is possible, however, to provide some comments based on the statistical trends described above.

The first point to make is that the annual number of 457 primary grants is less than one per cent of the number of advertisements in the ANZ index. It is wholly possible that the trends in the two series may move in opposite directions if the 457 grants are in specific occupations that are in demand while demand in other occupations has softened. Also, comparisons are sometimes made with the number of 457 grants and the trend in overall unemployment in Australia.

The validity of this comparison can also be questioned on similar grounds that the unemployment may be in occupations other than those to which 457 visa grants are made. In addition, unemployment in Australia is heavily concentrated among people with low or no skills, in many ways a different labour market to the 457 labour market.

In this context, it is notable that, since October 2013, employment in Australia has risen strongly while, in the same period, the number of 457 grants has remained lower than it has been for a few years. The strongest conclusion that can be drawn from these observations is that analysis of whether or not the trend in 457 grants is acceptable must be made in terms of the specific occupations to which 457 grants are made. If there is strong growth in the number of 457 visa grants in a particular occupation, is this justified by vacancies or increasing demand in that occupation? This is the type of analysis that should be routine in relation to Australia's migration programme, especially the 457 component of the programme.

Taking this approach, as shown in Table 2 and Table AS3 at Appendix 8, the largest numerical surges in 457 visa grants in 2011-12 and 2012-13, the years leading up to the mid-2013 regulatory changes, were in the following occupations:

Cooks, Café and Restaurant Managers, Chefs;
University Lecturers and Tutors;
Mechanical Engineering Draftspersons and Technicians;
Motor Mechanics;
Carpenters and Joiners;
Specialist Managers; and
Contract, Program and Project Administrators.

Cooks, Café and Restaurant Managers, Chefs

In the years following the global financial crisis, there was very considerable growth in the hospitality, restaurant and tourism industries and this would have required a large increase in the number of workers in these industries. Clearly many of these vacancies were filled through the use of 457 visa grants. As businesses in these industries are mainly very small, this is part of the explanation for the rapid growth in the number of 457 sponsors in these years and in the number of small business sponsors in particular. The trend is also part of the explanation of the growth of onshore conversions to 457 visas by former international students and working holiday makers.

To some extent, this was an inevitable consequence of the enormous surge in 2007 and 2008 in the numbers of students who came to Australia to take vocational courses related to these industries. In 2010, these former students were permitted to remain in Australia to enable them to search for employment and many have done so through the 457 programme.

This interpretation is backed by data showing large increases in the peak growth years of grants to persons from South Asia, the major source of the 2007 and 2008 international student surge. As these students were mainly single males, this also explains the relative fall in the number of secondary applicants in the peak years. That the growth in employment of 457 visa holders in these industries was due to demand is further evidenced by the fact that, unlike most other occupations, the numbers of grants in these occupations have not declined significantly after 1 July 2013. At the same time, these are industries in which the level of sanctioning is high and in which there is scope for nefarious practices. Thus, while most of the apparent demand is likely to be genuine, vigilance is required.

University Lecturers and Tutors

The strong surge in demand for overseas academics is hard to explain but this demand has also continued as evidenced by the trend in 457 grants since 1 July 2013. The peak years, 2011-12 and 2012-13 were years in which the competition between universities was greatly stimulated by the Excellence in Research for Australia ("ERA") process. It could be speculated that, in these years, universities were 'buying' overseas academics with strong publication records in order to enhance their rankings in the ERA and in the global rankings.

These were also years in which a large number of new positions became available through the Australian Research Council's fellowship programmes. Once more, overseas academics with good publication records probably performed better in the competition for these fellowships than recently graduated Australians.

Mechanical Engineering Draftspersons and Technicians, Motor Mechanics, Carpenters and Joiners

Research on demand in these occupations is not well documented but it can be argued that the growth in the peak years was related to mining construction. This is supported by the high growth in the peak years in the resource states of Western Australia and Queensland and the subsequent falls in 457 visa grants in the trade occupations and in these states from 1 July 2013 onwards.

Specialist Managers and Contract, Program and Project Administrators

These 'generic' occupations were identified as occupations of concern through the department's monitoring processes, particularly when the sponsor was a small business. The concerns about the genuineness of applications in these occupations seem to have been justified. The introduction of the genuine requirement and skills assessment for these occupations as part of the reforms seems to have been highly effective as the number of grants in these occupations has fallen dramatically since 1 July 2013. This experience illustrates the problems that arise when the 'generic' (not elsewhere classified ("nec")) occupations in the ANZSCO classification are used at nomination stage.

Core questions

The face-to-face consultations and written submissions have made us keenly aware of the complexities inherent in the existing 457 programme. These complexities hinder programme transparency and clarity, and raise questions around programme integrity. This can undermine public confidence in the programme. Our view is that an overarching principle of the 457 programme must be credibility – so as to ensure its continued success, the 457 programme must have legitimacy in the eyes of the Australian public as something that benefits Australia rather than does harm. The 457 programme will only be able to attain this necessary credibility when the Australian public can clearly see that policy problems are being resolved by robust evidenced based solutions.

During our consultations it became clear that there are programme settings which have been constructed and implemented without a transparent and evidence-based approach. There are two policy issues that we consider to be core questions in the existing 457 programme, as they directly address one of the two objectives. These are: proving that the position cannot be filled by a local worker and determining the skilled occupations that are used for the programme. It is our considered view that these issues are not well served by the current policy approaches and can be improved by adopting a more robust evidence-based approach.

Labour Market Testing

The first objective of the programme is to enable businesses to sponsor a skilled overseas worker if they cannot find an appropriately skilled Australian citizen or permanent resident to fill a skilled position. In order to meet this objective, integrity would be enhanced if there was some reassurance that a suitable worker in Australia was not available.

However, determining an appropriate regulatory approach that achieves this is challenging. In our view, one of the core problems that adds unnecessary complexity to the 457 programme is the requirement introduced in July 2013 for labour market testing to be undertaken for some occupations, principally, trades and technical roles, community workers and administrative workers as well as the protected occupations of engineering (including shipping engineering) and nursing.[18]

We note that labour market testing has previously been removed from the 457 programme as it was found to be ineffective,[19] and we have not been presented with any strong evidence in support of the effectiveness of its re-introduction in 2013.

[18] Labour market testing (LMT) was re-introduced into the 457 programme as a result of the *Migration Amendment (Temporary Sponsored Visas) Act 2013* and came into effect on 23 November 2013.
[19] LMT was removed from the 457 programme on 1 July 2001 by then Minister Ruddock after the External Reference Group Review chaired by Peter McLaughlin in its report, *In Australia's Interests: A Review of the Temporary Residence Program,* recommended the introduction of a skills threshold as a replacement.

Under current settings for the labour market testing requirement, Standard Business Sponsors must, unless exempt, test the local labour market prior to nominating an overseas worker. Sponsors must then provide information about their attempts to recruit Australian workers to the department, the cost of doing so and demonstrate how they have determined that there is no suitably qualified and experienced Australian citizen or permanent resident to fill the position.

Subject to Australia's international treaty obligations, except where the occupation is protected, exemptions from the labour market testing requirement may apply in relation to the required skill level for a nominated position. Essentially, this means that all ANZSCO Skill Level 1 and 2 (that is managers and professionals) are exempt from the labour market testing requirement with the exception of occupations in the nursing and engineering professions.

Sponsors are also able to be exempted from the requirement in the case of a major disaster in Australia that has such a significant impact on individuals that a government response is required; and the exemption is necessary or desirable in order to assist disaster relief or recovery.

Throughout the consultation process, business and sponsor representatives have overwhelmingly stated that the existing requirement for labour market testing is ineffective and imposes an unnecessary time, regulatory and cost burden. Common complaints have been that the existing 'one size fits all' approach to labour market testing is unworkable and that the requirement undermines the flexibility of the 457 programme.

Many stakeholders consider that labour market testing is unnecessary because there are already sufficient market and regulatory safeguards in place to ensure that Australian workers are prioritised. Stakeholders also observed that it is unclear how the requirement contributes to integrity and compliance in the 457 programme.

Stakeholders who support labour market testing, including many of the trade unions, state that the requirement must be retained to ensure that local talent is not overlooked, thereby ensuring the efficacy of the 457 programme. However, trade unions also expressed unease with the existing labour market testing requirement. Of particular concern is that the requirement is poorly constructed and not stringent enough to ensure that Australian workers have priority for employment in Australian jobs. On the evidence presented to us we have concluded that the labour market testing provisions introduced in 2013 are easily circumvented and do not prevent employers from engaging overseas workers in place of Australians. In addition, recruitment practices are highly diverse across occupations and industries: to design a system that encompasses this diversity is impractical.

While the provisions are symbolic of what is trying to be achieved, in practice they do not assist in achieving the objective of providing evidence that suitable Australian workers are not available. Therefore the requirement adds unnecessary regulatory cost for little or no actual benefit. In its current form the labour market testing requirement is costly for sponsors who have done the right thing and subject to manipulation by those that have not made a serious effort to find a local worker.

Quotes from public submissions

While recognising that employers should first look within Australia for their staff, the Labour Market Testing regime introduced recently must be wound back at the earliest opportunity. The 457 programme should enable employers to obtain skilled employees needed in their Australian operations without cumbersome processes. The programme should trend towards the free flow of people to strengthen Australia….A benefit to Australia test is much more preferable than Labour Market Testing.

Hallmark Immigration

A key concern for Consult Australia is that the recently-introduced Labour Market Testing requirements that specifically target employers of engineers will add administrative burdens to an industry that is already struggling, partly due to the high cost of doing business.

Consult Australia

Even if the employer-conducted labour market testing requirement was imposed more rigorously by the Department, it is the author's contention that employer-conducted labour market testing is too easily evaded by unscrupulous employers and provides an additional regulatory burden on the vast majority of law-abiding employers.

Dr Joanna Howe

Since the introduction of the LMT, we have noticed that the majority of our members have been able to obtain employment and that training for new entrant to marine engineering is high on the list for our EBA negotiations with the offshore industry. If that protection is removed, it would seriously damage the opportunities of young Australians obtaining either a traineeship or cadet ship in this industry.

Australian Institute of Marine and Power Engineers

UnionsWA supports the notion that where genuine labour shortages can be demonstrated some use of temporary overseas labour is justified. However rigorous processes for labour market testing are needed to ensure that employment opportunities are made available in a meaningful way to those already in the Australian labour market.

UnionsWA

LMT is absolutely central to the efficacy of the 457 visa scheme. It is self-evident that a skills shortage must exist before it can be filled by any temporary visa scheme. The operation of a 457-visa scheme in the absence of any temporary skills shortage would simply mean that Australian workers are being displaced from the labour market. This is an unacceptable outcome.

Australian Worker's Union

Occupations List

The second core problem raised repeatedly by stakeholders was the shortcomings of the current occupations list and the lack of a transparent process to modify or target such a list. The list of occupations goes to the heart of that element of the first objective of the programme in that it relates to *skilled* workers.

One of the current requirements for participating in the 457 programme is to employ an overseas worker in an occupation that is listed on the Consolidated Sponsored Occupation List ("CSOL").[20] This list determines eligibility for the programme on the basis of skill and is not a list of occupations in demand. The CSOL, with few exceptions, includes all ANZSCO[21] occupations in Skill Levels 1, 2 and 3.[22] We understand that while there is the ability for the department to exclude occupations from the list in response to evidence of abuse, to date, few occupations have been excluded on the basis of integrity.[23]

In contrast, the Skilled Occupation List ("SOL"), introduced in mid-2010 applies to independent points based general skilled migration applications. The SOL identifies occupations that are of high value and will assist in meeting the medium and long term skills needs of the Australian economy. As the SOL is used as the basis for migrants to come to Australia without an employer sponsor but with the hope of finding a job, more rigorous labour market analysis is required to determine skills shortages across the economy, and is, as a consequence, a much shorter list of occupations.

This is different from the use of the CSOL which enables employers who are experiencing temporary skill shortages in their business to access overseas workers when they cannot find local workers. Shortages may be very evident in one region but not in another, or not in the economy overall. This is fundamental to the understanding of the basis of skilled migration nominated by employers as against independent skilled migration. It is useful to note that employment outcomes for employer nominated migration are significantly better than for independent skilled migration. Principally, stakeholders consider the CSOL too inflexible and unresponsive to changes in the Australian labour market. As it is an "extract" from the ANZSCO, these comments reflect directly on the limitation of the ANZSCO list itself. As an example, the agricultural sector and peak bodies including the National Farmers Federation ("NFF")[24], Dairy Australia and individual farmers reported that they have severely limited access to the 457 programme to address chronic skilled shortages because the list does not appropriately reflect skilled dairy farming occupations.

[20] The CSOL came in to effect in July 2012 and incorporates the subclass 402 and 457 skilled occupation lists, the Employer Nomination Scheme Occupation List (ENSOL) and the state/territory nominated SOL (StatSOL).
[21] Australian and New Zealand Standard Classification of Occupations is issued by the ABS.
[22] There is one occupation, Driller ANZSCO 712211, which is on the list even though it is below Skill Level 3.
[23] Limitations have been put on positions for Chefs and Cooks in Fast Food or Takeaway Food Services and Skill Level 3 occupations such as.Hotel Service Manager, Security Consultant, Personal Assistant and Secretary are not on the list.
[24] National Farmers Federation, written submission to the panel.

Quotes from public submissions

A particular issue…is the need for the CSOL to have the ability and flexibility to accommodate the new and emerging roles….The CSOL will need to have a mechanism to capture new and emerging roles as and when required...

Community Services and Health Industry Skills Council

Unions NSW believes the occupations listed on the CSOL should be better targeted. The occupation groups should align with identified skill shortages that exist within the Australian labour market. This would require better research into current shortages and would also take into account the experiences of regional and rural Australia…Unions NSW supports the inclusion of only skilled occupations on the CSOL. We believe the expansion of the list to include semi-skilled or lower-skilled occupations would undermine the integrity of the scheme.

Unions NSW

There are a number of tasks within different occupations that overlap across several different ANZSCO codes. Consequently, this opens the door for subjective interpretation and allocation of ANZSCO codes to the position being offered based on a "best fit" decision at a particular point in time.

Agrifood Alliance Western Australia

New roles and the qualifications that match them are currently not captured or recognised within ANZSCO, which is out of date and in need of substantial review. As a result there are considerable limitations within the ANZSCO system that impact on a wide range of labour market and migration initiatives. At the heart of these is a lack of recognition of the occupations and roles within the agribusiness sector.

National Farmers Federation

Other regional businesses have similar criticisms: for example, Regional Development Australia (Murraylands & Riverlands Inc SA)[25] commented that the list is inadequate and does not reflect the true range of required skilled occupations, which may also vary from region to region. Other stakeholders have also expressed frustration with the current list. Among these stakeholders there were views that the list should contain occupations which are in shortage. The Electrical Trade Union ("ETU")[26] and Dr Joanna Howe,[27] from the University of Adelaide, observed that as the CSOL simply lists skilled occupations it does not capture the shortfalls in the Australian domestic labour force. Dr Howe commented that occupations were added and removed from the list without any proper consultation or justification. The process of amendment of the CSOL is ad hoc and not transparent.

We propose that this be changed so that the list of occupations for the 457 programme becomes both transparent and responsive. We have developed core solutions outlined below that will address both of these difficult problems presented by the 457 programme.

[25] Regional Development Australia (Murraylands & Riverlands Inc SA), written submission to the panel.
[26] Electrical Trade Union (ETU), written submission to the panel.
[27] Dr Joanna Howe, written submission to the panel.

Core solutions

A New Ministerial Advisory Council

To address the core problems identified beyond this review and into the future, there is a clear need to establish an evidence based framework to support the 457 programme. We were provided with an opportunity to redefine the framework of the 457 programme when the Assistant Minister for Immigration and Border Protection, Senator the Hon Michaelia Cash requested that we consider the effect of the Ministerial Advisory Council on Skilled Migration ("MACSM") on the 457 programme to date, and provide advice to government on any future advisory body.

To inform this evaluation, we consulted extensively. Feedback was sought on a variety of issues including the legislative basis for such a group, its performance and participation levels, and views on a new structure, as well as terms of reference of any future ministerial advisory council.

These consultations were invaluable in assisting our understanding of how MACSM operated in practice. The council's role and function was viewed positively and former members reflected that the diversity of the committee created an environment for frank and open dialogue with regular, robust debates. There was overwhelming support expressed for a tripartite ministerial advisory council as a structure to provide stakeholders from divergent viewpoints the opportunity to collaborate and develop workable options for government.

We see a continuing role for such a body to underpin the evidence based approach which is essential to the success of the 457 programme and the skilled migration programme more broadly. We believe that a new ministerial advisory council should play a pivotal role in the future of skilled migration and the 457 programme specifically.

While the composition of such a group would be for government to decide, we believe it is important that the advisory committee be tripartite and include representation from key stakeholders such as peak councils, industry and trade unions. This construction would enable the council to create stronger linkages between industry, trade unions, and government to provide advice on matters relating to skilled migration.

The ministerial advisory council would be further enhanced by a government resource that would support the advisory council by providing technical advice such as labour market analysis. To facilitate this, it is envisaged that there would be an ongoing and permanently resourced team embedded in an existing Australian government department, specialising in labour market analysis.

We note that currently substantial expertise in labour market analysis relevant to the 457 programme exists within the Departments of Employment, Industry (which has recently absorbed the labour resources from the Australian Workforce and Productivity Agency ("AWPA") which had been responsible for the SOL), Education and Health.

A coordinated approach within government, backed by a dedicated resource on labour market analysis as it relates to skilled migration, will be a significant advance on the current limited resources available to the department in relation to understanding the labour market.

Quote from public submissions

Master Builders submits that there should be a standing industry consultative council on skilled migration established following on from the Review Panel's deliberations – similar to advisory groups already existing in some other areas of the immigration portfolio. It would provide advice to the Immigration Minister on issues such as eligible occupations, English language requirements and minimum salary levels. This would help ensure the best industry intelligence was available to the Minister while promoting transparency and stakeholder buy-in to the migration program.

Master Builders Association

Specific roles in relation to the 457 programme the panel sees for the new ministerial advisory council would be providing advice to government on labour market testing, as well as on the occupations list.

We consider that in place of the labour market testing requirement, the proposed new ministerial advisory council would be the appropriate body to consider occupations in over-supply or those where there are concerns about over-use in certain regions or occupations.

Although it is important that occupations (other than potentially for integrity reasons), are not removed from the current CSOL, the ministerial advisory council would be well placed to recommend the appropriate course of action, which may include introducing additional requirements of sponsors of certain occupations, limiting regions for certain occupations or capping occupations.

For example, if evidence indicated that the 457 programme was being used disproportionately in some occupations (based on evidence of the type similar to the analysis in Tables 4 and 7) , requirements for labour market testing could be targeted to that situation, since it is more workable to design suitable approaches to labour market testing in specific situations rather than using the unworkable "one size fits all approach".

We note this approach is utilised in Labour Agreements which cover specific sponsors and occupations.

We also consider that the new ministerial advisory council should provide advice to government on the development of a more responsive occupation list for use in the 457 programme (and any associated programmes). For example, if industries can present evidence that a skilled occupation exists and it is not currently included in the ANZSCO list, then it can seek to have the occupation defined and added to CSOL.

We also envisage that the ministerial advisory council would be central to progressing the recommendations of this review, including those made below on additional elements of the programme. Although a number of former MACSM members supported the body being given the added credibility of legislation, this is not considered an essential mechanism to the operation of an advisory council. The panel would support the government should it decide to retain, or repeal, the reference to MACSM in the current legislation.

Recommendation 1

1.1 That, in lieu of the existing Ministerial Advisory Council on Skilled Migration, a new tripartite ministerial advisory council, which is not necessarily prescribed in legislation, be established to report to government on skilled migration issues.

1.2 That the new ministerial advisory council be supported by a dedicated labour market analysis resource.

Recommendation 2

2. Acknowledging that, as the Organisation for Economic Co-operation and Development has pointed out, employer-conducted labour market testing is not "fully reliable", and in the Australian context has proven ineffective, that the current legislative requirement for labour market testing be abolished.

Recommendation 3

3.1 That the Consolidated Sponsored Occupations List be retained as a list of occupations which are at Skill Level 3 and above, and that the Consolidated Sponsored Occupations List should be able to be amended by two means: first, the addition of skilled occupations which can be shown to exist in the community but which may not be on the Australian and New Zealand Standard Classification of Occupations list; and, second, the refinement of the Consolidated Sponsored Occupations List in cases where there may be integrity or appropriateness concerns. Any occupations not on the list, which are usually referred to as semi-skilled, may be addressed as part of the Labour Agreement regime.

3.2 That the new ministerial advisory council provide advice on those occupations where some concern exists and recommend additional requirements or limitations on occupations and/or regions.

Elements – addressing key programme requirements

Market Salary Rate

The market rate framework was originally implemented in 2009 as a result of the Deegan Review, replacing the previous system of Minimum Salary Levels ("MSLs"). It is based on the principle that, to the maximum extent possible given their particular circumstances, 457 visa holders should be provided with terms and conditions of employment (earnings) which are no less favourable than those provided to an Australian worker performing equivalent work.

The policy imperative of the market rates framework is that the 457 visa holder be paid neither under the market rate (with the risk that this would entail of overly "cheap" labour), nor over it (which could indicate that Australians were being paid inequitable salaries compared to temporary skilled migrants).

Before 1 July 2013, although the department relied to some extent on award and enterprise agreement wage rates, it increasingly relied on a copy of the employment contract which set out salary and conditions of the nominee, together with evidence of what sponsors paid other employees. Where the salary package relating to a nomination was above $180 000, including specified (guaranteed) non-monetary benefits, it was exempt from the need to demonstrate that market rates were paid.

Two major changes came into effect on 1 July 2013. The first: an increase in the market rates threshold to $250 000 p.a., above which there was no need to demonstrate the market salary. The second: the removal of the specific reference to the market rates paid by the sponsor in the workplace. The intention of this second change was to address the concern that some sponsors who paid below the market rate (defined as those rates being paid by other enterprises operating in competing businesses in the region) could nominate and pay a 457 visa holder a rate of pay which was equivalent to that of their workplace colleagues, but which was not a genuine market rate as would be generally understood.

A number of submissions raised concerns about the practical application of market rates given the difficulty of gathering evidence on salaries paid, particularly by small businesses in regional areas, as pointed out by a submission from Eventus Corporate Immigration. The Joint Submission of the Department of Employment and the FWO highlighted the fact that the Department of Employment, which has a key role in labour market analysis, does not hold data on salary rates for individual occupations, industries or regions which would enable reliable market comparators. Given these difficulties, the department, even after the 1 July 2013 changes, continues to take into account evidence of what is paid to other employees in the sponsor's workplace, but now seeks evidence beyond the workplace.

Quotes from public submissions

The objective of the market salary framework is to ensure primary Subclass 457 visa holders are subject to the same salary and employment conditions an Australian worker undertaking equivalent (similar) work with the business sponsor in a workplace…The Department of Employment does not hold data on salary rates for individual occupations, industries or regions to which primary Subclass 457 nominations or visa applications may refer which would enable reliable market comparators to be determined.

Department of Employment and the Fair Work Ombudsman (Joint Submission)

The present system of determining Market Salary Rates is problematic among small and medium businesses, particularly in rural and regional areas. Often businesses in these environments do not have access to substantial data upon which market salary can be clearly determined. Market rates are by their nature relational and vary between businesses, industries, and geographic areas.

Eventus Corporate Immigration

The market salary rates framework is the foundation of the 457 visa program. It ensures migrants are not discriminated in the labour market and allows temporary migration to ebb and flow without undermining existing wages and conditions…market salary rates are the most important policy tool in the 457 visa program.

Migration Council of Australia

Despite these difficulties in gathering definitive evidence of market rates, we believe that the integrity of the 457 programme requires a continuation of the market rates approach.

As the Migration Council of Australia ("MCA") state in its submission, the market rate is the foundation of the 457 programme. Importantly, in neither the consultations nor submissions were we presented with any workable alternative approach that would satisfy the objectives of the programme in the same way as the markets rates approach does.

However, in relation to the specific issue of threshold, no substantial evidence was provided to the panel that supported the need for the market rates exemption threshold to be as high as $250 000. If there are specific occupations and/or regions where the market rates of Australian workers would be undermined by 457 visa holders being paid $180 000 or more, then evidence of these concerns can be taken to the proposed new ministerial advisory council which would have the authority to make recommendations to address this situation for that occupation.

Recommendation 4

4. That the market rate framework continue to operate as a core component of the 457 programme, but that the earnings threshold above which there is an exemption from the need to demonstrate the market rate should be aligned with the income level above which the top marginal tax rate is paid (currently at $180 000).

Temporary Skilled Migration Income Threshold ("TSMIT")

As it is generally understood, the TSMIT provides an income floor which is primarily designed to ensure that 457 visa holders are able to support themselves, and not breach their visa conditions by working for someone other than their approved sponsor, given that, as temporary residents, they are generally ineligible for income support, taxation benefits and other forms of support. In addition, the TSMIT can discourage sponsors from artificially inflating the skill level of a position. For example, a retail business that sought to disguise a sales assistant as a customer service manager would need to pay the nominee well above the prevailing rate for a sales assistant to meet the TSMIT.

Currently the TSMIT is $53 900 p.a. It usually increases annually on 1 July in line with changes to average weekly earnings.

There are a number of aspects to the application of the TSMIT that are complex and opaque. For example, a substantial number of submissions expressed concern that due to the requirement to pay a guaranteed income on or above the TSMIT, pressure was put on employers to pay their Australian workers the equivalent rate to the one paid to the 457 visa holder, if the latter were receiving higher wages than their counterparts. These comments demonstrate a misunderstanding about the TSMIT, as the 457 programme is not available to those occupations and regions where the market rate for that occupation is below the TSMIT. Therefore, the TSMIT has two roles: as a threshold that assesses eligibility of a nomination, and as an income floor for visa holders.

An element of the TSMIT which is not well understood is that to address the considerable concerns raised that shortages in skilled occupations, particularly in regional areas or where award rates are closer to market rates cannot meet the threshold requirements of the TSMIT, an exception is permitted where "the Minister considers it reasonable to disregard" the TSMIT – this is referred to as the TSMIT "out clause". This does not change the need for the guaranteed minimum earnings to be above the TSMIT but it does change the assessment of eligibility of the nomination.

In order to access this "out clause" a sponsor needs to demonstrate that the equivalent Australian worker in a "typical working week" would receive not just a base rate of pay, but penalties, allowances and overtime which when included in a total salary would demonstrate that the occupation is eligible. This calculation is not unlike the process of calculating an annualised salary which is recognised in some industrial awards.

Views on the TSMIT were not unexpectedly divergent. While generally supportive of the market salary rates concept, industry groups have consistently raised the TSMIT as an issue of concern for businesses. Several, such as Restaurant and Catering Australia and the Australian Hotels Association (WA), called for the TSMIT to be replaced by the relevant award rate.

By contrast, the Australian Council of Trade Unions ("ACTU"), the ETU, and the MCA all supported the concept of the TSMIT. The ACTU, for example, noted that the TSMIT "helps to ensure that Subclass 457 visa holders do not impose undue costs on the Australian community or find themselves in circumstances which may put pressure on them to breach their visa conditions" particularly as they are ineligible for a range of support available to Australian citizens and permanent residents, such as Medicare.

Quotes from public submissions

TSMIT is quite clear and specific and should be used as the base salary range…TSMIT should be based on the Australian award rate for employees, but this could be difficult to manage, therefore a minimum of $48,000 should be the minimum TSMIT rate and indexed by the National Federal Wage Increase.

Australian Hotels Association (WA)

TSMIT…helps ensure that that all subclass 457 visa holders have sufficient income to independently provide for themselves and helps ensure the 457 visa program does not operate at the very lowest paid end of the labour market where the potential for exploitation of vulnerable workers is at its greatest…The ETU submits that the TSMIT should be kept and that it should not be amended in and such way that provides for a lessening of real wages.

Electrical Trade Union

The NFF considers the current Temporary Skilled Migration Income Threshold (TSMIT) framework to be overly prohibitive. The introduction of market salary rates and training benchmarks in 2009 created a barrier to use of the 457 visa programme for members in regional areas whose skilled workers are paid market salary rates below the TSMIT or the English Language Salary Exemption Threshold.

National Farmers' Federation

The MCA also noted that, unlike 457 visa holders, Australian citizens who receive award rates may also be eligible for different types of support, including "child support, single parent support, family tax benefits and various types of tax exemptions and rebates". 457 visa holders must also hold private health insurance and in some states pay for public schools. Some groups raised concerns with the process for determining or indexing the TSMIT. The Master Builders' Association, for example, argued that it "should be set through a more transparent mechanism that guarantees it is a genuine minimum salary that ensures a reasonable standard of living and is not a de-facto mechanism to restrict supply".

Other submissions, including that from the NFF, have noted particular difficulties for employers in regional areas in meeting the TSMIT and suggested it be adjusted to take earnings differentials between metropolitan and regional labour markets into account.

After consideration, on balance we believe that the TSMIT currently plays an important role in protecting the integrity of the 457 programme, since:

- it is an actual dollar amount that is a simpler figure for compliance purposes;
- it aligns with the public perception of the 457 visa as a programme aimed at skilled and experienced workers;
- Labour Agreements and DAMAs, improved and properly implemented, will be a more responsive and appropriate mechanism of addressing issues specific to regions and/or occupations where the market rates are clearly below the TSMIT; and,
- with the recommended removal of the "one size fits all" approach to labour market testing, the retention of the TSMIT will assist in maintaining confidence with the scheme.

Given this role in the integrity of the scheme, we support the retention of the TSMIT at the current rate of $53 900 with the following conditions:

- That the TSMIT stay at the current rate until such time as a full review is conducted within two years, by which time there will be an improved understanding of the labour market and the ability to undertake an analysis of the sufficiency of market rates paid to the visa holder in skilled occupations to meet minimum income needs of a skilled temporary migrant.
- Reflective of the additional costs that a temporary migrant has to bear, there is justification to have up to a 10 per cent lower threshold (i.e. $48 510) for determining the eligibility of the nominated occupation, which could be known as the Skilled Occupation Eligibility Threshold. We believe it would not challenge the integrity of the scheme to recognise that the 457 visa holder could be paid up to 10 per cent more than their Australian counterparts at this minimum salary threshold range as they have additional costs and receive fewer benefits.

Importantly, taking into account the market salary rate requirement and the income threshold of the TSMIT, the sponsor would need to pay the nominee the market salary rate or the TSMIT, whichever is the greater. The proposed Skilled Occupation Eligibility Threshold ("SOET") only relates to eligibility not to the role of the TSMIT as an income floor. In relation to the regional concerns, we acknowledge that, based on the evidence provided in many submissions, there may be merit in having a separate, lower TSMIT for nominations lodged for positions in regional areas. However, the panel has not had scope in this review to undertake a comprehensive market rate analysis, and is therefore not in a position to determine what the regional differential should be, particularly as it is likely that the regional market rates will vary.

The panel therefore recommends that the issue of regional concessions to the TSMIT be considered by government, and informed by a comprehensive analysis of wage trends in regional labour markets.

Recommendation 5

5.1 While there is an argument for abolishing the Temporary Skilled Migration Income Threshold, that it nevertheless be retained to allow for streamlining within the wider programme, and that concessions to the Temporary Skilled Migration Income Threshold be afforded under Labour Agreements, Enterprise Migration Agreements and Designated Area Migration Agreements, as appropriate.

5.2 That the current Temporary Skilled Migration Income Threshold be retained at $53 900 p.a. but that it not undergo any further increases until it is reviewed within two years.

5.3 That the two roles currently performed by the Temporary Skilled Migration Income Threshold (that is, acting as a determination of the eligibility of occupations for access to the scheme and as an income floor) be more clearly articulated in the 457 programme, and that consideration be given to accepting the eligibility threshold as up to 10 per cent lower than the Temporary Skilled Migration Income Threshold.

5.4 That the government give further consideration to a regional concession to the Temporary Skilled Migration Income Threshold, but only in limited circumstances and where evidence clearly supports such concession.

5.5 That in circumstances where the base rate of pay is below the Temporary Skilled Migration Income Threshold, the current flexible approach adopted by the department, taking into account guaranteed annual earnings to arrive at a rate that meets the minimum requirement of Temporary Skilled Migration Income Threshold be continued and made more visible to users of the programme and their professional advisors.

Training benchmarks

The 457 programme has always required sponsors to demonstrate their commitment to, or record of, training Australian citizens or permanent residents in their business operations. The intent behind this requirement is to ensure that employing overseas workers is not seen as an alternative to training Australians in that skill area.

In September 2009, following the Deegan Review, interim training benchmarks were introduced in the absence of a recommendation of the then Department of Employment, Education and Workplace Relations pending the development of permanent benchmarks.

Businesses operating in Australia for 12 months or more are currently required to meet one of two benchmarks by either:

A. making a contribution equivalent to at least of two per cent of their annual payroll into an industry training fund ("Training Benchmark A"); or,
B. expending at least one per cent of their annual payroll into the provision of training to their Australian employees ("Training Benchmark B").

If the department approves the sponsor to employ an overseas worker then they are required to continue to meet one of these benchmarks for the term of their sponsorship. On 1 July 2013, this requirement became a sponsorship obligation which is subject to ongoing monitoring and enforcement by the department.

A number of submissions note the positive role that overseas workers play in training and skills transfer. Much of the training provided by employers is delivered on the job, and by passing on their skills and expertise to their Australian co-workers, 457 workers make a significant contribution to skills development and productivity in the workplace.

Despite this important training outcome, we found that there was strong support for the principle that employers who wish to sponsor 457 visa holders make some form of contribution to training Australians in return. However, we also found that there was little support for the current training benchmarks and stakeholders questioned whether they were achieving the desired training outcomes and were too complex.

The MCA, for example, observes that "there is no evidence the training benchmarks have induced more training of Australian workers", and that they are "more symbolic than effective"[28].

The ACTU described the training benchmarks as "ineffectual" and that they "have failed to ensure that employers are investing in the up-skilling of their Australian workforce, particularly in the occupations where they are using 457 visa workers"[29].

Furthermore, we note that that Training Benchmark A is not a proportional payment and does not reflect the number of 457 workers employed in a business. This can result in similar size companies paying the same contribution despite one of them employing fewer 457 visa holders, and provides no training disincentive to employ a large number of 457 visa holders. Additionally, there is some inequity in that certain sponsors such as universities and professional service firms, by their very nature, have easily been able to demonstrate compliance with Training Benchmark B, whereas smaller firms may have to use Benchmark A as it is hard to provide evidence of spend on informal training.

[28] Migration Council of Australia, written submission to the panel.
[29] Australian Council of Trade Unions, written submission to the panel.

Other anomalies include the inability of small 'Mum and Dad' businesses to include training costs incurred by family members in Training Benchmark B in relation to wages of children employed as apprentices (unless other apprentices are also employed) or company director business owners undertaking professional development courses relevant to their duties as a company director. We identified significant concerns with the operation of Training Benchmark A in relation to the role of scholarship funds.

Under policy, the department will accept contributions to scholarship funds to universities or TAFEs in the absence of an industry training fund that operates in the sponsor's industry. As relatively few industry training funds are known to be operating, most contributions made under Training Benchmark A are therefore made to scholarship funds.

Quotes from public submissions

Long term workforce planning is difficult due to the 'here and now' focus of key performance indicators, budgeting and a constant push to improve efficiencies. This makes it potentially more attractive for employers to hire the experienced nurse rather than spend the time, money and energy in training a registered nurse who has recently graduated.

Australian Student And Novice Nursing Association

These training benchmarks have been ineffectual. They have not been properly enforced and they have failed to ensure that employers are investing in the up-skilling of their Australian workforce, particularly in the occupations where they are using 457 visa workers.

Australian Council of Trade Unions

The training benchmark needs to be removed altogether or amended significantly.
Why should a business be imposed with additional training costs just because they cannot find an employee locally. The training benchmark should be removed for any business whose turnover is less than 1 million dollars or who employ less than 10 full time employees.
The training benchmark in itself has created a situation where training providers provide commissions to migration agents.

Mark Glazbrook

The minerals sector spends more on training per employee than most industry sectors and significantly more than the national average, with the overwhelming majority of training being privately funded. In reality, around five per cent of the minerals industry workforce is either a trainee or an apprentice, with many more undertaking training that is not part of a formal qualification.

Minerals Council of Australia

There is also no evidence the training benchmarks have induced more training of Australian workers. The current training requirements are more symbolic than effective. Replacing the training benchmarks should be a higher nomination fee of $1000. This would serve multiple purposes.

Migration Council of Australia

Through consultations with stakeholders, both public and private, we note that there has been strong interest shown by training providers in establishing industry training funds or other allowable training funds aimed at prospective 457 sponsors. However, there is a high risk that some training providers are seeking to profit from this, particularly as the department has confirmed that it does not have the capacity or authority to ensure that contributions to these funds are being spent appropriately.

This is further complicated by the fact that some training providers are known to pay not insignificant commissions to Registered Migration Agents ("RMAs") for referring their sponsor clients to the training provider. While RMAs are obliged under their Code of Conduct to declare any such commissions to their clients, in practice this is difficult to enforce.

We have also found that there are problems with the compliance element of the training benchmarks. While the requirement for sponsors to comply with the current benchmarks was strengthened in July 2013, it remains difficult for the department to monitor a sponsor's ongoing compliance with this obligation. This is supported by a number of submissions which have noted the lack of proper reporting on compliance with the training benchmarks.

One of the key issues raised during the course of the review concerned the relation between the 457 programme and the skills shortages in the economy. Specifically, the questions the panel sought to address were: what role should the training requirement in the 457 programme play in addressing skill shortages; and, should it be specifically linked to the occupation being filled by the overseas worker?

Having carefully considered this, the panel believes that it is difficult to envisage a regulatory system which would fit across the programme and which could actually achieve a clear link between the 457 programme and the filling of specific shortages. This may explain why training benchmarks, as flawed as they are, have remained in place. We looked for a solution and are of the view that given the amount of money involved, and the broad range of occupations eligible for nomination under the 457 programme, linking the training requirement to specific shortages would not be effective as the overall contribution would be spread too thinly to make an appreciable difference.

In lieu of the current training benchmarks we propose a simpler model. We are attracted to the concept of a 'social licence' whereby, in return for being able to sponsor an overseas worker under the 457 programme, sponsors help to contribute to the broader issue of providing employment and training opportunities for disadvantaged Australians and apprentices, as well as facilitating specific assistance to high user 457 visa industry sectors such as IT and nursing. This could be done by the sponsor making a training contribution on the basis of each 457 visa holder that they have in their employ. We believe that this contribution could be in the order of, say, $400 p.a. per visa holder.

In addition, to reflect a sliding scale linked to size of business in the first year, the initial training fund contribution could be scaled as set out in the following Table 11:

Table 11 Proposed training fund contribution in the first year

Business Size	Amount
Small (less than 20 employees)	$400
Medium (between 20 and 199 employees)	$600
Large (200 or more employees)	$800

We considered making a different contribution throughout the term of employment, but this is administratively difficult as the size of business could change over the period of the sponsorship. Instead, we recommend that the larger differential be reflected in the first year, and that in subsequent years, the contribution be the same for everybody.

The advantage of this model over the current training benchmarks is that the size of the training contribution would be directly linked to the sponsor's usage of the 457 programme hence, those sponsors who most frequently use the programme would be required to contribute more, while those who use the programme less frequently would make more modest contributions. For small businesses employing one visa holder, the size of the contribution at the suggested rate of $400 p.a. equates to no more than 0.7 per cent[30] of the annual income paid to the visa holder.

This training contribution would apply to all 457 visa arrangements including On-hire Labour Agreements and other Labour Agreements (unless under these negotiated arrangements the stakeholders agree to an alternative customised training requirement).

It is proposed the initial contribution be paid to the department at the time of lodgement of a new nomination. The department would then pass money collected to a fund administered by the Department of Industry. It would be incumbent on the Department of Industry to report to the department how the training fund contribution has been spent so that the department could present this information in its Annual Report. This is important to uphold the concept of the "social licence" that the contribution is seen to be used to train Australians. With this is mind, we sought some advice from the Department of Industry, and our recommendations outlined below are informed by these discussions.

It is acknowledged that the department's need to invoice a sponsor each year will involve departmental resources. This annual engagement could, however, be seen as an opportunity for the department to communicate with sponsors and remind them of their obligations as a sponsor as well as provide information in relation to recent monitoring activity, the nature of shortcomings identified and sanctions imposed as a consequence.

[30] Based on $400 as a percentage of the TSMIT.

The sponsorship obligations would require amendment to ensure that cost to the sponsor of the training contribution could not be passed on to a 457 visa holder or third party.

The panel recognises that transitional arrangements would need to be put in place as this proposal would only apply to new nominations.

In addition, the panel is very aware that for a significant number of programme users this proposal would involve additional costs, and so we urge government to take this into account when considering our discussion of visa fees later in the report.

Recommendation 6

6.1 That the current training benchmarks be replaced by an annual training fund contribution based on each 457 visa holder sponsored, with the contributions scaled according to size of business.

6.2 That any funding raised by way of a training contribution from sponsors of 457 visa holders be invested in:

a) training and support initiatives, including job readiness, life skills, and outreach programmes for disengaged groups particularly youth who have fallen out of the school system;
b) programmes allowing employers to take on apprentices/trainees from target groups including Indigenous Australians and those in rural and regional areas;
c) mentoring programmes and training scholarships aimed at providing upskilling opportunities within the vocational training and higher education sectors that address critical skills gaps in the current Australian workforce. Target sectors include those industries, such as nursing and the IT sector, that rely heavily on 457 workers; and,
d) training and support initiatives for sectors of critical national priority. Target sectors include industries experiencing significant increase in labour demands, such as the aged care and disability care sectors.

6.3 That funds raised through the training contribution be dedicated to this training role and that the government reports annually on how these monies are spent by the Department of Industry.

6.4 That there be a new sponsor obligation to ensure that the cost to the sponsor of the training contribution cannot be passed onto a 457 visa holder or third party.

English language requirement

The English language requirement is an important part of the 457 programme. It provides protection to 457 visa holders by helping them understand their rights, minimise the risk of occupational health and safety incidents in the workplace and help to facilitate their participation in Australian society. It is also an essential requirement for the Employer Nomination Scheme ("ENS"), Regional Sponsored Migration Scheme ("RSMS") and General Skilled permanent residence pathways.

Having regard to the number of 457 visa holders who transition to these visas, we believe it is important that prospective sponsored employees be aware of the English language competency requirement they should be meeting.

Currently, most 457 visa applicants are required to demonstrate their English language proficiency by achieving a score of at least 5 in each of the four IELTS test components - listening, reading, writing and speaking (a description of the IELTS band scale can be found at Appendix 9). Since 1 July 2013, 457 visa applicants have also been able to demonstrate their English proficiency by achieving a score of at least a 'B' in all four components of the Occupational English Test ("OET") (unless registration or licensing bodies require a higher level of proficiency).

With effect from November 2014 the Assistant Minister for Immigration and Border Protection has expanded the list of acceptable tests for a range of visas that do not include the 457 visa. The department's website states that the Minister's decision not to extend the other tests to the 457 visa is due to the fact that this review is currently considering the issue.[31]

There are presently some exemptions to the English language requirement for 457 visa applicants. These exemptions are for applicants who: will be paid a base salary above the specified exemption threshold currently set at $96 400 p.a.; hold a passport from Canada, the United States of America, the United Kingdom, the Republic of Ireland or New Zealand; or, have completed at least five consecutive years of full-time study in a secondary and/or higher education institution where the instruction was delivered in English.

On 1 July 2013, all occupation-based exemptions from the English language requirements were removed due to integrity concerns with certain occupations that had been exempt.[32]

[31] www.immi.gov.au/News/Pages/aelt.aspx

[32] Previously, ANZSCO Major Groups 1, 2, 4, 5, 6 and Sub-Major Group 31 and Unit Group 3993 were exempt. Current exemptions in relation to at least five years consecutive full-time study in English and nationals of the 5 English speaking countries also were in place. The base salary exemption was set at $92 000 p.a. Essentially, the nominated occupations exemption in place before 1 July 2013 meant that only 457 visa applicants nominated for a trade occupation were required to have their English languages skills assessed, and then only if none of the other exemptions applied.

The English language provisions were further bolstered to prevent misuse of the salary exemption. This was achieved by ensuring the salary exemption was based on the salary assessed in the most recently approved nomination linked to the visa applicant.

During our consultations, it was pointed out that the English language requirements can act as a significant integrity measure, since they can help ensure that 457 visa holders properly understand their rights and obligations. In this way, the requirements can provide protection to 457 visa holders who might have been vulnerable without an adequate level of English. On the other hand, many stakeholders consider the current English language requirement too onerous for most workers, stating that these requirements are often a barrier to employing overseas workers, that they compromise the flexibility of the 457 programme and have considerably slowed down the process as well as imposed additional costs. For these stakeholders, the current English language requirements are too high. They recommend that a more practical level of English would be appropriate for the programme.

Other stakeholders consider that the requirement for 457 visa applicants to provide documentary proof of five years consecutive secondary or tertiary study in English is inflexible and often difficult to prove in practice.

Stakeholders who support the retention of the current English language requirements state that it should not be lowered, because it is critical in ensuring good occupation health and safety in the workplace, in understanding work rights, and in reducing the potential for exploitation in the workforce. Some have also argued that the English language requirements enhance the productivity and long term employability of 457 visa holders.

Many stakeholders have advocated an exemption to English language requirements for certain occupations. There is support for an occupational based exemption for those occupations that are ANZSCO Major Groups 1 and 2. Stakeholders have particularly argued that the occupations of academic/researcher, where 457 visa applicants have taught, published and/or studied in English, should be exempt from English language requirements. Feedback also indicates that it may be appropriate for concessions to the English language requirements to be permitted where appropriate, thus providing greater flexibility on an occupational basis.

Stakeholders have commented that they would like to see additional tests to IELTS be considered for the 457 programme. They have observed that IELTS is a one-size fits all approach which was not created to test migrant language skills. The IELTS testing system has been criticised by stakeholders for being academic rather than vocational, and the use of the term “vocational English” in the test can be misleading.

Quotes from public submissions

Historically the main problem we see at RDA is that the IELTS test has been hard for many potential 457 visa holders to meet. When you consider that the IELTS requirement to enter Australia is considerably lower than the level required to work in Australia this provides problems with consistency. Either we need to be stricter on requirements for entry to Australia or we need to be more flexible with the IELTS level for 457 visa holders. The current IELTS test is hard even for someone from an English speaking background.

RDA Murraylands Riverland

The current exemption to formal testing available to applicants who have studied for five consecutive years in institutions where English is the language of instruction requires applicants to locate evidence of their education that goes back many years or to contact schools and universities to provide documents. This can be onerous and should not be necessary for applicants from countries where it is well accepted that English is the primary language of education and the workplace.

Ernst & Young

It is proposed that the Department returns to occupation based exemptions. For example, ANZSCO skill levels 1 and 2 (excluding health care occupations) should be exempt from the English language requirements.

KPMG

DoB is aware of several restaurant/café owners in Darwin who have reduced trading hours or closed operations because of the shortage of qualified staff. There are others in the sector who have indicated that they are seriously considering their future business options. It is not possible for them to continue to operate unless they can attract skilled workers from within Australia or identify overseas cooks and chefs who are able to meet the English requirements of the Subclass 457 program.

Northern Territory Department of Business

IELTS was not designed as, and is not, a test of vocational English proficiency. Rather, it was designed specifically to assess the English of students intending to enter English-speaking universities or training programmes.

David Ingram

There is an inherent belief that higher levels of English language skills are required for both 457 and 119 visas due to reasons associated with ensuring employees can be trained in and understand occupational health & safety law, policies and work procedures etc. This is a fallacy because it assumed that people are safer and/or work safer because they have good English skills - this is not the case. Statistics within MaxiTRANS provide evidence to the contrary where, the vast majority of safety related incidents involve people educated in Australia and with reasonable English language skills.

MaxiTRANS

The unreliability of the IELTS test is undermining the 457 visa programme as it does not accurately assess an applicant's English language skills.

Mark Tarrant Lawyers

We recommend that the English language requirement be amended to an average across the four test components, rather than a minimum. Given the range of occupations that utilise the 457 programme, we consider it appropriate to set this average at an IELTS score of 5 across the four competencies, while allowing certain occupations to require a higher score where necessary.

We also recommend that greater flexibility be provided for industries or businesses to seek concessions to the English language requirements for certain occupations, should they have the case to do so. This may be of relevance not only to the university sector but also to some occupations including those that are subject to a Labour Agreement.

We support the proposal that the department give further consideration to allowing the use of additional tests.[33]

We recommend that consideration be given to expanding the alternative English language test providers to include TOEFL internet based tests, Pearson Test of English Academic ("PTE"Academic) and Cambridge English: Advanced ("CAE") as well as explore the suitability of other tests such as the International Second Language Proficiency Rating test.

This is in line with the expansion of alternative English language tests in other visa programmes announced by the Assistant Minister for Immigration and Border Protection on 22 May 2014.[34]

Our recommendation in this regard will address the concerns expressed in many submissions in relation to the difficulty experienced in booking tests as well as having to travel to take a test.

We recognise English language test results are necessary for some occupations that require registration or licensing. It is essential that this be maintained.

Recommendation 7

7.1 That the English language requirement be amended to an average score. For example, in relation to International English Language Testing System, the 457 applicant should have an average of 5 across the four competencies (or the equivalent from an alternative English language testing provider).

7.2 That greater flexibility be provided for industries or businesses to seek concessions to the English language requirement for certain occupations on a case by case basis, or under Labour Agreement, Enterprise Migration Agreement or Designated Area Migration Agreements, as appropriate.

[33] In November 2011, alternative language tests to IELTS (TOEFL internet-based test, Cambridge and Pearson) were implemented for the Student visa programme. Currently, the only accepted English language tests for the 457 programme are IELTS and OET.

[34] Press Release 22 May 2014 www.minister.immi.gov.au/media/mc/2014/mc214807.htm

7.3 That consideration be given to alternative English language test providers.

7.4 That consideration be given to expanding the list of nationalities that are exempt from the need to demonstrate they meet the English language requirement.

7.5 That instead of the current exemption which requires five years continuous study, five years cumulative study be accepted.

Genuine position requirement

The genuine position requirement, which was introduced as part of the 1 July 2013 reforms, provides authority for the department to refuse a nomination if there are concerns that the position associated with the nominated occupation is not genuine or was created specifically to achieve a migration outcome.

This is intended to ensure that the position is genuinely required by the business and that the 457 programme is only being used for legitimate purposes. The requirement also provides decision-makers with the ability to better scrutinise cases where the authenticity of the certifications made by the business in relation to the tasks and skill level of the position is questionable.

Many stakeholders consider this requirement to be highly effective as it provides decision-makers with a valuable tool with which to query dubious nominations. However, concerns have also been raised by some stakeholders that this requirement provides decision-makers with too much discretion.

Some stakeholders have also suggested that this requirement is an unnecessary regulatory burden. In addition, there have been concerns raised about inconsistent decision making.

Quotes from public submissions

The discretion…to decide whether or not a nominated occupation is 'genuinely required'…has seen some highly subjective decisions being made by case officers…

Law Council of Australia

In our view, the genuineness criterion was an important reform which provides Department officers with an effective tool for identifying and refusing applications where the nominated position is bogus or misleading.

This measure better and sufficiently addresses the use of generalist occupations as an attempt to use the subclass 457 visa program to sponsor unskilled workers into low skilled roles.

Fragomen

We are supportive of the genuine position requirement. We believe that decision-makers should request further information where they have concerns about a nominated position, and that applicants should be invited to provide more information to address these concerns before a final decision is made. However, we recognise that it can be a subjective decision and that it has brought another delay into the process. As such we recommend that there be targeted training for decision-makers in relation to its use.

Recommendation 8

8.1 That there be targeted training for decision-makers in relation to the assessment of the genuine position requirement.

8.2 That before decision-makers refuse a nomination on the basis of the genuine position requirement, the sponsor be invited to provide further information to the decision-maker.

Skills assessments

A fundamental requirement in the 457 programme is that overseas workers should have the skills, qualifications and experience necessary to perform the duties of their nominated occupation. In most cases, a decision-maker's assessment of this requirement is based on documentation provided by the applicant in support of their 457 visa application, and does not require a formal skills assessment. However, a number of applicants must demonstrate their skills by providing a skills assessment.

A Trades Recognition Australia ("TRA")[35] skills assessment is currently required for 30 trade occupations if the applicant is a national of one of ten countries.

Quotes from public submissions

VETASSESS skills assessment requirement into the subclass 457 visa criteria creates particular difficulties for senior managers who have gained their skills from many years in their field, rather than through formal qualifications… these are undesirable outcomes that are not sufficiently counterbalanced by any beneficial effect, because the use of skills assessments is a misdirected attempt to achieve the desired policy outcome.

Fragomen

The existing skills assessment process is sometimes logistically cumbersome and could be improved in terms of ease and accessibility. A salary threshold above which a skills assessment would not be required for particular occupations also warrants consideration.

Australian Mines and Metals Association

[35] Trades Recognition Australia is a skills assessment service provider specialising in assessments for people with trade skills gained overseas or in Australia, for the purpose of migration and skills recognition.

Quotes from public submissions

A VETASSESS skills assessment involves significant expense, delay and organisational difficulties of the kind indicated under the "English language skills" section above. Indeed the skills assessment fee is $700 and the skills assessment process takes between 2 – 3 months… An Australian University is ideally qualified to make an assessment as to whether a candidate meets the skills entry and work experience requirements for the positions in question. In the circumstances, a VETASSESS skills assessment should not be required.

UNSW/ANU/Monash/Uni Melbourne

Since 1 July 2013, all applicants nominated for the occupations of *Program and Project Administrator* and *Specialist Managers (nec)* have been required to undertake a skills assessment conducted by VETASSESS.[36] Integrity concerns existed with the high use of these two occupations in the 457 programme and since the introduction of the VETASSESS skills assessment requirement, applications for these two occupations have significantly decreased. In addition, a decision-maker has the option to require a skills assessment where there is concern in relation to the skills of a 457 visa applicant.

We see no reason for the existing skills assessment requirements to change.
The streamlining proposal outlined further in this report will go some way to addressing concerns raised by stakeholders on this topic. Concerns were raised by various stakeholders during the consultation process regarding the length of time taken to complete a skills assessments and the cost involved and, further, that VETASSESS does not appropriately recognise work experience. If there were a way that work experience could be better recognised, then we believe it would be worthy of consideration.

In addition, industries such as the university sector expressed concern that because the skills assessments use merely generic occupations for academic research and coordinators, those industries and sectors face the additional burden of providing justification for specific occupations within that generic category.

We believe that the recommended responsive approach to an occupations list would be a more appropriate way of addressing these concerns, as universities could seek to have a specific occupation listed.

Recommendation 9

9. That the government should explore how skills assessments could more appropriately recognise a visa applicant's experience.

[36] Vocational education and training assessment provider approved by the Minister for Immigration and Border Protection to undertake skills assessment for the migration programme for general occupations.

Sponsorship

There are currently two classes of sponsor within the 457 programme, namely:

1. a party to Labour Agreement; and,
2. a Standard Business Sponsor.

Within the Standard Business Sponsor stream, there are different requirements for Australian and overseas businesses.

Overseas business sponsors can only use the programme to establish business operations in Australia or to fulfil a contractual obligation in Australia. In comparison, businesses already operating in Australia do not face these restrictions: however; they must meet training requirements that do not apply to the overseas business sponsors.

Additionally, businesses which are large, longer term users of the programme and which employ a high percentage of Australians relative to overseas workers may apply for accredited status. Accredited sponsors receive benefits such as an extended sponsorship approval period and priority processing of nomination and visa applications. Most businesses that are approved as a Standard Business Sponsor are approved for a three year period. Accredited sponsors are approved for six years and businesses that have operated for less than 12 months are only approved for one year.

Quotes from public submissions

Current unnecessary duplication and administration can be reduced by enabling Australian business sponsors to nominate individuals in any of the employment related visa categories without obtaining separate sponsorship approval and duplicating information and documents with each nomination for permanent residence… The savings to business and the department by streamlining procedures under one simple sponsorship framework will be significant.

Ernst & Young

The introduction of a reduced sponsorship validity period of 12 months for start- up businesses has become problematic… the requirement to reapply for sponsorship and associated 457 visa approval within a 12 month period places an undue financial and administrative burden on newly established businesses.

PricewaterhouseCoopers

Restricting business to a 12 month approval period does not provide new businesses with certainty or the ability to structure its activities without any guarantee of continued access to its sponsored overseas worker at the end of the 12 month period.

Chamber of Commerce and Industry W.A.

As well as 457 Standard Business Sponsors, there are additional classes of sponsorship for other temporary work visa subclasses, such as the training and research sponsor, temporary work sponsor, special programme sponsor, and professional development sponsor.
As a result, a business may have to undergo a sponsorship approval process multiple times depending on its recruitment needs. For example, a university may become a Standard Business Sponsor to hire a lecturer but may also become a training and research sponsor to enable an overseas academic to participate in a research project.

We are of the opinion that Standard Business Sponsorships should be approved for a greater period of time and that a simplified renewal process should be investigated and implemented as part of the government's deregulation agenda.

Some stakeholders expressed concern at the recently introduced limitation of one year approval for start-up businesses and the associated limitation of the visa grant period to one year. We recognise there are inherent risks with some start-up businesses and the potential for businesses to be set up only for the purpose of sponsoring 457 workers. In addition, we recognise that a shorter term for a start-up businesses signals to the worker that this is a temporary arrangement, and that he or she should have limited expectations, in order not to be as severely affected should the business not succeed. In this context, and in the face of evidence from business that one year is insufficient time for a new business to establish itself in a new country, we are recommending a longer term sponsorship of 18 months.

We also note that the department has recently commenced processing the overseas business sponsorship caseload in Australia and that there is limited information about how this operates currently. It appears that some overseas businesses have been approved for one year and others for three years. Labour Agreements are approved for three years, with sponsors renegotiating numbers for the second and third years through a lengthy process of consultation with the department.

In the future, there will also be a much broader base for Labour Agreements.
We considered sponsorship lengths for overseas business sponsors and Labour Agreements, and, while recognising the benefit of aligning these with the general approval period recommended for Standard Business Sponsorships, we are concerned that there is currently not enough information on which to base such a recommendation. We suggest that once more information is available about this cohort of sponsors, the department consider aligning the sponsorship periods. In addition, we recommend that the department consider combining as many sponsorship classes as soon as possible. This is in alignment with the government's deregulation agenda, will simplify the sponsorship processes, avoid multiplication and additional costs for businesses.

To remove an existing administrative burden on current sponsors, we recommend changes be made to the requirement to notify the department of certain events within 10 days as part of sponsorship obligations. We consider this time period to be unnecessarily short, and recommend that the notification period be lengthened from 10 days to 28 days. Amongst other benefits this will better align with obligations under the Corporations Law. We also suggest consideration be given to amending the obligation imposed on sponsors to notify the department of any change to a 457 visa holder's duties. To reduce this administrative burden on sponsors we suggest restricting this obligation to notifying of a change of duties only where the change would result in the 457 visa holder working in a different 4-digit ANZSCO Unit Group: for example, no reporting would be required in the case of a nurse who has changed duties resulting in a shift from one specialist area to another.

In our discussions on this topic with large users of the programme, the question was raised about publishing the names of sponsors of 457 visa holders. Feedback from the ACTU indicates that they believe "a public register of all sponsoring employers should be introduced as an important transparency measure for the integrity of the 457 visa program".[37] We note that, as a transparency and integrity measure, the United Kingdom publishes a list of organisations that are licensed to sponsor a sizeable number of skilled migrant workers,[38]and that the Deegan Review in 2008 suggested a list of large users of the programme be published on the department's website.[39]

Through our discussions, however, and our examination of the statistics (nominations, visa grants, and compliance) relating to large users, we have determined that the operative consideration is not necessarily whether an organisation is large, but whether it has a disproportionately large number of 457 visa holders in its workforce. Of course, it is without doubt important to ensure that larger users of the 457 programme utilise the programme in the way it is intended and not as a substitute for employing Australian workers.

The panel believes that the range of recommendations we are making in this report will go a long way to ensuring the integrity of the programme and increase transparency.

The current sponsorship requirements include a provision that a sponsor must provide a written attestation that the business has a strong record of, or demonstrated commitment to, the employment of local labour, and to non-discriminatory employment practices. The department considers this requirement is met when the sponsor provides a written attestation. No assessment of the sponsor's compliance with this attestation is conducted, nor is there an ongoing obligation for a sponsor to have in place non-discriminatory employment practices and a demonstrated record of employing local labour.

[37] Australian Council of Trade Unions, written submission to the panel.
[38] Register of Sponsors Licensed Under the Points-based System, UK Home Office, p. 1.
[39] Barbara Deegan, *Visa Subclass 457 Integrity Review – Final Report ("The Deegan Review")*, October 2008.

In our examination of compliance it has come to our attention that some sponsors have been paid by visa applicants for a migration outcome. This undermines the integrity of the programme and we consider sanctions including possible criminal sanctions should apply.

Recommendation 10

10.1 That Standard Business Sponsors should be approved for five years and start-up business sponsors for 18 months.

10.2 That as part of the government's deregulation agenda, the department should develop a simplified process for sponsor renewal.

10.3 That the department consider combining as many sponsorship classes as possible.

10.4 That when more detailed information is available, the department should investigate the alignment of overseas business and Labour Agreement sponsorship periods with the general Standard Business Sponsorship approval period.

10.5 That the timeframe for the sponsor to notify the department of notifiable events set out in legislation should be extended to 28 days after the event has occurred.

10.6 That the department should explore options that would enable the enforcement of the attestation relating to non-discriminatory employment practices.

10.7 That it be made unlawful for a sponsor to be paid by visa applicants for a migration outcome, and that this be reinforced by a robust penalty and conviction framework.

Fees

We have received wide ranging feedback that the fees attached to the 457 programme are now excessive and act as a disincentive to participation in the programme. Sponsors state that the fee increases have had a significant impact on the costs associated with recruiting the best talent. The fees reportedly place an additional and unreasonable burden on the business sector, in particular on small business.

While the department has indicated that these changes formed part of an overall programme of initiatives, known as the Visa Pricing Transformation ("VPT") Programme, which saw the introduction of new visa services and a new pricing structure,[40] stakeholders can see no justification for the fee increases in 2013 and have noted that there has been no corresponding improvement in the client service provided by the department. Stakeholders have also questioned how the fee increases have contributed to integrity and compliance in Australia's migration system.

[40] News 457 nomination fee increases - www.immi.gov.au/News/Pages/Nomination-fee-increase-1-July.aspx

The department's statement to justify the fee increases as outlined on the website is that the "increases reflect the real cost of processing and administering nominations and brings Australia's visa system in line with international benchmarks". More broadly, the department has commented that the visa pricing increases "will put Australian visa services on a substantial financial footing in the long term while not detracting from Australia's global position as a destination of choice to visit, live, work and study" [41]. We have also observed anomalies in the current pricing structure. Of particular concern are the significant fees that secondary visa applicants are charged under the current framework, together with the fees imposed for visa renewals.

Through the consultation process, we have not been able to clearly identify a valid justification for the substantial nature of the recent fee increases and welcome a clear explanation from government about the purpose of these pricing increases. Of particular concern is the subsequent temporary application charge which may apply to the 457 visa holder.[42] We have difficulties in determining the policy rationale behind this approach given the demand driven nature of the 457 programme.

Quotes from public submissions

Visa application fees are excessive, with applicants experiencing difficulty in meeting associated costs for subsequent visas or to bring family members over to join them whilst in Australia.

Teys Australia

CCF believes the recent fee increases were inappropriate as they were intended purely as a disincentive. There is no evidence that the quality of service provided by DIBP has improved commensurately.

Civil Contractors Federation

We note that the 457 programme operates in a highly competitive global market place in which permanent residence in Australia is a valuable commodity. The setting of visas fees must be seen within this broader international context. A comparison of international fees is provided at Appendix 7. We also note that in the current settings, the fees attached to the 457 programme may be acting as a disincentive for participation in the programme. We question whether this was the government's intention.

While it is outside the panel's scope to consider the specific dollar value of visa fees, we suggest that the fees be reviewed and set at a more reasonable level, particularly for secondary visa applicants and on-shore visa renewals.

[41] www.newsroom.immi.gov.au/channels/NEWS/releases/australian-visa-pricing-changes-to-drive-use-of-online-services.

[42] This charge is applicable where a person holds a temporary visa which they applied for in Australia, who then applies for a 'subsequent' temporary visa whilst in Australia.

Recommendation 11

11. That the government should review the fee structure, especially for secondary visa applicants and visa renewal applications.

Information provision to 457 visa holders

We believe that 457 visa holders who have a good understanding of their workplace rights are less susceptible to exploitation. As such, we consider that the provision of information on workplace rights to 457 visa holders would strengthen the integrity of the 457 programme. Currently, 457 visa holders have available to them a document on the department's website named *Your Rights and Obligations – Immigration Facts for Workers* which provides limited information relating to the rights of 457 visa holders.

We have heard of occurrences where 457 visa holders have signed their employment contract but have not been provided a copy for their reference. This scenario combined with other feedback from stakeholders, has led us to believe that information provision to visa holders is less than adequate.

We believe information provided to 457 visa holders should be extended to include relevant information from a number of Commonwealth agencies including the department, the FWO, and the ATO. Whilst a consolidated document covering all aspects of a 457 visa holder's rights may be difficult to coordinate, due to the challenge of keeping information current, there should be an increased focus on this matter by the department and other relevant agencies. In addition, the difficulty in finding information on the department's website, particularly the lack of any specific information regarding the rights of 457 visa holders, should be addressed.

Quotes from public submissions

The Commission supports the recommendation…to provide improved support and information to employers and visa holders about their rights and obligations…457 visa holders should be supplied with information, in their own languages, and in a format appropriate for those with a print disability, about anti-discrimination and workplace laws – both Commonwealth and State. This information should be provided to visa holders upon receiving their visa, and should also be made available to migration agents, and migration services who come into contact with 457 visa holders.

South Australia Commissioner for Equal Opportunity

Quotes from public submissions

Visa holders do not generally appreciate the significance of not meeting their obligations. Further communication with visa holders needs to occur to ensure that they are meeting their obligations…responsibility is currently with employers to advise of rights and responsibility under FWA and NES. The DIBP web site provides sufficient information on the 457 rights and responsibilities.

Australian Meat Industry Council

It is essential that 457 visa holders receive timely and relevant information on their rights under immigration and workplace laws… information must be provided directly to 457 visa holders when they are granted their visa and they commence employment…there should be a new, specific sponsor obligation to inform every 457 visa holder in writing of their rates of pay and terms and conditions of employment, and their rights and responsibilities under immigration and workplace law. This should include information on the role of the DIBP, the FWO and unions in pursuing underpayment claims and other breaches of sponsorship obligations. Information should be provided to visa holders in all relevant languages.

Australian Council of Trade Unions

The current information for 457 visa holders is not adequately detailed or easily located. Given the department's increasingly strong online presence over various digital and social media channels, the panel considers it vital that information relating to the rights of 457 visa holders should be suitably available and readily accessible through contemporary media methods.

Recommendation 12

12.1 That sponsors be required to include as part of the signed employment contract:

a) a summary of visa holder rights prepared by the department; and
b) the Fair Work Ombudsman's *Fair Work Information Statement*.

12.2 That improvements be made to both the accessibility and content on the department's website specific to 457 visa holder rights and obligations, and utilising the department's significant online presence more effectively to educate 457 visa holders on their rights in Australia.

A streamlined approach

In addressing the terms of reference of this review (see Appendix 1) we feel there is considerable scope to streamline processes. In particular, a number of submissions argued for the introduction of an intra-company transfer visa.

It is the panel's considered view that the streamlined approach for processing outlined below will deliver all - or most - of what advocates for intra-company transfer visas want, as well as providing benefit to many sponsors more broadly.

We believe that a streamlined approach will maintain programme integrity, while at the same time promoting deregulation and providing the benefit of faster processing.
In developing this approach there are four characteristics we have used based on the evidence we have examined as part of this review. The evidence shows that characteristics such as business size, occupations, salary and behaviour matter – and we have based this proposed indicative model in Table 12 below on those characteristics.

Table 12 Indicative model for streamlined approach

	Sponsor characteristics	Nomination characteristics
Stream 1 Nomination and visa applications will be assessed in this stream if all five of these sponsor and nomination characteristics are met.	- Turnover at least $4 million per year - Have been an approved sponsor for more than four years - No sanction history	- Nominated occupation included in new Occupation List 1 - Nominated base salary greater than $129 300
Stream 2 Nomination and visa applications will be assessed in this stream when all five sponsor and nomination characteristics are met from stream 2 or a combination of stream 1 and 2 characteristics are met.	- Turnover at least $1 million per year - Have been an approved sponsor for more than one year - No sanctions in the last four years	- Nominated occupation included in new Occupation List 2 - Nominated base salary between $96 400 and $129 300
Stream 3 Nomination and visa application will be assessed in this stream if any of the five characteristics exist. Essentially this will mean all others.	- Turnover less than $1 million per year - Have been an approved sponsor for less than one year - Sanctions in the last four years	- Nominated occupation included in the new Occupation List but not listed in Occupation List 1 or Occupation List 2 - Nominated base salary less than $96 400

The practical outcome of this approach is the potential to significantly streamline a segment of the 457 programme (stream 1) and for many stakeholders – this will go some way to address their concerns about the current system.

Stream 2 could potentially receive a light touch assessment which would enable processing resources to be directed to the higher risk portion of the caseload so all processing times would be decreased.

As the department's data collection and analysis capability is increased, the parameters of the stream characteristics could be reassessed on a regular basis to move additional applications into streams 1 and 2.

The new occupational lists (referred to as Occupation List 1 and Occupation List 2) will be issued by the department but it is envisaged that they would be responsive to specific concerns via the ministerial advisory council process. To assist in understanding the streaming proposal, Occupation List 1 will contain occupations at the highest skill level, and Occupation List 2 is likely to consist primarily of ANZSCO Major Group 2 and above.
It is envisaged that no ANZSCO Skill Level 3 occupations such as technicians and trade occupations would be in Occupation List 1 or Occupation List 2.

To illustrate how this streamlined approach has the potential to offer opportunities to simplify and deregulate the programme, Table 13 provides examples of current requirements that could be amended to achieve productivity gains through a streamlined approach to processing. It is important to note that where the streaming has allowed certification, this does not mean that the sponsor is removed from the obligation to comply with the requirements of the programme.

In addition to processing outcomes, many stakeholders provided feedback on inefficiencies in the 457 sponsorship framework and we have considered these concerns closely. Many of the concerns regarding the operation of the accredited sponsor framework have been addressed within the streamlined 457 recommendation. We are of the opinion that current accredited sponsors should retain their priority processing benefits within the relevant nomination and visa application streams until their sponsorship ceases; however, no further sponsors should be afforded accredited status while the streamlining format is in its infancy.

We suggest that should the streamlining format be implemented, the department investigate a redefined accredited sponsor system that reward businesses who maintain a high Australian workforce percentage. This should not be limited to large businesses, in contrast to the current system.

Table 13 Indicative Model for streamlined approach

Nomination	Visa application	Sponsorship obligation
Stream 1		
- No Market Salary Rate ("MSR") assessment - No TSMIT - Genuine position certification (but current legislative provision still exists)	- No English test required - No formal Skills Assessment	- Current MSR obligation does not apply - New obligation that the base salary must remain above the Fair Work Act threshold, currently at $129 300 - New circumstance to bar or cancel a sponsorship if position is found not to be genuine
Stream 2		
- MSR certification (legislative provision still exists so assessment could be undertaken if deemed necessary) - No TSMIT - Full assessment of Genuine position requirement	- No English test required - Current Skills Assessment policy settings apply	- MSR obligation applies up to threshold of $180 000 - New obligation that the base salary must remain above $96 400 (irrespective of number of hours worked) - Reduction of earnings to become a notifiable event - New genuine position / health insurance obligations
Stream 3		
- Full MSR assessment - TSMIT applies - SOET requirement - Full assessment of Genuine position requirement	- English test required - Current Skills Assessment policy settings apply	- MSR obligation applies up to threshold of $180 000 - New obligation that the guaranteed annual earnings must remain above TSMIT (irrespective of number of hours worked) - Reduction of earnings to become a notifiable event - New genuine position / health insurance obligations

Recommendation 13

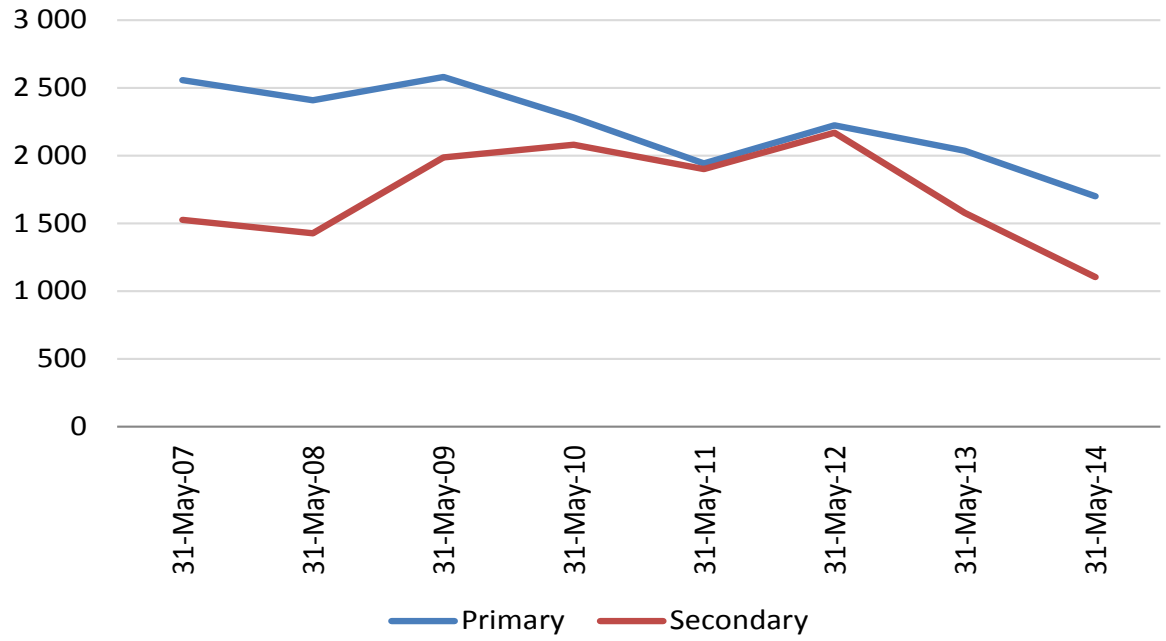
13.1 That consideration is given to creating streamlined processing within the existing 457 programme as a deregulatory measure. To maintain programme integrity, streamlining should be built around risk factors including business size, occupation, salary and sponsor behaviour.

13.2 That should the recommended nomination and visa streamlining outlined in this report be implemented, the department should investigate a redefined accredited sponsor system. Current accredited sponsors should retain their priority processing benefits until their sponsorship ceases; however, no further sponsors should be afforded accredited status until a new system is implemented.

Labour Agreement stream

A Labour Agreement is an arrangement negotiated between an employer and the Australian Government. Labour Agreements aim to provide a migration pathway for businesses and industries that need semi-skilled and skilled workers, and that cannot use the mainstream 457 programme. Chart 5 illustrates the number of 457 visa holders under a Labour Agreement. Compared to the total number of visa holders, those covered by Labour Agreements is less than three per cent.

Chart 5 Subclass 457 visa holders in Australia under a Labour Agreement



The Labour Agreement document defines employer obligations such as the terms and conditions of employment for the skilled overseas workers, and the training requirements for Australian employees. It also defines the skill and English language requirements for the overseas workers. Since 2007, on-hire firms have had to negotiate an On-hire Labour Agreement ("OHLA") to sponsor workers to access the 457 programme. Other template Labour Agreements have been negotiated for the meat, snow sport and fishing industries. Additionally, there are non-template arrangements to meet niche business needs.
A number of stakeholders commented to us that protracted negotiation times coupled with onerous ongoing requirements for Labour Agreement sponsors (such as yearly reporting to the department) make Labour Agreements cumbersome and resource-intensive.

In written submissions, stakeholders have advocated that template Labour Agreements should be introduced for their respective industries, due to difficulties in both recruiting in their industries and an inability to meet requirements under the mainstream 457 programme.

Stakeholders have also commented that ANZSCO job definitions do not accommodate the unique or non-standard position requirements for their respective industries, including the skills requirements prescribed. This in turn has posed problems in sponsoring skilled overseas workers in some roles.

Quotes from public submissions

The onerous, cumbersome and expensive obligation to establish and maintain a [on-hire] Labour Agreement appears to be an excessive measure in attempting to eliminate inappropriate use of the 457 visas… Not only is a substantial submission needed to be made to apply for a Labour Agreement (with many months of delay for approval) a further major submission is required to re-negotiate the quota for each subsequent year… Successive governments have created increasingly burdensome requirements to make it more and more difficult for us to provide this service.

Bayside Personnel Australia Pty Ltd Submission

The agribusiness sector has experienced considerable variations in skill base as new processes and requirements bring new technical and specific roles across the industry… New roles and the qualifications that match them are currently not captured or recognised within ANZSCO, which is out of date and in need of substantial review. The dairy industry has had difficulty in the past with using the "Agricultural Technician" classification (311111), which is what many farmers use to bring in Farmhands and other roles that don't meet the skill level requirements for Dairy Cattle Farmer (121313).

National Farmers Federation Submission/Supplementary Submission

We also heard views from stakeholders relating to the difficulties encountered in sponsoring 457 workers in workplaces with non-standard working hours and conditions, despite the fact that these are considered to be broader industry-wide norms. We note this view has been expressed particularly by the hospitality, tourism and dairy industries.

We consider Labour Agreements to be a valuable pathway under the 457 programme that can be further utilised and expanded to meet changing labour market needs. However, the responsiveness and timeliness of Labour Agreements needs significant improvement, as the submissions from some industries and regions have indicated the difficulties being experienced in shortages of semi-skilled workers and the impact this is having on productivity and economic outcomes.

It is also our view that OHLA have more in common with Standard Business Sponsors than they do with other Labour Agreements. We believe that there is an opportunity to further simplify arrangements and align on-hire requirements to other Standard Business Sponsor requirements. Any such change must ensure that as many common elements are maintained and aspects such as the current on-hire agreement requirement for a direct and full-time employment relationship and contract of employment (that is, a contract of service as distinct from a contract for services) are included as part of its construction.

Recommendation 14

14.1 That Labour Agreement negotiation times be significantly improved to enable a demand-driven and responsive pathway for temporary migration, where the standard 457 programme arrangements are not suitable.

14.2 That to enable the Labour Agreement pathway to be more open and accessible for additional industry sectors, consideration be given to the development of other template agreements that will address temporary local labour shortages in industries of need.

Pathways to permanent residence

The existing pathway most used by 457 visa holders is the Temporary Residence Transition stream, which is one of the two streams of ENS or the RSMS for permanent residence. This pathway is also now available to New Zealanders and to their partners. This stream is for 457 visa holders who have worked for at least two years in the same nominated position in the business of a nominating employer who wants to offer them a permanent position. The nominated position must be full time, ongoing and available for at least two years, and be consistent with the position in which the visa holder has already worked in the business.

Submissions have indicated concerns that the pathway to permanent residence can distort the behaviour of programme participants and give visa holders false expectations about their future in Australia. Therefore, in supporting the continuation of a pathway from the temporary 457 programme to permanent residence, it is important to ensure that the settings are such that the lure of permanency does not undermine the integrity of the 457 programme. We also note that, while this pathway offers opportunities for the overseas worker, there is also the potential for an employer to use this as an opportunity to exploit the overseas worker.

To reduce the potential for 457 workers who wish to transition to permanent status being in a 'bonded' relationship to their employer, we recommend that changes be made to enable 457 visa holders to be required to work for two years in Australia before transitioning to ENS or RSMS permanent residence visas, but only a minimum of one year with the nominating employer. We also suggest that consideration be given to increasing the points under the General Skilled Migration program for permanent residence for time worked in Australia.

We are also aware that there are some eligibility anomalies which have been raised through the consultation process, such as 457 visa holders not being eligible for a permanent visa due to current age restrictions. Where an overseas worker has entered the country at a certain age and works in Australia for a number of years, it seems disadvantageous to both parties if the worker is ineligible to be sponsored for a permanent visa because he or she meets an age milestone during this period.

Quote from public submissions

A migrant who lives in Australia for a significant period of time, who contributes to the economic life of the nation through their labour and their taxes, who has quite possibly paid fees to study here, is a person who for all intents and purposes, makes Australia their home. As Immigration Minister Scott Morrison acknowledged (whilst still in opposition):

> *When we arrive in this country, we become party of it – and it becomes part of us – it becomes what [Sir Henry] Parkes described as 'the land of our adoption'. It changes us – and in doing so it provides the basis for our connection with one another.*[43]
> *The more time temporary migrants spend living, working and studying in Australia, the more financial, cultural, psychological and emotional attachments they are likely to develop (a process that is aptly described as 'putting down roots').*

As a result, these temporary migrants also accumulate rights – moral rights, if not legal ones. Consequently, we as citizens, via the government that represents us, also accumulate obligations towards these temporary migrants.

Peter Mares, Institute for Social Research, Swinburne University of Technology

To ensure that valuable and experienced workers are not lost to the economy, the panel recommends that consideration be given to extending the age restriction on those 457 visa holders transitioning to ENS/RSMS permanent residence visas. This is in line with current government policy designed to encourage Australian workers to remain in the workforce longer.

We note that other temporary residence visa holders working in Australia often transition to become a primary sponsored 457 visa holder merely to facilitate and secure permanent residence under the transitional streamlined pathway. Such groups include the partners of 457 visa holders.

We recommend that the department consider facilitating direct transition to permanent residence under the ENS/RSMS Temporary Residence Transition stream. This would avoid the need for partners to become primary sponsored 457 visa holders for this purpose.

Acknowledging the existing pathway and with the goal of improved transparency in the programme, we consider it important to openly recognise a third objective[44] of the 457 programme, which is to:

- provide an effective and efficient, but not exclusive, pathway to permanent residence to meet Australia's skills needs.

[43] Scott Morrison, Address to the Affinity Intercultural Foundation, Sydney, 17 July 2013.
[44] The first two objectives are outlined above at page 28.

People coming to the country temporarily initially, proving themselves and then making an application for permanent residency. This is a positive pathway that hands the control of the decision to a sovereign country and these are the aspects we will continue to pursue.

That pathway from temporary to permanent if managed well has great opportunities for this country. It is probably one of the best ways to manage the integrity of the programme and to ensure that those who do get permanent residency are well suited to it, well qualified for it. They have earned it. They have demonstrated that, rather than the simple processing of applying one day offshore and then turning up some months later in Australia. My preference is the other pathway because it gives greater surety around not just the national security and integrity issues that are so relevant but also the economic and social participation issues that are vital to social and economic cohesion.

Minister for Immigration and Border Protection, the Hon Scott Morrison MP, Migration Institute of Australia's National Conference in October 2013

Around four in five permanent employer-sponsored visa applicants previously held a 457 visa and the majority of them stay with the same employer doing the same job.
Skilled migrants deliver major benefits to the Australian economy in terms of contributing to economic growth and offsetting the impacts of an ageing population…We know these workers can do the job and are ready to make a commitment to Australia, so it makes sense to streamline their pathway to permanent residence.

Former Minister for Immigration and Citizenship, the Hon Chris Bowen MP

As 457 visa holders choose to remain in Australia permanently in significant numbers, we consider that the introduction of this third objective provides clarity around the use of this existing pathway available and utilised by many 457 visa holders. We believe that if accepted, this suggestion would go some way towards improving public perceptions of the programme as it makes the role of the 457 programme more transparent within Australia's overall migration programme.

Recommendation 15

15.1 That 457 visa holders be required to work for at least two years in Australia before transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme, and that consideration be given to the amount of time required with a nominating employer being at least one year.

15.2 That consideration be given to reviewing the age restriction on those 457 visa holders transitioning to the Employer Nomination Scheme or Regional Sponsored Migration Scheme.

15.3 That consideration be given to facilitating access for partners of primary sponsored 457 visa holders to secure permanent residence under the Temporary Residence Transition stream.

Level of non-compliance by sponsors in the 457 programme

During the course of the review, we have been made aware of both good compliance and some very serious issues warranting strong penalty responses. Although in this section we discuss the compliance as measured by statistics, we are aware of the broader integrity impacts on the 457 programme of serious breaches.

We have been informed by the department that the level of non-compliance by sponsors in the 457 programme can be measured only by examining the outcomes of the department's monitoring of sponsors. In earlier years, the department attempted to monitor as many cases as possible and the level of monitoring approached 50 per cent of all active sponsors. As around 90 per cent of all cases with monitoring outcomes in 2006 and 2007 were found to fully satisfy all requirements, a change in procedure was introduced so that monitoring was targeted towards sponsors that prior to monitoring had shown to be 'high risk'. This approach is referred to as risk-tiering.

The department reports that as a result of risk-tiering, the percentage of all active cases that were monitored fell. Cases with a monitoring outcome in 2013 represented approximately 11 per cent of all active cases (Table 14). From 2009 to 2014, the risk-tiering procedures used by the department have been based on increasingly more sophisticated statistical analysis.

Table 14 Summary of monitoring and serious monitoring outcomes, 2007-2013

Year	Number of final monitoring outcomes in this year	Total sponsors at 30 June in previous year	% of sponsors monitored (a)[45]	% of monitored cases with outcome of cancellation or sanction	% of all sponsors with outcome of cancellation or sanction
2007	6 421	13 433	47.8	3.0	1.4
2008	6 232	15 391	40.5	3.0	1.2
2009	3 756	18 818	20.0	5.0	1.0
2010	2 360	19 843	11.9	8.0	1.0
2011	2 025	18 631	10.9	5.0	0.5
2012	1 518	18 992	8.0	13.0	1.0
2013	2 555	22 811	11.2	11.0	1.2

Table 14 shows that the percentage of cases monitored declined over time but, as would be expected with the shift to risk-tiering, the percentage of cases found to have a serious breach (cancellation of sponsorship or sanction) rose substantially across time. This suggests that the department has improved its targeting of sponsors. The overall level of identified serious non-compliance across all sponsors is shown in the final column of Table 14. With the exception of 2011, the overall level of serious non-compliance averaged a little over one per cent of all active cases.

[45] Number of final monitoring outcomes in given year divided by the total number of active sponsors at 30 June in the previous year. A lag of one year is used to better reflect the population of active cases to which the monitoring refers.

The department classifies the outcomes of monitoring into five categories:

- *Satisfactory*: used where the department is satisfied that no failures of the obligations have been identified.
- *Counselled*: used where the department has identified a minor failure of the obligations however, due to the minor nature, no formal action is taken. This does not constitute a finding of non-compliance and is a reminder to sponsors to ensure that their practices are appropriate in the future.
- *Warning Letter*: used when a formal finding of non-compliance has been made but no penalty is put in place due to the minor nature and / or the cooperative nature of the sponsor. Warning letters may also be used to finalise an administrative process where the sponsor has elected to pay an infringement notice issued for a more serious failure of the obligations.
- *Sanction bar / sanction imposed / sponsorship cancelled*: these events indicate that an administrative sanction has been imposed on the sponsor, that is being barred, cancelled, or both. The sanction imposed event is used where both sanctions are imposed against a business. All three events can be considered of the same severity although there is a wide range of sanctions (for example, bars are imposed for between three months and five years). These events may also be used where an infringement notice is issued earlier in the monitoring process.
- *Whereabouts Unknown*: this event is only used where the department is no longer able to locate the business. This can happen when the visa holders have departed and the business has not notified of their closure or other similar situations.

Table 15 shows the distribution across these outcome categories for all monitoring outcomes from 2006 to 31 March 2014. The table shows a shift across time from a 'counselled' outcome to a 'warning letter' outcome. In relation to the serious outcomes of sanctioning or cancellation, there has been a substantial increase in the first three months of 2014. This may reflect more intensive risk tiering, the involvement of the FWO or a shift in the composition of active sponsors towards those more likely to infringe.

Table 15 Monitoring outcomes, 2006 - 31 March 2014 (explanation of categories can be found above)

Year	Satisfactory	Counselled	Warning letter	Sanction/ Cancellation	Whereabouts unknown	Total	
	%	%	%	%	%	%	Number
2006	94.0	3.0	0.0	1.0	2.0	100	2 682
2007	87.0	8.0	0.0	3.0	1.0	100	6 421
2008	68.0	27.0	0.0	3.0	2.0	100	6 232
2009	74.0	17.0	3.0	5.0	1.0	100	3 756
2010	69.0	4.0	17.0	8.0	2.0	100	2 360
2011	73.0	6.0	16.0	5.0	1.0	100	2 025
2012	60.0	14.0	12.0	13.0	0.0	100	1 518
2013	75.0	8.0	5.0	11.0	0.0	100	2 555
2014 -Mar	59.0	9.0	6.0	26.0	0.0	100	520
Total	76.0	13.0	4.0	5.0	2.0	100	28 069

In relation to composition, the number of active sponsors with total employment of fewer than 10 employees (including Australians) rose from 1 692 (12.6 per cent of all active sponsors) at 30 June 2006 to 10 969 (36.5 per cent of all sponsors) at 30 June 2013. As described below, serous non-compliance is more likely among these very small businesses. At this point, it is not possible for the department to gauge the reasons for the 2014 increase in the serious non-compliance outcomes but, if this level were to be sustained, the overall level of serious non-compliance would rise from just over one per cent to around 2.6 per cent of all active cases. Serious monitoring outcomes (cancellation or sanction) are strongly associated with the size of the business as shown in Table 16.

Table 16 Serious monitoring outcomes by number of employees of the business, 2010-2014

Number of employees	% of monitored cases with outcome of cancellation or sanction	% of all active sponsors with outcome of cancellation or sanction
0-9	17.0	1.7
10-49	9.0	1.1
50 and over	3.0	0.4
Total	10.0	1.1

Serious monitoring outcomes for the sponsor are also associated with the main occupation of the 457 visa holder. Poorer monitoring outcomes are more common where the business mainly sponsors workers in the construction and food trades sectors and managers in the hospitality retail and service sectors (Table 17). However, the size of the business continues to have an impact such that serious outcomes are less likely for any occupation as the business size increases. Only one per cent of large sponsors employing mainly professional 457s had a serious monitoring outcome. As this category had the largest number of monitored cases among the 18 categories shown in the table, the department's risk-tiering procedures may need further development.

Table 17 Percentage of monitored cases with a serious outcome (cancellation or sanction) by number of employees and occupation of largest number of 457 employees

Main occupation of 457 visa holders of this employer	Number of employees of sponsor (all employees)		
	0-9	10-49	50 and over
	%	%	%
Managers (hospitality, retail, service)	13.0	16.0	7.0
Other managers	17.0	8.0	2.0
Professional	15.0	6.0	1.0
Trades (construction)	24.0	15.0	9.0 (*)
Trades (food)	22.0	14.0	10.0
Trades (other)	12.0	6.0	4.0

(*) Fewer than 100 cases.

There are 157 sponsors who have accredited status and of these 110 have been monitored by the department. To date, no accredited sponsor has been sanctioned. However, 16 have received formal warning letters, and a further 22 have been counselled in relation to their obligations. This counselling was typically for late notification of cessation of employment of a sponsored employee.

Compliance, Monitoring and Sanctions

Role of education in enhancing compliance

To date, limited resources have been dedicated to education. It is our view that education is an effective and efficient method of promoting sponsor compliance and that it can help in reducing compliance costs overall for the department. Greater priority and resources dedicated to monitoring generally, particularly education, should be considered. Improvements in data analytics would further focus the department's targeting of sponsors. This approach has proven very successful with the ATO and the FWO.

The department's Outreach Officer network served to provide sponsors with invaluable information about their obligations in sponsoring temporary skilled workers and about the rights of those sponsored employees. The network comprised of officers from the department who worked with industry, unions and with people in regional Australia to provide information about skilled migration visa products, services and responsibilities. In the 2014-15 Federal Budget the government announced the cessation of the Outreach Officer programme.

Quote from public submissions

The Department's Outreach Officers are an underutilised and under advertised resource, that should play an important role in improving outcomes for employers. A recent visit to our region by the Department's outreach officers was not only well received, but has also resulted in greater employer enquiries to us as an RCB.

We see this as a positive result and would welcome increased engagement with Outreach Officers in our region including regular visits and consultations.

RDA Orana

During the consultation process stakeholders observed that the Outreach Officer programme was an effective way of sharing information among stakeholders, the department and government. The Outreach Officers had become more familiar with particular industries and regions and could better tailor their information.

The consultation process consistently highlighted the invaluable assistance that Outreach Officers offered 457 programme sponsors in providing information and educating them about their sponsorship responsibilities. Furthermore, they stated that the Outreach Officer programme played a vital role in ensuring their voluntary compliance with the programme's requirements, including meeting sponsorship obligations.

We consider that compliance, in a broader sense, should include targeted education and engagement with programme sponsors about their obligations, with the aim of supporting voluntary compliance.

Accordingly, and noting that the Outreach Officer programme was discontinued in the Federal Budget, we recommend that support and information sharing of the type provided by Outreach Officers be delivered in order to strengthen compliance and monitoring measures in the 457 programme.

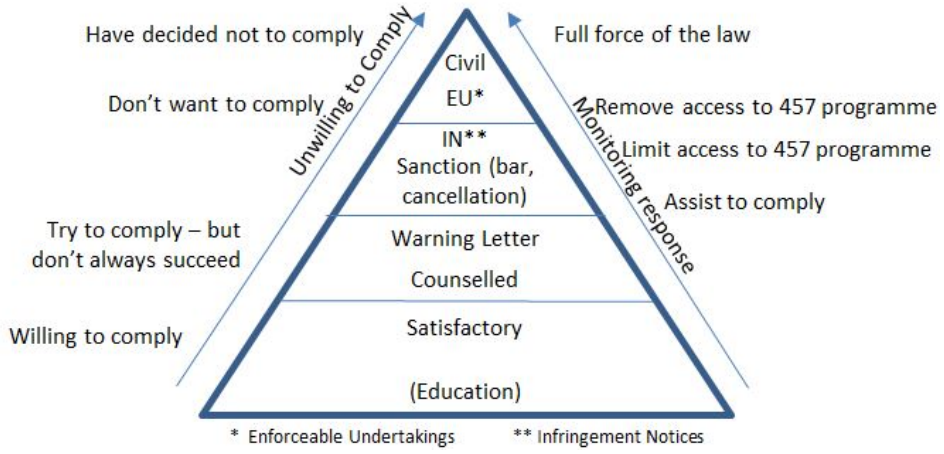
Recommendation 16

16.1 That consideration be given to the allocation of more resources to programmes aimed at helping sponsors understand and comply with their obligations , whether those programmes are delivered directly to sponsors or through the migration advice profession.

Monitoring

As discussed under *Non-Compliance*, the department adopts a risk-based approach to monitoring sponsor compliance with sponsorship obligations. The department's current monitoring regime is underpinned by the enforcement triangle in Chart 6. The triangle is framed according to compliance costs and the willingness of sponsors to comply. The base of the triangle represents significantly lower compliance costs based on cooperative sponsors; the apex represents higher compliance costs where more legal options are applied to non-cooperative sponsors.

Chart 6 Monitoring enforcement model



Our examinations reveal that the department does not receive dedicated funding for sponsor monitoring or associated litigation. Funding levels vary from year to year depending on broader departmental budget allocations and priorities. The department has advised that in 2013-14 approximately 44 staff across Australia worked on monitoring of sponsor compliance, with an expected output of 52 monitoring events per staff member (totalling over 2 200 monitoring events).

The Law Council of Australia has noted that the growth in the 457 programme has not been matched by growth in resources dedicated to monitoring sponsors, which has led to the integrity of the programme being undermined.

As discussed under *Non-Compliance*, while the percentage of sponsors monitored has declined since 2007, the percentage of sponsors found to have a serious breach (cancellation of sponsorship or sanction) has risen substantially. This suggests that the department's targeting of sponsors has improved over time. Nevertheless, if the number of sponsors continues to rise at the current rate without an increase in monitoring, the percentage of sponsors monitored will decrease over time.

While compliance should not be measured solely by reference to the number of inspectors, it is important that the department's monitoring regime be adequately funded to enable it to identify and take action against non-complying sponsors. It is equally important that sponsors and the wider community are aware of the sponsorship monitoring regime and have confidence in its efficacy. Given the department's limited monitoring resources, most of its enforcement activity is in the two middle sections of the enforcement triangle – that is, it is directed at detecting non-compliance, with the outcome dependent on the severity of the sponsor's breach of sponsor obligations. Table 18 below provides an overview of monitoring activity types in the last two years. This table highlights improvements in the department's targeting of sponsors who are most at risk of non-compliance, with the percentage of sponsors who were monitored and received a penalty increasing from 15 per cent in 2012-13 to over 18 per cent in 2013-14.

Table 18 Overview of monitoring activity 2012 – 2014

	2012-13 to 31 May 2013		2013-14 to 31 May 2014	
Monitoring Activity	**Total Events**	**Sponsors per event**	**Total Events**	**Sponsors per event**
Commenced	**1 921**	**1 856**	**2 031**	**1 991**
Site visit	**1 285**	**1 133**	**1 323**	**1 177**
Monitoring questionnaire provided	**630**	**609**	**739**	**707**
Breach Notice issued	**356**	**341**	**524**	**479**
Sponsors sanctioned (bar or cancellation)	**200**	**200**	**343**	**343**
Warning letter	**138**	**138**	**118**	**118**
Infringement Notice issued	**66**	**66**	**28**	**28**
Prosecution	**1**	**1**	**0**	**0**
Referred to other agency	**14**	**13**	**11**	**9**

Recommendation 17

17. That greater priority be given to monitoring and that the department continues to enhance its compliance model to ensure those resources are applied efficiently and effectively.

Inter-agency cooperation

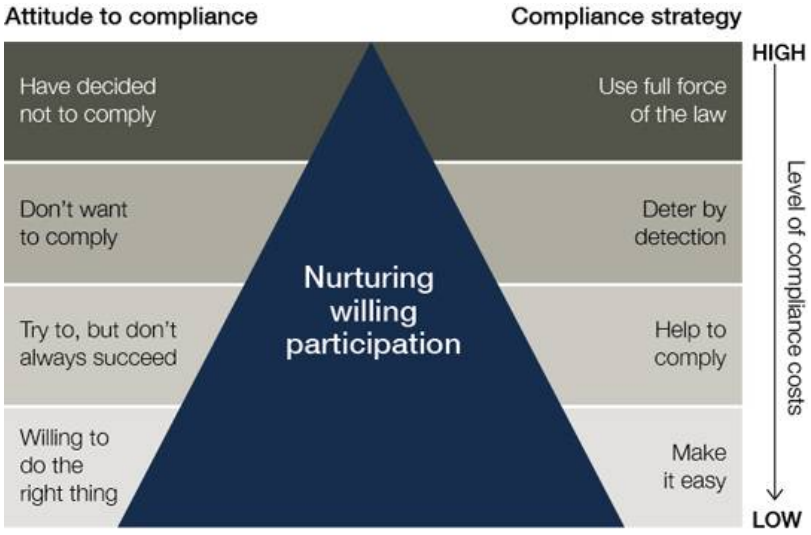
Following the Deegan Review, the legislation was amended to include the legislative framework for the department to share information with other Commonwealth, State/Territory government agencies including the ATO, Fair Work Commission ("FWC"), the FWO and State/Territory Governments' occupational health and safety bodies.

The department has already entered into a number of Memoranda of Understanding ("MoU"). In July 2013, the FWO was given legislative authority to monitor two of the sponsor's obligations, namely, the obligation to pay the nominated salary and the obligation to ensure the 457 visa holder works in the approved nominated occupation. We note that these enhanced information sharing powers are being used by the department, but we consider that considerably more could be done.

Australian Taxation Office

The ATO provides a best practice compliance model. It is focused on encouraging voluntary compliance (see Chart 7) and on detecting non-compliance, and it is based on cross-agency data matching. The ATO's general compliance model is similar to the department's compliance model discussed above. However, it is underpinned by much more sophisticated data-matching. The use of cross-agency data matching minimises the burden on business. At the same time, it ensures that government agency information is provided through a number of different means, and is leveraged and automatically analysed to identify businesses at risk of non-compliance for further investigation.

Chart 7 ATO compliance model



We recognise that the widespread application of the ATO's legislation and the funding base of the ATO has contributed to their expertise and their use of sophisticated strategies to target non-compliance.

While the department uses a comparable model in compliance monitoring for the 457 programme, we consider that further benefit could be achieved through information sharing and data matching with the ATO to identify sponsors at risk of non-compliance with their sponsorship obligations based on data discrepancies relating to visa holder salaries. Such collaboration could involve, but may not be limited to, matching records based on the visa holder's tax file number obtained from sponsors. The ATO has indicated that this would require legislative change. This is strongly supported by the panel.

We are of the view that workshops between the ATO and the department could assist in enhancing the integrity of the 457 programme by leveraging areas of government compliance best practice. We are aware the ATO exchanges large volumes of data with the Department of Human Services ("DHS") to enable the effective administration of various government programmes such as family assistance and child support, as well as for mutual compliance purposes. This collaboration has been beneficial for both agencies.
We consider that 457 programme integrity would benefit from a more integrated relationship between the ATO and the department, based on learnings from the ATO/DHS model. Consultation with the ATO highlighted the synergies and the integrity benefits that could flow from greater collaboration between the department and the ATO.

We recommend greater collaboration between the department and the ATO to uphold integrity and minimise the burden on employers. To achieve this, we support:

- inter-agency workshops to share information and improve capability on compliance models;
- information exchange between the agencies to facilitate enforcement of both agencies' powers and to minimise the burden on employers through data matching;
- a more integrated relationship to support integrity across immigration and tax systems, based on learnings from the ATO/DHS model; and,
- reporting of outcomes of inter-agency referrals relating to the 457 programme.
  As well as improving integrity, this collaboration with the ATO will contribute to the deregulation agenda by leveraging existing information provided to the ATO.

We also recommend a change to 457 visa conditions to place a positive obligation on 457 visa holders to provide their Australian tax file number to the department.
This represents a simple change that will shift the burden on 457 visa holders while sending a clear message to both the employee and the employer.

Recommendation 18

18.1 That there be greater collaboration between the department and the Australian Taxation Office to uphold integrity within the 457 programme and minimise the burden on employers.

18.2 That a change to 457 visa conditions be introduced to place an obligation on the visa holder to provide the department with their Australian tax file number.

Fair Work Ombudsman

In July 2013 FWO Inspectors were appointed as Inspectors under the migration legislation, giving them power to gather information on behalf of the department. An MoU with the FWO was signed on 5 July 2013 to clarify referral and reporting procedures. Under the terms of the MoU, the FWO collects information and records on behalf of the department in relation to:

1. the obligation to ensure equivalent terms and conditions of employment, in particular the requirement that sponsors ensure that 457 visa holders are receiving at least the same salary approved at nomination; and,
2. the obligation to ensure that the sponsored person works in the nominated position, in particular that sponsored visa holders are performing duties consistent with the relevant the ANZSCO occupation code approved at nomination.

The FWO first started referring details of sponsored workers to the department in November 2013 and since then details of 1 815 skilled sponsored workers have been referred. These 1 815 workers were linked to 1 106 sponsoring employers. The tables below provide a breakdown of FWO referral volumes and types.

Table 19 Referral volumes from the FWO

Month	Number of visa holders referred
November 2013	243
December 2013	38
January 2014	351
February 2014	306
March 2014	337
April 2014	167
May 2014	373
Total	1 815

Table 20 Referral types

Referral type	Number of visa holders referred
No apparent breaches	1 488
Nominated salary concerns	86
Nominated positions concerns	165
Both nominated salary and nominated positions concerns	76
Total	1 815

We note that the FWO's primary role is to refer all information obtained in their course of their duties to the department for assessment. All decisions and follow up action is conducted by the department following the referral of the information. In addition to expanding the number of sponsors monitored, we consider that the FWO's involvement also extends the type of sponsors monitored.

This is because FWO monitoring incorporates a degree of randomness which is generally absent in the department's risk-based approach to monitoring. This means that any trends emerging outside of the department's risk framework are more likely to be identified. If, in the course of its monitoring compliance with the a sponsor's obligations to pay the approved nominated salary and ensure the 457 visa holder is working in the approved nominated occupation, the FWO also identifies breaches of workplace law, these breaches will be pursued by the FWO independently. To date, FWO has finalised five cases against 457 visa sponsors in Perth and Melbourne for breaches of workplace law, and is currently pursuing four others in Sydney. The cases have generally involved underpayments and record-keeping contraventions.

It has become apparent that better access to departmental business systems would improve the efficacy of the FWO's monitoring role. Currently, the FWO is provided with ad-hoc reports on sponsors which may quickly become out of date.

A range of stakeholders have welcomed the FWO's involvement in monitoring sponsors. The Construction, Forestry, Mining and Energy Union ("CFMEU") are of the view that the FWO should be the appropriate agency to investigate non-compliance as "*there is an inherent conflict in both administering and regulating a programme".* The CFMEU also highlighted the importance of monitoring to prevent worker exploitation and that the department needs to more effectively communicate the outcome of its monitoring activities.

We have received mixed feedback from stakeholders on the effectiveness and appropriateness of the role of the FWO in 457 programme monitoring and compliance. While some stakeholders see the 2013 changes in this area as a positive development for programme integrity. Other stakeholders have expressed concern about resourcing implications and the impact of the core business the FWO as well as increasing 'red-tape'.

We consider it important that the success of compliance and monitoring in the 457 programme not be measured by how many inspectors are on the ground. Lessons can be learned from the various measures that the ATO employs to undertake monitoring. These include education, communication and data analytics rather than relying solely on inspectors undertaking workplace compliance audits.

Recommendation 19

19.1 That the Fair Work Ombudsman's current complementary role in monitoring compliance and referral of findings to the department for action should continue.

19.2 That the department should provide information in real time that is both current and in a format compatible with that of the Fair Work Ombudsman.

Fair Work Commission

Like other employees in Australia, all 457 visa holders may seek redress in the FWC Australia's national workplace relations tribunal. The FWC has jurisdiction to hear unfair dismissal claims, among other industrial matters.

A number of such claims have been initiated by 457 visa holders, particularly before 1 July 2013 when 457 visa holders had just 28 days to remain in Australia following termination of their employment. In the course of the conduct of such matters before the FWC, it sometimes becomes evident that a sponsor has breached its obligations or otherwise engaged in unlawful conduct.

To date, the FWC has demonstrated its willingness to refer at least two matters of concern to the department for action. In *Krishnakanth v Saai Bose Pty Limited*,[46] Deputy President Sams directed that the transcript of his decision in the matter of Mr Krishnakanth's application for unfair dismissal remedy be forwarded to both the FWO and the department.

The following allegations were "most disturbing":

- falsification of skills assessment criteria for obtaining a skills recognition from Trades Recognition Australia in anticipation of an application for permanent residence by overseas students;
- demands by the sponsor for large sums of money (in this case $4 000) in return for skills assessment references;
- underpayment of employees and possible breaches of Award conditions and entitlements; and,
- falsifying time and wages records.[47]

Commissioner Cambridge in *Shim v JMNE Pty Limited t/as Wooden Bowl Restaurant*[48] also directed that the transcript of his decision be forwarded to the department. The case resulted in compensation being awarded as a remedy following unfair dismissal in circumstances where tax had not been deducted and there was no payment of accrued annual leave entitlement. Further, the employer had requested $30 000 to nominate Mr Shim for permanent residence under the ENS.

The department has no policy to formally monitor decisions of the FWC and no MoU in place to ensure referrals of matters of concern.

We consider it appropriate that the department put in place a MoU with the FWC and, in the interim, that it monitor decisions of the FWC in relation to 457 visa holders.

[46] [2010] FWA 4578.
[47] Ibid para.69.
[48] [2010] FWA 8230.

In addition, it is considered appropriate that when a new nomination application is lodged, it be a requirement that a sponsor certify there has been no change to the information provided to the department in relation to whether the business or an associated entity has been subject to "adverse information". This term is defined in the legislation to include information relevant to suitability of the business to be a sponsor.[49]

Recommendation 20

20.1 That the department monitor decisions of the Fair Work Commission, so as to determine if sponsors have breached obligations or provided false and misleading information.

20.2 That the department require sponsors, when lodging a new nomination application to certify that there has been no change to the information provided to the department in relation to whether the business or an associated entity has been subject to "adverse information" as that term is defined in the legislation.

Sanctions

Penalties

The department has a number of options available where a sponsor has failed to satisfy a sponsorship obligation. These options include:

- issuing a formal warning;
- accepting an enforceable undertaking which can be published on the department's website to take specified action in relation to a sponsorship obligation or, in appropriate circumstances, refraining from taking specified action;
- applying to a court for an order that a sponsor comply with an enforceable undertaking, in cases where that undertaking has been breached by the sponsor;
- issuing an infringement notice for up to $10 200 for each contravention (as an alternative to applying for a civil penalty order);
- applying to a court for a civil penalty order with a maximum penalty of $51 000 per contravention;
- barring the sponsor for a specified period from nominating more 457 visa holders under an existing sponsorship;
- cancelling the sponsorship approval; and,
- barring the sponsor for a specified period from future access to the sponsorship programme.

[49] The definition includes information that the sponsor (or an associated entity) has been found guilty by a court of an offence, has been the subject of administrative action or is under investigation for a contravention of a law. The provision relates only to a narrow range of law that may impact a 457 visa holder and includes discrimination, immigration, industrial relations, OH&S and taxation law amongst others.

Additionally, in circumstances where a sponsor no longer continues to satisfy the criteria for approval as a sponsor or, in the alternative, has provided false or misleading information, the department may bar the sponsor for a specified period from nominating more 457 visa holders, cancel the sponsorship approval, and/or bar the sponsor from future access to the programme.

Overall, we are satisfied that the department has adequate compliance measures in place to effectively penalise those sponsors who do not meet their obligations under the sponsorship programme, who no longer continue to satisfy the criteria for approval as a sponsor or, in the alternative, who have provided false or misleading information. However, due to resourcing constraints these tools are not being implemented as effectively as they could be.

Civil Penalties

We note that since the introduction of civil penalties in September 2009, the department has only had one successful prosecution.[50] We consider that resourcing has been the main impediment to more civil penalty applications. The department has advised that external legal costs alone for a civil penalty application can be in excess of $100 000. The department is the highest litigated agency in the Commonwealth, which creates a significant drain on legal resources and budgets. This has meant that there has not been appropriate funding available to prosecute suitable cases for a civil penalty.

The panel considers that civil penalties are a key measure to promote compliance and the department's inability to pursue these matters has the effect of making its sanction regime appear to be relatively toothless. Dedicated legal resources should be made available to ensure that the department is able to litigate appropriate cases.

Enforceable Undertakings

Enforceable undertakings were introduced into the programme in the July 2013 reforms. We note that the department advises that since then there have been no enforceable undertakings accepted from errant sponsors. We are of the view that resourcing as well as unfamiliarity with this compliance tool has been the main reasons for not adopting its use.

We note the effectiveness of enforceable undertakings in other organisations such as the FWO and the Australian Competition and Consumer Commission. Enforceable undertakings require significantly less resources to put in place (and, if appropriate, pursue in court) than applications for a civil penalty. As a result, they can be a very effective method in which to promote compliance for certain sponsors. The flexibility of an enforceable undertaking is particularly attractive given that it can be tailored to suit the circumstances of a particular sponsor.

[50] *Minister for Immigration v. Sahan Enterprises Pty Ltd* [2012] FMCA 619 (28 June 2012).

We note that at this stage, the department has not found a case that would be suitable for the execution of an enforceable undertaking. Given that this legislation has been in place for less than 12 months and that it is a new power for the department, the reasons for not executing an enforceable undertaking at this stage are perhaps understandable. We are of the view that enforceable undertakings are an important sanction option and encourage the department to more strongly consider their use.

Publication of Sanction Outcomes

We consider that the department should be doing more to deter businesses that are potentially doing the wrong thing. One of the ways in which this can be done is to publicly release more information on sanctioned sponsors. Currently, the department releases limited information on its sanction activity. Generally, this is restricted to yearly sanction data contained in its annual report and other ad-hoc reports provided to the media or in other fora. This level of information is unlikely to provide any kind of general deterrent to sponsors as it does not contain specificity such as the industry or location of the sponsor to make it relevant to business.

It is our view that the department should provide more detailed information on sanctions that are imposed on sponsors, including 'naming and shaming' those sponsors found to be grossly in breach of their obligations. This occurs in comparable jurisdictions overseas including Canada. The ability to disclose this information on its website is already in place in relation to accepting enforceable undertakings. Whether the department actually does so will be largely determined by its capacity to apply for civil penalties and execute enforceable undertakings. This kind of disclosure would have a greater deterrent effect amongst sponsors and help encourage self-compliance.

Generally, consultations with stakeholders support the view that the current sanction regime is sufficient for the department to manage sponsors not complying with programme requirements. It has been noted that while the regime is appropriate, the department lacks the resources to be able to fully apply sanctions.

Most stakeholders agreed that greater publication of sanctions could provide a greater deterrent factor although there was some differentiation in the level of detail that should be provided. Some stakeholders support only generalised data being released, while others support a complete 'name and shame' approach where all sanctioned sponsors would be published on the department's website. Concerns were raised by some stakeholders about the potential harm that 'naming and shaming' would cause to the reputation of businesses.

It is worthy of note that a significant number of users of the 457 visa programme are assisted by registered migration agents. Of all the migration programmes, the 457 programme has the highest usage of the services of the migration advice profession.

Quotes from public submissions

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

Migration Council of Australia

AMIF is unaware of any fraud or non-compliance by retail motor trades employer sponsors or 457 visa holding employees. Indeed, AMIF and its Members contest the claim that 'rorting' occurs, because the penalties involved are sufficient to ensure that employer-sponsors are complicit with their duties as required by the department.

Australian Motor Industry Federation

PwC believe the current range of sanctions and actions available to the DIBP to respond with Non-compliance of sponsorship obligations under the 457 visa program are satisfactory. Recent changes to the regulatory regimes for the 457 visa program has led to greater effectiveness in the application of these sanctions.

PricewaterhouseCoopers

With this in mind, it is essential that any communication initiatives directed to sponsors and 457 visa applicants include communications with the migration advice profession through relevant representative professional bodies and the department's State/Territory Client Reference Groups.

We believe the motivation for compliance will be enhanced if the department discloses the outcomes of its compliance activities. This will also address the need for transparency in the sanctions imposed on sponsors and thereby confidence in the scheme's integrity. We make the following recommendations with respect to the sanction regime:

- that dedicated resourcing be provided to the department to enable the investigation and prosecution of civil penalty applications; and,
- that the department strongly considers greater use of undertakings as a sanction tool and notes their effectiveness in promoting compliance at a minimal cost.

We also recommend that the department consider disclosing greater information on sanctions action including:

- publicising the results of all civil penalties imposed by a court including communicating this to all sponsors by email;
- publication on the department's website of any enforceable undertakings accepted by the department and communicating this to all sponsors by email; and,
- publication on the department's website of sanction data in relation to issue of infringement notices as well as barring and cancelling sponsors with details limited to industry type, location and nature of sponsorship obligation breached.

At the apex of the enforcement triangle is civil litigation. As noted above, the cost of taking a matter to a court can be prohibitively expensive: this is one of the reasons why only one matter has been litigated since the introduction of civil penalties in September 2009.

It is our strong view that successful litigation is an important tool for the department in creating a general deterrent effect. Dedicated resourcing needs to be available to ensure that suitable cases are bought before the courts and unscrupulous employers are appropriately punished.

Recommendation 21

21.1 That dedicated resourcing be made available to the department to enable the investigation and prosecution of civil penalty applications and court orders.

21.2 That the department disclose greater information on its sanction actions and communicate this directly to all sponsors and the migration advice profession as well as placing information on the website.

DIBP system enhancements

We note the department's commitment to providing timely and accurate data to the public on a range of immigration matters. This data has been invaluable in assisting the panel in providing evidence-based recommendations throughout this report. The panel has also received positive feedback from stakeholders regarding the 457 pivot tables on the department's website.

However, we are of the view that the current IT infrastructure limits the department's ability to effectively analyse and assess the sponsorship caseload and does not leverage relevant information held by other government agencies. The department currently has a limited ability to capture data provided at sponsorship application and in other interactions sponsors have with the department. These limitations mean that the department is often analysing information that is not up to date or is incomplete.

We note that data integrity could be improved at the application stage by replacing invalidated free text in online forms with validated data obtained via drop down menus, pick-lists and formatted fields. This would provide reliable and accessible administrative data that would contribute to better policy analysis and research. Furthermore, there is scope for greater linkages with information held by other government agencies, such as the ATO, the FWO, Australian Securities and Investments Commission and WorkCover to assist the department to identify sponsors of concern. In particular, as discussed under *Inter-agency cooperation*, greater linkages with the ATO would create greater efficiency in monitoring as the department would more readily be able to access important business and payment information that could identify non-compliance amongst sponsors.

We recommend that the department build on its data capturing capabilities by adding rigour at the application stage and the ability to transfer this data in a format that allows the department to generate reports at a more detailed level, and refer information to other government agencies where appropriate.

Recommendation 22

22. That the department investigate the feasibility of system improvements that facilitate greater linkages with information held by other government agencies.

Other matters

Senate Inquiry on the Framework and operation of subclass 457 visa, Enterprise Migration Agreements and Regional Migration Agreements.

In addition to the original terms of reference of the review, the panel was subsequently asked by government to also consider the recommendations made in the report *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.*[51] This report relates to the Immigration and Border Protection Portfolio and was tabled by the Legal and Constitutional Affairs References Committee in Parliament on 27 June 2013.

The panel notes that the report focussed on the 457 programme and its ability to find a balance between addressing temporary labour shortages, protecting employment opportunities for Australian workers and maintaining working conditions of Australian and overseas workers.

In the course of the review the panel has considered these recommendations.

Deregulation

In addition to the original terms of reference, we were requested by Minister Morrison and Minister Cash to provide advice on any deregulation opportunities that arise as part of the review's consultation process as government saw a role for the panel in providing advice on possible deregulation measures that go beyond the 457 programme.

We also heard from the Deregulation Section within the department, which is coordinating the portfolio's response to the government's deregulation agenda. This was a valuable exchange and gave us an opportunity to provide views and feedback on the department's progress with its deregulation initiatives.

Thanks to the extensive consultation we completed as part of this review, we have been able to identify a range of useful deregulatory measures for the 457 programme. Those measures are outlined in our recommendations to government and in the narrative of the report.

[51] The Senate Legal and Constitutional Affairs References Committee: Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/457visas/report/~/media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/457_visas/report/report.ashx

Appendix 1 – Terms of Reference

Major reforms of the Subclass 457 visa programme have been affected over recent years through the introduction of the *Migration Legislation Amendment (Worker Protection Act) 2008*, the *Migration Amendment (Temporary Sponsored Visas) Act 2013,* and changes to the Migration Regulations 1994.

Given the importance of the Subclass 457 programme in supporting employers in industries and regions which are experiencing skill shortages, and the potential of the programme to contribute to productivity growth in the Australian economy, a review of the integrity of the programme in light of these reforms is warranted.

The Review

Consistent with the government's commitment to rigorous evidence based regulation and productivity reform, the review is to:

- determine the level of non-compliance by sponsors in the Subclass 457 programme, both historically and under the current regulatory framework;
- evaluate the regulatory framework of the Subclass 457 programme and determine whether the existing requirements appropriately balance a need to ensure the integrity of the programme with potential costs to employers in accessing the programme;
- report on the scope for deregulation while maintaining integrity in the programme; and,
- review and advise on the appropriateness of the current compliance and sanctions.

Conduct of the Review

The review will be conducted by an external review panel, appointed by the Assistant Minister for Immigration and Border Protection.

The external reviewer will be supported by a secretariat from the Department of Immigration and Border Protection.

A draft review report will be reviewed by the Ministerial Advisory Council on Skilled Migration (MACSM), and the views of the MACSM are to be noted in the report.

The reviewer will submit the final report to the Minister and Assistant Minister for Immigration and Border Protection.

The Review will be conducted with a view to reporting by 30 June 2014 and a progress report is to be provided by mid-March 2014.

Appendix 2 – Conduct of the Review

In conducting the review, we sought to engage stakeholders as fully as possible.
We considered it to be of utmost importance that stakeholders had ample opportunity to provide comments and feedback on the 457 programme. All the feedback received during the engagement process was considered by the panel in determining the content of the report.

We undertook an extensive consultation process with key stakeholders involved in the 457 programme. The panel held consultations with approximately 150 stakeholders, including industry groups, unions, peak bodies, academics, 457 programme sponsors and State/Territory and Commonwealth governments, across the period of April to June 2014.
See Appendix 4 for the list of stakeholder consultations.

The panel employed a three-tiered approach to the stakeholder consultation process.

- Tier one of the consultation process consisted of one-on-one meetings, in which key stakeholders were invited to provide feedback to the panel through face-to-face conversations.
- Tier two involved discussion forums with groups of stakeholders in capital cities.
- Tier three consisted of a submissions process. An invitation to submit was published on the department's website, requesting interested parties to make a written submission to the panel. There were 189 public and confidential submissions received and carefully considered. See Appendix 5 for the list of public submissions.

In addition to this three-tiered approach, the panel used social media to invite comment on the overall integrity of the 457 programme, including a post on the Migration Blog and facilitating a 'live chat' with the public via the departments Facebook page.
See Appendix 6 for further information on the engagement with stakeholders through social media.

As part of the engagement process, the panel also met with various people within the department to gain first-hand insights into the operations of the 457 programme.

Appendix 3 – 457 Inquiries and Reviews

Table 20 List of 457 Inquiries and Reviews

Short Title	Report Title	Committee Chair	Released
Roach Review Aug 1995	Business Temporary Entry – Future Directions – Report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists ("The Roach Report")	Neville J Roach	August 1995 Established October 1994
External Reference Group Review Jun 2002	In Australia's Interests: A Review of the Temporary Residence Program	Peter McLaughlin	June 2002 Review announced July 2000
Senate Inquiry Aug 2007	Temporary visas…permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program – Joint Standing Committee on Migration	Don Randall MP	August 2007 Commissioned December 2006
External Reference Group Review Apr 2008	Visa Subclass 457 External Reference Group – Final Report to the Minister for Immigration and Citizenship	Peter Coates	April 2008 Established February 2008
Deegan Review Oct 2008	Visa Subclass 457 Integrity Review – Final Report ("The Deegan Review")	Barbara Deegan	October 2008 Announced April 2008
457 Reforms IDC Dec 2008	Subclass 457 Visa Review – Interdepartmental Committee on the Temporary Business (Long Stay) Visa Subclass 457 reform – Final Report – v1.0	DIAC, DEEWR, Treasury , DFAT, Finance, PM&C	December 2008 Established May 2008
Senate Inquiry Jun 2013	Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements	Senator Penny Wright	June 2013 Referred to Senate March 2013

Appendix 4 – Table of stakeholder consultations

Tier 1: Meetings

Stakeholder Name	Date of Meeting
Migration Council of Australia	19 March 2014
Business Council of Australia	21 March 2014
Skilled Group	21 March 2014
Australian Nursing and Midwifery Federation	21 March 2014
Restaurant and Catering Australia	25 March 2014
Construction, Forestry, Mining and Energy Union	4 April 2014
Australian Industry Group	4 April 2014
Australian Workers' Union	7 April 2014
Electrical Trade Union	8 April 2014
Australian Mines and Metals Association	8 April 2014
Recruitment and Consulting Services Association	8 April 2014
Dr Joanna Howe	15 April 2014
Australian Manufacturing Workers' Union	16 April 2014
Master Builders Association	16 April 2014
Minerals Council of Australia	17 April 2014
Transport Workers' Union	29 April 2014
Consult Australia	29 April 2014
Maritime Union of Australia	30 April 2014
Migration Institute of Australia	30 April 2014
Information Technology Contract and Recruitment Association	5 May 2014
Fair Work Ombudsman	5 May 2014
Dairy Industry	5 May 2014
Australian Council of Trade Unions	9 May 2014
Migration Law Committee, Law Council of Australia	9 May 2014
National Farmers Federation	15 May 2014
Civil Contractors Federation	19 May 2014
Chamber of Commerce and Industry WA	19 May 2014
UnionsWA	20 May 2014
Department of Health WA	20 May 2014
Australian Council of Deans of Information & Communications Technology	23 May 2014
Professor Lesleyanne Hawthorne, International Workforce, University of Melbourne	23 May 2014
Peter Mares, Social Research, Swinburne University of Technology	23 May 2014
Dr Bob Birrell, Population and Urban Research, Monash University	23 May 2014
Dr Iain Campbell, Applied Social Research, RMIT University	23 May 2014
Professionals Australia	23 May 2014
United Voice	26 May 2014
Department of Health NSW	26 May 2014
Australian Tax Office	4 June 2014
Australian Computer Society	4 June 2014

Stakeholder Name	Date of Meeting
MACSM Members	
Michael Easson (Chair)	7 April 2014 & 3 June 2014
Karen Read	14 May 2014
Peter Anderson	20 May 2014
Innes Willox	23 May 2014
Peter Tighe	26 May 2014
James Pearson	4 June 2014
Paul Bastian	11 June 2014
Dave Noonan	12 June 2014

Tier 2: Consultation forums

Stakeholder Name	Forum	Date of meeting
Department of Industry	Skilled Migration Officials Group ("SMOG") meeting	8 April 2014
Economic Development Directorate ACT	SMOG	8 April 2014
Trade and Investment NSW	SMOG	8 April 2014
Community Relations Commission NSW	SMOG	8 April 2014
Department of Business NT	SMOG	8 April 2014
Trade and Investment QLD	SMOG	8 April 2014
Department for Manufacturing, Innovation, Trade, Resources and Energy SA	SMOG	8 April 2014
Department of Premier and Cabinet SA	SMOG	8 April 2014
Department of Economic Development Tourism and the Arts TAS	SMOG	8 April 2014
Department of State Development, Business and Innovation VIC	SMOG	8 April 2014
Small Business Development Corporation WA	SMOG	8 April 2014
Department of Training and Workforce Development WA	SMOG	8 April 2014
SA Health	Adelaide Forum	15 April 2014
Business SA	Adelaide Forum	15 April 2014
Migrant Resource Centre SA	Adelaide Forum	15 April 2014
University of Adelaide	Adelaide Forum	15 April 2014
University of South Australia	Adelaide Forum	15 April 2014
Department for Manufacturing, Innovation, Trade, Resources and Energy SA	Adelaide Forum	15 April 2014

Stakeholder Name	Forum	Date of meeting
Department of Employment	Round table with Commonwealth Agencies	16 April 2014
Australian Taxation Office	Round table	16 April 2014
Department of Foreign Affairs and Trade	Round table	16 April 2014
AUSTRADE	Round table	16 April 2014
Department of the Prime Minister & Cabinet	Round table	16 April 2014
Department of Education	Round table	16 April 2014
Australian Workforce and Productivity Agency	Round table	16 April 2014
Fair Work Ombudsman	Round table	16 April 2014
Trade Recognition Australia	Round table	16 April 2014
The Treasury	Round table	16 April 2014
Australian Information Industry Association	Canberra Forum	17 April 2014
IBM	Canberra Forum	17 April 2014
Australian Hotels Association	Canberra Forum	17 April 2014
ANU Migration Law Program	Canberra Forum	17 April 2014
Australian Medical Association	Canberra Forum	17 April 2014
Universities Australia	Canberra Forum	17 April 2014
Australian Motoring Industry Federation	Canberra Forum	17 April 2014
Hotels Industry Association	Canberra Forum	17 April 2014
Economic Development Directorate ACT	Canberra Forum	17 April 2014
NSW Business Chamber	Sydney Forum	29 April 2014
Ernst & Young	Sydney Forum	29 April 2014
Cochlear Ltd	Sydney Forum	29 April 2014
KPMG	Sydney Forum	29 April 2014
Fragomen	Sydney Forum	29 April 2014
Robert Walters	Sydney Forum	29 April 2014
University of Sydney	Sydney Forum	29 April 2014
Ramsay Health Care	Sydney Forum	29 April 2014
Macquarie Hospital	Sydney Forum	29 April 2014
Communications, Electrical and Plumbing Union	Sydney Forum	29 April 2014
VETASSESS	Melbourne Forum	5 May 2014
Bayside Personnel Australia	Melbourne Forum	5 May 2014
Enterprise Geelong Opportunity	Melbourne Forum	5 May 2014
Healthscope	Melbourne Forum	5 May 2014
Universities Australia	Melbourne Forum	5 May 2014
Australian Health Practitioner Regulatory Agency	Melbourne Forum	5 May 2014
Department of State Development, Business and Innovation VIC	Melbourne Forum	5 May 2014
Department of Health VIC	Melbourne Forum	5 May 2014
NASSCOM	Melbourne Forum	5 May 2014

Stakeholder Name	Forum	Date of meeting
Dairy Australia	Melbourne Forum	5 May 2014
Australian Dairy Farmers	Melbourne Forum	5 May 2014
Chamber of Commerce and Industry QLD	Brisbane Forum	14 May 2014
Queensland Industry Tourism	Brisbane Forum	14 May 2014
HealthX	Brisbane Forum	14 May 2014
JBS Australia	Brisbane Forum	14 May 2014
Arrow Energy	Brisbane Forum	14 May 2014
TEYS Australia PTY LTD	Brisbane Forum	14 May 2014
Queensland Nurses' Union	Brisbane Forum	14 May 2014
Griffith University	Brisbane Forum	14 May 2014
Morris Corporation	Brisbane Forum	14 May 2014
Department of Health QLD	Brisbane Forum	14 May 2014
Department of Treasury and Trade QLD	Brisbane Forum	14 May 2014
Australasian Meat Industry Employees Union	Brisbane Forum	14 May 2014
Canegrowers Australia	Brisbane Forum	14 May 2014
Chamber of Minerals and Energy WA	Perth Forum	19 May 2014
Australian Petroleum Production & Exploration Association	Perth Forum	19 May 2014
Fircroft Australia	Perth Forum	19 May 2014
WA Local Government Association	Perth Forum	19 May 2014
Murdoch University	Perth Forum	19 May 2014
Edith Cowan University	Perth Forum	19 May 2014
Department of Education	Perth Forum	19 May 2014
Tourism WA	Perth Forum	19 May 2014
Department of Training and Workforce Development WA	Perth Forum	19 May 2014
Department of Agriculture and Food WA	Perth Forum	19 May 2014
Australian Hotels Association WA	Perth Forum	19 May 2014
WA Pork Producers' Association	Perth Forum	19 May 2014
WA Farmers Federation	Perth Forum	19 May 2014
Lortleaze Farms	Perth Forum	19 May 2014

Appendix 5 – Public submissions received

Stakeholder
Absolute Immigration Services
Adrian Shambler
Agrifood Alliance Western Australia
Alan Sampson
Alex Blauw
Allens Linklaters
Andrew Olsson
Anthony Nealen
Ashley Webb
Australian Computer Society
Australian Council of Deans of Information and Communications Technology
Australian Council of Trade Unions
Australian Council of Trade Unions - Supplementary
Australian Dairy Industry Council
Australian Dairy Industry Council - Supplementary
Australian Higher Education Industrial Association
Australian Hotels Association Western Australia
Australian Industry Group
Australian Information Industry Association
Australian Institute of Marine and Power Engineers
Australian Meat Industry Council
Australian Medical Association
Australian Migration Education Center
Australian Mines & Metals Association
Australian Motor Industry Federation
Australian Nursing and Midwifery Accreditation Council
Australian Nursing and Midwifery Federation
Australian Private Hospitals Association
Australian Racing Board and Thoroughbred Breeders Australia
Australian Student and Novice Nurses Association
Australian Workers' Union
AXL Legal
Bayside Personnel Australia Pty Ltd
Bob Birrell
Bob Birrell and Ernest Healy
Brenda Ballantyne
Broad Hectare Farmers
Bulmer Farms Pty Ltd
Business Council of Australia
Chamber of Commerce and Industry Queensland
Chamber of Commerce and Industry Western Australia
Chamber of Commerce and Industry Western Australia Supplementary

Stakeholder
Chamber of Commerce Northern Territory
Chamber of Minerals and Energy of Western Australia
Chamber of Minerals and Energy of Western Australia Supplementary
Civil Contractors Federation
Clive Seiffert
Colin and Elisabeth Paterson
Community Relations Commission NSW
Community Services and Health Industry Skills Council
Consult Australia
Dallas Johns
David Bitel, Parish Patience Lawyers
David Griffiths
David Ingram
David Xerri
Deloitte
Department for Manufacturing, Innovation, Trade, Resources and Energy (South Australia)
Department of Business (Northern Territory)
Department of Economic Development, Tourism and the Arts (Tasmania)
Department of Education
Department of Employment and the Fair Work Ombudsman
Electrical Trades Union of Australia
Ernst & Young
Eventus Corporate Immigration
Faye Rouse International Business Services Pty Ltd
Federation of Ethnic Communities' Councils of Australia
Fragomen Australia
Frank Falcone
Garry and Lee Hibberd
Geoff Holman
Hall and Wilcox Lawyers
Hallmark Immigration
Henri Le Riche
Housing Industry Association
Human Rights Council of Australia
Iain Campbell
Izaac Walsh
Dr Joanna Howe
Joy Please
Ken Mayes
KPMG
Laurie Berg
Law Council of Australia
Law Council of Australia - Supplementary
Leonie Graham

Stakeholder
Liana Allan
Lorenzo Boccabella
Maritime Union of Australia
Mark Brocklesby
Mark Connelly
Mark Glazbrook
Mark Glazbrook - Supplementary
Mark Glazbrook - Second Supplementary
Mark Tarrant Lawyers
Master Builders Australia
Max Jelbart
MaxiTRANS
Michael Rabbitt
Migration Alliance
Migration Council of Australia
Migration Institute of Australia
Minerals Council of Australia
Monash University
NASSCOM Australia
NASSCOM Australia - Supplementary
National Farmers' Federation
National Farmers' Federation – Supplementary
National Tourism Alliance
Patrick Edgerton
Peter Mares
Peter Mares - Supplementary
PricewaterhouseCoopers
Queensland Nurses Union
Queensland Tourism Industry Council
Ramakrishna Poludasu
Ray Maybury
Recruitment and Consulting Services Association
Regional Development Australia Murraylands Riverland
Regional Development Australia Orana
Restaurant and Catering Australia
Scarlet Alliance
Shane Simolin
Simon Jones
South Australia Health
South Australian Commissioner for Equal Opportunity
Stephen Burns
Stephen Miller
Sydney Airport
Teys Australia

Stakeholder
Thomas Foods International
Transport Workers' Union
Tro Diep
Unions NSW
UnionsWA
University of Adelaide
University of New South Wales, Australian National University, Monash University, and the University of Melbourne
VETASSESS
West Australian Pork Producers' Association
Western Australian Government

Appendix 6 – Summary of social media

The department assisted us in facilitating a facebook 'live chat' on 7 May 2014, an open forum which encouraged sponsors and visa holders to participate by providing their views and questions regarding the integrity of the 457 programme, and receive a real-time response from departmental officers.

The live chat was promoted across the department's social media channels in the lead-up to the chat, including social media platforms such as facebook, twitter, LinkedIn and the department's Migration Blog. When choosing this method of consultation, we noted the department's facebook page is widely followed, with around 137 000 individuals 'liking' the page, and the Migration Blog has an average of 40 000-50 000 page visits a month.

Participation in the live chat on 7 May peaked at approximately 700 attendees, with participants asking over 100 questions relating to the 457 programme. The panel considered the live chat to be a contemporary way to engage with visa holders, businesses and migration agents about the integrity of the 457 programme, and gather views on the broader temporary migration programme as a whole.

The department's Migration Blog also featured a post relating to the review, and sought comment from blog readers regarding their views relating to integrity of the 457 programme. The blog post attracted 75 comments from members of the public covering a broad range of issues, with significant commentary relating to interplay of the 457 programme and permanent migration pathways.

The views gathered through these public consultation campaigns were from a broad range of stakeholder perspectives covering an extensive array of topics, which assisted in developing the stakeholder consultation findings of the review.

Appendix 7 – Country comparison

Theme	Australia	Canada	New Zealand	United Kingdom	United States
Name and description	The Temporary Work (Skilled) (subclass 457) visa is designed to enable employers to address labour shortages by bringing in genuinely skilled workers where they cannot find an appropriately skilled Australian.	Canada's Temporary Foreign Worker Program ("TFWP") allows for skilled and semi-skilled workers to enter Canada to work. The objective of the programme is a last resort for employers to fill jobs for which qualified Canadians are not available. It is based on employer demand to fill specific jobs.	New Zealand has a number of temporary skilled work visas including the Essential Skills visa and a Work to Residence visas.	Temporary work migrants in the UK are classified under 'Tiers'. 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. Tier 2 visa holders must have an employer, similar to the 457 visa.	Temporary (non-immigrant) Workers' program predominantly comprises three main visa classes, the H1B, the H2A and the H2B. The H1B visa is for workers in a speciality occupation that requires the theoretical and practical application of a body of highly specialised knowledge and a bachelor's degree or the equivalent in the specific speciality.
Capped or uncapped	Uncapped programme.	Uncapped programme.	Uncapped programme.	Capped at 20 700 per year. People who earn £150 000 a year or above are excluded from the cap.	Currently capped at 65 000 annually. There are several broad exemptions.
Duration of visa	The 457 visa is valid for up to four years.	Temporary foreign workers can work in Canada up to a maximum of four years. Work permits for low-wage positions are limited to one year.	Essential Skills visas are valid for between one to five years depending on skill level. Work to Residence visas are valid for up to 30 months.	Tier 2 visas are issued for a maximum of five years and 14 days, or the time on certificate of sponsorship plus one month, whichever is shorter. Visa extensions are possible up to another 5 years, as long as total stay is not more than 6 years.	The visas are valid for up to three years and further extensions are possible.

Theme	Australia	Canada	New Zealand	United Kingdom	United States
Labour market testing	LMT was announced in the 1 July 2013 reform package and implemented on 23 November 2013.	An employer must pass a Labour Market Impact Assessment ("LMIA"). The majority of employers must also submit a Transition Plan to ensure that they have a plan to transition to a Canadian workforce.	Employers are not required to undertake LMT unless they hire an occupation that is not on one of the Essential Skills in Demand Lists. To do this an employer needs to apply for an approval in principle.	A resident LMT is required if the job is not on the shortage occupation list.	Employers must complete must submit a Labor Condition Application ("LCA") to the Department of Labor ("DOL") no more than six months before the initial date of intended employment.
Public register of employers	There is no public register of employers who have nominated 457 workers.	The Employment and Social Development Canada ("ESDC") keeps a list of employers who have broken the rules or been suspended from the TFWP.	There is no public register of employers who have nominated temporary skilled workers.	Unlike in Australia, all sponsors are listed on a public register.	The US DOL has the Labor Certification Registry, an online database that makes certified LCAs easily accessible to the public.
Wages	To nominate a position to be filled by a 457 visa applicant, sponsors must demonstrate that the applicant's base rate of pay will meet the TSMIT. Standard Business Sponsors must also pay the 'market salary rate'.	Employers hiring temporary foreign workers must comply with the prevailing wage set by ESDC and be prepared to provide documentation that clearly demonstrates the wage being paid to the foreign workers.	The employer must show that the rate of pay is no less than the rate that would be required to recruit a New Zealander to equivalent work.	The job must pay £20 500 or more. There are some exemptions to this. Minimum rates for occupations are set out in the Codes of Practice for Skilled Workers, Standard Occupational Classification Codes.	The employer is required to pay the prevailing wage or the actual wage paid by the employer to workers with similar skills and qualifications, whichever is higher. The prevailing wage rate can be obtained by submitting a request to the National Prevailing Wage Center.
Pathway to Permanent Residency	There is a pathway for 457 visa holders to transition to permanent residency through the ENS.	Some temporary foreign workers can go on to become permanent residents.	After two years in New Zealand, temporary migrants can apply to transition to permanent residency.	These workers are also eligible for permanent residency after a continuous period of living in the UK for five years.	There is no link to any type of permanent residency.

Theme	Australia	Canada	New Zealand	United Kingdom	United States
Skills List	An overseas worker must be nominated in an occupation that is on the CSOL. The list determines eligibility for the programme on the basis of skill.	Migrants must be filling a position of shortage, as defined by the government. Canada is now using wages as a reflection of skill level.	To employ foreign labour the position must be eligible on one of the Essential Skills in Demand Lists. New Zealand also uses the ANSZCO to classify occupations.	There is a Tier 2 Shortage Occupation List which lists all of the UK-wide shortage occupation for Tier 2.	No list as such. Workers have to be employed in a speciality occupation that requires the theoretical and practical application of a body of highly specialised knowledge and a bachelor's degree or the equivalent.
Fees	Sponsorship - $420 Nomination - $330 Visa application - $1 035 per applicant 18 and over (Other additional charges may apply)	LMIA Fee - $1 000 Work permit - $155 Visitor (temporary resident) visa to enter the country (if required)- $100	Request for employer for approval in principle for purpose of recruiting staff - $250 Work visa (partnership/work to residence – talent) - $360 Work visa – other - $270 inside NZ; $230 Pacific/Australia; $270 rest of world	Sponsor Licence Fee Small sponsors - £536 Medium/Large sponsors - £1 476 Certificate of sponsorship - £184 per worker Tier 2 general (up to three years) (shortage occupation) - £428 Tier 2 general (more than three years) (shortage occupation) - £856	Base filing fee - $325 American Competitiveness and Workforce Improvement fee - $750 or $1 500 (depending on the number of workers employed by the petitioner) Fraud prevent & detection fee (If applicable) - $2 500 Premium processing fee (Optional) - $1 225

Appendix 8 – 457 programme statistics

Table AS1 Subclass 457 visa granted between 1 August 1996 and 31 May 2014

	Primary	Secondary	Total
1996-1997	11 765	10 867	22 632
1997-1998	16 191	14 085	30 276
1998-1999	15 700	13 043	28 743
1999-2000	16 870	13 157	30 027
2000-2001	20 520	15 445	35 965
2001-2002	16 700	14 289	30 989
2002-2003	18 673	15 092	33 765
2003-2004	20 101	16 165	36 266
2004-2005	24 401	20 226	44 627
2005-2006	36 229	30 455	66 684
2006-2007	43 118	39 068	82 186
2007-2008	55 796	50 844	106 640
2008-2009	48 376	48 196	96 572
2009-2010	33 761	32 132	65 893
2010-2011	46 657	40 906	87 563
2011-2012	65 900	54 931	120 831
2012-2013*	66 281	55 659	121 940
2013-2014**	46 651	41 908	88 559
* 62 807 at 31 May 2013 ** To 31 May 2014			
Source: Department of Immigration and Border Protection, 2014 (BE7421.01) Note 1: Figures are subject to variation Note 2: Exclude visa granted under a Labour Agreement and Independent Executives			

Table AS2 Nominated Position Location by Capital City

Nominated Position Location	Capital City	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
NSW	**Sydney**	11 488	12 865	17 658	12 814	11 166	15 414	19 952	21 259	16 210
	Other cities	1 081	1 095	1 697	1 573	1 111	1 274	1 886	2 194	1 412
	NSW Total	12 594	14 534	19 376	14 472	12 332	16 713	21 864	23 476	17 639
	% Sydney	91.2	88.5	91.1	88.5	90.5	92.2	91.3	90.6	91.9
VIC	**Melbourne**	6 642	8 474	10 444	9 651	7 515	10 418	12 536	12 919	10 110
	Other cities	636	650	940	994	768	746	802	1 101	970
	VIC Total	7 302	9 403	11 392	10 659	8 292	11 178	13 351	14 044	11 092
	% Melbourne	91.0	90.1	91.7	90.5	90.6	93.2	93.9	92.0	91.1
WA	**Perth**	4 632	6 222	9 732	8 547	4 650	7 379	12 761	11 695	6 424
	Other cities	1 123	1 403	1 924	1 611	1 004	1 662	2 760	2 518	1 336
	WA Total	5 889	8 082	11 712	10 401	5 683	9 073	15 553	14 318	7 778
	% Perth	78.7	77.0	83.1	82.2	81.8	81.3	82.0	81.7	82.6
QLD	**Brisbane**	3 183	4 384	5 826	5 071	2 987	4 463	6 856	6 262	3 934
	Other cities	3 322	3 285	3 445	3 389	1 560	2 128	3 937	3 977	2 787
	QLD Total	6 526	7 748	9 294	8 484	4 557	6 601	10 816	10 261	6 734
	% Brisbane	48.8	56.6	62.7	59.8	65.5	67.6	63.4	61.0	58.4

Nominated Position Location	Capital City	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
SA	**Adelaide**	1 071	1 139	1 645	1 878	1 320	1 295	1 499	1 591	1 215
	Other cities	369	256	257	253	104	181	252	311	247
	SA Total	1 446	1 458	1 906	2 132	1 429	1 479	1 759	1 911	1 467
	% Adelaide	74.1	78.1	86.3	88.1	92.4	87.6	85.2	83.3	82.8
NT	**Darwin**	417	489	621	720	338	349	708	648	722
	Other cities	207	244	254	260	151	139	215	242	172
	NT Total	624	773	893	989	500	498	936	896	902
	% Darwin	66.8	63.3	69.5	72.8	67.6	70.1	75.6	72.3	80.0
ACT	**Canberra**	423	555	586	644	594	700	1092	925	757
TAS	**Greater Hobart**	183	192	207	187	144	151	135	138	119
	Other cities	176	173	229	264	142	141	140	227	126
	TAS Total	361	386	442	459	286	292	277	370	246
	% Greater Hobart	50.7	49.7	46.8	40.7	50.3	51.7	48.7	37.3	48.4

Source: Department of Immigration and Border Protection, 2014 (BE7421.13)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: Percentages are accurate as missing data (records where state and/or city is missing) has been deleted

Table AS3 Subclass 457 Primary visa granted between 1 July 2005 and 31 May 2014 by nominated occupation ANZSCO 2

Nominated Occupation (ANZSCO 2)	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
11 Chief Executives, General Managers and Legislators	776	750	843	736	704	853	960	924	871
12 Farmers and Farm Managers	86	111	123	126	58	66	162	251	171
13 Specialist Managers	3 179	3 345	4 593	4 012	3 708	5 356	6 909	6 279	4 548
14 Hospitality, Retail and Service Managers	588	670	1 169	873	600	856	1 644	4 155	4 013
21 Arts and Media Professionals	281	262	319	272	182	329	280	250	215
22 Business, Human Resource and Marketing Professionals	4 783	5 444	8 052	6 453	5 155	7 256	8 360	7 981	6 304
23 Design, Engineering, Science and Transport Professionals	5 278	6 195	8 342	7 374	4 939	6 972	9 206	6 899	3 465
24 Education Professionals	729	890	1 128	1 005	878	1 257	2 151	2 345	1 883
25 Health Professionals	4 249	6 080	7 410	7 512	5 785	5 581	7 106	6 315	4 064
26 ICT Professionals	3 780	5 559	6 988	5 618	5 170	7 662	9 061	8 478	6 594
27 Legal, Social and Welfare Professionals	301	323	357	412	321	484	504	479	292
31 Engineering, ICT and Science Technicians	1 309	2 049	2 762	2 896	1 834	2 743	4 664	4 350	2 992
32 Automotive and Engineering Trades Workers	3 293	4 108	5 169	3 942	1 109	1 793	4 383	3 869	1 837
33 Construction Trades Workers	705	858	1 217	945	524	1 064	2 019	2 451	1 601
34 Electrotechnology and Telecommunications Trades Workers	937	930	878	710	348	615	1 291	1 213	576
35 Food Trades Workers	2 306	2 260	2 610	1 937	631	1 052	2 736	4 689	3 936
36 Skilled Animal and Horticultural Workers	127	181	163	204	98	128	222	346	273
39 Other Technicians and Trades Workers	640	655	724	539	228	449	829	1 127	935
41 Health and Welfare Support Workers	232	309	325	241	185	267	408	592	461
42 Carers and Aides	20	7	27	23			< 5	< 5	< 5
43 Hospitality Workers	46	58	72	92					
44 Protective Service Workers	7	8	6	16	< 5	< 5	6	5	< 5
45 Sports and Personal Service Workers	159	136	362	330	317	132	165	221	161
51 Office Managers and Program Administrators	643	783	1 166	1 040	709	1 309	2 400	2 495	844

Nominated Occupation (ANZSCO 2)	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013 to 31 May 2014
52 Personal Assistants and Secretaries	< 5	5	5	< 5				< 5	
53 General Clerical Workers	< 5	< 5	< 5	15					
54 Inquiry Clerks and Receptionists	21	11	22	20				< 5	
55 Numerical Clerks	13	5	23	11	5	< 5			< 5
59 Other Clerical and Administrative Workers	26	28	34	19	5	5	< 5	55	42
61 Sales Representatives and Agents	33	25	33	19	< 5	< 5	< 5	81	95
62 Sales Assistants and Salespersons	14	9	18	26					
63 Sales Support Workers	23	15	29	22	23	35	42	124	208
71 Machine and Stationary Plant Operators	334	600	461	418	116	322	356	280	244
72 Mobile Plant Operators	46	74	91	67					
73 Road and Rail Drivers	33	29	30	42					
74 Storepersons	< 5	< 5	7	6					
82 Construction and Mining Labourers	32	108	36	144		< 5			< 5
83 Factory Process Workers	969	41	35	28	14	< 5	< 5		
84 Farm, Forestry and Garden Workers	< 5		< 5	5				< 5	
89 Other Labourers	147	70	60	84					
NR Not Recorded	75	122	102	140	113	59	31	22	19
Total	36 229	43 118	55 796	48 376	33 761	46 657	65 900	66 281	46 651

Source: Department of Immigration and Border Protection, 2014 (BE7421.08)
Note 1: Figures are subject to variation
Note 2: Exclude visa granted under a Labour Agreement and Independent Executives
Note 3: ANZSCO was introduced in DIBP on 1 July 2010. Applications lodged prior to that date using the Australian Standard Classification of Occupations (ASCO) 2nd Edition have been converted to an ANZSCO code using a standard DIBP mapping approved by the ABS.

Appendix 9 – IELTS 9 band scale

What is IELTS?

IELTS is an English language proficiency test that assesses a person's reading, writing, speaking and listening ability for education, immigration and professional accreditation purposes. Candidates must sit all four components to receive a test result. IELTS is jointly owned by British Council, IDP: IELTS Australia and Cambridge English Language Assessment.

IELTS is one of the English language tests accepted by the department for visa purposes. There are two versions of the IELTS test: the General Training Test and the Academic Test. The department accepts results from both tests for visa purposes. The IELTS website describes the difference between the two versions of the test as a choice in the reading and writing components, and further outlines the distinction as follows:

IELTS Academic assesses whether a candidate is ready to study or train in English at an undergraduate or postgraduate level. Admission to undergraduate and postgraduate courses is based on the results of these modules.

IELTS General Training measures English language proficiency in a practical, everyday context. The tasks and texts reflect both workplace and social situations. General Training is suitable for candidates who plan to complete their secondary education in an English-speaking country, undertake work experience or training programs. This version of the test is also part of the migration process for candidates who are planning to migrate to Australia, the UK, Canada and New Zealand.

What does a score of 4 in a competency mean?

The IELTS band scale describes a test taker who achieves an IELTS Band score of 4.0 as a 'Limited user' whose basic competence is limited to familiar situations. This person has frequent problems in understanding and expression and is not able to use complex language.

What does a score of 5 mean?

The IELTS band scale describes a test taker who achieves an IELTS Band score of 5.0 as a 'Modest user'. People with this English language ability have a partial command of the language, coping with overall meaning in most situations, though is likely to make many mistakes. They are able to handle basic communication in their own field.

For visa purposes, a person who achieves an IELTS score of 5.0 in each of the four components of reading, writing, speaking and listening has demonstrated an ability of Vocational English.

Appendix 10 – Abbreviations

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACTU	Australian Council of Trade Unions
ACTU	Australian Council of Trade Unions
ANZ	Australian and New Zealand Banking Group Limited
ANZSCO	Australian and New Zealand Standard Classification of Occupations
ANZSIC	Australian and New Zealand Standard Industrial Classification
ASCO	Australian Standard Classification of Occupations
ATO	Australian Taxation Office
AWPA	Australian Workforce and Productivity Agency
CMFEU	Construction, Forestry, Mining and Energy Union
CSOL	Consolidated Sponsored Occupation List
DAMA	Designated Area Migration Agreement
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DHS	Department of Human Services
DIAC	Department of Immigration and Citizenship
DIBP	Department of Immigration and Border Protection
EMA	Enterprise Migration Agreement
ENS	Employer Nomination Scheme
ENSOL	Employer Nomination Scheme Occupation List
EPI	English Proficiency Index
ERA	Excellence in Research for Australia
ETU	Electrical Trade Union
FWO	Fair Work Ombudsman
GAE	Guaranteed Annual Earnings
ICT	Information and Communications Technology
IELTS	International English Language Testing System
LMT	Labour Market Testing
MACSM	Ministerial Advisory Council on Skilled Migration
MCA	Migration Council of Australia
MoU	Memorandum of Understanding
MSL	Minimum Salary Level
NEC	Not Elsewhere Classified
NFF	National Farmers' Federation
OECD	Organisation for Economic Co-operation and Development
OBPR	Office of Best Practice Regulation
OBS	Overseas Business Sponsors
OET	Occupational English Test
OHLA	On-hire Labour Agreement
OH&S	Occupational Health and Safety
PM&C	Department of Prime Minister and Cabinet
PTE Academic	Pearson Test of English Academic
RCB	Regional Certifying Body
RMA	Registered Migration Agent

RSMS	Regional Sponsored Migration Scheme
SBS	Standard Business Sponsor
SES	Socio-Economic Status
SMOG	Skilled Migration Officials Group
SOET	Skilled Occupation Eligibility Threshold
SOL	Skilled Occupation List
SOST	Skilled Occupation Salary Threshold
STAC	Subsequent Temporary Application Charge
TOEFL	Test of English as a Foreign Language.
TRA	Trades Recognition Australia
TSMIT	Temporary Skilled Migration Income Threshold
VAC	Visa Application Charge
VEC	Visa Evidence Charge
VPT	Visa Pricing Transformation