

Review of the Temporary Skilled Migration Income Threshold (TSMIT)

The Future of TSMIT within a Robust 457 programme



John Azarias
May 2016

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Letter from the reviewer

Senator the Hon. James McGrath
Assistant Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dear Minister,

In my letter introducing the predecessor to the present report, *Robust New Foundations: a Streamlined, Transparent and Responsive System for the 457 Programme* (September 2014), I expressed my appreciation for the opportunity to give something back to the country which has been so kind to me over the almost three decades I have been a citizen. The same is true in the case of this follow-up report.

I also acknowledged the excellent collaboration I received from a range of government officials. For this report, which deals with TSMIT, a key element of the 457 visa programme, I have benefited from a similar readiness to assist, combined with first-rate expertise, hard work and cheerfulness.

It is gratifying that the Government accepted 21 of *Robust New Foundations'* 22 recommendations, including its principal one, the formation of a tri-partite Ministerial Advisory Council on Skilled Migration (The Council). The Council has now met four times, and the relevant Minister has attended two of those meetings. Several government departments have expressed their willingness to help the Council work productively.

The preparatory work done for the present report, however, has shown that there still needs to be a greater recognition by stakeholders of the potential of the framework set out in the earlier document. The main task now is for those stakeholders to appreciate that the Council will reach its full effectiveness if they themselves proactively identify issues, bring them to the Council for further investigation, and receive objective data and analysis from government officials to inform later discussions and advice to the Minister.

The report makes a number of recommendations to help this process along. But ultimately, it is up to the stakeholders themselves to be proactive. This report's main contention is that once this happens, the issues currently surrounding TSMIT will clarify and, very possibly, ebb away. In the meantime, I have recommended a number of measures to fine-tune TSMIT.

I should like to single out Catherine Schmitz of your Department for the remarkable work, well beyond the normal call of duty, that she has performed in assisting me on this report. She has been painstaking and constructive. I have also received excellent assistance from Ben Meagher.

In conclusion, I echo the point I made in *Robust New Foundations*: a well-administered 457 programme is a key to Australia's economic prosperity and its success as a society. My aim in reviewing TSMIT has been to make a meaningful contribution to that end.

Yours sincerely,

John Azarias
TSMIT Reviewer

30 May 2016

Executive Summary

The Temporary Skilled Migration Income Threshold (TSMIT) is a major component of the 457 programme. It has been used as an entry level salary threshold to protect lower paid Australian jobs, and to ensure that 457 visa holders have reasonable means of support while in Australia. Since it was introduced, TSMIT has been increased annually to reflect prevailing conditions.

An independent review of the 457 programme conducted in 2014 *Robust New Foundations: a Streamlined, Transparent and Responsive System for the 457 Programme*, (henceforth referred to as *Robust New Foundations*) established a detailed framework for a new approach to the whole 457 visa programme. Two of its major recommendations referred to TSMIT. They were that a separate review of TSMIT be carried out within two years, and that, in the meantime, it should remain at its then current level of \$53,900. It was expected that, within the two years, the new framework for the 457 programme would be fully operational.

The principal recommendation of *Robust New Foundations*, however, was that a tripartite Ministerial Advisory Council (MAC) be established, to consist of representatives from business, unions and government, both federal, state and territory. The aim was that these representatives would proactively identify significant issues in their sector and raise them in the Council. The Council would be supported by a resource, one of whose tasks would be to collect the evidence relevant to the issues raised in the MAC. That evidence, and the evidence-based discussion that would ensue, would then form the basis for the Council's advice to Government.

There have been many positive developments since *Robust New Foundations*, including the Government's decision to revitalise the previous Ministerial Advisory Council for Skilled Migration (MACSM), in a more active role than that of its predecessor. However, the earlier expectation that the new MACSM framework would be completely bedded down and operational within two years has proved to be premature. For this new framework to be fully effective, stakeholders should be encouraged to bring issues to MACSM on their own initiative, that is, proactively.

This report makes two recommendations to that end:

- The MACSM secretariat's role should be enhanced so that it operates proactively and goes well beyond administration, to assist MACSM by liaising with its stakeholders, guiding them in the submission of their requests, co-ordinating the conduct of detailed research on the issues raised by these stakeholders, working on drafts of reports, and ensuring that follow-up action actually occurs.
- Experts in demography, economics, and the law should be appointed to MACSM, and should form a subcommittee which would work with agencies to develop, and prepare for MACSM, data and analytics on labour market trends.

The effect of these two recommendations is intended to be felt in the medium to longer term.

Once this framework is fully operational, the reliance on rigid regulation through measures such as TSMIT could be reduced, since the significant issues relating to skilled migration will have been raised, fully examined in an independent and granular way, and thoroughly discussed around the MACSM table.

In the meantime, this report makes a set of more immediate recommendations relating to TSMIT:

- it should be retained as a single figure
- it should continue to be set at \$53,900
- since it has not been adjusted after July 2013, it should be annually indexed as of July 2016
- it should be indexed according to the seasonally adjusted Wage Price Index
- any concessions to TSMIT should continue to be negotiated through Labour Agreements
- Labour Agreements should be included in the simplified sponsorship model
- the current legislative framework should continue to be used for TSMIT
- the current discrepancy between the 457 programme, which requires sponsors to meet TSMIT, and the ENS/RSMS programmes, which do not have such a requirement, should be addressed by Government.

To conclude, it is only once the *Robust New Foundations* framework is fully operational that a realistic future for TSMIT can be found. And the framework will only be fully operational once the stakeholders understand the need for them to work proactively to bring issues to the table. The Government has created a forum for ongoing engagement with stakeholders, but the ball is now in the latters' court.

General Overview

Introduction

Since 2009, the Temporary Skilled Migration Income Threshold (TSMIT) has been used by the 457 programme as an entry level salary threshold to protect lower paid Australian jobs, and to ensure that 457 visa holders have reasonable means of support while in Australia. Since it was introduced, TSMIT has been increased annually to reflect prevailing conditions.

An independent review on the 457 programme conducted in 2014 (*Robust New Foundations: a Streamlined, Transparent and Responsive System for the 457 Programme*, henceforth referred to as *Robust New Foundations*) recommended a detailed new framework for managing the 457 programme, including one of its major components, the TSMIT.

One of the recommendations of *Robust New Foundations* was that TSMIT be retained at its then level of \$53,900, as part of the detailed new framework, until a subsequent, and separate, review of TSMIT was undertaken and completed. The present document, *The Future of TSMIT within a Robust 457 Programme*, is that subsequent review.

The present review's detailed terms of reference are to be found in [Appendix 1](#). In a nutshell, they require this review to recommend ways of establishing the appropriate level and application of TSMIT within the new framework constructed by *Robust New Foundations*.

There was a sound reason why *Robust New Foundations* recommended that TSMIT be frozen at \$53,900 until it was separately reviewed later. This was that keeping TSMIT at the same level would give time and space for *Robust New Foundation's* new "streamlined, transparent, and responsive" framework to bed down properly. It was intended that the TSMIT review would then look at the best way of achieving the original aims of TSMIT within the framework established by *Robust New Foundations*, a framework which, it was anticipated, would be fully operational by the time the TSMIT review began.

It follows that the *Robust New Foundations* framework is of pivotal importance for this review. It is therefore worth summarising its main features, and considering how its implementation has progressed.

Background: Robust New Foundations

Robust New Foundations appeared after a chequered history of multiple reports on the subject of temporary skilled migration, all of which sought to reconcile divergent views. On the one side were those, largely business owners, who needed overseas workers to supplement their workforce, and on the other were those, mainly unions, who viewed their role as primarily safeguarding the job opportunities and entitlements of workers in Australia. The environment within which all these reports were prepared was clearly a politically and economically divided one.

These divisions exacerbated a number of problems in the system.

The first was that the Australian Bureau of Statistics (ABS)-based Consolidated Sponsored Occupation List (CSOL), used by employers seeking to recruit 457 staff, is an infrequently updated catalogue which was never designed to help pinpoint occupations in demand in a rapidly-changing economy.

The second was that employer-conducted Labour-Market Testing, designed to prevent overseas workers from taking jobs that can be filled by Australians, is ineffective.

The third was that the system is a one-size-fits-all one which does not give sufficient attention to sectoral or regional problems and needs.

The fourth was that, over the years, some of the tools (such as TSMIT) that were developed to address shortcomings in the system often turned out to be inflexible.

The *Robust New Foundations* framework was designed to solve these four problems, and greatly attenuate the evident polarisation.

It had several features:

1. A tripartite Ministerial Advisory Council on Skilled Migration (MACSM)
 - MACSM was designed to consist of representatives from business, unions and government, both federal, state and territory.
 - It was intended to provide an opportunity for all parties to proactively bring to the table, and discuss in an open and neutral context, a wide range of issues (e.g. TSMIT, and labour shortages and workforce development) relating to skilled migration, and to explore ways of reaching mutually acceptable solutions.
 - It would be supported by a permanently established resource in a department, which would bring together all the labour market analysis expertise in the Departments of Immigration and Border Protection (DIBP); Employment; Industry, Innovation and Science; Education and Training; and Health.
 - It would use the evidence produced by this co-ordinated analysis as a basis for advice to government on skilled migration.

2. A streamlined approvals process which combines, for the first time, sponsor and individual characteristics, those relating to sponsors at the nomination stage, and those relating to individuals at the visa application stage. This was designed to save time for both companies and visa applicants with excellent records, as well as for DIBP which scrutinises their applications
3. Significantly less time spent on negotiating Labour Agreements
4. The development of industry-based Template Agreements
5. A system under which employers would contribute a certain amount per 457 worker per annum to government-run training programmes as part of workforce development programmes for Australians
6. A requirement that 457 visa applicants provide their tax file numbers (TFNs) to DIBP, so as to ensure compliance by both employers and employees with taxation requirements
7. Continued monitoring by Fair Work Ombudsman (FWO) inspectors of adherence by employers of 457 visa holders to their obligations towards their 457 employees, and co-ordination with DIBP.

Early days yet but positive Government reaction to Robust New Foundations

It was gratifying that the Government approved 21 of the 22 recommendations of *Robust New Foundations*. Government reaction is summarised below.

1. MACSM

- The Government approved the principal recommendation of *Robust New Foundations*, namely the establishment of a tripartite MACSM.
- This was particularly pleasing in that the role of the revived MACSM, which was entrusted to it by Government, is appreciably more active than that of its predecessor.
- Considerable support has been forthcoming from the Ministers of Immigration and Border Protection in post during this process. Ministers have attended two of the four meetings of MACSM so far, and representatives of the Minister's office have been present at all four, an indication of strong commitment to the goals of MACSM.
- MACSM itself has embarked on a comprehensive review of CSOL, and is developing the methodology for its future application. This is an activity which is an important part of its role.

- In support of *Robust New Foundations*'s point that a "coordinated approach within government, backed by a dedicated resource, would be a significant advance", the Government agreed to the formation of a unit within DIBP, tasked with co-ordinating the labour market analysis units of a range of all the departments mentioned above. This unit is a key feature of the current environment, and it was satisfying that the Government gave it such ready support.
 - Another positive development has been that the other government departments listed above, all of which were consulted as part of this review, are willing to participate actively to support MACSM.
2. The Government accepted the recommendation to streamline the approvals process by combining sponsor and individual characteristics.
 3. The average processing time of Labour Agreements has dropped from five months in April 2014 to 35 days in April 2016.
 4. The Department has negotiated a number of industry Labour Agreements to support industries with identified skill shortages.
 5. The Government has stated its support for the introduction of an annual training fund contribution by sponsors, with monies collected to be used to fund government-run training initiatives for Australians.
 6. The Government has supported a change to 457 visa conditions to place an obligation on visa applicants to provide DIBP with their Australian TFNs.
 7. The relationship between DIBP and FWO is now governed by a Memorandum of Understanding, which enables closer co-operation between the agencies, allowing them to share information, and to refer relevant matters to each other.

Other developments since Robust New Foundations

A Ministerial Working Group Protecting Vulnerable Visa Holders has been established. It is chaired by the Minister for Employment and is made up of the Minister for Immigration and Border Protection, the Minister for Justice, and the Assistant Treasurer and Minister for Small Business.

The Government has increased its focus on the exploitation of 457 workers, with the establishment of Task Force Cadena. This is made up of representatives from DIBP, FWO, the Australian Taxation Office (ATO), the Australian Federal Police (AFP), and the Australian Securities and Investment Commission (ASIC).

The Senate Education and Employment References Committee report, *A National Disgrace: the Exploitation of Temporary Work Visa Holders*, which was issued in March 2016, explores a number of issues, including the exploitation of vulnerable migrant workers in temporary visa programmes, such as the 457 programme. *Inter alia*, the report recommends that MACSM provide evidence-based advice to government on matters including skills shortages, training needs, and workforce capacity and planning.

Coverage of exploitation of foreign workers in the media, for example the 7-Eleven case, highlights the ongoing importance of measures to protect visa holders.

One of the items canvassed in the Senate report was the question of whether Australia should establish a British-style Migration Advisory Committee (MAC), which would include independent experts e.g. in demography, economics, and the law. This issue is addressed in the present report.

The task now: realising the full potential of the framework set out in Robust New Foundations

The main need now is for MACSM to achieve its full potential.

A key ingredient of MACSM's success was envisaged to be that stakeholders would proactively bring their various issues to the table¹. In other words, issues would be brought directly to MACSM rather than being routed through the Minister.

However, perhaps understandably, since the system is a new one, this does not seem to have been happening yet as originally intended. It became clear during this review that the various stakeholders in the immigration world have yet to grasp fully, and take advantage of, the importance of their proactive role within MACSM. Significantly, no submissions to the review mentioned MACSM. This seems to indicate that stakeholders do not yet have proper appreciation of MACSM's potential, or of the task that Government has entrusted to it when it approved the *Robust New Foundations* framework.

Once stakeholders, both employers and unions, fully appreciate MACSM's potential, they will independently take steps to identify issues of concern in their sector (for example, regional and skills discrepancies, TSMIT and Labour Market Testing problems), and will regularly and actively do whatever they can to make sure that those issues are on MACSM's agenda. Then the process will unfold as envisaged by *Robust New Foundations*. Evidence and empirical data will be gathered and analysed, and that evidence will be presented at a subsequent MACSM meeting for open and transparent discussion by MACSM members.

Ideally, one or more recommendations from MACSM to Government should then ensue. Even if MACSM cannot reach a consensus on the advice it provides to the Minister, it will have allowed factual evidence to be collected and a proper discussion to be held in a neutral environment. Ministers will always retain the final word.

In this way MACSM will be properly and fully performing its intended function of providing Government with relevant, timely and evidence-based advice.

¹ The recently released Senate report, *A National Disgrace*, provides multiparty endorsement for this role for MACSM.

A key measure which could contribute materially to the full functioning of MACSM as originally envisaged would be for it to have its own small secretariat whose job would go beyond administration. The role of MACSM's current secretariat is confined to limited administrative matters, but essentially the enhanced secretariat now envisaged would help MACSM's Chairman drive the agenda. Specifically, it would be in regular contact with stakeholders, guide them in the submission of their requests, work on drafts of reports, ensure that follow-up action actually occurred, and, in short, would help ensure that MACSM reaches its full potential. (Recommendation 1).

Following on from the Senate's discussion on a possible British-style MAC, another important option could be for MACSM to include experts, for example, in demography, economics, and the law among its members. These experts, constituted as a subcommittee of MACSM, would work with DIBP's labour market analysis resource, with the purpose of convening a Working Group of agency experts in labour market analysis from the various departments mentioned above. The Working Group would prepare and co-ordinate data and analyses. The MACSM subcommittee would then ensure that the conclusions of the Working Group were presented to MACSM. (Recommendation 9).

To sum up, the whole system relies on:

- proactive submission of issues to MACSM by stakeholders
- expert, co-ordinated input from noted professionals and government analysts
- use of facts and evidence to inform discussions
- openness of debates
- transparency of conclusions
- organisational support from an expanded secretariat.

Once this transparent, open, evidence-based system is properly up and running, the usefulness of "blunter" instruments like TSMIT could become redundant, and fall away naturally. In other words, there is a good prospect that TSMIT may no longer be necessary in its present form, since the significant issues relating to skilled migration will have been raised, fully examined in an independent and granular way, and thoroughly discussed around the MACSM table. Meanwhile there is no option but to retain TSMIT, but in a more fine-tuned form, involving the administrative changes outlined in Recommendations 2 to 7.

Other items identified during the review

A number of submissions highlighted the discrepancy between the 457 and the ENS/RSMS programmes. The former requires 457 visa holders' wages to be equal to or above TSMIT, while the latter have no such requirement. Often both 457 and ENS/RSMS are for similar types of jobs in the same regions. In programme year 2014–15, there were 51,130 subclass 457 primary visas granted. The 2014-15 migration programme outcome for the Employer Sponsored category (ENS/RSMS) was 48,250 ENS/RSMS places, of which 22,098 were primary applicants.

This discrepancy has become even more marked after the recent announcement by the Government that New Zealand citizens can apply for permanent residency if their income was at least equivalent to TSMIT for the qualifying period. Recommendation 8 refers.

The Executive Summary of *Robust New Foundations* ended with the words:

What we have sought to do in this report is to design robust foundations for the 457 programme, foundations that are cooperatively 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.

To continue the analogy, we now have the design of our sturdy new house and are well on the way to building it. Until it is finished, however, we cannot quit our existing one, or remove its stopgap solutions. But once we move, we shall then be in possession of the durable structure designed by *Robust New Foundations* and by the present report, and we shall have achieved something of significant value for Australia.

Report Recommendations

Recommendation 1 (pg 30)

1. That MACSM have an enhanced secretariat with a proactive role beyond administration.

Recommendation 2 (pg 34)

- 2.1 That TSMIT continue to be \$53,900.
- 2.2 That, in circumstances where the Base Rate of Pay is below TSMIT:
 - 2.2.1 the current ability to take into account Guaranteed Annual Earnings (GAE) to arrive at a rate that meets or exceeds the minimum requirement of TSMIT be continued.
 - 2.2.2 that the current inclusion of non-monetary benefits in the calculation of GAE be continued, but that the Government investigate how it is used by sponsors.

Recommendation 3 (pg 42)

- 3.1 That TSMIT be indexed annually on 1 July.
- 3.2 That, as TSMIT has not been indexed since 1 July 2013, indexation commence from 1 July 2016.
- 3.3 That TSMIT be indexed using the seasonally adjusted Wage Price Index for the March quarter of the current year (ABS data 6345.0).

Recommendation 4 (pg 48)

- 4.1 That TSMIT be retained as a single figure for all nominations.
- 4.2 That concessions to TSMIT continue to be negotiated via Labour Agreements.
- 4.3 That the Department's Labour Agreement area continue being appropriately resourced to provide a demand driven and responsive pathway for temporary migration, where the Standard Business Sponsorship 457 programme arrangements are not suitable.

Recommendation 5 (pg 49)

5. That the current legislative framework continue to be used for TSMIT, with details of TSMIT contained in the Migration Regulations, and annual indexation changes contained in a Legislative Instrument. The Legislative Instrument should continue to be one that is disallowable.

Recommendation 6 (pg 50)

6. That the Department include Labour Agreements in the simplified sponsorship model being worked on in the Skilled Migration and Temporary Activity (SMTA) review as appropriate.

Recommendation 7 (pg 53)

- 7.1 That the Department review publicly available departmental information on TSMIT to ensure that:
 - 7.1.1 terminology is defined and used consistently; and
 - 7.1.2 the policy framework is clearly and consistently explained, including TSMIT concessions that may be available under the different types of Labour Agreements
- 7.2 That Migration Regulation 2.72(10)(cc) be amended to require salaries to be 'equal to or greater' than TSMIT.

Recommendation 8 (pg 54)

8. That the Government address the discrepancy that exists between the 457 programme and the Employer Nomination Scheme/Regional Sponsored Migration Scheme (ENS/RSMS) programmes, where the 457 programme applicants must meet TSMIT, and ENS/RSMS applicants are not required to.

Recommendation 9 (pg 56)

9. In order to help MACSM reach evidence-based conclusions, that the Minister consider appointing experts in demography, economics, and the law to MACSM, to form a subcommittee working with Government Departments which have labour market analysis capabilities.

TSMIT's historical context

Minimum Salary Levels – before TSMIT

Minimum Salary Levels (MSL) were in place for 457 visa holders from July 2001 to 13 September 2009, and replaced the concept of 'key' and 'non-key' activities. 'Non-key' activities were previously the subject of Labour Market Testing. Labour Market Testing was discontinued when MSLs commenced, as MSLs imposed minimum skill and salary levels, and were designed to:

- provide a price signal to employers to encourage training/hiring Australians first
- ensure employers did not gain any benefit from inflating the skill description of positions they wished to fill with an overseas worker, and
- ensure overseas workers maintained a standard of living broadly commensurate with that of Australian citizens.

The standard MSL was based on a seasonally adjusted average of Average Weekly Ordinary Time Earnings (AWOTE) for all employees, produced by the Australian Bureau of Statistics (ABS)². The initial 2001 MSL was gazetted at \$34,075 per annum, the final MSL from 14 September 2009 was \$45,220.

Regional concessions set at 90 per cent of the standard MSL applied to all of Australia (except Sydney, Newcastle, Wollongong, Melbourne, the Gold Coast and Perth) between November 2002 and when the MSL ceased in 2009. The concessions were the subject of criticism by stakeholders, including some State and Territory Governments and unions. Ms Deegan in her 2008 review of the 457 programme (discussed below) concluded that: "Where a regime of market rates is mandated for payment of the visa holders there is no need for any specific regional concession [. . .]." and that regional considerations could be addressed through Labour Agreements.

A separate and higher MSL applied to Information and Communications Technology (ICT) occupations from February 2004 to when the MSL ceased in 2009. This was introduced following concerns that the 2001 dot-com crash led to a significant number of Australians with ICT skills losing employment. External submissions to the Deegan Review also suggested that, as the ICT MSL level reflected the typical salary for experienced professionals, it also protected jobs for ICT graduates and experienced workers.

The MSL from 1 July 2006 was based on a standard working week of 38 hours. This was to make it clear that the MSL's intent was to reflect a standard working week, and avoid it being undermined if employees worked excess hours without receiving additional pay.

Minimum Salary Levels (MSL) ceased when the Market Salary Rates framework and TSMIT were introduced in 2009.

² Barbara Deegan, visa Subclass 457 Integrity Review – Final Report (The Deegan Review), October 2008.

The Deegan Review—TSMIT’s origin

In the course of the Deegan Review, undertaken in 2008, stakeholders raised a number of issues regarding the MSL. These included its effectiveness, level, treatment of non-salary benefits and hours worked above the standard 38 hours, difficulties caused by salary indexation, a lack of understanding as to how the MSL operates, and the displacement of local workers by secondary visa holders who are not subject to MSL requirements.

The Deegan Review found that “with a few exceptions, most stakeholders appear to agree that employees working in Australia on a Subclass 457 visa should receive, at a minimum, the same wages and conditions of employment as Australians performing the same tasks at the same workplace or in the same locations”³. While some stakeholders advocated the adoption of award rates as a salary benchmark, the Deegan Review found that this would “distort reality”⁴, noting that the award rate is a legislated minimum rate and is the rate paid in very few industries in Australia.

The Deegan Review recommended that:

- A salary floor, set by reference to an appropriate ABS-published wage rate based upon average weekly full-time earnings, be introduced;
- MSLs be progressively abolished, as other mechanisms (such as collective agreements or market rate determinations) were introduced to replace them; and
- Market rates of pay be paid to all temporary visa holders with salaries less than \$100,000 (or *Fair Work Act 2009* exempted salary level if different). All such rates should be provided for in industrial instruments (awards, agreements or determinations) enforceable by the Workplace Ombudsman or State/Territory equivalent.

The Market Salary Rate and TSMIT were implemented as a result of the Deegan Review recommendations.

³ Barbara Deegan, visa Subclass 457 Integrity Review – Final Report (The Deegan Review), October 2008.

⁴ Ibid.

TSMIT Today

Market Salary Rate Framework (MSR) and TSMIT

The MSR framework and TSMIT are complementary. They commenced together on 14 September 2009 to replace the MSLs, based on recommendations made in the Deegan Review. The MSR is made up of the base salary and other eligible earnings that can be determined in advance (as defined in the Fair Work Act) that are paid to an equivalent Australian worker. The MSR framework requires that 457 visa holders receive no less favourable terms and conditions of employment than Australian workers. This ensures that 457 workers do not undercut Australian terms and conditions, and that 457 workers are not exploited.

The Base Rate of Pay under the MSR must be greater than TSMIT for a sponsor to access the 457 programme. The only exemption is where the Base Rate of Pay under the MSR is below TSMIT but Guaranteed Annual Earnings are equal to or greater than TSMIT (see 'TSMIT exemption provision, Guaranteed Annual Earnings' below).

Operation of TSMIT

TSMIT is a salary threshold used by the 457 programme with a dual purpose:

- to act as an indicator that an occupation is skilled, and
- to ensure that a visa holder has reasonable means of support while in Australia.

This ensures that the 457 programme is not used for unskilled work, that visa holders can be self-reliant, are less vulnerable to mistreatment or exploitation, and are not exposed to circumstances that might put pressure on them to breach their visa conditions.

TSMIT is not prescribed by workplace relations legislation, and is not intended to have any bearing on the market rate that sponsors are obliged to pay visa holders. Rather, it is a floor originally set with reference to average weekly earnings.

As a salary floor commensurate with that of Australian workers, TSMIT assists in ensuring that the 457 programme acts as a supplement to, and not a substitute for, local workers. It also assists to protect potentially vulnerable foreign workers in Australia.

In 2009, TSMIT commenced at \$45,220, the same level that the MSL for non-ICT workers had been set at immediately prior to TSMIT's introduction.

Indicator that an occupation is skilled

One of the two purposes of TSMIT is to act as an indicator that an occupation is skilled. The existing Australian and New Zealand Standard Classification of Occupations (ANZSCO), TSMIT and MSR provisions are intended to discourage sponsors from artificially inflating the skill level of a position. This could result in visa holders being paid more than equivalent Australian workers and/or being employed in semi or unskilled occupations that might be adequately filled by training Australians.

The 457 programme uses the ANZSCO list published by the ABS to classify occupations. Generally, skill level is measured by the amount of formal education and training that a person may be required to have in order to be employed in that occupation in Australia. ANZSCO allows relevant experience to substitute for the formal qualifications. Based on ANZSCO skill level definitions, occupations with skill levels 1, 2 and 3 are considered sufficiently skilled for the purposes of employing a 457 visa holder.

The qualifications required for skill levels 1–3 range from a Certificate III, including at least two years on-the-job training, to a bachelor or higher qualification.

Occupations with skill levels 4 and 5 are not eligible under the standard 457 programme because they are not considered to be sufficiently skilled, requiring between a Certificate I or a short period of on-the job training to a Certificate II or one year relevant experience.

While ANZSCO is the primary indicator that a position is skilled, the duties listed for many occupations are open to interpretation. This makes the assessment of whether a nominated occupation is at a lower or higher skill level more complex. For example, there are multiple occupations that prepare and cook food including Chefs (skill level 2), Cooks (skill level 3), Fast Food Cooks (skill level 5) and Kitchenhands (skill level 5). Where positions are hybrid occupations consisting of duties from more than one of these occupations, this increases the complexity of determining the correct occupation. More information on the duties of Chef, Cook, Fast Food Cook and Kitchenhand is available at [Appendix 7](#).

A salary threshold such as TSMIT provides an important secondary indicator that an occupation is sufficiently skilled to be eligible for the 457 programme. It is intended that TSMIT be commensurate with the salary paid to skilled workers in Australia.

Despite this, some sponsors in the 457 programme seek to inflate the earnings of positions in order to meet visa requirements. The Department introduced the genuine position requirement in July 2013 to address these issues, which requires that the position associated with the nominated occupation be genuine.

Reasonable means of support

The other purpose of TSMIT is to ensure visa holders have reasonable means of support. This is based on the assumption that visa holders will then be less likely to breach their visa conditions by working for employers other than their sponsor, and that they will be less vulnerable to mistreatment or exploitation by their sponsoring employer.

TSMIT aims to ensure that 457 visa holders are paid sufficient funds to provide a reasonable standard of living while in Australia. 457 visa holders may be subject to higher costs of living in Australia than Australian citizens and permanent residents, both when moving to Australia and in their inability to access social services. Subclass 457 visa holders are generally ineligible for income support or taxation benefits, and may be required to meet other costs during their period of stay, such as private health insurance coverage and public school fees. They are also prohibited from secondary employment and may not have other income sources within their immediate family or broader family or social networks to rely on in times of financial stress. The current level of TSMIT does not take into account the number of dependants nominated with a primary 457 visa applicant.

Indexation

Since its introduction, TSMIT was indexed annually based on Average Weekly Earnings (AWE), report 6302.0, published by the ABS to keep pace with the cost of living. Table 1 below provides a summary of TSMIT's indexation.

Table 1: value of TSMIT and annual indexation between 2009 and the present

Time period	Legislative Instrument	TSMIT	Indexation (%)	\$ change
14/9/09-30/6/10	IMMI 09/112	\$45,220	n/a	
1/7/10-30/6/11	IMMI 10/037	\$47,480	5.00%	\$2,260
1/7/11-30/6/12	IMMI 11/041	\$49,330	3.90%	\$1,850
1/7/12-30/6/13	IMMI 12/047	\$51,400	4.20%	\$2,070
1/7/13-30/6/14	IMMI 13/028	\$53,900	4.80%	\$2,500
1/7/14-30/6/15	n/a	\$53,900	0.00%	\$0
1/7/15-present	n/a	\$53,900	0.00%	\$0

On 1 July 2013 TSMIT was indexed and set at \$53,900. In 2014, the Minister for Immigration and Border Protection used their discretion not to index TSMIT, as recommended by the *Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Programme* review (Robust New Foundations review).

Regional concessions

Since TSMIT was introduced in 2009, there have been no regional concessions, reflecting the broader aim of TSMIT to provide overseas workers with a reasonable standard of living without access to Government support.

The 2014 *Robust New Foundations* review noted that the market rate framework is a core component of the 457 programme and that Labour Agreements are an appropriate mechanism for providing concessions to TSMIT.

TSMIT exemption provision – Guaranteed Annual Earnings

If the MSR for an occupation in Australia is below TSMIT, an employer cannot nominate that occupation to be filled by a 457 visa holder. However, if the mark salary Base Rate of Pay is below TSMIT but the proposed Guaranteed Annual Earnings for the nominee are equal to, or above, TSMIT, then that position may be eligible for the 457 programme. This approach recognises that a number of industries and occupations provide for non-salary related earnings as part of an employee's salary package, such as guaranteed allowances and fringe benefits, including those provided under salary sacrificing arrangements.

It would generally only be reasonable to disregard the TSMIT requirement if the additional earnings being afforded to the nominee are, or would be, also afforded to an equivalent Australian worker under an Enterprise Agreement or Award provision, given the same circumstances exist (that is, hours worked).

Example

The relevant industry award provides that a 'split-shift' allowance of AUD 20 is payable when a person's ordinary day has a break of at least three hours in the middle. The contract provided with the nomination shows that the nominee's ordinary hours of work are 5.30am to 10.00am and 4.30pm to 9.00pm, five days a week.

Although the annual base rate of pay under the 'market salary rate' is AUD 50 000 (which is less than TSMIT), as the nominee's annual 'earnings' include an additional AUD 5 200 due to the split-shift allowances the nominee is guaranteed to receive, the guaranteed earnings are AUD 55 200.

As the guaranteed earnings are greater than TSMIT and the additional earnings would also be afforded to an equivalent Australian worker under the Award provision, it is reasonable to disregard the TSMIT requirement and the nomination can be approved⁵.

⁵ Procedure Advice Manual. Sch2 Visa 457 – Temporary Work (Skilled) – Nominations and visa applications

Sponsorship obligations

Sponsors of 457 visa holders must comply with a set of sponsorship obligations. These help protect overseas skilled workers from exploitation. The obligations also ensure the programme is being used to meet genuine skills shortages, and not to undercut local labour wages and conditions.

Compliance with sponsorship obligations is monitored by Immigration Inspectors, Fair Work Inspectors and Fair Work Building Industry Inspectors, who have investigative powers under the *Migration Act 1958*.

The *Robust New Foundations* review made recommendations, endorsed by the Government, that further strengthen the integrity of the 457 programme by protecting 457 visa holders, such as by requiring visa applicants to provide their Tax File Number to the Department. This will ensure compliance by both employers and employees with taxation requirements. Additionally, this measure (and any other measure improving DIBP/ATO information exchange) will assist the Department in checking whether the visa holder is paid the salary promised at nomination, and enable the Department to ensure that the visa holder's salary does not fall below TSMIT.

While there are sponsorship obligations regarding ensuring equivalent terms and conditions (Migration Regulations 1994: 2.79—a sponsor must ensure that the terms and conditions of employment for a primary sponsored person are no less favourable than the terms and conditions that were approved at the time of the nomination), there is no sponsorship obligation relating to TSMIT.

Under a Labour Agreement, the sponsor must ensure that the visa holder is paid the amount specified according to the terms of the Labour Agreement.

Labour Agreements

Labour Agreements enable approved businesses to sponsor overseas workers when there is a demonstrated need that cannot be met in the Australian labour market, and standard temporary or permanent migration arrangements are not appropriate.

There are four types of Labour Agreements:

1. **Company-specific:** These are developed directly with an employer. Terms and conditions are considered on a case-by-case basis. Any concessions, including to TSMIT, in a company specific Labour Agreement must be considered and approved by the Minister for Immigration and Border Protection.

2. **Industry:** These are developed in consultation with key industry stakeholders, specific to an industry sector, and provide fixed terms and conditions. Once an Industry Agreement is in place, individual employers within that industry negotiate agreements with the Australian Government under terms and conditions of the industry agreement. There are currently nine industry agreements in place. For the majority of industry agreements, the Base Rate of Pay (BROP) must be equal to or greater than TSMIT. Some agreements allow the BROP to be met through a specified amount of overtime.
3. **Designated Area Migration Agreements (DAMA):** Concessions of up to 10 per cent below TSMIT may be considered. Business, unions, and community stakeholders must be consulted prior to requesting a DAMA, which have a two-tiered structure, consisting of:
 - an over-arching agreement endorsed by a State/Territory Government to bring 457 workers to a designated area, and
 - individual agreements between employers and the Australian Government that allow employers to sponsor 457 workers to the designated area under the over-arching agreement's terms and conditions.
4. **Project agreements:** These allow infrastructure or resource development projects to access overseas labour. The BROP will generally meet or exceed TSMIT. In rare cases where the BROP is less than TSMIT, employers would still be expected to pay above the TSMIT threshold. Some concessions may be considered in the calculation of terms and conditions of TSMIT.

A statistical overview of 457 salaries

As at 31 March 2016, most major statistical indicators of the 457 programme were less than the previous year, this probably reflects the softening economic conditions that prevailed during 2015 into 2016.

- There were 97,766⁶ primary sponsored persons holding a 457 visa in Australia on 31 March 2016, an 8.4 per cent decrease compared with 31 March 2015 when there were 106,751⁷ primary sponsored persons holding a 457 visa in Australia.

⁶ Department of Immigration and Border Protection. Subclass 457 current trends report 2015–16 to 2016-03-31.

⁷ Department of Immigration and Border Protection. Subclass 457 current trends report 2014–15 to 2015-03-31.

Between the period 1 July 2014 to 31 March 2015 and 1 July 2015 to 31 March 2016:

- The number of primary applications lodged was 1.9 per cent less, from 40,868 to 40,102⁸.
- The number of nominations lodged was virtually unchanged from 53,252 to 52,363⁹. This is 1.7 per cent less than March 2015.
- The number of active sponsors was 35,160. This is 3.6 per cent less than March 2015¹⁰.

At the end of March 2016, the average nominated Base Rate of Pay (BROP) for primary applications granted in 2015-16 to 31 March 2016 was \$88,400, virtually unchanged from one year prior when it was \$88,300. Table 2 shows that the average BROP had increased by approximately 7 per cent (\$6300) since the 2012-13 programme year. Average Guaranteed Annual Earnings (GAE) increased by approximately 6 per cent (\$5300) over the same period.

Table 2: Change to Average Base Rate of Pay and Average Guaranteed Annual Earnings

Programme Year	Avg Weekly Earnings Full-Time ordinary time earnings x52	TSMIT	457 Average Base Rate of Pay *	457 Average Guaranteed Annual Earnings *	Difference Base Rate of Pay vs Guaranteed Annual Earnings	% difference
2015-16 to 31 March 2016 **	\$77,194	\$53,900	\$88,400	\$94,200	\$5,800	6.6%
2014-15	\$75,603	\$53,900	\$88,000	\$94,900	\$6,900	7.8%
2013-14	\$73,980	\$53,900	\$86,200	\$93,200	\$7,000	8.1%
2012-13	\$70,340	\$51,400	\$82,100	\$88,900	\$6,800	8.3%
2011-12	\$67,881	\$49,330	\$85,400	\$93,900	\$8,500	10.0%
2010-11	\$65,328	\$47,480	\$86,800	\$96,800	\$10,000	11.5%
2009-10 from 14 September 2009***	\$62,270	\$45,220	\$86,400	\$99,100	\$12,700	14.7%

*Department of Immigration and Border Protection. Subclass 457 quarterly report. The average Base Rate of Pay and average guaranteed annual earnings is based on subclass 457 primary visas granted.

**Data is from 1 July 2015 – 31 March 2016.

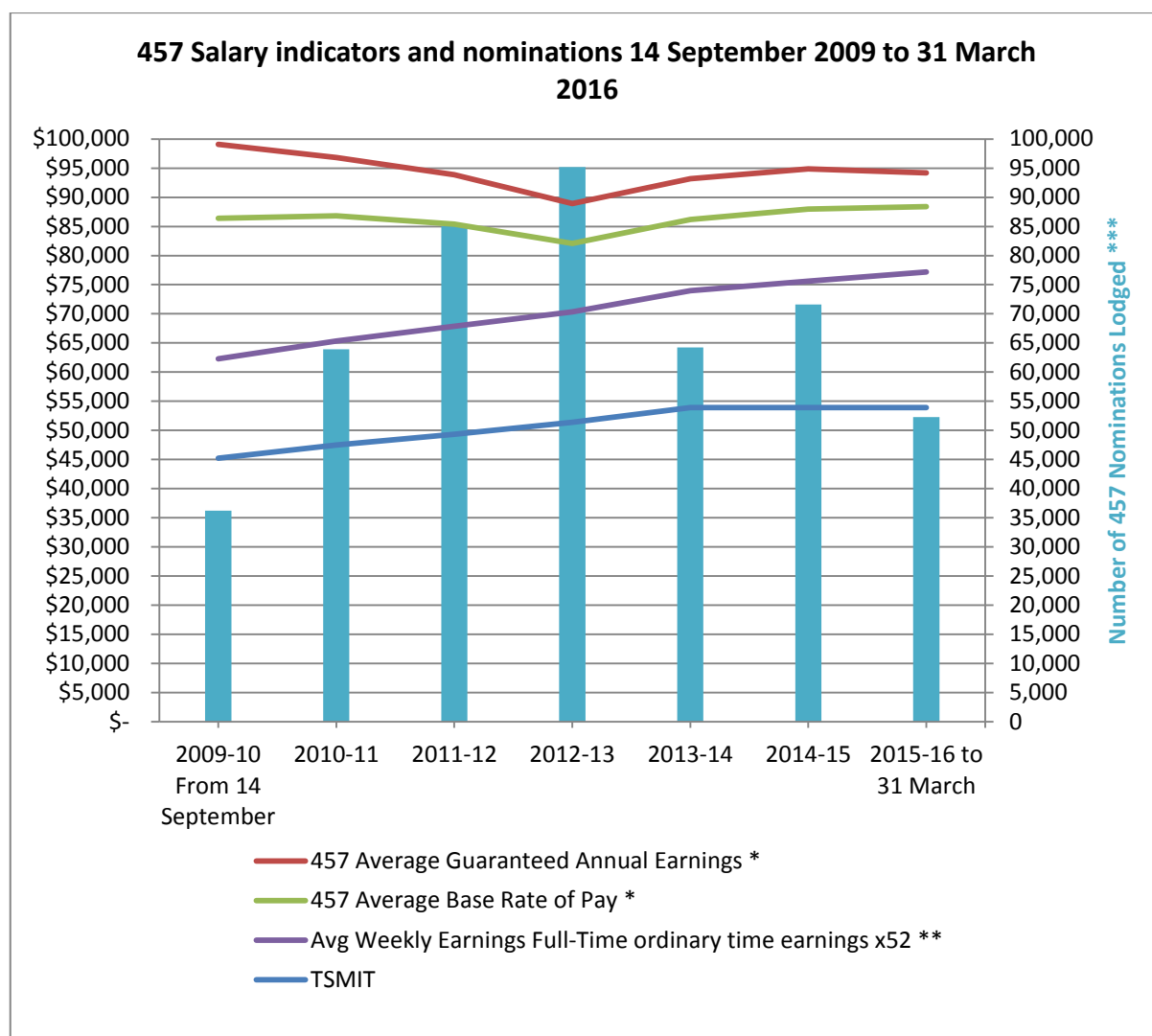
*** Australian Bureau of Statistics Cat. No. 6302.0, Full-time adult average weekly ordinary time earnings at May the previous FY x52. Data is from 14 September 2009 – 30 June 2010.

⁸ Department of Immigration and Border Protection. Subclass 457 current trends report 2015–16 to 2016-03-31.

⁹ Department of Immigration and Border Protection. Subclass 457 current trends report 2015-16 to 2016-03-31, and Subclass 457 current trends report 2014-15 to 2015-03-31.

¹⁰ Department of Immigration and Border Protection. Subclass 457 current trends report 2015-16 to 2016-03-31, and Subclass 457 current trends report 2014-15 to 2015-03-31.

Chart 1: Comparison of salary indicators since the introduction of TSMIT



* Department of Immigration and Border Protection, Subclass 457 quarterly report.

** AWE FT ordinary time earnings x52 figures from ABS Cat. No. 6302.0.

*** The number of 457 nominations lodged in 2015-16 to 31 March does not represent a complete programme year. Similarly, subclass 457 lodged in 2009-10 from 14 September does not represent a complete programme year.

Chart 1 shows that between the introduction of TSMIT on 14 September 2009 and 2012–13, both the average BROP and average GAE fell then increased, while TSMIT rose in line with Average Weekly Earnings (AWE). TSMIT did not increase from 1 July 2014 onwards, in line with the recommendation made by the *Robust New Foundations* review. In 2012–13, the number of 457 nominations made by sponsors peaked and in 2014-15 was approximately 25 per cent lower (23,627 nominations) than 2012–13. The number of nominations has seemingly been unaffected by changes to TSMIT.

The decrease in the programme's average wage indicators to 2012–13 may be due to the end of the mining boom, with both indicators gradually rebounding after this time. The end of the mining boom has also been signalled by a change in the composition of occupations and industries for which 457 visas have been granted over time.

Similarly, the difference between the average BROP and the average GAE has more than halved over the last seven years since TSMIT was introduced. This indicates that an increasing proportion of 457 workers' wages and salary packages are made up of the rate of pay payable to an employee for their ordinary hours of work (Base Rate of Pay), rather than incentive-based payments, loadings, allowances, overtime and/or non-monetary benefits (Guaranteed Annual Earnings).

In contrast, the trend of the AWE collection has been consistently upwards, showing little sign of having been affected by the end of the mining boom¹¹. Chart 1 and Table 2 show that the \$35,000 disparity between AWE and the average GAE of 457 primary visa holders granted in 2009–10 has more than halved in the same time period, with the difference being around \$17,000 at the time of writing of this report. The total AWE of all Australian workers are now closer to the average GAE of 457 workers than they are to TSMIT.

In the 2015–16 programme year as at the end of March 2016, of the 40,261 nominations (both Standard Business Sponsorships and Labour Agreements) that have been approved, 3497 (9.2 per cent) were approved where the BROP was between \$35,000 and TSMIT¹². Of these, the average BROP was \$50,840, and the average GAE was \$64,080. Given the difference between the average BROP and GAE for this group was approximately \$13,240¹³, where GAE was used to ensure the Market Salary Rate was above the TSMIT in 2015–16 to 31 March 2016, the BROP made up (on average) just over 60 per cent of the GAE amount¹⁴. It should be noted that a nomination can only be approved on the basis of GAE if the 'guaranteed' component of the salary package is also available to Australians also working at that enterprise.

¹¹ The method used to construct the AWE includes not keeping, for example, skill level of the workforce constant. As improved skill levels is linked to improved incomes, a more highly skilled Australian workforce over time, has contributed to a gradual increase in AWE over and above CPI.

¹² Department of Immigration and Border Protection. BE9636. Cases where the Base Rate of Pay was below \$35,000 have been removed and not considered, as these cases are generally considered by the Department to indicate either a data entry error, or only part-year earnings figures. Some data that is included in this calculation may be 'part-year' earnings, which may skew the data, if the figures provided are for the 'part-year' and are not annual figures, where a visa holder is engaged for less than one year.

¹³ Department of Immigration and Border Protection. BE9636. Figures are rounded to the nearest \$10.

¹⁴ Department of Immigration and Border Protection. BE9636.

Between 1 July 2013 and 31 March 2016, the most common occupational group where BROP is below TSMIT, and therefore GAE is used to meet Market Salary Rate requirements was in Information and Communications Technology occupations, which make up five of the top ten occupations where nominations using this method of meeting the Market Salary Rate were approved by the Department. A single occupation—that of Developer Programmer—made up approximately 14 per cent (2,142) of all nominations (15,400) that have been approved on this basis. In addition, the 2,142 nominations approved for the occupation of ‘Developer Programmer’ during this period where the average BROP was less than or equal to TSMIT, represented one-third of all nominations approved for this occupation.

Table 3: Subclass 457 nominations approved between 1 July 2013 and 31 March 2016 where Base Rate of Pay (BROP) is between \$35,000 and \$53,900 – Top 10 nominated occupations

	Average Base Rate of Pay	Nominations Approved	% of total nominations approved for the nominated occupation
261312 Developer Programmer	\$46,270	2,142	33.3%
351411 Cook	\$53,540	1,878	21.5%
141111 Cafe or Restaurant Manager	\$53,630	1,044	15.7%
Skilled Meat Worker	\$53,880	799	71.9%
351311 Chef	\$53,060	605	14.0%
261112 Systems Analyst	\$46,120	504	27.0%
261111 ICT Business Analyst	\$47,280	499	11.4%
321211 Motor Mechanic (General)	\$53,530	417	18.2%
261313 Software Engineer	\$47,810	347	9.1%
135112 ICT Project Manager	\$49,770	343	15.6%

Source: Department of Immigration and Border Protection. BE9636. Figures for average Base Rate of Pay are rounded to the nearest \$10. Subclass 457 nominations approved includes applications lodged from 14 September 2009 only.

Response to Review: Terms of Reference

Background: the *Robust New Foundations* review

An independent review on the 457 programme conducted in 2014 (*Robust New Foundations: a Streamlined, Transparent and Responsive System for the 457 Programme*, referred to as *Robust New Foundations* review) recommended a detailed new framework for managing the 457 programme, including one of its major components, the TSMIT.

One of the recommendations of *Robust New Foundations* was that TSMIT be retained at its then level of \$53,900, as part of the detailed new framework, until a subsequent, and separate, review of TSMIT was undertaken and completed. The present document, *The Future of TSMIT within a Robust 457 Programme*, is that subsequent review.

There was a sound reason why *Robust New Foundations* recommended that TSMIT be frozen at \$53,900 until it was separately reviewed later. This was that keeping TSMIT at the same level would give time and space for *Robust New Foundation's* new “streamlined, transparent, and responsive” framework to bed down properly. It was intended that the TSMIT review would then look at the best way of achieving the original aims of TSMIT within the framework established by *Robust New Foundations*, a framework which, it was anticipated, would be fully operational by the time the TSMIT review began.

It follows that the *Robust New Foundations* framework is of pivotal importance for this review. It is therefore worth summarising its main features, and considering how its implementation has progressed.

Robust New Foundations appeared after a chequered history of multiple reports on the subject, all of which sought to reconcile divergent views. On the one side were those, largely business owners, who needed overseas workers to supplement their workforce, and on the other were those, mainly unions, who viewed their role as primarily safeguarding the job opportunities and entitlements of workers in Australia. The environment within which all these reports were prepared was clearly a politically and economically divided one.

These divisions exacerbated a number of problems in the system.

The first was that the ABS-based Consolidated Sponsored Occupation List (CSOL), used by employers seeking to recruit 457 staff, is an infrequently updated catalogue which was never designed to help pinpoint occupations in demand in a rapidly-changing economy.

The second was that employer-conducted Labour-Market Testing, designed to prevent overseas workers from taking jobs that can be filled by Australians, is both cumbersome and easy to circumvent.

The third was that the system is a one-size-fits-all one which does not give sufficient attention to sectoral or regional problems and needs.

The fourth was that, over the years, some of the tools (such as TSMIT) that were developed to address shortcomings in the system often turned out to be inflexible

The *Robust New Foundations* framework was designed to solve these four problems, and greatly attenuate the evident polarisation.

It had several features:

1. a tripartite Ministerial Advisory Council on Skilled Migration (MACSM)
 - MACSM was designed to consist of representatives from business, unions and government, both federal, state and territory.
 - It was intended to provide an opportunity for all parties to proactively bring to the table, and discuss in an open and neutral context, a wide range of issues (e.g. TSMIT, and labour shortages and workforce development) relating to skilled migration, and to explore ways of reaching mutually acceptable solutions.
 - It would be supported by a permanently established resource in a department, which would bring together all the labour market analysis expertise in the Departments of Immigration and Border Protection (DIBP); Employment; Industry, Innovation and Science; Education and Training; and Health.
 - It would use the evidence produced by this co-ordinated analysis as a basis for advice to government on skilled migration.
2. A streamlined approvals process which combines, for the first time, sponsor and individual characteristics, those relating to sponsors at the nomination stage, and those relating to individuals at the visa application stage. This was designed to save time for both companies and visa applicants with excellent records, as well as for DIBP which scrutinises their applications
3. Significantly less time spent on negotiating Labour Agreements
4. The development of industry-based Template Agreements
5. A system under which employers would contribute a certain amount per 457 worker per annum to government-run training programmes as part of workforce development programmes for Australians
6. A requirement that 457 visa applicants provide their tax file numbers (TFNs) to DIBP, so as to ensure compliance by both employers and employees with taxation requirements
7. Continued monitoring by Fair Work Ombudsman (FWO) inspectors of adherence by employers of 457 visa holders to their obligations towards their 457 employees, and co-ordination with DIBP.

There have been a number of positive developments since *Robust New Foundations* was issued. In fact, the Government accepted 21 of its 22 Recommendations. Specifically:

1. MACSM

- The Government approved the principal recommendation of Robust New Foundations, namely the establishment of a tripartite MACSM.
 - This was particularly pleasing in that the role of the revived MACSM is appreciably more active than that of its predecessor.
 - Considerable support has been forthcoming from the Minister, and Assistant Minister, of Immigration and Border Protection in post during this process. Ministers have attended two of the four meetings of MACSM so far, and representatives of the Minister's office have been present at all four, an indication of strong commitment to the goals of MACSM.
 - MACSM itself is to be congratulated for embarking on a thorough, professional review of CSOL, and developing the methodology for its future application. This is an activity which is an important part of its role.
 - In support of *Robust New Foundation's* point that a "coordinated approach within government, backed by a dedicated resource, would be a significant advance", the Government agreed to the formation of a unit within DIBP, tasked with coordinating the labour market analysis units of a range of all the Departments mentioned above. This unit is a key feature of the current environment, and it was satisfying that the Government gave it such ready support.
 - Another positive development has been that the other government departments listed above, all of which were consulted as part of this review, are willing to participate actively to support MACSM.
2. The Government accepted the recommendation to streamline the approvals process by combining sponsor and individual characteristics.
 3. The average processing time of Labour Agreements has dropped from five months in April 2014 to 35 days in April 2016.
 4. There has been a greater number of industry-based Template Agreements.
 5. The Government has stated its support for the introduction of an annual training fund contribution by sponsors, with monies collected to be used to fund government-run training initiatives for Australians.
 6. The Government has supported a change to 457 visa conditions to place an obligation on visa applicants to provide DIBP with their Australian TFNs.
 7. The relationship between DIBP and FWO is now governed by a Memorandum of Understanding, which enables closer co-operation between the agencies, allowing them to share information, and to refer relevant matters to each other.

The main need now is for MACSM to achieve its full potential.

A key ingredient of MACSM's success was envisaged to be that stakeholders would proactively bring their various issues to the table¹⁵. In other words, issues would be brought directly to MACSM rather than being routed through the Minister.

However, perhaps understandably, since the system is a new one, this does not seem to have been happening yet as originally intended. It became clear during this review that the various stakeholders in the immigration world have yet to grasp fully, and take advantage of, the importance of their proactive role within MACSM. Significantly, no submissions to the review mentioned MACSM, which seems to indicate that stakeholders do not yet have proper appreciation of MACSM's potential, or of the task that Government has entrusted to it when it approved the *Robust New Foundations* framework.

Once stakeholders, both employers and unions, fully appreciate MACSM's potential, they will independently take steps to identify issues of concern in their sector (e.g. regional and skills discrepancies, TSMIT and Labour Market Testing problems), and will regularly and actively do whatever they can to make sure that those issues are on MACSM's agenda. Then the process will unfold as envisaged by *Robust New Foundations*. Evidence and empirical data will be gathered and analysed, and that evidence will be presented at a subsequent MACSM meeting for open and transparent discussion by MACSM members.

Ideally, one or more recommendations from MACSM to Government should then ensue. Even if MACSM cannot reach a consensus on the advice it provides to the Minister, it will have allowed factual evidence to be collected and a proper discussion to be held in a neutral environment. Ministers will always retain the final word.

In this way MACSM will be properly and fully performing its intended function of providing Government with relevant, timely and evidence-based advice.

A key measure which could contribute materially to the full functioning of MACSM as originally envisaged would be for it to have its own small secretariat whose job would go beyond administration. The role of MACSM's current secretariat is confined to limited administrative matters, but essentially the enhanced secretariat now envisaged would help MACSM's Chairman drive the agenda. Specifically, it would be in regular contact with stakeholders, would guide them in the submission of their requests, would co-ordinate evidence-based findings, would ensure that follow-up action actually occurred, and, in short, would help ensure that MACSM reaches its full potential.

Recommendation 1

1. That MACSM have its own enhanced secretariat with a proactive role beyond administration.

¹⁵ The recently released Senate report, *A National Disgrace*, provides multiparty endorsement for this role of MACSM's.

Setting TSMIT and determining the appropriate base level for TSMIT

Stakeholders representing employers and industries that sponsor occupations with Market Salary Rates close to the current TSMIT generally felt that TSMIT is a major barrier to the use of the 457 programme, as it is set too high, and above award or market rates in many industries. These stakeholders included representatives of the Restaurant and Catering Industry, farming and primary industries, some housing industries, and some registered migration agents and migration agent peak bodies.

Other stakeholders, mainly representing employee or worker interests, such as the Australian Manufacturing Workers' Union (AMWU) and the Construction, Forestry, Mining and Energy Union (CFMEU) suggested that TSMIT is too low. One noted that TSMIT is not commensurate with the Average Weekly Earnings (AWE) of Australian workers at all skill levels. As at May 2015 AWE were \$1,541 weekly and over \$80,000 annually (ABS Average Weekly Earnings May 2015 3602.0).

Employers who accessed occupations with Market Salary Rates consistently above TSMIT, such as mining, industry and construction, did not consider that TSMIT is a barrier.

A number of submissions stated that employers are obliged to either pay the visa holder more than Australian staff in order to meet TSMIT, or increase the wages they pay to Australian staff so that all wages are above TSMIT. The former may indicate that some sponsors are giving 457 visa holders priority access to work that attracts penalty rates (perhaps to ensure they receive their nominated salary). It could also be that some sponsors increase an Australian worker's salary until it is above TSMIT, or increase a visa holder's salary to meet TSMIT. The latter behaviours are not in line with the intention of the 457 programme, which is designed for occupations where the Market Salary Rate is above TSMIT (unless the TSMIT exemption provision applies). Furthermore, visa holders must receive equivalent terms and conditions of employment to an Australian worker performing equivalent work at the same location.

Many stakeholders advocated that TSMIT should include benefits other than base salary, and suggested that these could include accommodation, food, vehicles, overtime, penalty rates, allowances, and commissions.

A number of submissions suggested that TSMIT should be based on Enterprise Agreements, Modern Awards, or the Fair Work Act, where available.

Quotes from public submissions

Market rates [should be defined as] the total remuneration package, which would include normal penalties and overtime in a typical working week, or the annualised salary package.

Australian Chamber of Commerce and Industry

Agricultural salaries often include non-monetary benefits such as accommodation, food, the use of motor vehicles etc. Again, these are not reflected in the calculation for assessing whether the industry meets the TSMIT, yet they reduce the monetary burden on the employer and employee and enhance their capacity to meet the underlying objective of the TSMIT—to ensure that a visa holder has a reasonable means of support whilst in Australia and is able to meet costs during their period of stay.

National Farmers' Federation

TSMIT should be based on total remuneration as a more appropriate measure of remuneration (this would include normal penalties and overtime in a typical working week, ie the annualised salary package).

Australian Metals and Mining Association

The prospect of allowances (for example, meals and accommodation) being factored into the TSMIT is another problematic concession. This type of arrangement is frequently used by unscrupulous employers to reduce their wage costs and improperly maximise their profit at the expense of their workers. They do so by providing substandard accommodation and charging inflated rates to workers who have little choice but to acquiesce, given the sponsorship ties that bind them to their employer.

United Voice

The relevant Enterprise Agreement should be the basis of 457 visa holder payment in that it accounts for matters which are specific to the sponsor and the location of employment.

Australian Meat Industry Council

Stakeholders highlighted TSMIT's contribution to maintaining the integrity of the 457 programme, as it provides a safeguard against exploitation and abuse. The ACTU noted that TSMIT particularly guards vulnerable workers at the lower-skilled, lower-paid end of the labour market.

Quotes from public submissions

Master Builders supports the use of a minimum salary for employer sponsored visas as an important safeguard against the abuse of migrant workers.

Master Builders Australia

By providing a minimum wage floor below which no 457 visa worker can be paid, it has the aim of ensuring all 457 visa holders have sufficient income to independently provide for themselves in Australia. At the same time, it ensures the 457 visa program does not extend into the very lowest-paid sections of the labour market where the potential for exploitation of vulnerable workers and displacement of Australian workers is at its greatest. This is a critical protection in light of ongoing evidence of exploitation of temporary visa workers.

Australian Council of Trade Unions

The Deegan Review recommended both the abolition of regional concessions and the introduction of the TSMIT in order to protect visa holders (particularly those in trades occupations) because the Deegan Review found many of these were not receiving salaries or wages equivalent to that of Australian workers performing the same work, in some cases, even where employed in the same workplaces.

Dr Joanna Howe

The Review notes that in setting TSMIT, the broad intent of the 457 programme—to address labour shortages by bringing in genuinely skilled foreign workers on a temporary basis where employers cannot find an appropriately skilled Australian—should be considered. The Review supports the need for TSMIT to continue to ensure that visa holders are skilled, and have sufficient means to support themselves in Australia. As recommended by the Deegan Review, “it is necessary to ensure that in circumstances where the wage applicable to a particular skill or occupation is lower than that required to allow a visa holder to maintain a reasonable standard of living (given the lack of access to welfare and tax benefits available to Australian citizens), no visa will be granted at that salary level. This is particularly important to ensure that visa holders are not exploited, and that the 457 visa programme is not compromised”¹⁶.

The Review does not support basing TSMIT on Enterprise Agreements, Modern Awards, or the Fair Work Act. To do so would require different salary thresholds for different occupations or industries, which is impractical. Employees in some industries are also paid above the Modern Award. Setting TSMIT at the level of Modern Awards could send the wrong message about the 457 programme, if it was seen to allow sponsors to only aim to meet the salary level specified in Modern Awards, given that sponsors must still meet the Market Salary Rate requirement.

The Review notes that the 457 programme is aimed at skilled and experienced workers, something that was also noted in the *Robust New Foundations* review. The Fair Work Act provides a safety net of minimum entitlements to ensure that workers earn enough to live on. It is a different benchmark to TSMIT which operates in the 457 visa programme for skilled workers. Australians who receive the minimum wage also have access to additional benefits not available to visa holders such as income support, childcare subsidies, free public schooling and Medicare, which offset their living costs.

While submissions raised concerns about certain occupations being locked out of the 457 programme due to salaries being below TSMIT, in these cases sponsors still have the option to use the TSMIT exemption provision or pursue a Labour Agreement to access the 457 programme (see ‘TSMIT exemption provision—Guaranteed Annual Earnings’ and ‘Regional Concessions’). The Review feels that these options allow considerable scope for sponsors to access workers who would not otherwise be eligible.

An element of TSMIT which appears to be less well understood by stakeholders is the TSMIT exemption provision, which may allow access to the 457 programme where the Base Rate of Pay under the MSR is below TSMIT, but the Guaranteed Annual Earnings are equal to or above TSMIT. Some of the benefits stakeholders advocated to be included in meeting TSMIT can already be included under Guaranteed Annual Earnings.

¹⁶ Barbara Deegan, visa Subclass 457 Integrity Review – Final Report (The Deegan Review), October 2008.

Guaranteed Annual Earnings can include monetary and non-monetary benefits. The Review notes that it may be easier to artificially manipulate the value of non-monetary benefits such as accommodation and food, and that it is more difficult to verify their true value. The Review considers that the TSMIT exemption provision, which allows Guaranteed Annual Earnings to be considered where the Market Salary Rate is below TSMIT, should be retained. While there is greater potential for non-monetary benefits to be inflated, they provide legitimate flexibility within the programme. The Department, however, should investigate the use of non-monetary benefits within the programme.

The Review is conscious of conflicting stakeholder views regarding the level at which TSMIT should be set. Sponsors have been required to meet a TSMIT of \$53,900. The Review recommends that this figure be retained.

Recommendation 2

2.1 That TSMIT continue to be \$53,900.

2.2 That in circumstances where the Base Rate of Pay is below TSMIT:

2.2.1 the current ability to take into account Guaranteed Annual Earnings (GAE) to arrive at a rate that meets or exceeds the minimum requirement of TSMIT be continued.

2.2.2 that the current inclusion of non-monetary benefits in the calculation of GAE be continued, but that the Government investigate how it is used by sponsors.

Indexation

Periodic review versus annual indexation

The Migration Institute of Australia suggested that the Fair Work Commission's annual review of Australian wages be used to index TSMIT. The Australian Industry Group suggested that TSMIT be reviewed at set intervals rather than indexed. Teys Australia recommended that adjustments should occur based on the relevant modern award.

While stakeholders held different views as to the method of indexation, AMMA, Ernst & Young, the Australian Council of Trade Unions, and the Australian Chamber of Commerce & Industry supported annual indexation.

Quotes from public submissions

If the TSMIT is to be indexed it should be in the same way that Australian wages are indexed, through the Fair Work Commission Annual wage reviews. These wage case adjustments are more closely aligned to realistic cost of living and inflation increases.

Migration Institute of Australia

In looking at alternatives to automatic indexation (against the AWOTE, AWE, the national minimum wage or living cost indexes) this Review could consider recommending a regular independent review of the TSMIT on an annual or biannual timetable. This would help to ensure that the TSMIT's primary function as a minimum wage benchmark is maintained and that it is not inadvertently reflecting changes to average or higher wages.

The Australian Industry Group

In the future the annual minimum obligation should be adjusted automatically from 1 July each year by the percentage increase to the trades level rate in the relevant modern Award from the most recently awarded adjustment to minimum Award rates of pay by FWC.

Teys Australia

The current TSMIT level of \$53,900 should be indexed annually to the ABS Wage Price Index (WPI) series...

Australian Mines and Metals Association

Annual indexation of the TSMIT resume in accordance with percentage changes to AWOTE for all employees.

Ernst & Young

Restore annual indexation of the TSMIT based on Average Weekly Earnings or the Consumer Price Inflation index, whichever is the higher, from 1 July each year.

Australian Council of Trade Unions

Also as the initial review freeze was for two years, and given the timing of this review will take us beyond June 2016, we recommend that the first increase in the TSMIT should be 1 July 2017 and relate to movement in the WPI that had occurred in the 12 months to December 2016 (as this figure will be released with sufficient time to notify of an increase). Ongoing annual adjustments should be based on the WPI increase in the 12 months to December to take effect the following July.

Australian Chamber of Commerce & Industry

The Review believes that annual indexation is the most appropriate way to proceed. Regular, planned indexation is transparent and visible to all parties.

Method of indexation

TSMIT was introduced in 2009. It was subsequently indexed annually every 1 July to keep pace with the cost of living. Indexation was based on Average Weekly Earnings (report 6302.0 published by the ABS). Indexation ceased when the *Robust New Foundations* Review in 2014 recommended that TSMIT be retained at its current level until it was reviewed. AWOTE is one measure of AWE that is included within the AWE statistics.

Views were expressed by a number of stakeholders – mainly employer representatives – that, since its inception TSMIT had increased much faster than the wage rates of skilled occupations at the lower end of the income scale and/or actual wages growth (e.g. according to increases negotiated through collective bargaining). Unions largely argued that indexation should be reinstituted and one noted that TSMIT should be immediately indexed to allow it to ‘catch-up’ so that it reflects current costs of living.

Quotes from public submissions

[regarding the current TSMIT freeze] ...the TSMIT had risen at a much faster pace than the wage rates of the skilled occupations at the lower end of the skilled occupation income scale which made even more vacancies ineligible.

Australian Chamber of Commerce and Industry

The TSMIT has risen at a much faster rate than the Australian cost of living. While this is of great benefit to the visa holder, it comes at the cost of pricing many sponsors out of this market and subsequently reducing profitability and productivity. While Subclass 457 visa holders are required to be treated equally with Australian employees, the latter are treated less favourably when TSMIT is indexed at a higher rate than local workers’ pay increases.

Migration Institute of Australia

Without further delay, the TSMIT should be increased to \$57 000 (to catch-up for the two years of indexation increases not provided by the current Government).

Australian Council of Trade Unions

The review of the TSMIT currently being undertaken should restate the importance of maintaining an adequate TSMIT to ensure integrity in the 457 visa program. It should recommend, at a minimum, that indexation of the TSMIT should resume and that it be increased to \$57,000 to catch up for the two years of indexation which did not occur under the current Government.

Construction, Forestry, Mining and Energy Union

Table 4 shows TSMIT indexation against WPI changes.

Table 4: comparison of TSMIT indexation (AWE) against WPI change

Time period	TSMIT Indexation (AWE*) (%)	WPI* (%)
1/7/10-30/6/11	5.00%	3.8%
1/7/11-30/6/12	3.90%	3.6%
1/7/12-30/6/13	4.20%	3.3%
1/7/13-30/6/14	4.80%	2.6%
1/7/14-30/6/15	0.00%	2.4%
1/7/15-present	0.00%	NA
Total change	17.9%	15.7%

*WPI figures from *Wage Price Index*, ABS Catalogue Number 6345.0. AWE figures from Average Weekly Earnings, ABS Catalogue Number 6302.0

There were a wide variety of indexation benchmarks suggested by stakeholders.

AWOTE/AWE: A number of submissions, including those from unions, supported the retention of AWOTE/AWE to index TSMIT. United Voice recommended full-time AWOTE be used, as this is a measure of full-time work, which is appropriate as most 457 visa holders work full-time¹⁷.

However, the Department of Business, Northern Territory noted that AWOTE indexation does not consider the unique characteristics of regional areas. This concern was echoed by the South Australian Wine Industry Association, which noted that AWOTE is affected by higher salaries in the eastern states and Western Australia.¹⁸ AUSVEG raised concerns that AWE calculations do not include agriculture, forestry and fishing enterprises, and that the indexation mechanism should be one that includes all industries using the 457 visa.¹⁹

Quotes from public submissions

...setting the TSMIT at full-time AWOTE (\$1,499.30 as at November 2015) would more accurately reflect the reality that 457 visa holders typically work full-time.

United Voice

In our submission, to support the position of workers who rely on the protection of the TSMIT, indexation should be based on AWE or CPI, whichever is the higher.

Australian Council of Trade Unions

¹⁷ United Voice, written submission to the Review.

¹⁸ South Australian Wine Industry Association, written submission to the Review.

¹⁹ AUSVEG, written submission to the Review.

Quotes from public submissions

Given the intention to ensure subclass 457 visa holders have a reasonable standard of living in Australia, EY considers that the methodology applied to date for the TSMIT and its predecessor the Minimum Salary Level of using AWOTE for all employees is practicable.

Ernst & Young

The Discussion Paper suggests that the TSMIT is based on a seasonally adjusted average of Average Weekly Ordinary Time Earnings (AWOTE) for all employees produced by the Australian Bureau of Statistics (ABS). This is a prime example of the one-size-fits-all approach that has led to perverse outcomes.

Department of Business, Northern Territory

The TSMIT is based on the AWOTE, a national figure of the average weekly earnings. While a national figure might be easier to apply, the AWOTE is greatly affected by the higher salaries in the eastern states and Western Australia.

South Australian Wine Industry Association

While AUSVEG acknowledges the intent behind this [current] indexation, we feel the actual method and rationale behind the particular calculations are flawed... the data used to calculate the indexation of TSMIT does not actually take agricultural workers' earnings into account, making it extremely difficult to see how any adjustments of the threshold could reasonably be applied to jobs in the agriculture industry.

AUSVEG

Consumer Price Index (CPI): The Chamber of Commerce and Industry Queensland (CCIQ) and the Migration Council of Australia (MCA) agreed that CPI could be used to index TSMIT. The MCA noted that CPI is a transparent mechanism, whilst CCIQ felt CPI better measured changes in wage rates, than the current AWOTE mechanism. United Voice expressed concern that the use of CPI would artificially keep TSMIT lower than the market rate for Australian workers, thereby threatening the key integrity function of TSMIT's role as a wage floor.

Quotes from public submissions

MCA members have indicated that obligated costs, such as private health insurance and public school fees, should be included in setting the TSMIT. Consideration should be given to the inclusion of accommodation costs (but not meals) as the cost of living in the majority of remote locations is higher than living in a metropolitan area. Additionally a transparent mechanism such as CPI should be used to index the TSMIT.

Minerals Council of Australia

CCIQ supports the move by the 457 Integrity Review which led to the Minister for Immigration and Border Protection using his discretion not to index TSMIT from 2014. [TSMIT had increased] at a much faster pace than the wage rates of the skilled occupations at the lower end of the skilled occupations income scale which made even more vacancies ineligible. ...the TSMIT had been previously increased based on the growth of Average Weekly Earnings (AWE), which encompasses occupations across the income scale. As such, the dollar value of the TSMIT should only increase according to the CPI or changes to the minimum wage.

Chamber of Commerce and Industry Queensland

United Voice is concerned that the ministerial freeze has compromised the TSMIT's important function and recommends that indexation be reinstated at average weekly earnings levels. Indexing the TSMIT at consumer price index (CPI) would prevent the threshold income for the 457 visa program from keeping pace with average wage growth and would compromise the integrity of the 457 visa program.

United Voice

Wage Price Index (WPI): Stakeholders noted that the WPI has more application to TSMIT as an income floor. Where stakeholders mentioned WPI, they were in favour of this form of indexation. There were no submissions that recommended against using the WPI to index TSMIT.

Quotes from public submissions

As the WPI more accurately measures “like with like” it has more application to the concept of the TSMIT as an income floor than Average Weekly earnings.

Australian Chamber of Commerce and Industry

Rather than indexing the TSMIT to AWE, the TSMIT should instead be indexed to the ABS’ Wages Price Index (WPI) as an appropriate measure of the changes of labour in the Australian labour market. The WPI is widely accepted as the major measure of inflationary pressure on wages and salaries in Australia.

KPMG

AMMA’s recommendation is that it [TSMIT] be linked to the Wage Price Index (WPI) which is published quarterly by the Australian Bureau of Statistics... The WPI is a key economic indicator used by a wide range of organisations and individuals in industrial relations forums, developing wages policy and economic analysis. It is the major measure of inflationary pressure on wages and salaries and is one of the preferred information sources when assessing monetary policy.

Australian Mines and Metals Association

To the extent that there is any indexation, the NFF considers that it ought to be based on the Wage Price Index as this provides information on price changes related to changes in actual rates of pay (for example, due to changes in awards), rather than changes in the quantity of work performed (for example, hours worked) or changes in the quality of work performed (for example, due to the job occupant obtaining higher skills).

National Farmers Federation

The Review has considered three options for indexing TSMIT:

- retaining the existing method (Average Weekly Earnings)
- using the Consumer Price Index, and
- using the Wage Price Index.

Average Weekly Earnings (AWE), which has been the basis for prior annual TSMIT adjustments, measures changes in the level of average weekly earnings in Australia over time. As a long-running collection, it has been referenced extensively in legislation for indexation purposes.

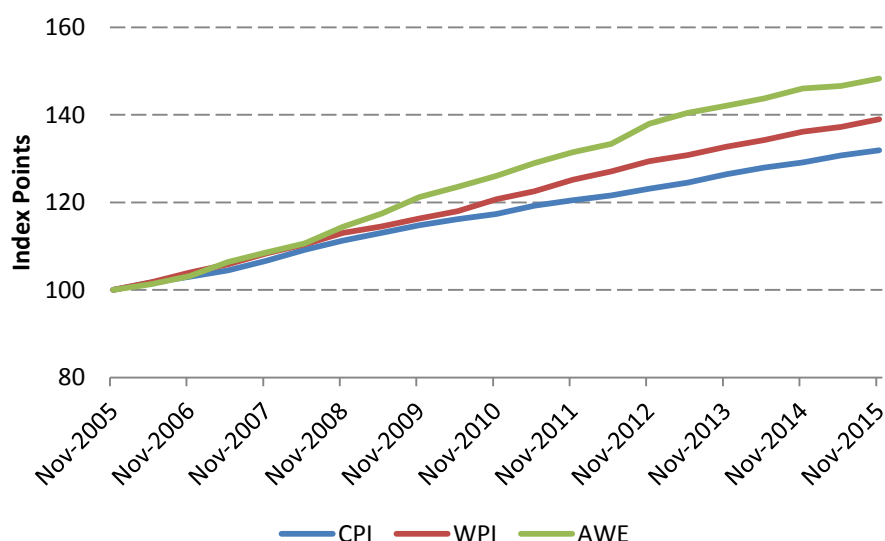
The Consumer Price Index (CPI) measures the changes in the price of a fixed basket of goods and services acquired by household consumers resident in Australia. The basket of goods and services is only measured in Australia's capital cities, which means the cost of the items in regional areas is not included. It is mainly used as a macro-economic indicator by the government and economists to monitor and evaluate levels of inflation in the Australian economy, and for adjusting dollar values, for example, in pensions and contracts.

The Wage Price Index (WPI) provides a more consistent measure of the change in the price of labour, or in wages over time.

In light of the above, the Review recommends that TSMIT be indexed by the Wage Price Index on an annual basis. WPI represents a valid and accurate measure of changes to rates of pay across the country. The 'headline' WPI is for the total hourly rates of pay, excluding bonuses, and it is published in original, seasonally adjusted and trend terms. The Review suggests the use of seasonally adjusted data, as such data remove 'seasonal influences' from data that may cause extreme movements unrelated to usual factors that influence wage movements.

Chart 2 shows how WPI, AWE, and CPI have trended since 2005.

Chart 2: Comparison of CPI and WPI, 2004 to 2015



Source: *Consumer Price Index, Australia, Dec 2015*. ABS Catalogue Number 6401.0 (used Trimmed Mean) , *Wage Price Index, Australia, Dec 2015*. ABS Catalogue Number 6345.0 and *Average Weekly Earnings, Australia, Nov 2015*. ABS Catalogue Number 6302.0

TSMIT was previously indexed annually on 1 July. The Review feels this is an appropriate point in time each year. The ABS publishes annual WPI figures in May, which cover the March (prior year) to March (current year) period. This is an up-to-date figure, and would allow sufficient time to apply indexation from 1 July each year.

The Review notes that TSMIT has not been indexed since 1 July 2013. It is therefore timely to index TSMIT from 1 July 2016.

Recommendation 3

- 3.1 That TSMIT be indexed annually on 1 July.
- 3.2 That, as TSMIT has not been indexed since 1 July 2013, indexation commence from 1 July 2016.
- 3.3 That TSMIT be indexed using the seasonally adjusted Wage Price Index for the March quarter of the current year (ABS data 6345.0).

A single TSMIT vs multiple TSMITs

TSMITs based on individual circumstances

One challenge identified by stakeholders is that TSMIT is a ‘one-size-fits-all’ measure. Stakeholders felt that a single TSMIT favours higher wage areas of Australia and big business, and visa holders without families. It does not specifically cater for small to medium businesses, skill level 3 occupations, and visa holders with families.

Stakeholders acknowledged that a point in favour of the current single TSMIT is that it is administratively simple.

However, even among stakeholders who do not support the one-size-fits-all TSMIT, there was little agreement on whether there should be multiple TSMITs and if so, along what lines they should be drawn – by industry, occupation, skill level, MSRs, or another factor. Some stakeholders advocated a ‘needs-based’ TSMIT that could consider a visa holder’s family composition, cost of living, and education/health costs. Other stakeholders argued against this, as it might result in an economic incentive for employers to nominate single visa applicants, and for overseas job applicants to conceal their family composition lest the employer hire another person who would cost them less.

Quotes from public submissions

A major issue with the existing rate of \$53,900 is that in a number of cases it is evidently higher than the market rate of many skilled jobs, particularly in regional locations, making the 457 programme inaccessible to many employers.

Chamber of Commerce and Industry Queensland

The 457 TSMIT should once again be set at a much higher rate for ICT occupations than for 457 occupations generally, just as it was for 5 and a half years between February 2004 and September 2009 under both Coalition and Labor governments... The same principle of higher 457 TSMITs could apply to other 457 occupations and sectors where this is necessary to achieve major public policy objectives, eg STEM occupations generally or possibly some trade-level occupations.

The Australian Population Research Institute

Thus, if the TSMIT was put into place in order to protect 'vulnerable overseas workers' (as per the 2008 Deegan Report), it fails to take into account extreme differentials in cost of living across Australia. It will therefore always provide for positive discrimination in areas of Australia which are subject to wage inflation, and be negatively discriminatory towards areas of lower growth and lower absolute wages.

WestVisa

The Review recognises that the cost of living in Australia for visa holders varies based on a range of personal factors such as their family composition, level of health insurance, school fees for dependent children, childcare fees, and place of residence. Similarly, the Review also recognises that visa holders may have alternate sources of income through income from dependents or investments or overseas income. The Review considers that it would be impossible for a single salary threshold to take into account the many and varied circumstances that apply to each 457 visa holder, and notes that neither TSMIT nor the MSL regime that preceded it were intended to account for individual differences.

The Review does not support multiple TSMITs or a needs-based TSMIT. This is because it is not possible for any framework to be so detailed as to be able to account for the many differences that exist. The Review notes that such a framework would be very complex for sponsors and the Department to work within, and could give rise to additional breaches of sponsorship obligations and potentially the Fair Work Act. A needs-based TSMIT could encourage fraud and discrimination, as visa applicants sought to present themselves as a cheaper option to encourage a sponsor to hire them.

The Review supports a single TSMIT.

Regional concessions

Most of those in favour of more than one salary threshold recommended salary concessions for regional and remote areas. This is based on the premise that the cost of living and remuneration in regional areas for wage and salary earners is, as stated by the Australian Chamber of Commerce and Industry “in most cases, substantially less than in metropolitan areas”.²⁰ Many stakeholders referred to the regional concessions available under the previous MSL regime and supported their reintroduction. Stakeholders supporting this measure included many State and Territory Government departments responsible for regional development, employer bodies supporting regional-based industries such as the wine industry, and representatives of migration agent peak bodies. A commonly cited figure was for TSMIT to be 10 per cent less (\$48,510) for 457 salaries outside capital city/metropolitan areas, although little empirical evidence was provided to underpin this figure.

Submissions from the ACTU, the CFMEU and UV recommended that no concessions should be made to the current TSMIT, including regional concessions, as this could be against the intent of the programme to be for skilled, not low wage low skilled labour, and give employers access to a cheaper overseas workforce. The LCA, NASSCOM and Fragomen felt that concessional salary rates would be better captured through the MSR than multiple TSMITs, for reasons including that regional living costs are not necessarily cheaper.

While some stakeholders raised concerns that Labour Agreements are too complex, others including AMMA felt that Labour Agreements were an appropriate mechanism to allow concessions, as these allow the Department to assess that concessions are appropriate, which ensures the integrity of the programme is maintained.

²⁰ Australian Chamber of Commerce and Industry, written submission to the Review.

Quotes from public submissions

...the previous 10 per cent regional concession to the former Minimum Salary Level [should] be re-incorporated into the TSMIT to recognise the different labour market (and subsequent difference in salary rates) for regional industries.

AUSVEG

A comparison of living costs in regional areas compared to cities is not quite as simple as saying that regional areas are cheaper. While housing generally is more affordable, other costs such as food, utilities and petrol are often more expensive due to transportation costs. Differentiation in the manner set out in the Discussion Paper is better achieved through the market salary rate requirement rather than by attempting to take account of cost of living factors.

Law Council of Australia

Given the operation of the market salary rate requirement, we see no reason for or value in (re-)introducing differentiated TSMIT rates for regional areas, nor for the nature and skill level of the nominated role. The requirement to make a favourable comparison with going market rates particular to the nominated position is a far more effective way of ensuring that a person receives fair and reasonable compensation for their work, automatically adjusted for factors such as location, occupation and industry.

NASSCOM

...we are of the view that concessional salary rates are better achieved through the market salary rate requirement rather than by setting differentiated TSMIT levels. The differentiated Minimum Salary Levels for regional/ non-regional and IT/ non-IT that existed prior to September 2009 were widely criticised in the 2008 Integrity Review of the 457 Visa; indeed the TSMIT and market salary rate requirements were introduced in 2009 as a response.

Fragomen

The TSMIT should apply as a minimum base rate of pay, with no regional or other concessions available... In our submission, the TSMIT should be extended beyond the standard 457 visa program and apply also to labour agreements, DAMAs, and IFAs. Concessions should not be available.

Australian Council of Trade Unions

Quotes from public submissions

United Voice is concerned that devaluing the base level and indexation of the TSMIT and discounting it through regional and occupational concessions will effectively legitimise the routine substitution of local workers for a more economical workforce, ill-equipped to seek redress when it comes to illegal actions by employers.

United Voice

As recognised by the Deegan Review, the labour agreements mechanism is useful for allowing concessions to be granted. This is because the labour agreements mechanism allows for the Department to ensure that where a concession is granted, the lowering of the minimum salary threshold will not lead to the abuse of, or bring into question, the integrity of the subclass 457 visa programme.

Dr Joanna Howe

...in some cases regional concessions are appropriate to reflect the lower wages offset by the lower cost of living in regional areas. However, in order to ensure the integrity of the scheme, such concessions, if not negotiated under a labour agreement, should have to be specifically approved by the Department based on evidence of a distinct and demonstrated need.

Australian Mines and Metals Association

The Review acknowledges the views that wages and costs of living can be lower in regional areas as compared to metropolitan areas, however also notes stakeholder feedback that this may not always be the case. It notes that there are significant difficulties in defining what constitutes 'regional'. A common definition of regional is not agreed even between different government departments.

The Review recognises that housing in some regional areas may be cheaper than the closest metropolitan centre, but that other costs such as food, utilities, communications and petrol may be more expensive. Furthermore, the Review also notes that the cost of living can be higher in certain regional areas, for example an Index of retail prices in Queensland regional centres 2013 found that "overall prices were higher than Brisbane in 10 centres surveyed"²¹.

²¹ Queensland Government Statistician's Office. Prices across Queensland: how they compare, Index of retail prices in Queensland Regional Centres 2013.
<http://www.qgso.qld.gov.au/products/reports/index-retail-prices-qld-reg-centres/index-retail-prices-qld-reg-centres-2013.pdf>

It would be difficult to consider the cost of living among different areas in Australia, principally because of a lack of available data. Only a few states and territories publish their own cost of living index²², which can show that the cost of living can vary among regions within the same state or territory.

Finally, even if the cost of living could be defined among different areas of Australia, it would be difficult to create a workable policy framework that could be administered and monitored by the Department.

To be truly representative, it is possible that regional concessions should not be based solely on geographic area, but should also need to consider salary variations between occupations and industries. The Review concurs with stakeholders who acknowledged that differentiated salary thresholds would, however, introduce “an extra layer of complexity, confusion and regulatory burden”²³.

The Deegan review noted that consideration of a lower MSL for regional/remote Australia should be “carefully balanced against other Government labour market mechanisms which encourage Australians, and in particular Indigenous Australians, into the workforce in these areas”²⁴. This is also applicable to consideration of a regional concession to TSMIT.

The Review notes that concessions are already available through the TSMIT exemption provision (see ‘TSMIT Today’), and Labour Agreements, and agrees with the Deegan Review’s view that “Labour agreements are, however, useful to selectively apply additional safeguards to areas of the program that require these without burdening other areas of the program with unnecessary and unwanted regulation”²⁵.

The *Robust New Foundations* Review recommended that negotiation times for Labour Agreements be improved. Since then the Department has reformed the programme, resulting in an improvement in mean processing times from five months in April 2014 to 35 days in April 2016.

The Review considers it a positive development that the Department has simplified processes through the introduction of a ‘business case proforma’ template which assists businesses in providing data specifically relevant to their request, and that the Department shifted its focus to create more industry template agreements, which provide more certainty to industries with well documented skill-shortages.

²² Government of Western Australia, Department of Regional Development *Regional Price Index 2013*. Queensland Government, Queensland Treasury and Trade *Prices across Queensland: how they compare – Index of retail prices in Queensland regional centres 2013*.

²³ Australian Mines and Metals Association, written submission to the Review.

²⁴ Barbara Deegan, visa Subclass 457 Integrity Review – Final Report (“The Deegan Review”), October 2008.

²⁵ Ibid.

Labour Agreements, including Industry Agreements, should continue to be used to request concessions to TSMIT. This will ensure that requests for concessions are supported by a strong business case. This is a much more effective mechanism for determining the appropriateness of a TSMIT concession, as the cost of living varies between different areas of Australia.

While the procedure and processing time for Labour Agreements has been greatly improved, it is important that this area of the Department continue to be appropriately resourced to maintain the delivery of outcomes (See the 'Labour Agreements' section for more detail on this).

Recommendation 4

- 4.1 That TSMIT be retained as a single figure for all nominations.
- 4.2 That concessions to TSMIT continue to be negotiated via Labour Agreements.
- 4.3 That the Department's Labour Agreement area continue being appropriately resourced to provide a demand driven and responsive pathway for temporary migration, where the Standard Business Sponsorship 457 programme arrangements are not suitable.

Legislative mechanism for specifying TSMIT

Currently, the Migration Regulations specify that an applicant's Base Rate of Pay must be greater than TSMIT. The dollar amount of TSMIT is specified in a Legislative Instrument.

Many submissions to the review did not express a preference regarding the most appropriate legislative mechanism—Act, Regulations, Policy, Legislative Instrument—for specifying TSMIT. This may indicate that many stakeholders do not have a strong view, or do not have any concerns with the current mechanism.

Some submissions, including those from the Australian Council of Trade Unions (ACTU) and United Voice, suggested that TSMIT and annual indexation criteria should be contained in the *Migration Act 1958* to ensure TSMIT was not frozen in future without due consideration. Ernst & Young advocated against this, stating that the Migration Act would not allow sufficient flexibility and responsiveness to adjust TSMIT in a timely manner.

Some stakeholders recommended that the current legislative mechanism be retained, as indexation using a Legislative Instrument allows for both flexibility and oversight.

Quotes from public submissions

The TSMIT, including annual indexation, should be in primary legislation, namely the Migration Act 1958. This would recognise the key, ongoing role of the TSMIT in providing a wage floor for the 457 visa program and help guard against it being removed or arbitrarily frozen again in the future.

Australian Council of Trade Unions

EY does not support setting the TSMIT in the Migration Act 1958. Legislative settings for the subclass 457 visa programme must remain flexible to facilitate timely responsiveness to changes in the economy and labour market.

Ernst & Young

In its current iteration, the TSMIT is a legislative instrument and is subject to disallowance by the Senate. This is an appropriate mechanism for setting the TSMIT as it balances the need for flexibility with the opportunity for parliamentary oversight and scrutiny through the disallowance mechanism.

Dr Joanna Howe

The Review believes that the current arrangement, where TSMIT criteria are specified in the Migration Regulations, and are indexed through a Legislative Instrument, is the most appropriate legislative mechanism.

Placing TSMIT in the Migration Act would prevent timely changes and require additional resources to amend. This is not appropriate, given the intention for TSMIT to be regularly indexed.

Either House of the Parliament can give a notice of motion to disallow the Legislative Instrument within 15 sitting days of the Instrument being tabled. Therefore, the Parliament can, if required, play a balancing role in any indexation of TSMIT. This mitigates any stakeholder concerns regarding arbitrary change.

Recommendation 5

5. That the current legislative framework continue to be used for TSMIT, with details of TSMIT contained in the Migration Regulations, and annual indexation changes contained in Legislative Instruments. The Legislative Instrument should continue to be one that is disallowable.

Other relevant factors

Labour agreements

Australian employers that have entered into Labour Agreements with the Department are currently able to recruit overseas workers within the terms of that Labour Agreement only, noting a number of employers utilise both Labour Agreements and other sponsorship/visa types.

The Department advised that it is currently working to simplify sponsorship arrangements under the Skilled Migration and Temporary Activity (SMTA) review, however Labour Agreements are not included in the review. At present, each class of sponsor is permitted to sponsor persons only under the visa subclass available for that particular class of sponsor. This means that one organisation must lodge multiple sponsorships to sponsor persons under different visas. The SMTA review aims to simplify the current seven different classes of approved sponsor prescribed in the Migration Regulations, by reducing the number of sponsorship classes and thereby benefiting sponsors by removing the need to become a sponsor multiple times to access multiple visas.

The Review recommends that the Department include Labour Agreements as part of the simplified sponsorship arrangements, as inclusion may benefit sponsors by reducing the work effort involved where a Labour Agreement sponsor is also a sponsor for other visa subclasses.

Recommendation 6

6. That the Department include Labour Agreements in the simplified sponsorship model being worked on in the Skilled Migration and Temporary Activity (SMTA) review as appropriate.

Workplace legislation and the Fair Work Ombudsman

Stakeholders noted that the interaction between visa requirements and the broader workplace relations system has caused confusion, particularly when requirements may be different.

The Department advised that sponsors at times state they are not aware that, in sponsoring a 457 visa holder, they and the visa holder are subject not only to immigration requirements, but Australian workplace law, including the Fair Work Act.

Recommendation 12.1 of the *Robust New Foundations* Review required sponsors to include, as part of their signed employment contract with 457 visa holders:

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

The Fair Work Act already requires that employees are provided with a copy of the *Fair Work Information Statement*. The Department has amended visa grant letters to include a link to an information sheet 'Your Rights at Work'.

The Department and the Fair Work Ombudsman have a Memorandum of Understanding (MoU) signed in July 2013 that clarifies referral and reporting procedures. The MoU is being reviewed and is available to the public through the website of the Fair Work Ombudsman at <https://www.fairwork.gov.au/ArticleDocuments/725/diac-and-fwo-mou.pdf.aspx>.

Quotes from public submissions

The confusing system that has evolved of TSMIT, market salary rates and guaranteed earnings instead provide a minefield for employers seeking to meet their sponsorship obligations and also work within the Australian industrial relations system.

Migration Institute of Australia

The current 457 Visa processes and their interaction with the broader workplace relations system is confusing and problematic. Compliance with both regulatory frameworks is inherently difficult, particularly for employers covered by the Building Award.

Housing Industry Association

...[t]he Migration Act 1958 (Cth) is not an appropriate vehicle for regulating terms and conditions of employment. Robust mechanisms are already in place for regulating and enforcing employment conditions under the Fair Work Act 2009 (Cth) and through the Ombudsman, which provide avenues for remedies and compensation for employees.

Law Council of Australia

... there is considerable confusion amongst the industry as to how the TSMIT is calculated, given that the Restaurant Industry Award sets the minimum wage required for key occupations in the hospitality industry.

Restaurant & Catering Australia

The Review notes the actions of the Department and the Fair Work Ombudsman and considers that appropriate measures are already in place with regard to the relationship between the Department and the Fair Work Ombudsman, and with regard to information provided to visa holders and sponsors regarding what is required under Australian law.

Terminology and Inconsistencies

Stakeholders noted that the terminology relating to TSMIT and related measures is complex and uses a number of specialised terms such as *base rate of pay*, *award rate*, *Market Salary Rate*, which may lead to confusion and misunderstanding, particularly if terms are not applied consistently. Some felt that public information could better explain and highlight the limitations on employing overseas workers.

Dr Joanna Howe noted that “[t]he Labour Agreement Information Booklet provides somewhat conflicting advice on whether labour agreements are permitted to ask for a concession on the TSMIT”²⁶. The Review considers that this could be addressed by updating information available on the Department’s website and information booklet.

Quotes from public submissions

Commentary around TSMIT often is confused, and refers to the TSMIT as the amount an overseas worker is paid – this is not the role of the TSMIT...

Australian Chamber of Commerce and Industry

Commentary in the Procedures Advice Manual on the market salary rate requirement also uses a wide range of phrases which imply nominee should be paid the market salary rate such as ‘the same pay’, ‘salary level is inconsistent with other workers’ and ‘not commensurate’. This has caused confusion for assessing case officers who have at times raised concerns with registered migration agents in our office where nominees’ base rate of pay has exceeded that of a comparable Australian citizen or permanent resident employee on the understanding that the remuneration should be exactly the same.

Ernst & Young

The Review notes that the Department decided to implement Recommendation 5.3 of the *Robust New Foundations* Review, to more clearly articulate TSMIT’s two roles, after the TSMIT review concluded. Other concerns can be addressed by reviewing and updating publicly available departmental information.

The Review notes that the Migration Regulations require salaries to be ‘greater than TSMIT’, and Guaranteed Annual Earnings to be ‘equal to or greater than’ TSMIT.²⁷ In practice, the Department assesses both using the ‘equal to or greater than’ definition. The inconsistency should be addressed by amending the Migration Regulations to align the definitions.

²⁶ Dr Joanna Howe, written submission to the Review.

²⁷ Regulation 2.72(10)(cc) and Regulation 2.72(10A) of the Migration Regulations.

Recommendation 7

7.1 That the Department review publicly available departmental information on TSMIT to ensure that:

7.1.1 terminology is defined and used consistently; and

7.1.2 the policy framework is clearly and consistently explained, including TSMIT concessions that may be available under the different types of Labour Agreements

7.2 That Migration Regulation 2.72(10)(cc) be amended to require salaries to be 'equal to or greater' than TSMIT.

TSMIT and other visa programmes

A number of submissions referred to an inconsistency, that TSMIT is applicable to 457 visas, however that it does not apply to ENS/RSMS, even though these visa holders often work in similar occupations. The ACT Government queried why the 457 visa programme has a TSMIT, when the Employer Nomination Scheme (ENS) and RSMS do not. Mr Glazbrook, Registered Migration Agent, recommended that the 457 and Regional Sponsored Migration Scheme (RSMS) programmes should align in order to provide a pathway to the RSMS programme.

Quotes from public submissions

The inconsistency between the requirements of the 457 TSMIT and the RSMS market salary rate is a cause for concern for the ACT. For example, an employer seeking to nominate a cook under the RSMS must meet the market salary rate which in the ACT is currently \$48,000 – \$50,000. If a 457 visa holders transitions to the RSMS the nominated salary must meet the TSMIT, regardless of the market rate. However, if a student or visitor visa holder is nominated under the RSMS, the nominated salary only has to be at market rate.

ACT Government

Quotes from public submissions

Temporary migration programs such as the 457 in regional, low population growth and economically challenged jurisdictions of Australia should consistently align to the permanent regional sponsored migration scheme (RSMS) subclass 187 in order to provide a designated pathway to the 187 program. This requires changes to the 457 program which includes remuneration set at the higher of market salary rates of pay or the relevant award and access to all skill level 1,2 and 3 occupations as defined in the Australian and New Zealand Standard Classification of Occupations (ANZSCO).

Mr Mark Glazbrook, Registered Migration Agent

The Review notes this inconsistency. In programme year 2014-15, there were 51,130 subclass 457 primary visas granted. The 2014-15 migration programme outcome for Employer Sponsored category (ENS/RSMS) was 48,250 ENS/RSMS places, of which 22,098 were primary applicants.

Table 5: Employer Sponsored (ENS/RSMS) primary applicant visas granted

Time period	Employer Sponsored (ENS/RSMS) places granted	Employer Sponsored (ENS/RSMS) primary applicant visas granted
1 July 2010 – 30 June 2011**	44,345	18,851
1 July 2011 – 30 June 2012**	46,554	20,512
1 July 2012 – 30 June 2013	47,740	21,651
1 July 2013 – 30 June 2014	47,450	21,453
1 July 2014 – 30 June 2015	48,250	22,098

* Department of Immigration and Border Protection. Data from BE9741.01

**Figures for this year also include Labour Agreements.

The inconsistency between the 457 and ENS/RSMS visas becomes more marked when the Government's recent decision regarding NZ citizens—who will need to have income of above TSMIT to be granted permanent residence—is taken into account. The Review recommends that the Government address the discrepancy between the 457 programme and the ENS/RSMS programme.

Recommendation 8

8. That the Government address the discrepancy that exists between the 457 programme and the Employer Nomination Scheme/Regional Sponsored Migration Scheme (ENS/RSMS) programmes, where the 457 programme applicants must meet TSMIT, and ENS/RSMS applicants are not required to.

Expert Analysis Subcommittee of MACSM

In the recent Senate Inquiry, The Education and Employment References Committee's report, *A National Disgrace: the Exploitation of Temporary Work Visa Holders*, March 2016, there were extensive discussions about the merits of having in Australia a counterpart to the British Migration Advisory Committee (MAC). Dr Joanna Howe and Associate Professor Alexander Riley made a submission to the Committee, which was informed by a paper written by Dr Howe for the Australian Journal of Labour Law (2014) 27, *Does Australia need an Expert Commission to assist with managing its Labour Migration Programme?*

Essentially, the British MAC is an independent public body composed of experts in relevant aspects of labour migration, which autonomously researches, prepares and publishes expert responses to remits from government.

This Review has carefully considered this model and its possible applicability in the framework created by *Robust New Foundations*. It considers that there is merit in making use of outside, independent expertise. Equally, however, there is merit in the normal Australian practice of relying on the expertise available in government departments. Accordingly, this Review suggests that the most effective course for Australia would be to combine both sources of competence, a course which is made possible, and easy, as a result of the existence of MACSM, a tripartite body for which there seems to be no counterpart in Britain.

What is proposed here for the Australian context is that two, or three, independent experts be appointed as members of MACSM, and that they form a MACSM subcommittee, called the Expert Analysis Subcommittee, which would work closely with a range of government departments.

The way it could work would be as follows.

First, stakeholders will submit to MACSM, via MACSM members, issues that are of concern to their sector. These issues might include, for example, labour shortages or surpluses in a particular industry, or any issues relating to TSMIT. The subcommittee would then be asked by MACSM to investigate the issues and come back with analyses based on actual data.

Next, the subcommittee would work with labour market analysts in relevant departments, including the relevant labour analysis unit in DIBP, in a coordinated and mutually profitable series of consultative meetings. The departments would provide the wide range of data they have collected, and their own analyses. The experts would also come to the table with their own investigations and analyses. The collaboration would take place through correspondence and a series of meetings over several weeks or months, and would result in a joint report. The result of this teamwork would be brought to MACSM for its consideration.

The merits of this approach are many. They include:

- MACSM itself is a tripartite body which has all the stakeholders “inside the tent”. They would all be the beneficiaries of the transparency of this system
- for DIPB, this system creates a safety valve, a mechanism bringing to the table all the groups seeking to exert pressure, and provides neutral, evidence-based solutions
- the system provides an opportunity for the labour analysis units in the various departments to share their expertise with each other and with MACSM
- the outside experts who now form the subcommittee will be able to add value to the whole process, and the fact that they come from outside government would provide an essential perspective
- the process is essentially a collaborative one, where outside experts and government analysts work together to present joint reports to MACSM, wherever possible, and where each can inform and supplement the work of the other.

The final decisions on actions to be taken in response to any reports would continue to rest with the Minister, whether consensus has been achieved or not.

The whole collaboration should be co-ordinated by the enhanced MACSM secretariat proposed earlier, which would be an integral part of the process.

An important conclusion from this report is that the process outlined above would represent an essential building block in creating the “Streamlined, Transparent and Responsive System for the 457 Programme” envisaged by *Robust New Foundations*.

Recommendation 9

9. In order to help MACSM reach evidence-based conclusions, that the Minister consider appointing experts in demography, economics, and the law to MACSM, to form a subcommittee working with Government Departments which have labour market analysis capabilities.

Appendix 1 – Terms of Reference

Context

Since 2009 the Temporary Skilled Migration Income Threshold (TSMIT) has been used by the 457 programme as a salary threshold which indicates that an occupation is skilled and ensures that 457 visa holders have reasonable means of support whilst in Australia.

Originally TSMIT was set at \$45 220, based on the amount of the minimum salary level that the 457 programme utilised in 2009. It has been indexed annually based on increases in the full-time adult average weekly earnings to keep pace with increases in the cost of living. On 1 July 2013 TSMIT was indexed and set at \$53 900.

An Independent Review into Integrity in the 457 Programme conducted in 2014 made a range of recommendations in relation to TSMIT, including retaining it at \$53 900 until a review of TSMIT is undertaken.

The Review

Consistent with the Government's commitment to ensuring that the Subclass 457 programme acts as a supplement to, and not a substitute for local workers, and the protection of potentially vulnerable foreign workers in Australia, the TSMIT review is to:

- consider and advise on the factors that should be taken into account when determining settings for TSMIT
- determine an appropriate base level for TSMIT, which is supported by evidence
- consider whether TSMIT should be indexed and if so, advise on the methodology for indexation of the TSMIT (eg whether is it appropriate to use CPI, Average Weekly Ordinary Time Earnings or other indicators for indexation purposes)
- determine whether a single income threshold should apply to all occupations, sectors and circumstances, such as regional locations
- determine the appropriate legislative mechanism for specifying the level at which TSMIT is set, and
- consider and advise on any other relevant factor

Appendix 2 – Conduct of the Review

The Review aimed to consult widely. It has consulted and received submissions from industry peak bodies and associations, business, unions, academia, and States, Territories and the Federal Government.

Where there was a peak body representing members across Australia, the Review directed communication through the body's headquarters, while also welcoming submissions from state and territory representatives.

Similar to *Robust New Foundations*, the Review employed a three-point approach to the stakeholder consultation process.

- one point 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
- one point involved a discussion forum with a group of stakeholders, and
- one point consisted of a submission process. An invitation to submit was published on the Department's website, requesting interested parties to make a written submission to the Review. There were 40 public and confidential submissions received and considered. See [Appendix 4](#) for a list of public submissions.

As part of the engagement process, the Review also consulted with various staff and officers within the Department of Immigration and Border Protection to gain first-hand insights into the operation of TSMIT within the 457 programme.

Appendix 3 – Table of stakeholder consultations

One-on-one meetings

Stakeholder Name	Date of meeting
Australian Chamber of Commerce and Industry	4 February 2016
Minerals Council of Australia	4 February 2016
Master Builders Australia	4 February 2016
Migration Council of Australia	4 February 2016
Department of Employment	4 February 2016 15 February 2016 8 March 2016 14 April 2016
Construction, Forestry, Mining and Energy Union	9 February 2016
Migration Law Committee	9 February 2016
Australian Mines and Metals Association	9 February 2016
Australian Industry Group	9 February 2016
Electrical Trade Union	9 February 2016
Australian Council of Trade Unions	9 February 2016
Dr Bob Birrell	10 February 2016
Migration Institute of Australia	18 February 2016
Restaurant and Catering Australia	18 February 2016
United Voice	18 February 2016
Australian Manufacturing Workers Union	18 February 2016
Australian Taxation Office	25 February 2016
Fujitsu	3 March 2016
Dr Joanna Howe	17 March 2016
Fair Work Ombudsman	12 April 2016
Department of Health	14 April 2016
Department of Education and Training	14 April 2016
Department of Industry, Innovation and Science	14 April 2016
The Treasury	14 April 2016
Ministerial Advisory Council on Skilled Migration (MACSM)	8 April 2016

Consultation forums

Stakeholder Name	Forum	Date of meeting
National Farmers' Federation, through Australian Pork Ltd	Canberra Forum	16 February 2016
Regional Development Australia Murraylands and Riverland Inc SA	Canberra Forum	16 February 2016
Tourism Accommodation Australia	Canberra Forum	16 February 2016
Australian Meat Industry Council	Canberra Forum	16 February 2016
Motor Trades Industry of Australia	Canberra Forum	16 February 2016
Ernst & Young	Canberra Forum	16 February 2016
TAFE Directors Australia	Canberra Forum	16 February 2016
Australasian Meat Industry Employees Union	Canberra Forum	16 February 2016
Australian Trade Commission (Austrade)	SMOG	9 March 2016
Department of Employment	SMOG	9 March 2016
Department of Education and Training	SMOG	9 March 2016
Chief Minister's, Treasury and Economic Development Directorate, ACT Government	SMOG	9 March 2016
Department of Industry, NSW	SMOG	9 March 2016
Department of Business and Employment, NT	SMOG	9 March 2016
Trade & Investment Queensland	SMOG	9 March 2016
Queensland Treasury	SMOG	9 March 2016
Department of State Development, SA	SMOG	9 March 2016
Department of State Growth, TAS	SMOG	9 March 2016
Department of Economic Development, Jobs, Transport and Resources, VIC	SMOG	9 March 2016
Department of Training and Workforce Development, WA	SMOG	9 March 2016
Small Business Development Corporation, WA	SMOG	9 March 2016

Appendix 4 – Public External Submissions Received

Stakeholder
ACT Government
Australian Industry Group
Australian Chamber of Commerce and Industry
Australian Council of Trade Unions
Australian Meat Industry Council
Australian Mines and Metals Association
Australian Pork Limited
AUSVEG
Chamber of Commerce and Industry Queensland
Construction, Forestry, Mining and Energy Union
Department of State Growth, Tasmania
Ernst & Young
Fragomen
Housing Industry Association
Jagminder Singh Purewal
Joanna Howe
Joint Submission - SA Industry Stakeholders
KPMG
Law Council of Australia
Mark Glazbrook, Migration Solutions (2 submissions)
Master Builders Australia
Migration Institute of Australia
Minerals Council of Australia
Motor Trade Association of South Australia
NASSCOM
National Farmers' Federation
Northern Territory Department of Business
Quick Steps School of Dance
Regional Development Australia Murraylands and Riverland Inc SA
Restaurant & Catering Industry Association
South Australian Wine Industry Association
Steve Whetton
Teys Australia
The Australian Population Research Institute
Tourism Accommodation Australia
United Voice
WestVisa

Appendix 5 – ANZSCO Duties

UNIT GROUP 3513 CHEFS	UNIT GROUP 3514 COOKS	UNIT GROUP 8511 FAST FOOD COOKS	UNIT GROUP 8513 KITCHENHANDS
<p>CHEFS plan and organise the preparation and cooking of food in dining and catering establishments.</p> <p>Indicative Skill Level 2 A level of skill commensurate with an AQF Associate Degree, Advanced Diploma or Diploma (ANZSCO Skill Level 2). At least three years of relevant experience may substitute for the formal qualifications listed above.</p> <p>Tasks include:</p> <ul style="list-style-type: none"> planning menus, estimating food and labour costs, and ordering food supplies monitoring quality of dishes at all stages of preparation and presentation discussing food preparation issues with Managers, Dietitians and kitchen and waiting staff demonstrating techniques and advising on cooking procedures preparing and cooking food explaining and enforcing hygiene regulations may select and train staff may freeze and preserve foods 	<p>COOKS prepare, season and cook food in dining and catering establishments.</p> <p>Indicative Skill Level 3 A level of skill commensurate with an AQF Certificate III including at least two years of on-the-job training, or AQF Certificate IV. At least three years of relevant experience may substitute for the formal qualifications listed above.</p> <p>Tasks include:</p> <ul style="list-style-type: none"> examining foodstuffs to ensure quality regulating temperatures of ovens, grills and other cooking equipment preparing and cooking food seasoning food during cooking portioning food, placing it on plates, and adding gravies, sauces and garnishes storing food in temperature controlled facilities preparing food to meet special dietary requirements may plan menus and estimate food requirements may train other kitchen staff and apprentices 	<p>FAST FOOD COOKS prepare a restricted range of foods in fast food establishments.</p> <p>Indicative Skill Level 5 A level of skill commensurate with an AQF Certificate I, or compulsory secondary education. In some instances no formal qualification or on-the-job training may be required.</p> <p>Tasks include:</p> <ul style="list-style-type: none"> taking and serving food and beverage orders, and receiving payment from customers preparing food such as hamburgers, pizzas, fish and chips washing, cutting, measuring and mixing foods for cooking operating cooking equipment such as grills, microwaves and deep-fat fryers cleaning food preparation areas, cooking surfaces and utensils ordering and taking delivery of fast food ingredients may arrange delivery of prepared food and beverages 	<p>KITCHENHANDS assist kitchen and service staff in preparing and serving food, and clean food preparation and service areas.</p> <p>Indicative Skill Level 5 A level of skill commensurate with an AQF Certificate I, or compulsory secondary education. In some instances no formal qualification or on-the-job training may be required.</p> <p>Tasks include:</p> <ul style="list-style-type: none"> cleaning kitchens, food preparation areas and sculleries cleaning cooking and general utensils used in kitchens and restaurants transferring, weighing and checking supplies and equipment assembling and preparing ingredients for cooking, and preparing salads, savouries and sandwiches packing food and beverage trays for serving cooking, toasting and heating simple food items

Appendix 6 – Glossary

This glossary provides an explanation of technical terms used in this report that relate to the 457 programme, and for other terms. Unless otherwise stated, regulations in this glossary are from the Migration Regulations 1994.

Annual Earnings – see ‘Guaranteed Annual Earnings’.

Average Weekly Earnings (AWE) – The Australian Bureau of Statistics' Average Weekly Earnings survey is designed to measure the level of average earnings in Australia at a point in time. Movements in average weekly earnings can be affected by changes in both the level of earnings per employee and in the composition of the labour force. Factors which can contribute to compositional change include variations in the proportion of full-time, part-time, casual and junior employees; variations in the occupational distribution within and across industries; and variations in the distribution of employment between industries²⁸.

Average Weekly Ordinary Time Earnings (AWOTE) – one measure contained within the Australian Bureau of Statistics' Average Weekly Earnings data .

Base Rate of Pay (BROP) – is defined in Regulation 2.57.

Regulation 2.57 Base Rate of Pay means the rate of pay payable to an employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

Note: This definition is based on the definition of base rate of pay in section 16 of the *Fair Work Act 2009*.]²⁹

Base Salary – see Base Rate of Pay.

Earnings – Under regulation 2.57A, a primary sponsored person’s earnings include:

- the person’s wages;

²⁸ Australian Bureau of Statistics, 6302.0 Average Weekly Earnings, Australia, Nov 2015.
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6302.0Main+Features1Nov%202015?OpenDocument>

²⁹ Regulation 2.57, Migration Regulations 1994

- amounts applied or dealt with in any way on the person's behalf or as the person directs; and
- the agreed money value of non-monetary benefits, for example, health insurance, car, mobile phone and laptop.

'Earnings' is defined in regulation 2.57A as including certain things (regulation 2.57A(1) refers) and excluding certain other things (regulation 2.57A(2) refers):

Note: In relation to regulation 2.57A(1):

- regulation 2.57A(1)(b) allows for salary packaging; and
- the value of the non-monetary benefits must be agreed under regulation 2.57A(1)(c) - officers should sight evidence of such agreement.

In relation to regulation 2.57(2), regulation 2.57A(1)(a) excludes contingent payments, such as overtime, bonuses and commissions.

Regulation 2.57A Meaning of earnings

1. In this Part, a person's *earnings* include:
 - a) the person's wages;
 - b) amounts applied or dealt with in any way on the person's behalf or as the person directs; and
 - c) the agreed money value of non-monetary benefits.
2. However, an employee's *earnings* do not include the following:
 - a) payments the amount of which cannot be determined in advance;
 - b) reimbursements; and
 - c) contributions to a superannuation fund to the extent that they are contributions to which subregulation (4) applies.

Note: Some examples of payments covered by paragraph (a) are commissions, incentive-based payments and bonuses, and overtime (unless the overtime is guaranteed).

3. *Non-monetary benefits* are benefits other than an entitlement to a payment of money:
 - a) to which the employee is entitled in return for the performance of work; and
 - b) for which a reasonable money value has been agreed by the employee and the employer.

4. This subregulation applies to contributions that the employer makes to a superannuation fund to the extent that 1 or more of the following applies:
- a) the employer would have been liable to pay a superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 in relation to the person if the amounts had not been so contributed;
 - b) the employer is required to contribute to the fund for the employee's benefit in relation to a defined benefit interest (within the meaning of section 292-175 of the *Income Tax Assessment Act 1997*) of the employee; and
 - c) the employer is required to contribute to the fund for the employee's benefit under a law of the Commonwealth, or of a State or a Territory.

Note: This definition is based on the definition of earnings in section 332 of the *Fair Work Act 2009*³⁰.

Guaranteed Annual Earnings (GAE) – allows non-salary related earnings to be taken into consideration, such as guaranteed allowances and fringe benefits including those provided under salary sacrificing arrangements.

Regulation 2.72(10A) refers to 'Guaranteed Annual Earnings':

Regulation 2.72(10A) The Minister may disregard the criterion in paragraph (10)(cc) for the purpose of subregulation (2) if:

- a) the base rate of pay will not be greater than the temporary skilled migration income threshold specified for that paragraph;
- b) the annual earnings are equal to or greater than the temporary skilled migration income threshold; and
- c) the Minister considers it reasonable to do so.

Regulation 2.57A defines 'Earnings' (see 'Earnings' in glossary above).

Guaranteed Earnings – see 'Guaranteed Annual Earnings'.

Market Salary Rate (MSR) – Under regulation 2.72(10)(c), the delegate must be satisfied that the terms and conditions of employment of the nominated 457 visa holder (the nominee) will be no less favourable than the terms and conditions (including, if applicable, the terms and conditions provided by an enterprise agreement under the Fair Work Act 2009) that:

³⁰ 2.57A Migration Regulations 1994

- are provided to an Australian citizen or an Australian permanent resident for performing equivalent work at the same location or
- if there is no Australian citizen or permanent resident performing equivalent work at the same location, would be provided to an Australian citizen or Australian permanent resident performing equivalent work at the same location, as determined using the method specified in the legislative instrument.

The nominated occupation should have (amongst other things) the same pay, hours of work and leave entitlements as those which are provided to Australian citizens and permanent residents performing the same or similar work in the local labour market. The pay provided according to these terms and conditions is then considered the 'market salary rate' for that occupation in that location³¹.

Regulation 2.72(10) If the person is a standard business sponsor — the Minister is satisfied that:

- c) the terms and conditions of employment of the person identified in the nomination will be no less favourable than the terms and conditions (including, if applicable, the terms and conditions provided by an enterprise agreement under the *Fair Work Act 2009*) that are provided or would be provided to an Australian citizen or an Australian permanent resident for performing equivalent work at the same location; and

Non-monetary benefits – defined in Regulation 2.57A(4), part of the definition of 'earnings'. See 'Earnings'.

Temporary Skilled Migration Income Threshold (TSMIT) – Unless regulation 2.72(10AA) applies, under regulation 2.72(10)(cc) the base rate of pay under the terms and conditions of employment mentioned in regulation 2.72(10)(c), that is, the 'market salary rate', must be greater than the TSMIT specified by legislative instrument.

The TSMIT, which is generally indexed annually, provides a benchmark against which the 'market salary rate' is measured. This ensures that 457 visa holders, who must be paid terms and conditions of employment that are no less favourable than the 'market salary rate', can be self-reliant and maintain a reasonable standard of living in Australia and not find themselves in circumstances that may put pressure on them to breach their visa conditions, given their ineligibility to access government income support payments and some other government-funded services³².

Regulation 2.72(10) If the person is a standard business sponsor — the Minister is satisfied that:

³¹ Procedure Advice Manual. Sch2 Visa 457 – Temporary Work (Skilled) Nominations and visa applications. 19 April 2016.

³² Ibid.

cc) the base rate of pay, under the terms and conditions of employment mentioned in paragraph (c), that:

(i) are provided; or

(ii) would be provided;

to an Australian citizen or an Australian permanent resident, will be greater than the temporary skilled migration income threshold specified by the Minister in an instrument in writing for this paragraph;

TSMIT exemption provision – If the MSR for an occupation in Australia is below TSMIT, an employer cannot nominate that occupation to be filled by a 457 visa holder. However, if the Base Rate of Pay under the MSR is below TSMIT but the proposed Guaranteed Annual Earnings for the nominee are equal to, or above, TSMIT, then that position may be eligible for the 457 programme. This is known as the TSMIT ‘exemption’ provision. This approach allows for non-salary related earnings to be taken into consideration, such as guaranteed allowances and fringe benefits including those provided under salary sacrificing arrangements.

It would generally only be reasonable to disregard TSMIT requirement if the additional earnings being afforded to the nominee are, or would be, also afforded to an equivalent Australian worker under an Enterprise Agreement or Award provision, given the same circumstances exist (that is, hours worked)³³.

³³ Procedure Advice Manual. Sch2 Visa 457 – Temporary Work (Skilled) Nominations and visa applications, 19 April 2016.

Appendix 7 – Abbreviations

AWOTE	Average Weekly Ordinary Time Earnings
ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AMMA	Australian Mines and Metals Association
AMWU	Australian Manufacturing Worker's Union
ANZSCO	Australian and New Zealand Standard Classification of Occupations
AUSVEG	AUSVEG
AWE	Average Weekly Earnings
BROP	Base Rate of Pay
CCIQ	Chamber of Commerce and Industry Queensland
CFMEU	Construction, Forestry, Mining and Energy Union
CPI	Consumer Price Index
DAMA	Designated Area Migration Agreement
DIBP	Department of Immigration and Border Protection
ENS	Employer Nomination Scheme
EY	Ernst & Young
FWO	Fair Work Ombudsman
GAE	Guaranteed Annual Earnings
GSM	General Skilled Migration
ICT	Information and Communications Technology
LCA	Law Council of Australia
MAC	Ministerial Advisory Council
MACSM	Ministerial Advisory Council on Skilled Migration
MCA	Minerals Council of Australia
MoU	Memorandum of Understanding
MSL	Minimum Salary Level
MSR	Market Salary Rate
NASSCOM	National Association of Software and Services Companies
NFF	National Farmers Federation
RSMS	Regional Sponsored Migration Scheme
SCV	Special Category Visa
SMOG	Skilled Migration Officials Group
SMTA	Skilled Migration and Temporary Activity
TFN	Tax File Number
TSMIT	Temporary Skilled Migration Income Threshold
UV	United Voice
WPI	Wage Price Index