

**Visa Subclass 457
Integrity Review**

**Issues Paper #3:
Integrity / Exploitation**

September 2008

Version 1.0

Table of Contents

Overview of this issues paper.....	3
Section 1 - Executive summary.....	5
Section 2 - The Visa Subclass 457 Integrity Review	6
Section 3 - Visa Subclass 457	9
Section 4 - Integrity and Exploitation	12
Section 5 - Monitoring, Compliance and related issues	38
Attachment A - References	42
Attachment B - Minister's media release	43
Attachment C - Integrity and Exploitation: supplementary information	45
Attachment D - Monitoring and Compliance: supplementary information	46

Overview of this issues paper

This paper includes the following sections:

- Executive summary
- The Visa Subclass 457 Integrity Review
- Visa Subclass 457
- Integrity and Exploitation
- Monitoring, Compliance and related issues.

The paper includes the following attachments:

- a list of the references used in the compilation of this paper
- the text of the media release from the Minister for Immigration and Citizenship announcing the appointment of industrial relations commissioner Ms Barbara Deegan to examine the integrity of the temporary skilled migration program
- supplementary information on aspects of integrity, exploitation and compliance.

Note on nomenclature

When the phrase ‘the department’ is used in this report without further attribution it should be read as ‘the Department of Immigration and Citizenship (DIAC)’.

The term ‘Subclass 457 visa holder’ applies only to primary visa holders unless otherwise noted.

References to submissions in this report refer both to written submissions and conversations with stakeholders.

Note on references

To avoid repetition, references in this report are generally concise. Full details on each reference may be found in the references list in Attachment A.

Note on occupational classifications

It is intended that the Australian and New Zealand Standard Classification of Occupations (ANZSCO) will replace the existing Australian Standard Classification of Occupations (ASCO) Second Edition and the New Zealand Standard Classification of Occupations (NZSCO) 1999 used in Australia and New Zealand, respectively.

It is likely that this will lead to changes in the classification system used for temporary skilled migration visa purposes. Details on the new classification system may be found at the Australian Bureau of Statistics website:

See: <http://www.abs.gov.au>

List of abbreviations

ANZSCO	Australian and New Zealand Standard Classification of Occupations
AQF	Australian Qualifications Framework
ASCO	Australian Standard Classification of Occupations
CSWP	Commonwealth/State Working Party on Skilled Migration
DEEWR	Department of Education, Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
ENS	Employer Nomination Scheme
ERG	Visa Subclass 457 External Reference Group
FAQ	Frequently Asked Question
GSM	General Skilled Migration
IELTS	International English Language Testing System
IOO	Industry Outreach Officer
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia
MRT	Migration Review Tribunal
MSL	Minimum Salary Level
NZSCO	New Zealand Standard Classification of Occupations
OH&S	Occupational Health and Safety
RCB	Regional Certifying Body
ROO	Regional Outreach Officer
RSMS	Regional Sponsored Migration Scheme

Section 1 - Executive summary

This is the third and final issues paper to be released as part of the Visa Subclass 457 Integrity Review (the Review) being conducted by Ms Barbara Deegan. This paper will focus on Integrity and Exploitation, and will provide the basis for structured feedback from interested stakeholders.

The issues raised in the paper have been compiled from DIAC and Department of Education, Employment and Workplace Relations (DEEWR) resources and from a series of informal consultative meetings between Ms Deegan and a selection of stakeholders. The issues outlined in this paper are designed to prompt debate and provide interested parties with an opportunity to provide the Review with written submissions.

This work builds upon stakeholder input to earlier reviews of the temporary skilled migration program, including the Joint Standing Committee on Migration of 2007 and the External Reference Group (ERG) earlier in 2008 (see Attachment A for references). It also incorporates comment received during informal consultation carried out between stakeholders and Ms Deegan following establishment of the Review.

Section 2 - The Visa Subclass 457 Integrity Review

Following concerns raised about the exploitation of migrant workers, salary levels and English language requirements within the temporary skilled migration program, the Minister for Immigration and Citizenship, Senator Chris Evans, announced the establishment of an integrity review process (see Attachment B) to be conducted by Barbara Deegan (a member of the Australian Industrial Relations Commission).

The terms of reference for the Review include examining:

- measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program
- the employment conditions that apply to workers employed under the temporary skilled migration program
- the adequacy of measures to protect 457 visa holders from exploitation
- the health and safety protections and training requirements that apply in relation to temporary skilled workers
- the English language requirements for the granting of temporary skilled migration workers' visas
- the opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The Review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented in October 2008.

The Review is independent of DIAC which provides accommodation and secretariat support.

The Integrity Review

Barbara Deegan

Barbara Deegan holds a law degree from the University of Tasmania. After a time in private practice, and then a period with a TAFE teachers' organisation, she joined the Australian Public Service in the Department of Employment and Industrial Relations.

She held the position of Assistant Secretary of the Legislation Branch of the Department of Industrial Relations for a number of years before being appointed as the Principal Registrar of the Australian Industrial Relations Commission.

Subsequently she became the Australian Government's representative at the International Labour Organisation in Geneva, and was appointed to her current position as a Commissioner with the Australian Industrial Relations Commission in 1996.

Secretariat

The secretariat function for the Review has been provided by the following DIAC staff:

- Tony Davison - Project Manager, Labour Market Branch
- Penelope Robinson - Director, Labour Market Branch
- Felicity Lloyd - Project Officer, Labour Market Branch.

Secretariat members coordinate the activities of the Review, draft discussion papers and reports, manage meetings and assist with the consultation process.

Please note that the members of the secretariat carry out their roles independently of DIAC and that the Review itself is being carried out independently of the department.

The temporary skilled migration reform agenda

The Skilled Migration Consultative Panel has been established to provide advice to the Government on proposals aimed at improving Australia's temporary skilled migration program and how it integrates with the employer sponsored permanent skilled migration program.

The Review is working closely with the Consultative Panel and will provide it with advice on integrity matters relevant to its operation. The Panel, in turn, will consider and provide advice on issues referred to it by the Review.

The independent work of the Review is limited to the scope of its terms of reference and the subject matter of the issues papers it will release from time to time.

If you are interested in contacting the Consultative Panel please address your correspondence to the department:

Email: temporary.business.strategy@immi.gov.au

Submissions

The Review welcomes submissions on the issues raised in this paper and/or on its terms of reference. All submissions should be sent via email to the following email address:

Email: 457IntegrityReview@immi.gov.au

The closing date for submissions is **7 October 2008**.

At the end of Sections four and five of this paper you will find a series of questions. These are designed to stimulate discussion on particular issues. The questions should be viewed as prompts and should not be seen as restrictive. Please feel free to provide comments on any issues of interest.

Please note: The content of submissions may be made public. If confidential submissions are provided they should be sent separately from any public submission and clearly marked as confidential and not for publication.

Future work program

This is the final issues paper the Review will be releasing to prompt discussion and seek submissions on integrity issues relevant to the temporary skilled migration program.

The first issues paper was on Labour Agreements / Minimum Salary Levels. It was released in July 2008.

The second issues paper was on the English Language Requirement and Occupational Health and Safety. It was released in August 2008.

The content of submissions received on all three issues papers, along with input from face-to-face meetings, will inform the final report of the Review to the Minister for Immigration and Citizenship and the Deputy Prime Minister in October 2008.

Disclaimer

The views and issues in this paper do not necessarily reflect the views of the department or of the government. The paper is intended to stimulate discussion and covers a wide range of views and opinions, some of which may be contradictory.

Acknowledgements

The Review would like to thank all of the groups and individuals who have contributed to the Review to date through the initial consultation process and by submissions in response to the first two issues papers.

Section 3 - Visa Subclass 457

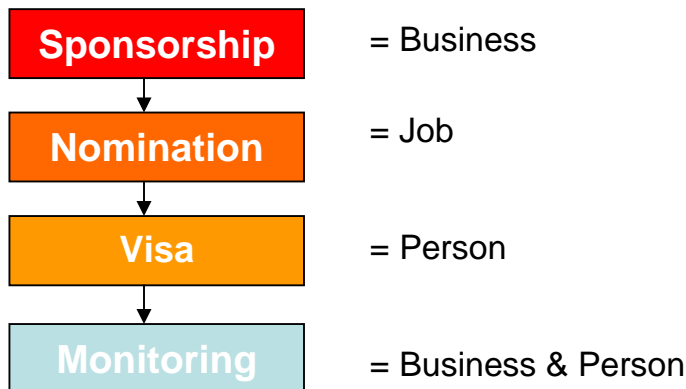
Managing the Subclass 457 visa program

Managing the program poses two critical and potentially competing challenges:

- remaining internationally competitive in facilitating labour movement, particularly skilled labour, in the context of Australia's changing demographic and skill needs, and in meeting international trade commitments; and
- safeguarding employment and training opportunities for Australians and protecting overseas workers from exploitation.

Subclass 457 visa processing process

There are currently three processing steps in the Subclass 457 visa program, followed by ongoing monitoring, as shown in the following diagram:



The business sponsorship process involves assessing the employer to ensure:

- they are actively and lawfully operating
- the entry of the visa holder will benefit Australia, such as by contributing to Australian trade, improving international business links, contributing to competitiveness
- they will either introduce new technologies to Australia or demonstrate a record of, or commitment to, training Australians
- they are directly employing the visa holder
- they are able to meet their sponsorship obligations.

The nomination process involves the assessment of the position (job) to ensure it meets minimum skill and salary requirements.

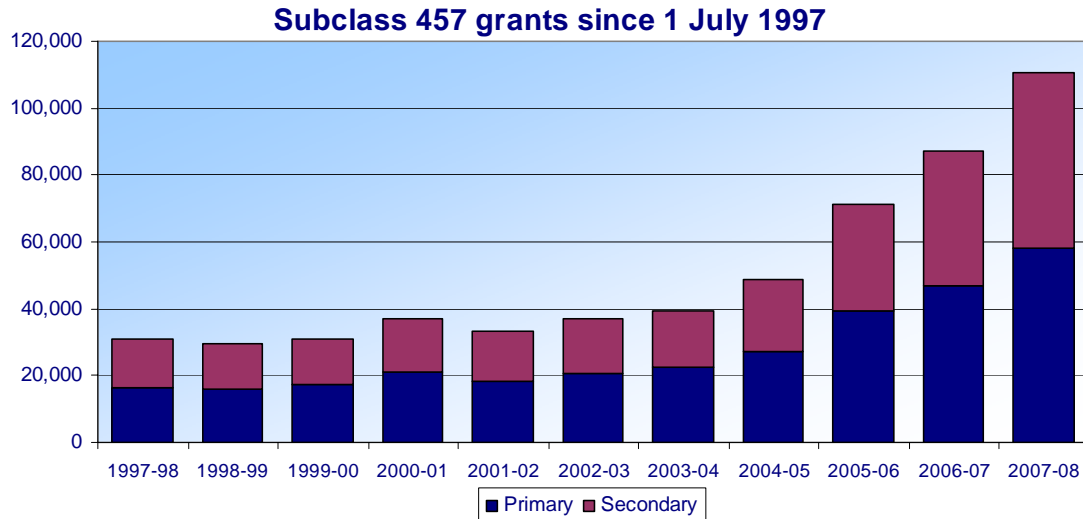
The Subclass 457 visa application process assesses:

- the appropriateness of the match between the nominated position and the personal attributes/employment background of the Subclass 457 visa applicant
- the applicant against health and character requirements
- the extent to which the nominated salary is known to the applicant and meets the minimum salary requirement
- English language proficiency, where relevant.

The duties of the position sought must be equivalent to those of an occupation prescribed under migration regulations and the position must attract a salary of at least the Minimum Salary Level (MSL) set for the program.

Subclass 457 visa grants

The number of Subclass 457 visas granted over the last 11 years is shown in the graph below.



Source: DIAC

Primary visa holders are the workers who fill the nominated position, secondary visa holders are the spouse and family members who may accompany them to Australia (where the sponsor has agreed to the arrangement).

The tables below show the number and proportion of visa grants in 2007-08 by ASCO major group.

Subclass 457 visa grants to primary applicants in 2007-08 by ASCO Major Group and the location of the nominated position (excludes independent executives)

ASCO Major Group	Location of the nominated position									Total
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Not Spec	
ASCO 1 to 3	630	18 670	470	7 060	1 470	390	10 490	7 730	90	47 010
ASCO 4 to 9	80	1 790	440	2 630	450	50	1 270	4 060	10	10 780
Not recorded	0	20	0	120	0	0	0	10	110	260
Total	720	20 480	910	9 810	1 930	450	11 750	11 800	200	58 050

Source: DIAC

Percentage of Subclass 457 visa grants to primary applicants in 2007-08 within the State / Territory location of the nominated position by ASCO Major Group (excludes independent executives)

ASCO Major Group	Location of the nominated position									Total
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Not Spec	
ASCO 1 to 3	88.7%	91.1%	51.5%	72.0%	76.6%	87.9%	89.2%	65.5%	44.6%	81.0%
ASCO 4 to 9	11.3%	8.7%	48.5%	26.8%	23.4%	12.1%	10.8%	34.4%	3.9%	18.6%
Not recorded	0.0%	0.1%	0.0%	1.3%	0.0%	0.0%	0.0%	0.1%	51.5%	0.4%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: DIAC

For comparison purposes the following table shows the percentage of grants by ASCO major group in 2005-06.

Percentage of Subclass 457 visa grants to primary applicants in 2005-06 within the State / Territory location of the nominated position by ASCO Major Group (excludes independent executives)

ASCO Major Group	Location of the nominated position									Total
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Not Spec	
ASCO 1 to 3	86.9%	89.0%	57.2%	62.1%	61.3%	88.3%	85.1%	56.9%	65.4%	76.1%
ASCO 4 to 9	12.9%	11.0%	42.8%	37.9%	38.7%	11.7%	14.9%	43.1%	29.1%	23.7%
Not recorded	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.1%	5.5%	0.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: DIAC

Section 4 - Integrity and Exploitation

Introduction

This paper considers the integrity of the Subclass 457 visa system and possible areas of failure, including the potential for exploitation of temporary migrant workers in Australia on Subclass 457 visas. Integrity can be compromised where systems are poorly designed (allowing easy and low-cost transgression for those who wish to abuse the system) or are unfit for purpose (where the nature of the system design inadvertently allows or encourages unintended activity) as outlined below.

Subclass 457 visa holders are potentially vulnerable to exploitation, arising out of their position as temporary visa holders in Australia, particularly those who may have aspirations towards permanent residency. Under the ASCO classification system the ASCO groups 1-3 are generally professionals with the capacity to negotiate their own terms and conditions and as such are not the main focus of this paper. Stakeholder feedback indicates that, with some minor exceptions, particularly with regard to chefs and aged care nurses there is little concern with the ASCO 1-3 group; however in relation to the ASCO classifications 4 and below there are a number of areas of concern. It is this latter group who are the particular focus of this paper from an exploitation perspective.

There are a number of contributing factors, dealt with below, making this particular cohort of visa holders especially vulnerable. As noted by the Federal Magistrate in *Flattery v Zeffirelli's Pizza Restaurant* [2007] FMCA 9:

'Significantly, the breaches involved vulnerable employees, dependent on their employment with the Italian Eatery for their visas to remain in Australia.'

The Federal Magistrate in *Jones v Hanssen Pty Ltd* [2008] FMCA 291 made a similar comment:

'The fifteen employees concerned were in Australia on Subclass 457 visas. As such their remaining in Australia was, at least in part, dependent upon their remaining on good terms with the Respondent, who was their sponsor for migration purposes. The Respondent was aware of the employees' vulnerability. Mr Hanssen, the director and secretary of the Respondent, acknowledged that the employees "would sign anything" because they "are frightened of ... being sent back". The Court has no difficulty in concluding that this was a vulnerable set of employees, that the Respondent, through its principal officer Mr Hanssen had knowledge of that, and that he exploited his perception of these employees as being malleable to the wishes of the Respondent.'

Stakeholders have given examples of Subclass 457 visa holders who, after asking about such matters as salary deductions, underpayment of wages or union membership have been dismissed by their sponsor and put on the next plane 'home' as an example to the rest of the workforce to ensure their compliance. It has been suggested that such behaviour is particularly prevalent where Subclass 457 visa holders make up a large percentage of the workforce at a workplace.

Additionally, while Subclass 457 visa holders pay income and other taxes, including the Medicare levy, most have no access to Medicare or other social security safety nets (though they may be eligible for a refund of the Medicare levy through their end of financial-year tax return). Their public health costs are stated to be the responsibility of their sponsor. The issue of health insurance and access to medical assistance was raised in Issues Paper #2 in the OH&S context, and the issue of access to other support services is discussed elsewhere in this paper.

Wages

Wages are one of the key costs impacting on profitability for business enterprises. As such, employers have a financial imperative to contain them, consistent with employing a suitable workforce. The level of wages paid to Subclass 457 visa holders is thus one of the more contentious elements of the program. Issues Paper #1 considers the current MSL requirement in some detail. A brief comparison of actual wages paid with MSL is included below.

Movements in Visa Subclass 457 salaries paid.

Nomination Industry	Average Salaries		
	2005-06	2006-07	2007-08
Accommodation, Cafes and Restaurants	\$43 000	\$45 000	\$44 800
Agriculture, Forestry and Fishing	\$43 000	\$47 300	\$55 100
Communication Services	\$78 000	\$84 800	\$80 700
Construction	\$73 000	\$72 400	\$75 400
Cultural and Recreational Services	\$49 000	\$53 900	\$59 800
Education	\$59 000	\$62 200	\$64 200
Electricity, Gas and Water Supply	\$68 000	\$77 000	\$88 700
Finance and Insurance	\$92 000	\$90 400	\$92 400
Government Administration and Defence	\$73 000	\$82 600	\$84 700
Health and Community Services	\$62 000	\$66 400	\$69 300
Manufacturing	\$66 000	\$66 600	\$63 400
Mining	\$87 000	\$95 200	\$103 700
Not Recorded	\$57 000	\$84 100	\$63 800
Personal and Other Services	\$64 000	\$65 900	\$65 800
Property and Business Services	\$63 000	\$69 100	\$72 900
Retail Trade	\$58 000	\$55 900	\$57 300
Transport and Storage	\$65 000	\$64 000	\$74 500
Wholesale Trade	\$70 000	\$82 000	\$84 500
Overall Average Salary	\$66 000	\$71 600	\$73 100

Source: DIAC

The table above shows average salaries paid to Subclass 457 visa holders by industry. It can be seen that in most industries workers were paid, on average, well above the MSL applicable at the time (see the table below).

MSL Instrument Period of Effect	MSL Occupation Category	Current MSL
11/02/04 to 08/04/05	Non-ICT	\$37 720
	Regionally-certified	Industrial Award
	ICT	\$46 620
09/04/05 to 02/05/06	Non-ICT	\$39 100
	Regionally-certified	Industrial Award
	ICT	\$50 775
03/05/06 to 30/06/06	Non-ICT	\$41 850
	Regionally-certified	Industrial Award
	ICT	\$57 300
01/07/06 to 31/7/2008	Non-ICT	\$41 850
	Regionally-certified (non-ICT)	\$37 665
	Regionally-certified (ICT)	\$51 570
	ICT	\$57 300
10/09/2007 to date	English language exemption	\$75 000

Source: DIAC

Changes to the Minimum Salary Level

In May 2008 the Minister for Immigration and Citizenship announced a 3.8 per cent increase in the MSLs that apply to the majority of Subclass 457 visa holders. The increase took effect from 1 August 2008. It was the first time the MSL had been indexed in more than two years and, even more significantly, the first time it had been applied to existing visa holders (some of whom may have been subject to a lower salary level for up to four years) rather than applying only to new applications. The policy shift was intended to increase the safety net for temporary skilled migrants to help preserve their earning power and protect them from exploitation in the workplace.

As outlined in Issues Paper #1, during consultations some stakeholders have suggested that the MSL is too high. For example, a major concern expressed by stakeholders in regional areas is that even with a regional concession (90 per cent of the MSL) this figure is too high and forces wages up, making local businesses unviable.

Other stakeholders have suggested that the MSL drives down wages in local areas as employers prefer to bring Subclass 457 visa holders, who are prepared to work for a lower wage, into local communities and pay the MSL, rather than pay the market rate required to attract local workers.

The table below shows the relationship between minimum wages, the MSL and average weekly ordinary time earnings for the period 2001-2007.

year	Minimum Wage C14	increase	AWE (May figures)			annual increase	Minimum Wage as a proportion of AWOTE	weekly standard MSL
			Fulltime Adults ordinary time earnings (AWOTE)	annual increase	All Adults			
	\$	%	\$	%		%	\$	
2000	400.40	3.89	784.60	4.3	636.50	3.9	n/a	
2001	413.40	3.25	825.00	5.3	664.50	4.4	653.06	
2002	431.40	4.35	868.40	5.2	688.40	3.7	686.66	
2003	448.40	3.94	921.20	6.3	726.80	5.5	#	
2004	467.40	4.24	949.70	3.1	747.70	3.0	722.92	
2005	484.40	3.64	1008.30	6.0	792.90	5.8	749.37	
2006	511.86	5.67	1043.00	3.5	829.00	4.4	802.07	
2007	522.12	2.00	1088.40	4.3	867.00	4.5	#	

Notes:

1) the 2006 FMW increase of 5.67% covers a 15 month period and the 2007 increase of 2% is based on a 9 month period

2) the 2001 Standard weekly MSL is derived from ABS AWE February 2001 data

No MSL increase during this period.

By way of comparison the table below shows Average Weekly Earnings by ASCO code for 2005. It can be seen that for all occupation groups except those in ASCOs 8-9 the weekly standard MSL at the time was below average salaries, so that any salaries utilising regional concessions may have been below average salaries within that ASCO group (noting that average weekly salaries incorporate overtime payments and the MSL is based on a 38 hour working week).

ASCO Major Group	Average weekly salary as at August 2005
1 - Managers and administrators	\$1 431
2 - Professionals	\$1 215
3 - Associate professionals	\$995
4 - Tradespersons and related workers	\$867
5 - Advanced clerical and service workers	\$850
6 - Intermediate clerical, sales and service workers	\$787
7 - Intermediate production and transport workers	\$881
8 - Elementary clerical, sales and service workers	\$682
9 - Labourers and related workers	\$701

Source: ABS

These comparisons highlight an imminent data issue since, as indicated earlier in the paper, the ABS has moved from an ASCO classification system to ANZSCO. The post 2005 ABS salary figures for the series set out in the table above are released under ANZSCO groupings, making comparison with MSL wage statistics for more recent years difficult.

Subsidising employers

A contentious issue with regard to wage rates is the suggestion that in some regions and/or industries the requirement that the employer need only pay MSL (particularly with a regional concession) might be subsidising inefficient industries. If employers are able to access workers from overseas who are prepared to work for minimum rates then there is no incentive to offer above minimum rates to attract local workers. Although some of the submissions received in response to Issues Paper #1 reject this proposition other employers claim that the government are subsidising their inefficient competitors.

Market rates

A number of submissions received in response to Issues Paper #1 were supportive of the payment of market rates rather than relying on the MSL, which was generally seen as cumbersome and unresponsive to market conditions. As shown in that paper the majority of cases where employers have been sanctioned for a breach of visa conditions have been for breach of MSL compliance.

Another issue with the MSL is that it is an immigration requirement and not a workplace legislative requirement. In cases of breach the visa holder needs to recover personally any underpayment through the courts and does not qualify for assistance from the relevant workplace authorities. Nor is a failure to pay MSL a breach of the *Workplace Relations Act 1996*, for which a penalty would apply.

If market rates were to be adopted, further consideration would need to be given to the concept of a 'premium' above market rates to account for the fact that Subclass 457 visa holders are unable to access many government support services (such as health and education) and to ensure that employers find engaging labour under a Subclass 457 visa a more expensive option than employing and training local employees.

The skills shortage

Labour market testing

One of the aims for the Subclass 457 program given in Section 3 was to safeguard employment opportunities for Australian workers. From the inception of the Subclass 457 program labour market testing was one of the mechanisms intended to ensure employers had tested local labour markets before seeking skilled workers from overseas. The system in place at the time was seen as cumbersome and difficult to operate effectively, it was removed in 2001 when MSLs were introduced (see Issues Paper #1).

An example of the practical difficulties involved with assessing compliance with labour market testing requirements is that while the employer might be required to place an ad for a job, they can rightly claim that no applicants had the skills they were seeking and therefore a skilled worker from overseas is required.

While there have been suggestions that some form of market testing could assist in confirming that skills shortages actually exist in particular regions or industries seeking overseas workers there may be some restrictions imposed on the scope of such mechanisms by Australia's international trade obligations.

Australia has committed, at the World Trade Organisation and under Free Trade Agreements, not to use labour market testing for some categories of persons that seek to enter Australia temporarily to supply a service, invest or sell goods. For example, the visa application of a manager or executive who wishes to transfer temporarily from the foreign office of a company to an Australian office of that company must not be subject to labour market testing. Australia has also committed not to limit the numbers of service suppliers from other countries that can take advantage of Australia's specific commitments on temporary entry.

It should be noted that such commitments do not restrict the Government's ability to assess the eligibility of each individual who applies for a visa (including the use of labour market testing in certain circumstances) or to deny entry to specific persons that do not meet such criteria. As noted above, Australia's current international obligations with regard to not using labour market testing apply only to certain categories of service suppliers.

Skilled or semi-skilled?

The Subclass 457-eligible occupations are those in the ASCO major groups 1 to 4 (with some exceptions). These groups are:

- Managers and Administrators
- Professionals
- Associate Professionals
- Tradespersons and Related Workers.

Exceptions to this list are available under regional concessions as discussed below. During consultation a number of employers have argued that they need access to workers in other ASCO categories.

Labour shortages

Initial discussions with stakeholders and an examination of the submissions received by the ERG suggest that a number of employers are facing labour shortages rather than specific skills shortages. Using a skilled visa to address these shortages may increase the risk to the integrity of the program.

Measures sufficient to protect the integrity of the system as it applies to the more highly skilled and paid employees may be insufficient to protect workers at the 'lower' end of the market, particularly where those workers may be more concerned with gaining permanent residency in Australia than ensuring that they receive appropriate wages and conditions in the short term.

2-tier system

A number of the submissions to the ERG stated that there was a need for migration across the skills spectrum, however, the ERG noted:

'The 457 visa was ... never envisaged as a general labour supply visa (which it has become by default)'

and went on:

'The ERG is of the view that the Visa Subclass 457 visa is not suitable to meet market requirements for semi-skilled and unskilled labour except through Labour Agreements for semi-skilled.'

The ERG thus proposed a 2-tier system whereby labour requirements for workers in ASCO major groups 1-4 would be available under the Subclass 457 program and access to workers in other ASCO groups would be available under another program specifically designed to manage general labour supply issues (with some exceptions for projects of national significance under Labour Agreements).

Underlying these proposals appears to be a recognition that the majority of integrity issues around the skilled visa program appeared to be associated with employment in lower skilled ASCO major groups and particularly those occupations attracting salaries close to the MSL as outlined elsewhere in this paper. The ERG recommendation may need to be reviewed in light of integrity and exploitation concerns that have arisen with ASCO 4 (trades level) workers employed at or close to the MSL.

The ASCO classification and skills matching

Skills levels and skills assessment

Skill thresholds for Subclass 457 primary visa holders were introduced in July 2001 when the concept of 'key' and 'non-key' activities was abolished (the latter had been subject to labour market testing).

The skill thresholds were designed to reflect the highly skilled focus of the program and aimed to deliver two main policy objectives:

- to allow employers to sponsor suitably skilled overseas employees to fill highly skilled positions that they could not readily fill from the local labour market
- to promote training opportunities and prevent displacement of Australians by excluding low-skilled and unskilled jobs from those occupations which can be nominated under standard Subclass 457 visa arrangements.

To apply to nominate positions, employers are required to outline the responsibilities, main duties, qualifications, essential skills, employment experience and registration/licensing requirements for each position. The department then makes an assessment as to whether the tasks sought can be appropriately matched to the tasks of an occupation listed in the Australian Standard Classification of Occupations and gazetted by the Minister for Immigration and Citizenship on an occupations list.

The gazetted occupations list is broadly consistent with ASCO major groups 1-4, or ASCO major groups 1-7 under regional arrangements - the latter could be considered to work against the intended aims of the skills thresholds process.

The skills assessment, particularly checks for appropriate licensing or registration, can be difficult to perform consistently as skills assessment is not a core departmental responsibility and licensing is a matter for State and Territory agencies. Another area of vulnerability for the integrity of the process is the verification of claims of relevant overseas work experience, the department currently carries out risk-based referrals to overseas posts to check such claims.

Even with this level of checking there have been allegations that unscrupulous employers have used uncertainties over skill levels, particularly where jobs do not require formal qualifications, to bring in workers who are not even semi-skilled.

The department is also aware of some instances where sponsors or migration agents have sought to present positions as more highly skilled than the actual position to be performed. A low salary is often indicative of this and is often a trigger for departmental decision makers to examine their cases more closely.

The situation is further complicated where jobs do not match existing ASCO classifications or where new technologies develop with specific skills requirements which are not able to be captured within the ASCO classification system.

Australian Qualifications Framework (AQF)

There are a number of skills recognition systems which might assist in providing more certainty around skills assessment. The AQF is a unified system of national qualifications in schools, vocational education and training and the higher education sector (mainly universities).

The AQF was introduced Australia-wide on 1 January 1995 and was phased in over five years, with full implementation by the year 2000. The AQF was developed under the auspices of State, Territory and Commonwealth Education and Training Ministers. Utilisation of the AQF or another appropriate framework might assist in ensuring a more consistent skills assessment process.

Skills Australia

As part of the Australian Government's Skilling Australia for the Future policy, a new independent statutory body, Skills Australia, has been established to provide advice on current and future demand for skills and investment of public funds in training.

One of the functions of Skills Australia is to analyse current and emerging skills needs across industry sectors. Information flowing out of this analysis should provide more certainty with regard to skills shortages. This new body may also be able to provide information and advice as to skills which are necessarily accessed from overseas.

Further information on Skills Australia may be found on the DEEWR website:

See: www.dest.gov.au/sectors/training_skills/policy_issues_reviews/key_issues/skillsaustralia/

The role of ‘agents’

Stakeholders have mentioned a number of other factors contributing to vulnerability through lack of transparency in the current system. These include the role of both registered and unregistered migration agents. For some of the Subclass 457 visa holder cohort the role of offshore, and therefore unregulated in Commonwealth legislation, ‘agents’ is a major integrity concern.

In a significant proportion of cases during consultation where issues arose in relation to integrity there was a concern mentioned about misinformation or lack of information provided by an ‘agent’, however described. These ‘agents’ can charge large fees offshore (often paid offshore) of which an employer may never become aware. Other stakeholders have described situations where employers attempt to recover the costs of bringing a Subclass 457 visa holder to Australia from the visa holder’s wages after they arrive, having being told by their ‘agent’ that this was acceptable.

Other stakeholders have given examples of migration agents who tell employers that the Subclass 457 visa is only a 12 month visa (when they can in fact be granted for up to 4 years) and then charge the employer and the employees excessive fees of up to \$A10 000 to ‘renew’ the visa at twelve month intervals. Stakeholders have also described migration agents who act for both the employer and employee and who advertise their services as both migration and employment agents, charging both ‘clients’, despite the potential conflict of interest issues that could arise.

Another issue that arises in this context is the concern expressed by some stakeholders about the number of former DIAC employees who become migration agents. There is a need for Commonwealth employees to clearly understand their Australian Public Service obligations and to ensure that all dealings with former officers are conducted in accordance with those obligations.

Many stakeholders have raised concerns about ‘agents’ who ‘sell’ the system to employers as a method to acquire a ‘bonded’ workforce for the length of the visa. These ‘agents’ allegedly tell employers that Subclass 457 visa holders can be made to work for unlimited hours and need only be paid the MSL. This is clearly not the case. As discussed in Issues Paper #1, the MSL is linked to a 38 hour work week and any relevant industrial instrument applies to a Subclass 457 visa holder in the same way as it applies to any other employee in the workplace, the only difference being that should the MSL provide for a higher wage than the industrial agreement, then the MSL wage rate is to be paid.

Migration agents

In Australia, in order to legally provide immigration assistance for a fee or reward, individuals must be registered with the Migration Agents Registration Authority (MARA), unless they belong to certain exempted groups.

An individual must meet several requirements in order to be registered. Amongst other requirements, these include that they:

- meet specific knowledge requirements
- are an Australian citizen, permanent resident, or a New Zealand citizen holding a special category visa
- are a person of integrity / are of good character
- are over 18 years of age
- hold professional indemnity insurance of at least \$250 000.

During consultations stakeholders have commented that this requirement for registration may deter those who seek to assist vulnerable visa holders, as they can be reluctant to provide advice in case they are held to have broken the law.

Around 50 per cent of migration agents are members of the Migration Institute of Australia (MIA). In a move intended to encourage voluntary self-regulation of the profession the MIA was appointed to operate the MARA in 1998. Concerns have been raised by some stakeholders that this creates a situation of potential conflict of interest.

Some of those who have lodged formal complaints against migration agents have been dissatisfied with the outcomes of the existing review process. As noted above the industry currently relies on self-regulation. The capacity of the MARA to deal with complaints has been a primary focus of the *'2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession'* which is expected to release its Final Report later in the year.

During the consultation process for the Review there have been consistent claims that many migration agents have not carried out their tasks in a professional manner. The lack of information provided to clients by migration agents has been claimed as a major contributing factor in many cases of failure to abide by the visa conditions.

There have been a number of recent court decisions involving migration agents. The most recent High Court case is *SZFDE v MIAC & Anor* [2007] HCA 35. In *SZFDE*, H represented himself to the appellants as a solicitor and registered migration agent and received payment to act for the family with respect to proceedings. H's practising certificate as a solicitor and his registration as a migration agent had in fact earlier been cancelled.

Labour Agreements

One of the terms of reference for the Review is to examine 'the opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program'. Labour agreements allow for the negotiation of terms and conditions surrounding visa grants and companies are able to request concessions where standard visa arrangements do not meet their needs. These concessions are usually balanced by other terms of the Labour Agreements which provide additional protections for the visa holders. Labour agreements most often cover occupations within ASCO groups 1-7.

A number of older agreements contain negotiated salary concessions based on identified industry requirements. Language concessions (where the minimum requirement of English proficiency has been adjusted or waived due to exceptional circumstances) have also been granted for several of the agreements. In the latter Agreements additional requirements for interpreters, language training and information in languages other than English are usually included.

Labour Agreements were considered extensively in Issues Paper #1 and the outcomes of this deliberation will form part of the Final Report of the Review. It is worth noting that a number of submissions to the review supported greater transparency in the negotiation process for Labour Agreements to improve integrity.

On-hire agencies

As noted in Issues Paper #1, since 2007 the on-hire industry has been limited to using Labour Agreements to access Subclass 457 workers. There have been examples in the past where there has been some confusion (actual or claimed) about who the employer is, with some hire firms claiming that once the employee is placed they are no longer responsible for meeting Subclass 457 visa requirements.

An example of the problems which previously arose in the on-hire area is illustrated in a recent prosecution by the Workplace Ombudsman in the Federal Magistrates Court (*Armstrong v Healthcare Recruiting Aust Pty Ltd & Anor (No.2)* [2008] FMCA 1050) where, on 8 August 2008, a labour hire company was fined \$40 000 and its director \$8 000 for failing to pay three Filipino nursing assistants the appropriate wages and allowances. The company and its director were found to be in breach of both the *Workplace Relations Act 1996* and the applicable Nursing Homes award.

The Magistrate rejected the company's argument that it was not involved in an employment relationship with the nurses concerned and stated that the lack of rights given to the workers under the company's agency agreements left him:

'doubting whether they would survive examination under contracts review legislation or principles of unconscionability'.

The Labour Agreements utilised in the on-hire sector clarify employment arrangements and give greater force to training commitments required of on-hire employers, but have been criticised for inflexibility and time necessary to conclude negotiations.

While noting the on-hire industry's concerns over the current requirements, maintaining the integrity of the program is compromised where there is no certainty as to the particular position that the Subclass 457 visa holder may occupy at any given time, or the person that will be responsible for the control and supervision of that person.

Visa requirements

The training requirement

Under the Migration Regulations, a part of the approval process for sponsorship is that the Minister is satisfied that the applicant has ‘a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in the business operations of the applicant in Australia’. A DIAC officer makes this decision on the Minister’s behalf.

This is a consideration at the time of the sponsorship application. DIAC monitors compliance with this undertaking and the outcome of monitoring is used for subsequent applications for sponsorship, although stakeholder feedback indicates that there appears to be minimal impact on existing sponsorships for failure to comply.

Employers on Subclass 457 visa arrangements often cite difficulty in meeting the training requirement due to a perceived lack of flexibility with regard to industry characteristics. Potential solutions include allowing more options for meeting the training requirement, some possible examples might include:

- a minimum prescribed percentage of the workforce comprises apprentices and trainees
- a minimum prescribed percentage of the workforce comprises first year graduates
- a minimum level of expenditure on structured training for each Australian employee
- active participation in nominated labour market programs, based on a regularly updated list of such participants provided by relevant agencies to DIAC
- a contribution per Subclass 457 employee per annum to an approved industry training fund or a State government training fund for the training of Australians.

Failure to have adequate training in place militates against one of the aims for the program outlined in Section 3 of this paper: ‘safeguarding employment and training opportunities for Australians’. DIAC monitoring officers have noted the difficulties involved in assessing compliance with training requirements. It has been suggested that this role might more appropriately fall to DEEWR, given that Department’s portfolio responsibilities.

English language requirement

This requirement has been the subject of much debate in the Subclass 457 visa context and was the subject of this Review’s Issues Paper #2 together with matters related to OH&S. It must be noted that (as alluded to in Section 3 of this paper) since the introduction of the English language requirement on 1 July 2007, the proportion of Subclass 457 visa applicants in the ASCO 4 and below cohort has decreased from approximately 24 per cent in 2005-06 to 19 per cent in 2007-08.

Various stakeholders have argued that English language ability may, to a greater or lesser extent, be an issue in the work place from an OH&S perspective. A number of stakeholders have suggested that a person’s level of vulnerability in the general community can be linked to their level of English language skills and that people with sufficient skills to access assistance are in a better position to understand their rights and obligations and whether or not to enforce them. These matters were more fully canvassed in Issues Paper #2.

Regional concessions

The significant expansion in the range of concessions to enable higher and more targeted levels of skilled migration to regional Australia and low population growth centres began with a report in 1996-97 from the Commonwealth/State Working Party on Skilled Migration (CSWP). The report recommended mechanisms to permit states and territories to use aspects of the migration program to support their individual development strategies including:

- addressing skill shortages
- encouraging a more balanced dispersal of the skilled migrant intake
- attracting overseas business people.

Over the subsequent 10 years, the CSWP has continued to meet regularly to expand and refine the range of state and regional migration mechanisms. These fall into three main categories:

- mechanisms that provide a concession where a State/Territory government provides sponsorship
- mechanisms that provide a concession based on family or study linkages
- mechanisms that provide concessions for employer sponsored visas.

In the case of the Subclass 457 visa the third category above applies. Access to these concessions requires certification by a Regional Certifying Body (RCB). There has been a variable pattern of uptake of the RCB function by a range of regional bodies, in some states RCBs are State Government instrumentalities, in others RCBs may be the local Chamber of Commerce or industry peak body.

Concerns have been expressed that where RCBs are constituted by industry or employer groups members of those groups may often be the employers seeking access to concessions. In such circumstances there is a perceived, if not actual, conflict of interest.

A list of RCBs may be found on DIAC's website:

See: <http://www.immi.gov.au/skills/regional-certifying-bodies.htm>

Some stakeholders have also expressed concern over the arrangements for accessing regional concessions and the lack of transparency with regard to the mechanisms used to access them (including the operations of RCBs, which seem to vary across States and Territories).

Comparison between the table below and the statistics given in Section 3 shows that the actual number of workers receiving salaries below the standard MSL in regional areas is relatively low (based on nominated salaries, actual salaries paid may be higher), although there is a seemingly disproportionate number in ASCO groups 4-7.

Subclass 457 visa grants during 2007-08 to primary applicants under a regional concession by nominated occupation

Nominated occupation (ASCO Major Group)	2007-08	%
1 Managers and Administrators	30	3.12
2 Professionals	29	3.02
3 Associate Professionals	191	19.88
4 Tradespersons and Related Workers	450	46.83
5 Advanced Clerical and Service Workers	10	1.04
6 Intermediate Clerical, Sales and Service Workers	167	17.38
7 Intermediate Production and Transport Workers	84	8.74
Total	961	100.00

Source: DIAC - Figures rounded up where below 10.

Given the highly skilled nature of the occupations in ASCO groups 1-3 it is also interesting to note that some workers in regional areas in these groups are being paid at rates below the MSL. The RCBs are meant to establish market rates in regional areas and ensure that the salaries paid are consistent with those market rates.

Temporary visas and the pathway to permanent residency in Australia

Permanent residency as a goal

Subclass 457 visa holders regularly move from being temporary migrants to permanent residence. In 2007-08 over 20 000 Subclass 457 visa holders (both primary and secondary applicants) were granted permanent visas, primarily on the basis of sponsorship by an Australian employer.

Stakeholder feedback has highlighted that many Subclass 457 visa holders in ASCO major groups 4-7 see the Subclass 457 visa as a pathway to permanent residency in Australia. It has been made clear during the consultation process that where a visa holder has permanent residency as a goal that person may endure, without complaint, substandard living conditions, illegal or unfair deductions from wages and other similar forms of exploitation, in order not to jeopardise the goal of permanent residency.

Under the current system a Subclass 457 visa may be granted for up to 4 years and there is no age limitation on those who can apply for the visa. As Subclass 457 visa holders can apply for new Subclass 457 visas in Australia on an unlimited number of occasions, some visa holders could potentially remain in Australia for a significant period of time on that visa.

Subclass 457 visa holders can also apply for certain permanent residence visas while in Australia, through such mechanisms as the Employer Nomination Scheme (ENS), the Regional Sponsored Migration Scheme (RSMS) and Labour Agreements through employer sponsorship. There are concessions for onshore Subclass 457 visa holders applying for these visas. As the ENS and RSMS are permanent visas, they are limited to people who are less than 45 years old. There is, however, scope to waive the age requirement for these visas where there are 'exceptional circumstances', such as when special skills are in strong need and a person can not be found to fill the vacancy. Some Labour Agreements also include requirements relating to the obtaining of permanent residence and these too, can include variations to the usual age requirements.

ENS applicants are not required to have formal qualification assessments if they have worked in Australia for at least two years in their occupation or profession and at least 12 months with the sponsoring employer. Offshore ENS applicants are required to have formal assessments and have worked for at least three years in their occupation after graduating or qualifying in their profession. RSMS also provides concessions for Subclass 457 visa holders in the lower qualified occupations to access permanent residency, particularly where they have been sponsored by their Subclass 457 employer.

Other permanent visa options for Subclass 457 visa holders while in Australia are limited to family stream visa subclasses. To apply for the General Skilled Migration (GSM) subclasses, the Subclass 457 visa holder must be offshore.

The current sponsorship arrangements limit the mobility of workers and may be a contributing factor to the vulnerability of those workers. Those limitations on mobility may arise from visa mechanisms, incorrect information provision or promises of support for permanent visa applications which may never eventuate. These limitations are discussed more fully below.

As set out above, Subclass 457 visa holders who are ENS applicants for permanent visas are, for example, not required to have formal qualification assessments if they have worked in Australia for at least two years in their occupation or profession and at least 12 months with the sponsoring employer. Offshore ENS applicants are required to have formal assessments and have worked for at least three years in their occupation after graduating or qualifying in their profession.

The benefits provided by employer sponsorship to gain permanent residence are used by some employers to control Subclass 457 visa holders in their employ through promises to support permanent residence sponsorship.

The link between the sponsoring employer and access to permanent residency has been raised during consultations as a key driver for Subclass 457 visa holders to continue to work for a sponsor despite being subjected to underpayment of wages, substandard working and living conditions (including unsafe workplaces) and other breaches of the sponsor's obligations. A visa holder may be so desperate to access a streamlined pathway to permanent residency, not otherwise available, that he or she will be compliant in such treatment.

The table below shows ENS visa grants by ASCO major group. It can be seen, by comparison with the statistics in Section 3, that while ASCO groups 4-9 represent approximately 19 per cent of Subclass 457 primary visa nominations they represent only 10 per cent of permanent visa grants under the ENS program (noting that some occupations in this group may not be on the approved list for the program).

Percentage of total ENS visa grants in 2007-08 where the person was most recently the primary visa holder of a subclass 457 visa, by the ASCO Major Group of the 457 nominated occupation and the location of the 457 nominated position (excludes independent executives)

Subclass 457 ASCO Major Group	Location of the Subclass 457 nominated position									Total
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Not Spec	
ASCO 1 to 3	0.6%	40.9%	0.2%	10.9%	0.7%	0.3%	22.1%	11.7%	2.0%	89.4%
ASCO 4 to 9	0.0%	3.2%	0.0%	1.3%	0.2%	0.0%	2.6%	2.7%	0.4%	10.4%
Not recorded	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.2%
Total	0.6%	44.2%	0.2%	12.2%	1.0%	0.3%	24.7%	14.4%	2.5%	100.0%

Source: DIAC

Mobility

Actual or perceived bonds to a particular employer are potentially exacerbated by the conditions of grant of the Subclass 457 visa. Visa condition 8107 (given in full in Attachment C) is applied to all Subclass 457 visa holders. It states that the visa holder can only work for the one employer and could be seen by the visa holder as bonding the employee to the employer AND prohibiting work for a third party.

Thus visa condition 8107 is another factor possibly contributing to a perception that a Subclass 457 visa holder is 'bonded' to their sponsor for the length of their stay in Australia. The department's original intention for imposing the 8107 condition on Subclass 457 visa holders was to ensure that the visa holder commenced work for the sponsor who was responsible for bringing them to Australia and who had the obligations of sponsorship. Without this condition there was no way of ensuring that the employee commenced work for the sponsor.

Stakeholders have suggested that another way Subclass 457 visa holders can be 'tied' to a particular employer is if they experience difficulties having their overseas qualifications recognised in Australia. Should a visa holder want to change employers they may need to provide evidence of their skills for a new employer. The necessary paperwork, costs and/or examinations involved in having their skills recognised may be prohibitive for some employees, effectively 'tying' them to their original sponsor for the length of their stay in Australia. Visa holders have also indicated that they have been quoted up to \$A10 000 by migration agents to help them to obtain a new visa with a new sponsor.

It has been made clear through stakeholder consultations that there is a widespread misunderstanding about how the Subclass 457 visa operates in practice. There appears to be a general misconception that the employer or sponsor can 'cancel' an employee's Subclass 457 visa. This is clearly not the case. Only the department can cancel a person's visa under the migration legislation and there are very strictly prescribed processes in place for cancellation which include notification to the visa holder. A sponsor cannot cancel a visa. A sponsor can withdraw their sponsorship for a visa holder but this is not the same as cancelling a visa as the visa holder has the option of finding another sponsor and obtaining a new Subclass 457 visa.

A further factor leading to the perception that a Subclass 457 visa holder is 'tied' to the sponsor is the cost associated with bringing a Subclass 457 visa holder (and dependants in some cases) to Australia. Many employers who sponsor Subclass 457 visa holders expend considerable amounts of money to do so. Some stakeholders have noted that the fact that this money has been outlaid gives some sponsors the impression that they have a claim or entitlement to the visa holder's services. This misapprehension has, on occasions, been fostered by misleading information provided by migration or recruiting agents and some employer organisations.

In attempting to recoup these costs stakeholders have given the Review team examples of situations where sponsors attempt to recover these costs from Subclass 457 visa holders. The Review has been made aware of situations where monies are deducted from employees' wages in such ways as to disguise the recovery of these costs to avoid breaching the MSL sponsorship undertakings.

A number of stakeholders have raised the issue of the 28 day time limit to find another sponsor for Subclass 457 visa holders who want to change employers. Different stakeholders have suggested lengthening this period to up to 90 days. A central concern is, if this period is lengthened, how will a Subclass 457 visa holder being paid the MSL for only 28 days manage to provide for themselves and any dependents during this time? This raises issues about whether the 28 day time limit contributes to vulnerability as visa holders may not have enough time to locate another sponsor, particularly if they do not have English language skills or they may have signed a lease for housing or have some other financial obligation that ties them to the employer for a length of time.

Sponsor obligations

Currently sponsors give a number of undertakings in relation to the visa applicants they sponsor, including undertaking to:

- pay certain costs, including ensuring the cost of return travel for visa holders is met, public health costs (other than those covered by health insurance or reciprocal healthcare arrangements), and the cost of locating and removing the employee if they become unlawful
- comply with immigration laws
- cooperate with the department, including notifying them of a change in circumstance over the employment arrangement
- comply with the terms of nomination of the position
- comply with workplace relations laws.

Current arrangements to ensure compliance with these undertakings are not well defined; liability is not always clear and sanctions for infringement are primarily administrative and rarely enforced. In response to these problems the 2008-09 Budget committed \$19.6 million to enhanced arrangements for temporary working visas. A significant portion of this funding is to support the introduction of legislation to better define employers' obligations, improve investigative powers and provide for a more robust sanctions framework to protect workers' rights, and facilitate greater information exchange.

On the 30 June 2008 the Minister for Immigration and Citizenship publicly released a discussion paper seeking stakeholder feedback on proposed reform to the Subclass 457 visa arrangements and other temporary visas with work rights.

The Minister intends to introduce a Bill in the 2008 Spring sittings to amend the *Migration Act 1958* and reform the sponsorship regime for all temporary visas with work rights, including Subclass 457 visas. The Bill (and related migration regulations) will incorporate four key initiatives, all of which will contribute to better protecting the rights of Subclass 457 visa holders:

- better defined sponsor obligations
- improved investigative powers
- a more robust sanctions framework
- improved information sharing.

It is intended that the better defined sponsorship obligations will resolve the existing ambiguity around sponsorship undertakings, including by clearly defining who is responsible for particular costs. The proposed new obligations will replace current employer

undertakings to comply with monitoring, and give specially trained inspectors the power to enter premises unannounced (without force) for the purposes of conducting investigations. This is intended to give the department greater capacity to identify possible non-compliance with the legislation.

The more robust compliance framework is to complement existing administrative sanctions by introducing punitive sanctions in the form of civil penalties (up to a maximum of more than \$5 000 for individuals and \$25 000 for corporations). It is intended that the civil penalty regime should provide a strong incentive for sponsors to comply with the legislation and hence improve the integrity of the system.

While bearing in mind the aims of the legislation to make visa compliance more robust, there remains a risk that any regulations requiring sponsors to be responsible for increased 'up front' costs may add to pressures to restrict the mobility of that person until these costs are recovered. Some stakeholders have expressed the view that there should be some mechanism which provides for a suitable proportion of these costs to move to new employers if the visa holder changes employer.

Family members

Under current arrangements secondary visa holders have work rights in Australia with no restriction as to the industry sector they work in. There have been claims that these visa holders may be taking work from local semi-skilled and unskilled workers as they are allegedly often willing to work for lower than local market rates.

It has been suggested that the vulnerability that is attached to the status of Subclass 457 visa holder also attaches to family members who are also sponsored to accompany the primary visa holder to Australia. Spouses may be required to work for and be subject to exploitation by employers who take advantage of the primary visa holder's vulnerability to bring about this situation.

To be a member of the family unit, children are required to be under 18 years of age, or if over 18 years, to be financially dependent. In many cases, the children of Subclass 457 visa holders turn 18 while on their Subclass 457 visa. This makes further Subclass 457 visa applications and applications for ENS or Labour Agreements a difficulty for these families. During consultations claims have also been made that children of primary visa holders who have left school have been persuaded to work under irregular and exploitative conditions for employers who have claimed that to 'regularise' the situation (and pay correct wages etc) would jeopardise that person's status as a dependent of the primary visa holder and their right to remain in Australia.

Accreditation

In line with ERG recommendations and the Minister's direction, the department is moving towards developing an accreditation scheme whereby employers who demonstrate an exemplary record of compliance with Subclass 457 visa requirements will be able to 'fast-track' Subclass 457 visa applications.

This 'fast-tracking' will allow firms to adapt to demand and manage labour requirements more swiftly. The prospect of losing accreditation by acting inappropriately may act as an incentive to minimise integrity problems among this group.

The complexity of the legislation

Understanding the current Migration Act and Migration Regulations can be a challenge, even for those who have English language skills. This may be one reason why many people who have questions about migration seek advice from migration agents.

In *Armstrong v Healthcare Recruiting Aust Pty Ltd & Anor (No.2)* [2008] FMCA 1050, the Federal Magistrate noted that:

'I accept that a degree of muddled thinking, business incompetence, and genuine confusion about the legal and regulatory context governing the employment of nursing assistants residing in Australia under temporary work visas, partly explains HRA and Ms Lloyd's failure properly to appreciate and implement its obligations as the employer of these nurses. However, I consider that there also was an element of conscious exploitation of three very vulnerable workers. Moreover, it was HRA's duty, if it wished to engage in its specialised recruitment business involving vulnerable overseas workers, to obtain proper advice and properly understand all its statutory obligations, especially when acting as a labour hire employer. The present case reveals a serious dereliction by HRA of these responsibilities, and a reprehensibly casual attitude towards them on Ms Lloyd's part.'

Unintended consequences

The complexity of the legislation and its interaction with applicable industrial awards and workplace legislation has had unintended consequences in cases where work arrangements don't mesh well with Subclass 457 visa work requirements. As one example, Subclass 457 visa workers are meant to work at least a 38 hour week; issues have arisen in those industries with non-standard work patterns, including the fishing and farming industries.

Additionally where workers have had industrial injuries and are on a graduated return to work they may be unable to meet the 38 hours of work per week requirement. Similarly, a return to work program might require a visa-holder to undertake duties not consistent with their visa condition that they work only in the occupation nominated for the visa. This visa requirement can also cause resentment at a workplace should a short term lack of available skilled work result in Australian workers performing lower level duties and available skilled work being given to visa holders, in order not to breach the visa condition.

Another problem has arisen with the requirement that Subclass 457 workers are meant to be in continual paid employment. Even very highly paid Subclass 457 visa holders are unable to access extended unpaid maternity leave without risking cancellation of their visas.

Lack of information/support for temporary visa holders

A lack of information on worker rights has led to some Subclass 457 visa holders signing employment contracts which purport to bar union membership or other contacts with unions; others have allegedly been dismissed from their employment for asking about union membership.

In relation to contracts barring union membership it was noted in a report on the investigation into a complaint received in relation to ABC Global Services Pty Ltd by the Victorian Workplace Rights Advocate, Anthony Lawrence that:

'The concerns which I hold about the contracts relate to their legality, fairness and appropriateness.'

In particular, the Victorian Workplace Rights Advocate was concerned about clause 13 of the contracts, which were the subject of the investigation and according to information supplied to the Victorian Workplace Rights Advocate by ABC Global Services, was signed by 252 migrants and stated that:

'Termination; Neither party may unilaterally cancel the contract except for the legal, just and valid causes(s)

*(a) Termination:.....The Employer may also terminate this contract on the following just cause: serious misconduct, wilful disobedience of Employer's lawful orders, habitual neglect of duties, absenteeism, insubordination, revealing secrets of establishment, **engaging in trade union activities**, when Employee violates customs, traditions and laws of Australia and/or term of this Agreement' (emphasis added).*

For Subclass 457 visa holders with limited understanding of their rights and obligations, many of whom come from culturally diverse backgrounds, even accessing charities for assistance may be problematic. It has been suggested that they may be reluctant to approach such organisations for fear that accessing assistance will make them vulnerable to having their employment terminated, particularly given that they have no access to social security or other forms of government support if this occurs.

As noted above, stakeholders have suggested that many Subclass 457 visa holders recruited to come to Australia in their country of origin sign contracts offshore that breach Commonwealth legislation (e.g. purporting to bar union membership). Where people are willing to pay large sums to agents or other 'middle men' in order to access a visa to come to Australia, entitlements such as access to annual leave, sick leave, workers compensation or union membership may not be a priority.

Stakeholders have noted that these offshore contracts can be enforced through pressure on families, who often have made large sacrifices to send a member of the family to work overseas. In these circumstances a Subclass 457 visa holder will be reluctant to jeopardize their employment and thereby their visa status.

In a case involving offshore contracts signed by applicants in China, *Inspector Robert John Hortle v Aprint (Aust) Pty Ltd & Anor* [2007] FMCA 1547 the Federal Magistrate noted that:

'Each of the Employees accepted offers of employment with Aprint, after signing written contracts of employment in China, and subsequently entered Australia on Subclass 457 visas sponsored by Aprint. Neither Mr. Tu nor the Employees speak English as a first language and communication between them was done in the Chinese language. Their contracts were prepared in Chinese.....'

The Federal Magistrate then noted the terms of the contracts in that case, which are set out below.

'..... There were terms of each written contract of employment that:

- a) the employment was for four years;*
- b) the Employee would work for five days, rest two days, work each day for 10 hours, with a weekly amount of 50 hours;*
- c) the Employee is entitled to two weeks of paid annual leave;*
- d) based on operational requirements, when the Employee works overtime, he will be paid a rate of \$18.00, or receive the corresponding time as annual leave in lieu;*
- e) in the first year of employment, Aprint would deduct monthly instalments from wages over the course of one year totalling \$10,000 to cover various processing fees such as the cost of the visa application for the Employee to come to Australia, and legal representation (note that there is a footnote made by the translator that the word used in Chinese which was interpreted to mean "deduct" is closer to "keep" or "save" rather than "deduct");*
- f) in the first two years Aprint would assist the Employee to arrange convenient and suitable accommodation, but commencing the third year, the Employee would arrange their own accommodation; and*
- g) to ensure the convenience of work and life, in the first two years of employment, in principle, the Employee could not bring along their family members.'*

Assistance for migrants

Any newly arrived migrant may be eligible for a range of support services from DIAC and other government agencies. The department funds a range of settlement services aimed at assisting eligible migrants and humanitarian entrants. These services focus on building self-reliance, developing English language skills and fostering connections with mainstream services as soon as possible after arrival in Australia.

The department advises that the key eligibility requirement for inclusion in their Settlement Services Target Group is generally permanent residence in recognition of the longer-term contribution to social and economic development made by these entrants. Eligibility to access settlement services also depends on visa class, length of residency in Australia and English language proficiency.

Individual programs such as the Integrated Humanitarian Settlement Strategy, Complex Case Support Services, Settlement Grants Program and Adult Migrant English Program have individual eligibility requirements as they cater to particular needs within the target group. In recognition of the importance of communication, telephone interpreting services are available to all non-English speakers.

Support provided by other agencies includes the mainstream support which is also available to the general population, including medical services, Centrelink support, Job Network services, the First Home Owner Grant and so on.

As the Subclass 457 visa is a temporary visa, those services available to permanent migrants (dependent upon visa subclass) are generally not available to temporary visa holders. State and local government authorities have raised concerns during consultation that failure to provide adequate funding to support primary Subclass 457 visa holders and their families has strained available resources, particularly in education and health care.

Provision of information by DIAC

Stakeholders have suggested that DIAC should examine ways to communicate with temporary visa holders directly either before they arrive, or on arrival in Australia, with an information 'pack' in their local language. This suggestion has caused other stakeholders to raise concerns about people coming to Australia on Subclass 457 visas who may not be literate in their local language.

Central to the integrity of the system is ensuring that skilled workers who come to Australia, and employers bringing someone to Australia, understand that the Subclass 457 visa system is not by any means about a 'cheap labour' solution, in fact it may be more expensive than employing someone locally.

Since late 2007 DIAC has progressively implemented a targeted information strategy for Subclass 457 visa holders. The aim of the strategy is to promote awareness of rights and obligations amongst visa holders and awareness of obligations amongst employer sponsors. Information provided has included the following:

- In late 2007 a set of Frequently Asked Questions (FAQs) was sent to sponsors with advice to pass them on to Subclass 457 visa holders.
- In June-July 2008 an information package was sent to 20 000 sponsors of Subclass 457 visa holders outlining the recent changes to the MSL and details of their sponsorship requirements. This information has also been published on DIAC's website.
- In addition, a compilation of FAQs concerning unions, accommodation and taxation/superannuation has been published on the DIAC website (see Attachment C).
- In order to achieve the desired impact of this information on Subclass 457 visa applicants the FAQs have been translated into seven languages (Chinese (simplified), Korean, Thai, Vietnamese, Portuguese, Indonesian and Tagalog).

Many stakeholders have suggested that Subclass 457 visa holders are concerned to ask DIAC, or any other government agency, questions about their pay and conditions or visa status in case their employer threatens to ‘cancel’ their sponsorship.

Departmental responsibilities and resources

The role of DIAC outreach officers

The Industry Outreach Officer (IOO) program was established in April 2005 as a result of consultations with peak industry bodies and employer groups on skilled migration issues and labour shortages. The IOOs are based in 25 industry groups on a variety of full time and part time placements.

The role for the IOO network is to:

- work in partnership with industry to help employers better understand how to use DIAC’s services to address skilled labour shortages
- provide expert support to employers who want to employ skilled overseas workers
- promote DIAC expos and recruitment events
- provide an effective communication link between DIAC and industry.

The primary role of a Regional Outreach Officer (ROO) is to provide information and advice on state-specific and regional migration schemes to a range of stakeholders including:

- local employers
- state/territory and local governments
- regional certifying bodies
- area consultative committees
- chambers of commerce
- universities/educational institutions.

ROOs make regular visits to regional areas to meet and provide information to employers. The ROOs could be seen by some organisations (such as local government) as a demonstration of the department’s commitment to addressing regional labour market concerns.

Statistics

Statistics around Subclass 457 workers are variable. While there are extensive statistics available on the number of Subclass 457 primary visa holders by location and industry little is known about the employment activities of secondary visa holders or the incidence of state-based OH&S problems (as discussed in Issues Paper #2).

Integrity and Exploitation - Some issues for consideration

Set out below are some of the issues that have been raised in relation to Integrity and Exploitation. Any comments concerning other relevant matters will be appreciated.

Is the current Subclass 457 visa suitable for all occupational classifications?

Should labour market testing be used in the Subclass 457 program? Is it necessary at all levels of the program? How could it be assessed? Or are there alternative ways of ensuring employers recruit local workers first, e.g. a price signal?

Should work skills be assessed for visa applicants under the program? If so, by whom and at what stage? Should any such assessments be applied to all skill levels?

What would be the best way of determining market rates for wages under the Subclass 457 visa program?

How would regional differences be addressed in any attempt to set market based rates?

Should regional concessions be available under the Subclass 457 visa? If so, what would be the ideal process for managing them?

What training obligations, if any, should be required of employers under the 457 Program?

Should accredited employers be given freer access to the Subclass 457 program? If so, what benefits should accompany accreditation of employers under the program?

What should be the basis for accreditation of employers? For example:

- size
- financial viability
- history of compliance with immigration laws and regulations
- compliance with industrial, OH&S and taxation laws
- commitment to training.

Are IOO and ROOs a useful resource for businesses? If so, what should be their area of responsibility? For example:

- educating employers
- providing information to employers and employees
- assisting employers in carrying out immigration related work.

Is the current practice of placing DIAC outreach officers with employer organisations for extended periods of time an efficient / appropriate practice?

Would greater transparency improve the integrity of the program? If so, what form should it take, for example:

- publishing the names of employers on the internet where those employers have sponsored 5 or more workers on Subclass 457 visas
- publishing regional data on the number of Subclass 457 visas granted
- notifying State and Territory governments of Subclass 457 visa grants
- passing on information on Subclass 457 visa grants to relevant external agencies, e.g. Workplace Ombudsman, Australian Taxation Office and OH&S agencies.

Should the Workplace Ombudsman and OH&S agencies be given the details of Subclass 457 visa holders when they arrive in Australia to assist these agencies to monitor compliance with workplace regulations?

Should this information also be given to State and Territory governments to assist with planning infrastructure, such as providing local schools with teachers with 'teaching English as a second language' skills?

Access to Information and Services

How important is access to information about visa holders' rights and obligations pre-arrival in Australia?

- What can be done to improve potential applicant's understanding of their rights and obligations?
- Would increasing awareness about key elements of the program assist in reducing vulnerability?

What services (if any) should be available to Subclass 457 visa holders and their dependants on arrival in Australia?

Should Subclass 457 visa holders be given more time to locate another sponsor, beyond 28 days, if they decide to change sponsors in Australia?

- What sort of assistance could they be given to locate another sponsor?
- What sort of support, if any, should they be given in this time?

English language ability

Does a visa holder's country of origin contribute to their vulnerability?

Does a visa holder's level of English language contribute to their vulnerability?

Mobility

Do some Subclass 457 visa holders come to Australia with aspirations of permanent residency, when this might never in fact be a realistic possibility?

Should Subclass 457 visa holders be denied access to permanent residence at certain levels of ASCO classification?

Should Subclass 457 visa holders have greater access to permanent residency in Australia not requiring sponsor support?

Given there are relocation costs to Australia for Subclass 457 visa holders and any dependents, and ongoing costs to remain here, how should these costs be distributed between the sponsor and the visa holder?

What measures can be taken to ensure that the additional premium attached to Subclass 457 visa holders moves to a new employer with them, thus increasing the mobility of the visa holder and reducing the cost to the initial sponsor?

Role of ‘agents’

How could the role of migration agents be altered to increase their contribution to the integrity of the program?

- Should the prohibition on giving migration advice unless you are a registered migration agent be clarified to ensure that other organisations can assist visa holders without infringing the current prohibition?
- Should migration agents have a schedule of fees and charges for their services?
- Should migration agents be prohibited from being employment agents or running a business associated with them?
- Should specific penalties be introduced for migration agents who fraudulently deceive their clients or the Commonwealth?
- Should migration agents have obligations to properly inform their client of their rights and responsibilities, and be penalised if they breach those obligations?

Section 5 - Monitoring, Compliance and related issues

DIAC has developed a Client Service Improvement Program in an endeavour to improve aspects of client service across the department. There has been a strong focus on the Subclass 457 visa program with the creation of a processing and monitoring environment designed to provide speed and accuracy of processing and an improved, risk-based approach to monitoring and compliance activity.

Risk-based monitoring is essential in the current environment where the number of visa grants has increased substantially over the life of the program (as shown in Section 3 of this paper) and resources are limited.

This approach, however, raises the possibility that non-compliant employers may not be discovered promptly, by which time the profits of their exploitation of workers outweigh any concern they may have with any temporary, or even permanent, bans on future sponsorship which might be imposed.

Centres of Excellence

On 1 July 2008 the department opened three new centres of excellence to process Subclass 457 Business (Long Stay) visas (amongst others). These centres are designed to improve client service by reducing processing times and developing areas of staff expertise. It is expected that this increased expertise will assist in the development of improved monitoring and compliance outcomes.

Monitoring Officer Training and Processing Training

With the change from attempting 100 per cent monitoring to targeted monitoring, and the creation of a new monitoring form (the 1287), monitoring training has been delivered to all state and territory offices around Australia. On successful completion, officers are awarded the qualification of Certificate IV in Government (Statutory Compliance).

The need for the processing officers to be trained is just as significant to the department and a roll-out of an updated training program has begun to all centres of excellence. This training focuses on visa legislative requirements and a consistent approach to processing.

Currently, for all applications, DIAC requires additional documents such as company financials, job descriptions and employment contracts, as well as proof of qualification for the applicant.

Education and Enforcement

The role of DIAC compliance teams is to educate and enforce DIAC legislation, and in the context of the Subclass 457 program to have people from overseas legally work in Australia on a temporary basis. This includes educational site visits to employers using the program, the distribution of employer responsibilities kits (DIAC produced) and the introduction of IOOs and ROOs to assist large industries in using the program for bringing in skilled workers.

Complexity

The monitoring and compliance process has to manage in an environment of complexity in legislation and systems (both paper and information technology).

Role of other agencies

A consistent thread in stakeholder consultations is that DIAC seems to lack the resources, authority and expertise to administer areas of the program which fall outside the immigration sphere. These include, but are not limited to:

- labour market testing
- skills examination/matching
- determinations as to market rates
- determinations as to employment contracts.

It was noted in a report on the investigation into a complaint received in relation to ABC Global Services Pty Ltd by the Victorian Workplace Rights Advocate, Anthony Lawrence that:

‘.....contracts between the 457 visa holder and the Australian employer are often drafted in the local language by a migration agent. Where, for instance, a Chinese national is seeking employment in Australia under a 457 visa, the documentation may well be drafted in the relevant Chinese language. It would appear that the substance and form of such contracts may either not be, or are inadequately, reviewed by DIAC.’

It has been suggested that existing agencies, which have appropriately trained and resourced staff should be given a greater role in monitoring and ensuring compliance with, what are in essence, employment conditions, both prior to the approval of a visa application and after a visa applicant has commenced employment. These agencies could include, but not be limited to:

- The Workplace Ombudsman
- The Workplace Authority
- State and Territory OH&S agencies
- DEEWR staff on training issues
- Skills Australia.

In order for this suggestion to be viable appropriate legislative, administrative and funding arrangements may need to be put in place both to increase the ‘visibility’ of Subclass 457 workers so that each agency could include them in existing workplace monitoring, training and enforcement activities and to ensure that those agencies are sufficiently resourced for the purpose.

Migration Review Tribunal (MRT)

The MRT is intended to provide an independent and final merits review of decisions made in relation to visas to travel to, enter or stay in Australia. The Tribunal is established under the *Migration Act 1958* and the Tribunals' jurisdiction and powers are set out in the *Migration Act* and in the *Migration Regulations 1994*. The Tribunal comprises Members appointed by the Governor-General upon recommendations made and approved by Government under the Act and staff engaged under the *Public Service Act 1999*.

The *Migration Act* states that the Tribunal is required to 'pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick'. Concerns have been expressed as to whether a 'quick and informal' review is appropriate in cases dealing with integrity and exploitation.

One case which attracted considerable media and stakeholder attention involved a logger from China, 33-year-old Guo Jian Dong, who died in a remote state forest 700 kilometres west of Brisbane. A tree he was felling brushed a dead tree, which then fell and crushed him. Although the Subclass 457 visa is only meant to allow foreign workers into Australia to do jobs for which they are skilled, Jack Watson, the man who trained Mr Guo, said in '*A lonely death among the pines*' (Sydney Morning Herald, August 29 2007) that Mr Guo had 'not even sliced bread' before he arrived in Queensland. The department determined there had been a breach of the employer's undertakings and issued a sanction against the employer, barring them from employing further workers under the scheme for a period of time. The department's decision to sanction was overturned by the MRT on the grounds that the applicant had not breached the undertakings identified by the department.

Monitoring and Compliance - Some issues for consideration

Set out below are some of the issues that have been raised in relation to Monitoring and Compliance. Any comments concerning other relevant matters will be appreciated.

Should DIAC staff processing Subclass 457 visas be formally trained in reading financial documents and have the ability to assess trades recognitions and other formal qualifications or should a more appropriate area of the government assume such responsibilities?

Similarly should DIAC employees processing Subclass 457 visas be required to have an understanding of employment law and contract law generally?

Should DIAC officers have responsibility for monitoring compliance with workplace conditions of employment for Subclass 457 employees?

Are there functions currently performed by DIAC processing, monitoring, and compliance staff that are more appropriately the province of other departments, agencies or institutions?

In the case of monitoring and compliance activities, should relevant external agencies be routinely informed of the location of Subclass 457 employees?

Is DIAC providing sufficient information on employer obligations to employers?

Is there sufficient oversight of sponsors who do not do the right thing in relation to the Subclass 457 visa holders they sponsor?

- What type of compliance work would be most effective in reducing vulnerability?
- Do Labour Agreements provide any greater controls to assist with compliance?
- How effective are Labour Agreements in reducing vulnerability?

Is DIAC appropriately managing the risk of Subclass 457 visas through its monitoring and compliance activity? What risk factors should be taken into account when targeting monitoring activity?

Attachment A - References

Australian Safety and Compensation Council, *Notified Fatalities Statistical Reports*

Department of Immigration and Citizenship, *Subclass 457 Business (Long Stay) - State/Territory Summary Report (Report Id: BR0008)*, 2007-08

Joint Standing Committee on Migration, *Temporary visas ... permanent benefits*, Parliament of the Commonwealth of Australia, 2007

Sydney Morning Herald, 'A lonely death among the pines', August 29 2007 (Internet)

Visa Subclass 457 External Reference Group, *Final Report to the Minister for Immigration and Citizenship*, April 2008

Visa Subclass 457 Integrity Review, *Issues Paper #1: Minimum Salary Level / Labour Agreements*, July 2008

Visa Subclass 457 Integrity Review, *Issues Paper #2: English Language Requirement / Occupational Health and Safety*, August 2008

Workplace Express, *\$48,000 in fines for labour hire company for exploitation of Filipino nurses*, August 2008 (Internet)

Attachment B - Minister's media release

Included below is the text of the media release from Senator Chris Evans on 14 April 2008 announcing the establishment of the Integrity Review. The biography of Ms Deegan included in the original media release is included in Section two of this report.



IR expert to oversee temporary skilled migration review

Monday, 14 April 2008

The Rudd Government has appointed industrial relations commissioner Barbara Deegan to examine the integrity of the temporary skilled migration program, the Minister for Immigration and Citizenship, Senator Chris Evans said today.

Senator Evans said Ms Deegan will address concerns about the exploitation of migrant workers, salary levels and English language requirements

'Ms Deegan will draw on her extensive expertise in the industrial relations sector to review the Temporary Business Long Stay subclass 457 program and provide options to improve the integrity of the scheme,' Senator Evans said.

'Ms Deegan will take leave from her current position as Commissioner of the Australian Industrial Relations Commission for six months to undertake this independent role.

'Ms Deegan will consult with overseas workers, union and industry representatives as well as relevant Commonwealth, state and territory agencies.'

A working party of industry and trade union leaders will be formed to provide a forum for Ms Deegan to access relevant information.

The terms of reference for the review include examining:

- Measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program;
- The employment conditions that apply to workers employed under the temporary skilled migration program;
- The adequacy of measures to protect 457 visa holders from exploitation;

- The health and safety protections and training requirements that apply in relation to temporary skilled workers;
- The English language requirements for the granting of temporary skilled migration workers' visas; and
- The opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented by 1 October 2008.

Senator Evans said Ms Deegan's review would complement the recommendations of the External Reference Group, which was established in February to look at ways to streamline visa processing times and improve the flexibility of the temporary skilled migration program for employers.

'The Rudd Government is determined to address the skills and labour shortages we are currently experiencing,' Senator Evans said.

'We are working with industry to improve the efficiency of our skilled migration program while ensuring we continue to provide employment and training opportunities for Australian workers.

'The External Reference Group has consulted widely and in an interim report has flagged the concept of establishing an accreditation system whereby 'low risk' employers with a good track record can have 457 visa applications fast-tracked by the department.'

The final reports from Ms Deegan and the ERG form part of the Australian Government's medium and longer term strategy to improve the transparency, accountability and integrity of the temporary skilled migration program.

Any recommended initiatives will also complement broader labour market policies, including the development of a new fair and flexible workplace relations system.

Media contact: Simon Dowding – (02) 6277 7860 or 0411 138 541

Attachment C - Integrity and Exploitation: supplementary information

Visa Condition 8107

The holder must not:

- (a) if the visa was granted to enable the holder to be employed in Australia:
 - (i) cease to be employed by the employer in relation to which the visa was granted; or
 - (ii) work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; or
 - (iii) engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted; or
- (b) in any other case:
 - (i) cease to undertake the activity in relation to which the visa was granted; or
 - (ii) engage in an activity inconsistent with the activity in relation to which the visa was granted; or
 - (iii) engage in work for another person or on the holder's own account inconsistent with the activity in relation to which the visa was granted.

Information provision

The links below provide further details on the Subclass 457 visa information being provided by the department. This material is part of a targeted information strategy which aims to promote awareness of rights and obligations amongst visa holders and awareness of obligations amongst employer sponsors.

During June and July 2008, an information package was sent to 20 000 sponsors of Subclass 457 visa holders. The information package outlined to sponsors of Subclass 457 visa holders changes to the MSL and details of their sponsorship requirements. This information on Subclass 457 employer sponsorship requirements and MSLs has also been published on the Department's website:

- http://www.immi.gov.au/skilled/skilled-workers/_pdf/minister-letter-0507.pdf
- http://www.immi.gov.au/skilled/skilled-workers/_pdf/457-sponsored-requirements.pdf
- http://www.immi.gov.au/skilled/skilled-workers/_pdf/457-min-salary-levels.pdf

In addition, a compilation of FAQs has recently been redeveloped to answer significant questions around the Subclass 457 visa. This information for visa holders is in three parts and is currently available on the DIAC website at the following addresses:

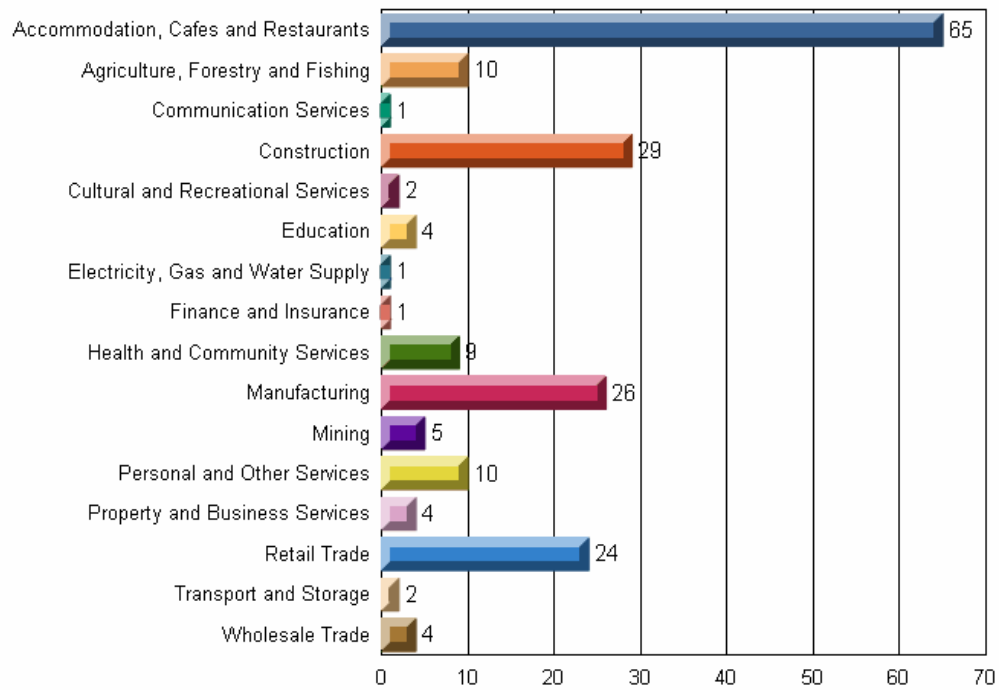
- http://www.immi.gov.au/skilled/_pdf/457-unions.pdf
- http://www.immi.gov.au/skilled/_pdf/457-accom.pdf
- http://www.immi.gov.au/skilled/_pdf/457-tax-super.pdf

This information is also being made available in a range of foreign languages.

Attachment D - Monitoring and Compliance: supplementary information

The chart below updates information provided in Issues Paper #1

Number of Sponsor Sanctions in 2007-08 by Sponsor Industry



Source: DIAC

* Total sponsor sanctions for 2007-08 to 30 June 2008 is 192, 7 sponsors were sanctioned twice taking the total sanctions to 199.