

CHAPTER 2

EFFECTIVENESS OF THE 457 VISA PROGRAM

Introduction

2.1 As noted in Chapter 1, the policy settings of the Temporary Work (Skilled) - Standard Business Sponsorship (Subclass 457) visa program (457 visa program) broadly seek to balance the goal of addressing temporary skilled labour shortages with the need to protect the employment opportunities and conditions of local (Australian or permanent resident) workers, and the working conditions of 457 visa holders.¹

2.2 This view of the program is confirmed by the submission of the Department of Immigration and Citizenship (the department); the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism (the departments' submission), which identified the program's two 'fundamental tenets' as being:

- to enable a business to sponsor a skilled overseas worker if they cannot find an appropriately skilled Australian citizen or permanent resident to fill a skilled position; and
- to ensure that the working conditions of a sponsored visa holder are no less favourable than those provided to an Australian worker and that overseas workers are not exploited.²

2.3 The extent to which the program's design and administration effectively achieves a balance between its fundamental tenets is therefore the question underpinning the issues raised by the inquiry's term of reference. As the Migration Council of Australia (MCA) has observed, the inherent tension in the program's policy aims is reflected in the 'extensive media coverage and political attention' it has received since its inception.³ The committee notes also that the program has undergone a number of significant changes over that time.⁴

2.4 Accordingly, this chapter considers broadly the effectiveness of the 457 visa program, with particular reference to inquiry terms of reference (a) to (g) and (i),

1 The question of the extent to which the program protects the rights of 457 visa workers (term of reference (h)) is considered in the next chapter.

2 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 1.

3 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, p. 3.

4 For an overview of the various iterations of the 457 visa program, see Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, pp 33-61.

which required the committee to examine the framework and operation of the program, including:

- (a) ...[its] effectiveness in filling areas of identified skill shortages and the extent to which they may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements;
- (b) ...[its] accessibility and the criteria against which applications are assessed, including whether stringent labour market testing can or should be applied to the application process;
- (c) the process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors;
- (d) the process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes;
- (e) the adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities;
- (f) the economic benefits of such agreements and the economic and social impact of such agreements;
- (g) whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on such visas; and
- ...
- (i) the role of employment agencies involved in on-hiring subclass 457 visa holders and the contractual obligations placed on subclass 457 visa holders...⁵

2.5 The inquiry's terms of reference also asked the committee to consider the above with reference to Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs), and with reference to the proposed changes announced by the Government in February 2013. These matters are considered in chapters 4 and 5, respectively.

The economic benefits and economic and social impact of the 457 visa program (term of reference (f))

2.6 The committee notes that there is general support for an effective system of temporary skilled migration in Australia, and this was evident across the range of interests represented by the groups and individuals that provided evidence to the inquiry.⁶

2.7 Mr Andrew Bartlett, a Research Fellow at the Australian National University Migration Law Program, observed that, of all migration visa subclasses, 457 visa holders provide the most 'immediate and...significant' fiscal benefits for Australia,⁷ and support for the 457 visa program is generally premised on recognition of the direct economic benefits flowing from the ability to address genuine skill shortages in the local labour market. The Australian Mines and Metals Association (AMMA), for example, observed that the program:

...provides a 'circuit breaker' when appropriate labour cannot be sourced locally, allowing important job creating projects and investments to proceed that would be unviable or significantly delayed without access to such labour...⁸

2.8 It was also noted that 457 visa workers make a direct contribution through the payment of taxes and the spending of wages in the Australian economy.⁹

2.9 Further, the 457 program was recognised as supporting skill shortages in respect of critical industries or services, such as healthcare and hospitals.¹⁰

2.10 Many submissions noted that, in addition to the direct benefits of addressing temporary skill shortages, the program provides an avenue of skills exchange and development by allowing overseas workers to impart their skills, knowledge and experience to local workers.¹¹ In this way, 457 visa workers 'enhance Australia's skill

6 See, for example, Mr Tony Sheldon, National Secretary, Transport Workers' Union of Australia, *Committee Hansard*, 23 May 2013, p. 1; Mr Dave Noonan, National Secretary, Construction and General Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 23 May 2013, p. 5; Ms Angela Chan, National President, Migration Institute of Australia, *Committee Hansard*, 23 May 2013, p. 23; Mrs Anne O'Donoghue, Law Council of Australia, *Committee Hansard*, 23 May 2013, p. 31; and Australian Mines and Metals Association, *Submission 22*, p. 5.

7 Mr Andrew Bartlett, Research Fellow, Migration Law and Practice, Migration Law Program, Australian National University, *Committee Hansard*, p. 58.

8 Australian Mines and Metals Association, *Submission 22*, p. 5.

9 Australian Mines and Metals Association, *Submission 22*, p. 10.

10 See, for example, Ramsay Health Care, *Submission 32*, p. 4; and Mr Dave Noonan, National Secretary, Construction and General Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 23 May 2013, p. 5.

11 See, for example, Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, p. 15.

base and assist in developing Australia's economy to become more efficient on a global comparison'.¹²

2.11 In social terms, the 457 visa program represents an avenue of cultural exchange and, in many cases, significant economic opportunity for individual 457 visa holders in terms of enhancing their social, family and career prospects.¹³

2.12 It was also recognised in a number of submissions that the operation of the 457 visa program should be seen in the context of a global employment market.¹⁴

Effectiveness of the 457 visa program in addressing areas of identified skill shortages (term of reference (a))

2.13 Notwithstanding the general level of support for the 457 visa program, the evidence to the inquiry revealed significant concerns regarding the effectiveness of the program in addressing areas of genuine skill shortages, and whether the program is achieving its stated policy aim of ensuring that the 457 visa workers are used only where skilled labour cannot be sourced locally.

457 visa applications and the general rate of unemployment

2.14 A particular focus of the evidence to the inquiry on this question was the apparent significance of recent data showing a divergence between the number of 457 visa applications and the general rate of unemployment, which, historically, have been closely aligned.¹⁵ In a May 2013 Senate estimates hearing, an officer of the department commented on the significance of the relationship between these two measures, noting:

...the effectiveness [of the 457 visa program] will be measured by how responsive...[it] is to the business cycle. If you...are seeing growth rates in 457 at the time of growing unemployment that is the first test for 457, and the most important one...¹⁶

2.15 The significance of this statistical relationship as an indication of the effectiveness of the 457 visa program appears to be well-accepted. The AMMA submission, for example, noted:

The demand-driven nature of the program is...an in-built mechanism that renders it responsive to prevailing economic and labour market conditions.¹⁷

12 Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 3.

13 Australian Mines and Metals Association, *Submission 22*, p. 10.

14 See, for example, Fragomen, *Submission 26*, p. 2.

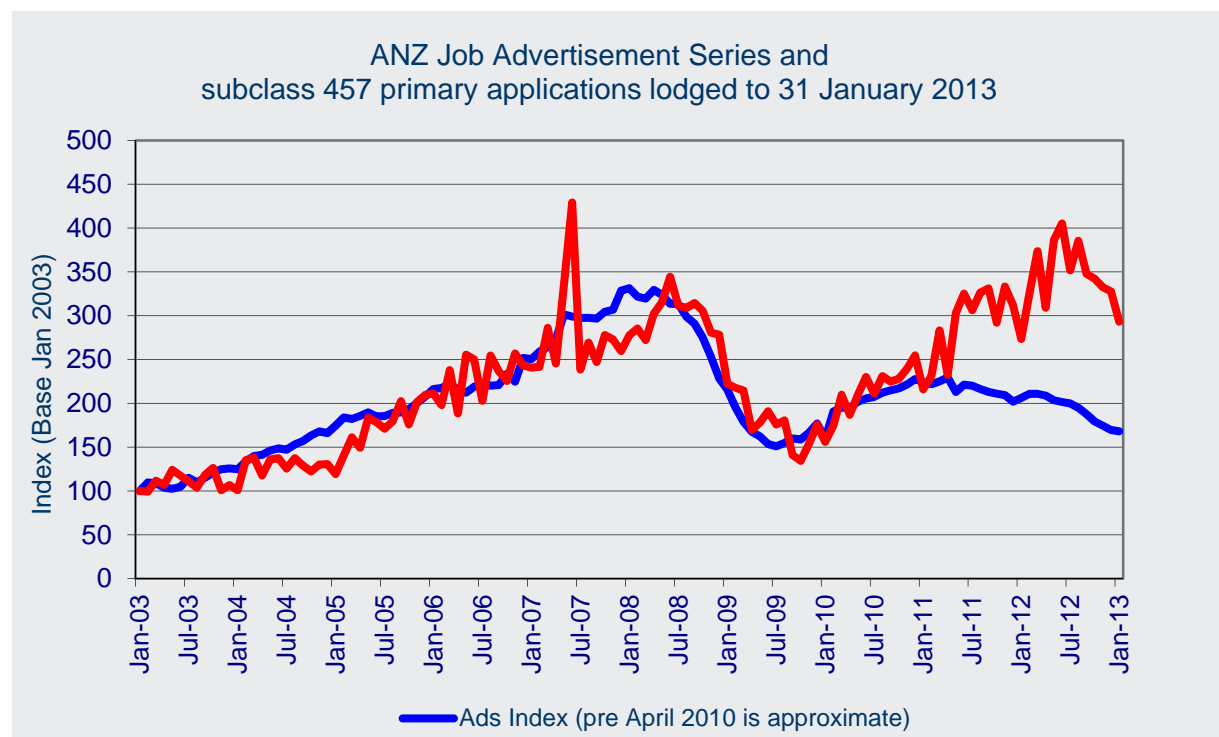
15 Law Council of Australia, responses to questions on notice, 23 May 2013 (received 31 May 2013), p. 5.

16 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 71.

17 Australian Mines and Metals Association, *Submission 22*, p. 5.

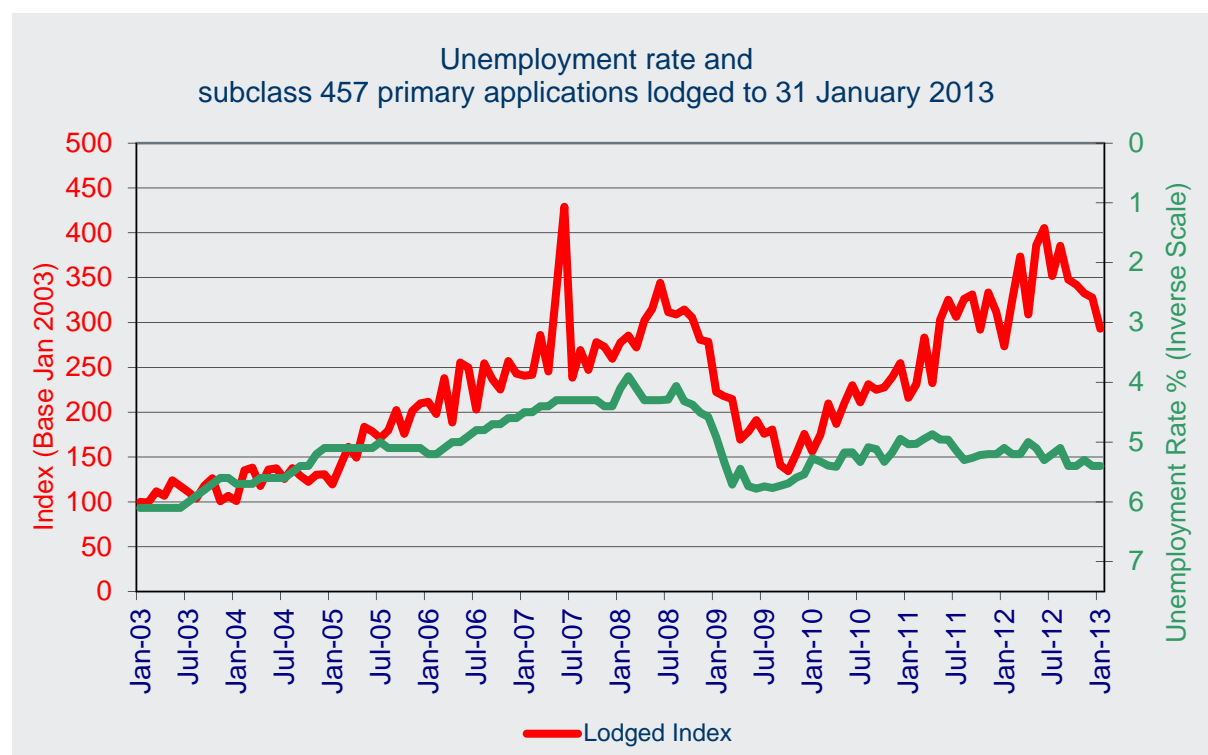
2.16 Similarly, the MCA has described the program as 'an automatic relief valve', whereby '[s]urges in skilled labour requirements or dips in economic activity see numbers of temporary skilled workers ebb and flow'.¹⁸

2.17 The divergence of the number of 457 applications and the general rate of unemployment was demonstrated in the departments' submission, which provided the following graphs showing the number of primary 457 visa applications as against the number of job advertisements (using the ANZ Job Advertisement Series) and the general rate of unemployment, respectively.¹⁹



18 Migration Council of Australia, 'More than temporary: Australia's 457 visa program', additional information received 14 May 2013, p. 3.

19 Department of Immigration and Citizenship; Department of Education, Employment and Workplace Relations; Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and Department of Resources, Energy and Tourism, *Submission 24*, pp 2-3.



2.18 The departments' submission noted that the above graphs demonstrate that the program has 'continued to grow since July 2011 to mid-2012 despite a softening of the Australian labour market'.²⁰

2.19 However, the strength of this trend was disputed, with some groups pointing to downward trends since June 2012 as 'reinforcing the responsiveness of the program and [minimising] any concerns' about divergent trends.²¹ A February 2013 media release from the department was cited in support of this view:

Temporary work visa applications have been heading downwards since June 2012 and have now declined for the last three consecutive months...

Reinforcing this trend has been a drop in actual 457 visa grants since August. This movement demonstrates the 457 visa program's responsiveness to the changing needs of the Australian economy.²²

20 Department of Immigration and Citizenship; Department of Education, Employment and Workplace Relations; Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and Department of Resources, Energy and Tourism, *Submission 24*, p. 3.

21 Australian Chamber of Commerce and Industry, *Submission 21*, pp 7-8.

22 Department of Immigration and Citizenship, '457 visa program responds well to economic needs', media release, 3 February 2013, cited in Australian Chamber of Commerce and Industry, *Submission 21*, p. 7; and Australian Mines and Metals Association, *Submission 22*, p. 5.

Underlying causes

2.20 The inquiry heard different views as to the underlying causes of the divergent trends in the number of 457 visa applications and the general rate of unemployment (notwithstanding any recent improvement that may have occurred).

2.21 Some submitters and witnesses interpreted this divergence as indicating that the program was failing to ensure that 457 visa workers were being employed only as a measure of last resort in areas of genuine skills shortage.²³ This was acknowledged as potentially being the case by the departments' submission, which noted:

...it is possible under the current program settings for employers to source skilled workers from offshore without sufficient commitment to recruiting or training locally by using various loopholes in the current legislative framework.²⁴

2.22 Evidence arising from a May 2013 estimates hearing confirmed at least some incidence of 457 visa holders being employed in the absence of a genuine skill shortage. An officer of the department noted:

[The department has]...come across evidence that some employers that are clearly discriminating against Australian workers...

...we have seen some companies that have a policy of not employing Australian workers.²⁵

2.23 A discussion paper on strengthening the integrity of the 457 visa program, which was prepared for the Ministerial Advisory Council on Skilled Migration (MACSM) and released under freedom of information laws on 2 May 2013, also cited some occurrences of this type:

Recent cases include examples of certain sponsors who have advised the Department that they do not seek to recruit locally as it does not fit with their business model, or because it is too expensive to recruit domestically.²⁶

2.24 Other groups, however, submitted that the break down in the historic alignment of the number of primary visa applications and the general rate of unemployment was due to 'structural' factors within the broader immigration program. The Law Council of Australia (LCA), for example, identified these factors as being:

23 See, for example, Construction, Forestry, Mining and Energy Union, *Submission 41*, p. 9.

24 Department of Immigration and Citizenship; Department of Education, Employment and Workplace Relations; Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education ; and Department of Resources, Energy and Tourism , *Submission 24*, p. 3.

25 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 48.

26 Department of Immigration and Citizenship, Ministerial Advisory Council on Skilled Migration, 'Strengthening the Integrity of the Subclass 457 Program', discussion paper, December 2012, p. 3.

- since February 2010 student visa holders have been precluded from applying for on-shore general skilled permanent residence visas. Student visa holders are therefore applying for 457 visas where previously they would have applied for a general skilled migration visa;
- since February 2010, for the same reason, student visa holders have been transitioning first to Graduate Skilled 485 visas, allowing them to remain in Australia for a further 18 months, and subsequently applying for 457 visas;
- since July 2012, the minimum period which student visa holders must wait before being able to seek permanent residence has increased from one year to two years, increasing the number of people remaining on 457 visas;²⁷ and
- since mid-2012, delays in the processing times for visa subclasses 186 and 187, increasing the number of people remaining on 457 visas.²⁸

2.25 In a May 2013 estimates hearing, an officer of the department confirmed that some increase in 457 visa applications since mid-2012 was attributable to increased applications via the student visa stream.²⁹

457 visa applications and other labour market trends

2.26 The relationship of 457 visa numbers with certain other labour market trends was also raised as relevant to the question of whether the program is effectively ensuring that overseas workers are used only in areas of genuine skill shortage.

2.27 The Construction, Forestry, Mining and Energy Union (CFMEU) submission argued that a 'similar picture of 457 worker growth outstripping general employment growth emerges at an industry and occupation level'; and noted, for example, that in the 12 months to February 2013 a 1.1 per cent growth in the Australian construction industry was exceeded by growth of 25 per cent in the number of 457 workers in that industry.³⁰

2.28 In contrast, with reference to the same industry, AMMA pointed to a 3 per cent reduction in the number of 457 visa applications in construction, in the 2012-13 year to November, compared to the same period in the previous year.³¹

27 The committee notes that this factor would appear to go the issue of the total number of 457 visa holders as opposed to the number of applications.

28 Law Council of Australia, responses to questions on notice, 23 May 2013 (received 31 May 2013), pp 5-6. See also: Fragomen, *Submission 36*, pp 20-21. The committee notes that this factor would appear to go the issue of the total number of 457 visa holders as opposed to the number of applications.

29 Mr Martin Bowles PSM, Secretary, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 47.

30 Construction, Forestry, Mining and Energy Union, *Submission 41*, p. 9.

31 Australian Mines and Metals Association, *Submission 22*, p. 5.

2.29 In a May 2013 estimates hearing, an officer of the department advised that in mid-2012 concerns arose about the growth of the 457 visa program in relation to particular industries and regions:

Midway through...[2012] the department identified that the 457 program was growing at quite a rapid rate...[We] identified much of the growth as being in industries and geographical regions where there had been a softening of the labour market. Some examples of that include accommodation and food service and the retail industry.³²

2.30 At the same hearing another officer noted that, beyond concerns arising from divergent patterns of growth per se, concern could also arise where growth occurred in industries and occupations traditionally exhibiting higher levels of noncompliance:

There has been some growth in specific occupations, where we have integrity concerns. Traditionally, the accommodation and food services industry is the industry where we have a larger percentage of noncompliance. Also, those occupations are where the salary levels are very low and very close to the minimum salary level prescribed under the temporary skilled migration income threshold limit...We also have some occupations that are not clearly defined, like project manager/administrator, where it is really difficult to identify the particular skills required in that occupation. These two occupations, project administration and project manager or problem manager, have [also] been growing quite significantly...³³

32 Mr Martin Bowles PSM, Secretary, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 47.

33 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 27 May 2013, p. 69.

The accessibility and criteria against which 457 visa applications are assessed, including whether stringent labour market testing can or should be applied to the application process (term of reference (b));

The process of listing occupations on the Consolidated Sponsored Occupations List, and the monitoring of such processes and the adequacy or otherwise of departmental oversight and enforcement of agreements and undertakings entered into by sponsors (term of reference (c));

The process of granting such visas and the monitoring of these processes, including the transparency and rigour of the processes (term of reference (d)); and

The adequacy of the tests that apply to the granting of these visas and their impact on local employment opportunities (term of reference (e))

2.31 Terms of reference (b), (c), (d) and (e) collectively relate to the extent to which the 457 visa program's design and administration effectively achieve a balance between its fundamental policy objectives.

2.32 The following issues are discussed below:

- impact on local employment opportunities;
- labour market testing;
- cost of employing 457 visa workers;
- the Consolidated Sponsored Occupations List;
- transparency and rigour of the 457 visa application process and adequacy of relevant tests;
- impact of the 457 visa program on the national training effort and apprenticeships; and
- impact of better long-term forecasting and skills training.

Impact on local employment opportunities

2.33 The committee notes that, where a genuine skill shortage does not exist in relation to a position, the employment of a 457 visa holder represents a fundamental breach of the program's central aims, and as a matter of course must impact negatively on the opportunity for local workers to fill that position.

2.34 Evidence in support of this proposition was received from a number of submitters and witnesses. The Australian Nursing Foundation (ANF), for example, pointed to high levels of employment of overseas nurses on 457 visas at a time when 'an increasing number of new graduate nurses unable to find work as nurses'. The ANF expressed concern that:

...the inability of our home grown nurses to obtain employment is not only a serious waste of public monies but will also lead a decline in those taking

up undergraduate nursing courses and a consequent decrease in the levels of nursing care.³⁴

2.35 Similarly, the Communications Plumbing Electrical Union (CEPU) submitted that its members commonly experienced difficulty in obtaining employment in the mining and resource industry, despite possessing the appropriate skills and willingness to work.³⁵

2.36 Conversely, the committee notes that, where a genuine skill shortage exists in relation to a position, the inability of an employer to readily access a 457 visa worker to fill that position frustrates the key economic objectives of the program and could impact negatively on both business activity and the availability of critical services.

2.37 The submissions of the Chamber of Commerce Northern Territory and the Chamber of Commerce and Industry Western Australia provided valuable insights into the particular impacts of an inability to readily access employees through the (standard business sponsorship) 457 visa program, subject as these regions are to the pressures of geographical remoteness and large-scale resource projects on the pool of local labour.³⁶

Labour market testing

2.38 'Labour market testing' (LMT) may be understood as 'a legal obligation on employers to demonstrate, before being able to access an overseas worker through the 457 [visa] program, that they have tried to recruit Australian resident workers for the job vacancy on the open market through designated means and have not been able to find a suitably qualified Australian resident worker'.³⁷

2.39 The committee notes that, in simple terms, in the absence of a requirement for LMT to establish that there exists a genuine skill shortage in relation to a specific position,³⁸ this must otherwise be achieved via the combined effect of the program's policy settings.

2.40 A number of submitters and witnesses argued strongly for the introduction of LMT to the application processes for the 457 visa program. In general, those in favour of this regarded the current policy settings of the program as being ineffective at

34 Australian Nursing Foundation, *Submission 27*, p. 6.

35 Communications Electrical Plumbing Union, *Submission 30*, p. 4.

36 Chamber of Commerce Northern Territory, *Submission 28*; Chamber of Commerce and Industry Western Australia, *Submission 34*.

37 Australian Council of Trade Unions, *Submission 40*, p. 22.

38 LMT was a feature of the 457 visa program on its introduction in 1996, at least in respect of non-key activities; however, this requirement was later removed (Dr Joo-Cheong Tham and Dr Iain Campbell, 'Temporary Migrant Labour in Australia: The 457 visa scheme and challenges for labour regulation', Centre for Employment and Labour Relations Law, Working Paper No. 50, additional information received 26 March 2013, pp 11 and 13).

ensuring that it is used only in respect of genuine skill shortages and, concomitantly, offering adequate protection to the rights of local and 457 workers.³⁹

2.41 Equally, the inquiry registered strong opposition to any imposition of LMT. Generally, the view of those against LMT was that the program's current policy settings are effective to ensure that it is used only in respect of genuine skill shortages and, accordingly, offers adequate protection to the rights of local and 457 visa workers.

2.42 In a number of cases, opponents of LMT pointed to previous experience of a LMT requirement in the context of the 457 visa program. The Migration Institute of Australia submission (MIA), for example, observed:

Whilst [LMT]...may appear prima facie to be a thorough way of testing the market it [previously] proved to be cumbersome and ineffective as...many advertisements were left unanswered or suitable applicants were simply not found.

In many cases, employers received applications from people who required sponsorship to remain in Australia, which again defeated the purpose of carrying out labour market testing to attract local Australians.⁴⁰

2.43 Similarly, the LCA submitted:

...when labour market testing was [previously] compulsory as part of the company sponsored temporary visa program...[i]t was our experience that those requirements were poorly managed, largely ineffective and honoured more in form than substance.⁴¹

2.44 Dr Joanna Howe, appearing in a private capacity, pointed to particular design features of the previous LMT requirement as being problematic:

...our experience in Australia has been that it did not work too well between 1996 and 2001. There were reasons for that. In the system there was this artificial distinction between key activities and non-key activities, so it was quite a difficult...system to work.⁴²

2.45 Beyond the question of previous experiences, it was also argued that, in many cases, LMT is unnecessary because an employer is seeking highly specialist skills,⁴³ or is otherwise aware that the skills being sought are not available in the local labour market—for example, there may be industry or government information clearly demonstrating that a skill shortage exists in a particular occupation or region.⁴⁴ In such

39 See, for example, Construction, Forestry, Mining and Energy Union, *Submission 41*, pp 6-7.

40 Migration Institute of Australia, *Submission 7*, p. 5.

41 Law Council of Australia, *Submission 29*, pp 9-10.

42 Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 59.

43 Mr Scott Barklamb, Executive Director, Industry, Australian Mines and Metals Association, *Committee Hansard*, 23 May 2013, p. 41.

44 Migration Institute of Australia, *Submission 7*, p. 10.

cases, a requirement for LMT was said to impose delay and cost that could ultimately frustrate the fundamental economic objectives of the program.⁴⁵

Cost of employing 457 visa workers

2.46 A number of submitters and witnesses drew attention to the cumulative financial impact of sponsorship requirements as the main design feature of the 457 visa program to ensure that employers preference local workers over 457 visa holders. The true relative cost differential between the employment of local as against 457 visa holders is therefore of fundamental importance to the question of whether employers may seek to use the program exclusively in respect of genuine skill shortages.

2.47 On this point, the departments' submission pointed to a number of 'strong economic incentives' for employers to employ Australian workers before seeking workers through the 457 visa program. It identified the costs related to the sponsorship of a 457 visa holder as:

- sponsorship and nomination fees;
- recruitment costs;
- providing equal terms and conditions including paying market salary rate;
- meeting training expenditure benchmarks and maintaining a financial commitment to training levels; and
- being liable for the cost of the 457 visa worker's return to their country of origin.⁴⁶

2.48 The submission observed:

These costs...make foreign workers more costly to employ than Australian workers, provided that there are Australian workers available and that employers abide by the intent of the legislation.⁴⁷

2.49 A number of submitters and witnesses attested to the effectiveness of these requirements in imposing higher costs on the employment of 457 workers relative to local workers. Mr Stephen Bolton, a Senior Adviser for the Australian Chamber of Commerce and Industry (ACCI), for example, submitted:

...it is almost universally the case that workers on 457 visas are significantly more expensive than local workers when you factor in not only the recruitment costs that an employer may incur by going overseas but also

45 Australian Industry Group, *Submission 16*, p. 4.

46 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, pp 1-2.

47 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 2.

healthcare provision in many cases, subsidised accommodation and ongoing training, as well as their wages and entitlements. It can be a very expensive prospect for an employer.⁴⁸

2.50 Some submitters and witnesses questioned the extent to which employers face relatively higher costs to employ 457 visa holders. The CFMEU, for example, argued that 'the costs to employers of accessing temporary foreign workers on 457 visas are either declining, as a consequence of the falling costs of offshore recruitment; relatively modest or avoidable;⁴⁹ or in fact largely avoided because the 457 visa is sought in respect of an onshore applicant.⁵⁰

2.51 On this last point, at a Senate estimates hearing in May 2013 an officer of the department confirmed a trend of 'strong growth' in onshore 457 visa applications, and confirmed that such applications would generally involve lower costs:

This is the area where we have identified some integrity concerns, given that the legislative framework around the current system was developed on the basis of...[the] price signal that actually provides economic incentive for employers to look domestically, if the labour is available, before looking overseas...

...if you have a large number of temporary visa holders under the other visa categories onshore, with the pathway to 457s, that price signal may not work as effectively as for offshore applicants.⁵¹

The Consolidated Sponsored Occupations List

2.52 The Consolidated Sponsored Occupations List (CSOL) is an important feature of the 457 visa program, specifying as it does the occupations that can be sponsored for the program, in addition to a number of other employer and state and territory nominated visa subclasses.⁵²

Form and content of CSOL

2.53 The evidence of a number of submitters and witnesses addressed the question of whether the current form and content of the CSOL effectively supports the operation and objectives of the 457 program.

48 Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, p. 15.

49 Construction, Forestry, Mining and Energy Union, *Submission 41*, pp 7 and 13-14 (table).

50 Construction, Forestry, Mining and Energy Union, *Submission 41*, pp 7 and 10.

51 Mr Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, *Estimates Hansard*, 27 May 2013, pp 69-70.

52 These are the subclass 186 Employer Nomination Scheme, subclass 190 Skilled – Nominated visa and subclass 489 Skilled Regional (Provisional) visa (Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 5).

2.54 Regarding the content of the CSOL, the departments' submission advised that, with reference to the visa subclasses that it supports, the CSOL seeks to achieve an appropriate balance between allowing employers 'access to workers which they need to sponsor to retain their skills [sic], and ensuring that appropriately skilled migrants would be [sic] accessing the skilled migration program'.⁵³ Occupations are included on the CSOL:

...based on the skill level of occupations as defined in the Australian and New Zealand Standard Classification of Occupations (ANZSCO)...[with] [m]ost occupations specified in ANZSCO with a skill level of 1, 2 or 3 [currently included]...unless a particular occupation has significant integrity concerns or Australian citizenship is a pre-requisite for appointment.⁵⁴

2.55 A number of submitters and witnesses expressed the view that the CSOL effectively targets occupations subject to identified skill shortage, thereby negating the need for LMT. The Australian Industry Group submission, for example, stated:

The...CSOL ensures that 457 visas apply to occupations where there are identified skill shortages.⁵⁵

2.56 Similarly, Mr Scott Barklamb, Executive Director, Industry, AMMA, stated:

...we already have, in our view, significant labour market testing by virtue of the government's scheduled occupations that can use these visas, based on research and the government's extensive labour market knowledge.⁵⁶

2.57 However, Mr Alan Chanesman, a policy adviser with the Australian National University, characterised the CSOL as a 'static list of occupations' as opposed to one that lists occupations on the basis of identified skill shortages.⁵⁷ Other submitters and witnesses expanded on this point, noting that the CSOL, in servicing a number of visa types by reference to the skill level of occupations rather than identified skill shortages, is by definition composite and very broad in nature.⁵⁸ A joint submission

53 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 5.

54 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 5.

55 Australian Industry Group, *Submission 16*, p. 1.

56 Mr Scott Barklamb, Executive Director, Industry, Australian Mines and Metals Association, *Committee Hansard*, 23 May 2013, p. 41.

57 Mr Alan Chanesman, External, Migration and Policy Adviser, Migration Law Program, Legal Workshop, Australian National University, *Committee Hansard*, p. 61.

58 Law Council of Australia, *Submission 29*, p. 10; and Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 5.

from Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart observed:

...[the 457 program currently relies] upon a broadly-based occupational list to identify the occupations for which employers can sponsor temporary migrant workers. Crucially, this list is not compiled with reference to skill shortages in the domestic economy. The CSOL currently has 742 occupations on it from A[NZ]SCO skill levels 1–4. So long as an occupation is on this list, an employer can make a 457 nomination and the occupation is deemed to be in shortage. Present on this list is a number of occupations where there is clearly no domestic labour shortfall.⁵⁹

2.58 A number of examples were provided in evidence to the inquiry of occupations currently included on the CSOL, but clearly either not presently the subject of a skill shortage (such as 'print journalist', despite the high level of redundancies in that profession on recent years) or not requiring a particularly high level of skill (such as 'flight attendant' and 'cook', which are Certificate III occupations requiring only two years of on-the-job training).⁶⁰

2.59 On the basis of the composite and broad nature of CSOL, Dr Howe observed:

...[the CSOL]...is not finely attuned to shortages. So long as an occupation is on this list then an employer can nominate an overseas worker...

...[This is] a fairly broad, crude mechanism for identifying skill shortages and...is fairly ineffective for that key first threshold test of identifying Australia's skill needs. As such, because of this design flaw...the 457 visa has become more of a general labour supply visa...⁶¹

2.60 Notwithstanding evidence regarding the overly broad nature of the CSOL, the committee heard evidence that the range of occupations listed on the CSOL poorly services a number of regions, industries or areas of particular or emerging skill shortages.

2.61 The Chamber of Commerce and Industry Queensland, for example, indicated that the CSOL's current focus on skill levels does not 'reflect the skills needs of Queensland's small to medium businesses, particularly those in regional and remote areas'.⁶² Similarly, the MIA noted:

59 Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, pp 3-4.

60 Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 57; and Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, p. 4; Ms Katie Malyon, Vice-Chair, Migration Law Committee, Law Council of Australia, *Committee Hansard*, 23 May 2013, p. 36.

61 Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 57.

62 Chamber of Commerce and Industry Queensland, *Submission 13*, p. 9. See also: Chamber of Commerce Northern Territory, *Submission 28*; Chamber of Commerce and Industry Western Australia, *Submission 34*.

Many would argue that the...[CSOL] is not broad enough and does not include those occupations that assist employers to address their skill shortages. For example, restaurateurs are often seeking ways in which they can sponsor experienced sommeliers or maitre d'hotel for their fronts of houses. Similarly, with the abundance of seafood restaurants...there is also a need for the skills of experienced fishmongers to be employed. This is also apparent in the mining and rural sectors in which employers are not able to sponsor people in specific occupations.

...

The CSOL is not representative of critical business needs and skill shortages in the regional and remote areas of Australia. There should be an expanded list for rural and remote areas of Australia, for example in the horticultural and nursery sectors where specialist workers are required for the cultivation of the nation's food.⁶³

2.62 Mr Bolton also questioned whether the use of a skill-based occupations list for the 457 visa program (as opposed to an occupations-in-demand list) was well suited to Australia where geographical regions could experience disparate skill shortages, and noting that regional differences were already subject to tailored approaches, including regionally based and state occupations-in-demand lists.⁶⁴ Mr Bolton was also critical of the responsiveness of the CSOL in servicing emerging and growth industries.⁶⁵

Process of listing occupations on the CSOL

2.63 The committee received very little detailed evidence or insight regarding the process for listing occupations on the CSOL.

2.64 The departments' submission briefly noted that the CSOL is approved by the Minister for Immigration and Citizenship (the minister) following consultation between the department, the Department of Education, Employment and Workplace Relations and the Australian Workforce and Productivity Agency (AWPA).⁶⁶

2.65 The submission from Berry Appleman and Leiden (BAL Australia) noted also that the Ministerial Advisory Council on Skilled Migration (MACSM) is able to recommend changes on any aspect of Australia's skilled migration program, and may

63 Migration Institute of Australia, *Submission 7*, pp 5-6. See also: Chamber of Commerce and Industry West Australia, *Submission 34*, p. 5.

64 Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, p. 21.

65 Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, pp 20-21.

66 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 5.

also therefore provide input to the department regarding the content of the CSOL.⁶⁷ The Minerals Council of Australia attested to its own experience of participation in the MACSM, noting that, through that forum, it had successfully negotiated the addition of 'skill-shortage occupations' to the CSOL in recent years.⁶⁸

2.66 In broad terms, a relatively consistent message from submissions on the current listing process for the CSOL was that there is a lack of transparency as to the methodology by which occupations are added and removed. The joint submission from Dr Joanna Howe, Professor Alexander Reilly and Professor Andrew Stewart, for example, noted:

...[there is] limited transparency and accountability in the compilation of the list. It is unclear when annual reviews of this list take place. It is unclear as to how and why occupations are added to this list. Very little justification, if any, is given for the occupations that are on this list.⁶⁹

2.67 Similarly, the ACCI submission noted:

Changes made to the CSOL...are often not immediately or widely communicated. This leads to considerable confusion and frustration on the part of employers and can further exacerbate time lags in cases where access to skills in order to progress work is time critical.⁷⁰

2.68 The submission of the Transport Workers' Union of Australia (TWU) pointed to concerns, voiced previously by the Joint Standing Committee on Migration and the Visa Subclass 457 Integrity Review (the Deegan review), regarding a lack of clarity about the extent to which the CSOL is customised in terms of 'listing not only skilled occupations but also migration occupations in demand' (that is, occupations subject to skill shortages).⁷¹

2.69 More generally, the LCA contrasted the relatively opaque administrative processes supporting the compilation of the CSOL with the more consultative and public approach taken to determining the content of the Skilled Occupation List (SOL),⁷² which lists occupations for the purposes of nominating occupations in relation to general skilled migration visas:

The SOL is compiled by AWP...[I]t contains those occupations that are widely recognised to be in short supply and include such occupations as

67 Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 6. For information on the MACSM's term of reference and current membership see Department of Immigration and Citizenship website, 'Ministerial Advisory Council on Skilled Migration', <http://www.immi.gov.au/about/stakeholder-engagement/national/advisory/macsm/> (accessed 10 June 2013).

68 Minerals Council of Australia, *Submission 8*, p. 5.

69 Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 57.

70 Australian Chamber of Commerce and Industry, *Submission 21*, p. 12.

71 Transport Workers' Union of Australia, *Submission 20*, pp 8-9.

72 Department of Immigration and Citizenship website, 'Skilled Occupation List (SOL): Schedule 1', <http://www.immi.gov.au/skilled/pdf/sol-schedule1.pdf> (accessed 10 June 2013).

health professionals, engineers, lawyers and certain trades. AWPAs analyse a range of evidence when updating the SOL. Evidence is also gathered from industry and key stakeholders: comprehensive submissions from industry stakeholders are available from...[AWPA's] website. As well, a variety of indicators and information is considered to make determinations about relevant occupations to include in the SOL.⁷³

Suggestions for improving the effectiveness of the CSOL

2.70 With reference to the issues outlined above regarding the effectiveness of the CSOL in the context of the 457 visa program, a number of submitters and witnesses offered suggestions as to how it and related processes might be reformed to better support the operation and objectives of the program. The general theme of these was that the narrowing and targeting of the list to occupations demonstrably the subject of a skills shortage would both improve the ability of employees to readily access workers to fill positions for which a local worker could not be found,⁷⁴ and remove the potential or pressure for the program to be used to fill low- and semi-skilled positions against the fundamental tenets of its policy aims.⁷⁵

2.71 Submitters and witnesses advocating for a narrower and more targeted CSOL generally acknowledged that such an approach would involve an element of LMT or labour market analysis to establish whether an occupation was the subject of a genuine skills shortage. It was also suggested that any such approach would need to be consultative and timely in order to add and remove occupations in response to labour market conditions and trends.⁷⁶

2.72 The committee notes also suggestions that a more narrow and targeted CSOL may require complementary consideration of whether and how to accommodate the demand for low- and semi-skilled workers through the Australian immigration system.⁷⁷

2.73 AWPAs were generally identified as the appropriate agency to undertake primary responsibility for maintaining the (modified) CSOL and overseeing and/or

73 Law Council of Australia, *Submission 29*, p. 10. The committee notes, however, that the CSOL incorporates the SOL.

74 Mr Alan Chanesman, External, Migration and Policy Adviser, Migration Law Program, Legal Workshop, Australian National University, *Committee Hansard*, p. 61.

75 See, for example, Law Council of Australia, *Submission 29*, p. 10.

76 See, for example, Mr Alan Chanesman, External, Migration and Policy Adviser, Migration Law Program, Legal Workshop, Australian National University, *Committee Hansard*, p. 61; and Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 6.

77 See, for example, Dr Joanna Howe, Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, p. 3; Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 57; and Chamber of Commerce and Industry Queensland, *Submission 13*, p. 10.

undertaking the required labour market testing or analysis.⁷⁸ Dr Howe, for example, observed:

...[AWPA could be used] to compile a list [for the purposes of the 457 visa program]. They currently compile the skilled occupation list [SOL], which has 192 occupations on it. So they are already doing labour market analysis. We think that organisation could potentially be used to rigorously compile a 457 visa list that would more accurately identify skill shortages.⁷⁹

Transparency and rigour of 457 visa application process and adequacy of relevant tests

2.74 Evidence to the inquiry in relation to the transparency and rigour of the 457 visa application process suggested that, while some stakeholders are generally satisfied with the process,⁸⁰ others feel that there are inconsistencies in the assessment of applications at various stages of the process.

Refusal of applications at application stage

2.75 A number of submitters and witnesses outlined concerns regarding what was said to be a large number of refusals occurring at the (visa) application stage (that is, after approvals have been granted at the sponsorship and nomination stages) on the basis of concerns that the nominated position with the employer was not in fact genuine.

2.76 On this issue, the MIA submitted:

...after a sponsorship and nomination have been approved by [the department]...case officers are refusing some visa applications because they have decided that it is not a genuine position. Assessment by a [department]...officer of the nominated position is outside their mandate when assessing a visa application. The requirements that a position meets a "genuine need" is not current policy but has been mooted by the Government to be changed, however, until such time that new legislation and policy has been announced, then...[department] officers should implement current Immigration policy and not take it upon themselves to interpret what they believe will be the new policy.⁸¹

2.77 The LCA, similarly, was concerned that this apparent practice was leaving the outcome of applications unduly dependent on the discretion and policy interpretation of individual decision makers, leading applications of similar merit to be determined

78 See, for example, Berry Appleman and Leiden (BAL Australia), *Submission 12*, p. 6; Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, p. 57; and Dr Joanna Howe, Associate Professor Alexander Reilly and Professor Andrew Stewart, *Submission 11*, p. 4

79 Dr Joanna Howe, private capacity, *Committee Hansard*, 23 May 2013, pp 57-58. See also: Transport Workers' Union of Australia, *Submission 20*, p. 8; and Law Council of Australia, *Submission 29*, p. 3. See Australian Workplace and Productivity Agency, *Submission 6*, for discussion of that agency's work, methodology and focus.

80 See, for example, Minerals Council of Australia, *Submission 8*, p. 5.

81 Migration Institute of Australia, *Submission 7*, p. 8.

inconsistently and thereby introducing uncertainty into the process. The LCA noted that, under current arrangements, the department may have little evidence before it at the nomination stage to consider the question of whether a nominated position is genuine, but contended that in such circumstances further investigation should be undertaken so that refusal, if warranted, can take place at that earlier stage of the application process.⁸²

2.78 In relation to improved transparency around decision making more generally, the LCA called for:

...the implementation of stricter guidelines and collation of precedents for case officer's adherence and increased case officer training for a greater transparency in DIAC's decision making process.⁸³

Intra-company transfers

2.79 The committee heard evidence that the application of the criteria attached to the 457 visa program is unwieldy in respect of intra-company transfers. In response to a question on notice, Fragomen noted that the current sponsorship criteria reflected the program's focus on the filling of short term skill shortages, and were not well suited to accommodating or regulating temporary intra-company transfers.

2.80 Fragomen submitted that transfers of this type were a common practice among multinational companies, which 'routinely assign key staff and executives to their operations around the world in the normal course of conducting their business'.⁸⁴

2.81 In light of the particular purpose and benefits of intra-company transfers, Fragomen called for the creation of a distinct 'intra-company transfer' category within the 457 visa program, with a tailored application process and eligibility criteria to better match the particular characteristics and risks attached to such requests. The adoption of the specific criteria and processes could support a truncated application process, in which the nomination stage could be removed. Specific and appropriate visa conditions could ensure that an intra-company transfer category would be incorporated easily within the existing regulatory framework, which was already premised on distinct 'streams' within the subclass 457 visa category.⁸⁵

82 Law Council of Australia, responses to questions on notice, 23 May 2013 (received 31 May 2013), p. 8.

83 Law Council of Australia, responses to questions on notice, 23 May 2013 (received 31 May 2013), p. 8.

84 Fragomen, responses to questions on notice, 23 May 2013 (received 31 May 2013), p. 3.

85 Fragomen, responses to questions on notice, 23 May 2013 (received 31 May 2013), p. 7.

Extent to which the 457 visa program may result in a decline in Australia's national training effort, with particular reference to apprenticeship commencements (term of reference (a)); and

Whether better long-term forecasting of workforce needs, and the associated skills training required, would reduce the extent of the current reliance on 457 visas (term of reference (g))

2.82 Term of reference (a) and (g) required the committee to look at the inter-related issues of the impact of the 457 visa program on Australia's national training effort, including apprenticeships; and the extent to which better long-term forecasting of workforce needs, and associated skills training, would reduce the extent of the current reliance on the 457 visa program to address skill shortages.

Impact of the 457 visa program on national training effort and apprenticeships

2.83 A number of submitters and witnesses expressed concern that the 457 visa program impacts negatively on Australia's national training effort and apprenticeships because it reduces the need for employers to directly invest in workforce training. The CEPU, for example, submitted:

The 457 visa scheme provides an attractive alternative to investing in training by employers faced with the skills shortage. Rather than investing in training or taking on apprentices, employers can simply poach trained employees from overseas.⁸⁶

2.84 However, other submitters and witnesses noted that approval as a sponsor under the program requires employers to meet one of two training benchmarks, being:

- expenditure of one per cent of payroll expenditure on the provision of structured training to employees; or
- a contribution equivalent to two per cent of payroll expenditure to an industry training fund.⁸⁷

2.85 A business must also demonstrate a commitment to meeting one of the specified training benchmarks for each fiscal year for the term of their approval as a sponsor.⁸⁸

2.86 The program's training benchmark requirements for sponsors were said to ensure that the 457 visa program has a positive impact on training, by requiring

86 Communications Electrical Plumbing Union, *Submission 30*, p. 12.

87 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 6.

88 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 6.

businesses either to invest directly in staff development,⁸⁹ or to provide a financial contribution to the national training effort more generally, and so providing 'the flexibility to direct training effort where it provides maximum economic benefit'.⁹⁰ Further, it was noted that the program's focus on filling immediate demand for skilled labour did not directly compete with the skill level demands and training timelines for apprenticeships.⁹¹

2.87 The absence of a demonstrable link between the program and apprenticeships was addressed by an officer of the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, who advised the committee:

...there is no evidence that there has been any impact on apprenticeship commencements...[T]rade apprenticeship commencements have remained relatively steady over the last 10 years, with a slight increase...There is no evidence of a relationship between 457s and commencements. Where there have been downturns in non-trade commencements, that has generally been related to changes to apprenticeship incentives.⁹²

2.88 More generally, the committee heard that the level of the Commonwealth's funding commitment did not appear to be linked to the operation of the 457 visa program:

...in the area of training, funding for training has increased rather than decreased over the last five or six years. This would tend to indicate that the use of 457s is not about reducing the federal government commitment to training.⁹³

2.89 Notwithstanding differences of view regarding the impacts of the 457 visa program on the national training effort and apprenticeships, the evidence of submitters and witnesses revealed a relatively consistent view that deficiencies in the national training effort reflect a 'broader failure...to ensure that young people have employability skills as well as the vocational skills to meet the areas of large demand in the economy'⁹⁴ through increased resourcing,⁹⁵ and more effective and responsive

89 See, for example, Australian Mines and Metals Association, *Submission 22*, p. 6.

90 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 6.

91 Australian Industry Group, *Submission 16*, p. 3.

92 Dr Melissa McEwen, General Manager, Trades Recognition Australia, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, *Committee Hansard*, 23 May 2013, p. 70.

93 Dr Melissa McEwen, General Manager, Trades Recognition Australia, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, *Committee Hansard*, 23 May 2013, p. 71.

94 Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, p. 18.

demand-side strategies for matching the needs of industry with the activities of the education and training sectors.⁹⁶

Impact of better long-term forecasting and skills training

2.90 In general terms, while submitters and witnesses broadly accepted the proposition that improved long-term forecasting can allow training settings to be adjusted to reflect upcoming skills needs',⁹⁷ this view was tempered by a number of significant caveats.

2.91 First, there was some question as to the significance of the link between the national training effort and the level of use of the 457 visa program, given the program's focus on addressing temporary skills shortages. Mr Robert Walsh, Managing Partner, Australia and New Zealand, Fragomen, for example, stated:

I do not think in any way that...[a more effective national skills training program] would deal with the vast majority of people who come to Australia on a 457 visa because...the vast majority of those people are professional and managerial level staff or skilled tradespeople.⁹⁸

2.92 Second, it was noted that, due to a range of personal, cultural and geographical factors, skill shortages in Australia arise due to not only a lack of relevant skills but also a lack of mobility in the Australian workforce.⁹⁹

2.93 Third, there was recognition that long-term forecasting is unable to wholly address skill shortages. ACCI, for example, noted that it was 'generally accepted that current mechanisms used in workforce projections and planning have limited validity and cannot predict major shifts and changes in the economy'.¹⁰⁰

2.94 The qualified view of the ability of long-term forecasting or modelling to address skill shortages was encapsulated by the evidence of AWPAs, whose submission noted that such forecasting makes a valuable contribution to matching available skills to demand, but will not reduce the need for skilled migration entirely:

AWPA views the long-term modelling of workforce needs and the associated skills training required to meet them as an essential component

95 See, for example, Mr Tony Sheldon, National Secretary, Transport Workers' Union of Australia, *Committee Hansard*, 23 May 2013, p. 6; and Migration Institute of Australia, *Submission 7*, p. 4.

96 Australian Chamber of Commerce and Industry, *Submission 21*, p. 14.

97 Department of Immigration and Citizenship; the Department of Education, Employment and Workplace Relations; the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education; and the Department of Resources, Energy and Tourism, *Submission 24*, p. 1.

98 Mr Robert Walsh, Managing Partner, Australia and New Zealand, Fragomen, *Committee Hansard*, 23 May 2013, p. 52.

99 Mr Stephen Bolton, Senior Adviser, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 23 May 2013, p. 14.

100 Australian Chamber of Commerce and Industry, *Submission 21*, p. 14.

in achieving an adaptable workforce where skills are used effectively to meet the increasingly complex needs of industry, and individuals are able to fulfil their potential...The scenario modelling produced by AWP is a leading contributor to the long-term modelling of workforce needs and indicates that the tertiary qualifications held by the workforce need to grow by between 3 and 3.9 per cent per annum over the years to 2025 to meet Australia's skill needs. AWP is of the view that although such an increase would not remove the need for skilled migration, it would reduce the extent to which skilled migration is required to meet Australia's skill needs.¹⁰¹

COMMITTEE COMMENT

2.95 Evidence to the inquiry has confirmed that the 457 visa program, as the main instrument of Australia's system of temporary skilled migration, attracts widespread support based on recognition of the significant economic and social benefits that flow from the ability to address genuine skill shortages in the local economy through the use of overseas workers.

2.96 Equally, however, it is accepted that the goal of ensuring that employers are able to readily access skilled migrants must be balanced against the need to ensure that the employment opportunities and conditions of local workers are protected, and that 457 visa workers enjoy no less favourable conditions and are not otherwise subject to abuse or exploitation. Each of these important policy elements interacts with and affects the others, and the effectiveness of the program is dependent on the balance that is achieved by its overall design and administration. Given this, concerns must arise if the program is able to be used to employ 457 workers in occupations not subject to skill shortages, and if 457 workers are able to be employed on less favourable terms than local workers. Where this occurs, the economic objective of the program may be frustrated, the employment opportunities and conditions of local workers may be undermined, and the rights and working conditions of 457 visa holders may be compromised.

2.97 The committee heard that a core indicator of the effectiveness of the 457 visa program in addressing areas of genuine skill shortage is the relationship between the number of 457 visa applications and the general rate of unemployment, which, historically, have been closely aligned. Evidence on this 'automatic' indicator showed that there has been some divergence in the growth or demand for 457 visas relative to the rate of general unemployment. Further, at a geographical, industry and occupation level, there is evidence of a divergence in the growth or demand for 457 visas relative to the strength of the labour market, of increasing use of 457 visa holders in less skilled and broadly defined occupations, and an increasing number of onshore applicants. A number of submitters and witnesses pointed to these trends as showing that the 457 visa program is not effectively achieving its core economic aim of directing skilled overseas workers to areas of genuine skill shortages. Others, however, pointed to policy and systemic factors in the immigration system, such as

101 Australian Workforce and Productivity Agency, *Submission 6*, p. 5.

changes impacting student visa holders, as the underlying cause of these trends in the data.

2.98 In relation to this issue, the committee notes that, while it seems clear that policy and systemic factors are likely to be contributing to the number and rate of primary applications for 457 visas, the divergence in the historical alignment of this measure and the general rate of unemployment gives rise to legitimate questions as to whether the program's policy settings are currently effective to ensure that overseas workers are in all cases being employed in areas subject to genuine skill shortages. Given this, an assessment of the effectiveness of the program, including consideration of proposals for changes to its current policy settings, is appropriate at this time. The committee notes that, over the course of its life under successive governments, the 457 visa program has undergone a number of substantial reviews and revisions in seeking to achieve or maintain an effective balance between its policy settings and aims.

Cost of employing 457 visa workers

2.99 The committee heard that the main way in which the 457 visa program ensures that it is used only in respect of areas subject to genuine skill shortages is through the imposition of higher costs on employment of 457 visa holders, including sponsorship and nomination fees, recruitment costs, training expenditure benchmarks and travel costs. These costs are intended to create a price signal such that employers will seek to engage a 457 visa holder only where a local worker cannot be found to fill a position. Evidence was provided to the inquiry from a number of sources attesting to the fact that this price differential is substantial and therefore effective in achieving this aim. However, other submitters and witnesses questioned the strength of this price signal, claiming that such costs are in many cases not substantial, or in fact avoidable, particularly in relation to onshore applicants.

The Consolidated Sponsored Occupations List

2.100 Another main focus of the inquiry was the Consolidated Sponsored Occupations List (CSOL), which specifies the occupations that can be sponsored under the 457 visa program, and is therefore an important consideration in assessing the extent to which the program addresses genuine skill shortages. The committee heard that the CSOL is broadly based, incorporating the Skilled Occupations List (SOL) in addition to most occupations defined in levels 1 to 3 of the Australian and New Zealand Standard Classification of Occupations (ANZSCO). The CSOL is not, as such, a well-targeted list of occupations in demand (that is, subject to skill shortages), and in fact services a number of other visa subclasses. Evidence from submitters and witnesses suggested that the CSOL is in some respects both too narrow, with employers unable to access in-demand occupations not present on the list, and too broad, with the inclusion of occupations both not in demand (for example, print journalists) and not possessing the requisite skill requirements (for example, flight attendants) to justify the use of a 457 visa holder to fill such positions. The committee heard that these problems with the content of the CSOL arise not only because the ANZSCO definitions are ill matched to Australia's skill needs (for example, through overly broad occupation descriptions or ascribing too high a skill

level to an occupation), but also because there is a lack of rigour, transparency and consultation around the processes for determining its content.

2.101 In light of these concerns about the CSOL, the committee heard calls for the development of a specific skills in-demand list for the 457 visa program, with many recommending that the Australian Workforce and Productivity Agency (AWPA) be tasked with compiling and maintaining such a list. It was argued that the development of a 457 program specific list based on labour market analysis and consultation conducted by AWPA could operate as a de facto form of labour market testing, and also more easily accommodate labour market changes and regional and geographical differences in terms of in-demand occupations.

2.102 Such an approach, however, may require complementary consideration of whether and how Australia's immigration system should facilitate the flow of low- and semi-skilled labour into Australia. This is suggested by evidence to the inquiry that, in the shift to an increasingly demand-driven program, the 457 visa program is under pressure to act as a pathway for bringing low- and semi-skilled workers into the Australian labour market.

2.103 In the committee's view, the evidence to the inquiry has established that the 457 visa program should be serviced by a specific list or lists of in-demand skilled occupations for Australia and, where necessary, specific state or regional labour markets. As occurs with the SOL, AWPA should be tasked with and appropriately funded to compile and regularly review the content of the 457 visa program list.

2.104 The committee also considers that a complementary review of whether and how Australia's immigration system should facilitate the flow of low- and semi-skilled labour into Australia is needed.

Recommendation 1

2.105 The committee recommends that, for the exclusive purposes of the 457 visa program, the Australian Workforce and Productivity Agency be given the responsibility and commensurate funding to compile and prepare a skills in-demand list which also takes into account regional labour market skill shortages.

Recommendation 2

2.106 The committee recommends that the government institute a review of the extent to which Australia's immigration system does and should facilitate the flow of low- and- semi-skilled labour into Australia.

Transparency and rigour of 457 visa application process and adequacy of relevant tests

2.107 While evidence to the committee revealed some level of dissatisfaction with the transparency and rigour of the 457 visa application process, the committee considers that the administration of the program is generally satisfactory. Notable improvements to the administration of the program have occurred through the department's industry outreach strategies, and there was also particular support expressed for the consultative mechanism of the Ministerial Advisory Council on Skilled Migration.

2.108 A particular matter raised was the apparent practice of the department in refusing applications at the (visa) application stage of the 457 visa process. This matter is addressed in Chapter 5.

2.109 A further matter raised was the absence of a dedicated 457 visa 'stream' for intra-company transfers. The committee considers that the arguments in favour of establishing a dedicated stream to ensure that the movement of such skilled labour is properly accommodated by the program have merit.

Recommendation 3

2.110 The committee recommends that a dedicated pathway for intra-company transfers be introduced to the 457 visa program.

Labour market testing

2.111 Based on the concerns outlined above in relation to the 457 visa program, a number of submitters and witnesses called strongly for the introduction of labour market testing (LMT) to the 457 visa program, which in simple terms is a requirement on employers to advertise a position locally to ensure that a genuine skill shortage exists in relation to a position.

2.112 However, others raised concerns about the effectiveness of LMT. Some submitters and witnesses noted that this requirement had previously been an element of the 457 visa application process, which had proven to be generally a barrier to employers accessing skilled labour, and nevertheless ineffective at restricting the use of the program to areas of genuine skill shortages. LMT was criticised as imposing an often unnecessary additional cost and delay, particularly in cases where a clear skill shortage exists or highly specialist skills are being sought, and as susceptible to manipulation to achieve desired outcomes.

2.113 In the committee's view, the evidence to the inquiry regarding LMT suggests that the introduction of such a requirement to the 457 visa application process could assist with ensuring that the program is better targeted to occupations that are genuinely the subject of skill shortages. However, it is also clear that there are valid concerns regarding the potential for LMT to impose additional cost and delay and therefore to act as a barrier to addressing genuine skill shortages through the program.

2.114 In this regard, the evidence to the committee has shown that the combined interactions of individual policy settings in the 457 visa program may impact on its underlying policy aims in complex or unintended ways. It is therefore clear that a LMT requirement would need to be carefully designed and calibrated against the other elements of the 457 visa program to ensure that it would be effective in demonstrating labour market shortages, while not undermining the responsiveness of the program in meeting employers' needs.

2.115 In this regard, the committee notes that the evidence to the inquiry addressing the issue of LMT did not address the specific legislative proposal for LMT contained in the Migration Amendment (Temporary Sponsored Visas) Bill 2013 (the bill), given that the bill was introduced to the House of Representatives well after the receipt of evidence in submissions and at the hearing for the inquiry. Further, the lack of any Regulation Impact Statement (RIS) assessment or formal consultation on the detail of

the LMT proposal contained in the bill was a significant limitation on the committee's ability to assess the practical implications of the proposal for the operation of the 457 visa program. This matter is further discussed in Chapter 5 of this report.

Impact of the 457 visa program on national training effort and apprenticeships

2.116 Evidence to the inquiry regarding the impact of the 457 visa program on the national training effort, and particularly the number of apprenticeship commencements, was divided. A number of submitters and witnesses expressed concern that the program undermines the incentive for employers to support the training of local workers and apprentices by providing ready access to skilled overseas workers. Others, however, claimed that the higher cost of employing 457 visa holders, and particularly the training expenditure requirements for sponsors, are effective to remove any such incentive and, in fact, ensure that the program contributes positively to the national training effort.

2.117 More generally, there was a relative consensus of view that, the impact of the 457 visa program aside, to be effective in addressing skill shortages the national training effort requires both a greater funding commitment and level of integration between the supply- and demand-side sectors of the labour market. While these matters fall outside the scope of this inquiry, the committee endorses this view.

2.118 With this in mind, however, it is important to recognise that the promoting of the national training effort is, in one sense, not a core but almost an incidental aim of the 457 visa program. That is to say, the primary policy purpose of the training benchmarks appears to be to contribute to the cost differential in the hiring of overseas workers which ensures the preferencing of local workers. While the training benchmarks may have a self-correcting effect on skill shortages in the local labour market (particularly training benchmark A), they may also be less targeted to actual skill shortages (training benchmark B).

2.119 On this view, the committee considers that the impact of the 457 visa program on the national training effort should, overall, be a positive one, but with the important caveat that this is in circumstances where the overall policy settings of the program are effective in ensuring that the 457 visa holders are only sought, or able to be accessed, for the purposes of addressing genuine skill shortages.

Impact of better long-term forecasting and skills training

2.120 In relation to the issue of better long-term skills forecasting and skills training, and the extent to which this may reduce the need to rely on the 457 visa program, the evidence to the inquiry broadly supported the proposition that improved forecasting could reduce Australia's reliance on systems of temporary skilled migration. However, it is also generally accepted that, as noted by AWP, there will, regardless, remain a need for a system of temporary skilled migration to address areas of need in the economy.

2.121 The committee notes that, if implemented, Recommendation 1 (above) should ensure that analysis and forecasting of Australia's skill needs is undertaken by the appropriate specialist and expert agency, properly tasked and operating with adequate resources to support this important task.

2.122 In relation to the targeting of skills training via labour market analysis and forecasting, the committee again draws attention to the evidence to the inquiry regarding the need for greater funding and integration of Australia's national training effort.