

*Submission to the Senate Education and
Employment References Committee's Inquiry
into The impact of Australia's temporary work
visa programs on the Australian labour market
and on the temporary work visa holders*



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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Introduction

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA (as it is known today) was established in 1840 as the *Society for the Introduction of Vines*.

SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a transitionally recognised association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of members' wine business.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

Overview

SAWIA is pleased to have the opportunity to provide a submission to the Senate Education and Employment References Committee's inquiry into *"The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders"*.

The operation of Australia's temporary work visa programs is of interest to the South Australian wine industry. Many of SAWIA's members are located in rural and regional South Australia and may experience difficulties accessing and attracting unskilled and skilled labour, including to the key positions of winemaker and viticulturist.

South Australia is experiencing a higher unemployment rate, 6.4%, than the national rate of 6.1%. In addition, the following metropolitan suburbs are experiencing an unemployment rate, in all cases substantially higher than the overall South Australia rate¹:

- Elizabeth (32.6%)
- Smithfield – Elizabeth North (23.6%)
- Davoren Park (19.8%)
- Christie Downs (18.3%)
- Hackham West – Huntfield Heights (18.1%)
- Royal Park – Hendon – Albert Park (15.6%)
- Christies Beach (14.5%)

However, the high unemployment rate does not mean that wine industry employers easily can fill all job vacancies, whether permanent or casual. Industry feedback indicates that where skilled or unskilled positions are unable to be filled by applicants from the local town or region, it may be difficult to attract domestic applicants from metropolitan areas. This is

¹ Australian Bureau of Statistics 2015, Labour Force, March 2015, 6202.0; Department of Employment 2014, Small Area Labour Markets Australia, December Quarter 2014.

because potential applicants based in metropolitan areas may not be attracted to move either temporarily or permanently to a small country town in a regional area where a large number of South Australia's wine industry employers are located. Therefore, in some circumstances wine industry employers may have no other option but to rely on temporary visa holders to fill vacancies. The current visa system, including the 457 subclass, enables wine industry employers to fill skilled positions where there is an insufficient number of suitable domestic applicants.

SAWIA notes that the operation of the temporary work visa system, including the 457 subclass, has been subject to 9² reviews and inquiries (including the current inquiry) in the last 20 years. Seven of those inquiries and reviews have occurred in the last eight years. SAWIA also notes that the report of the most recent review was published only 7 months ago and the Government's response to the recommendations released only 1 month ago.

This most recent review, the "Independent Review into Integrity in the Subclass 457 Programme" consulted over 150 stakeholders and received 140 public submissions. The 125 page report contained a number of important findings and made 22 recommendations to the Government, some relating to the same matters included in this current inquiry's terms of reference, including:

- monitoring, compliance and enforcement;
- English language requirements; and
- effectiveness of labour market testing.

In addition, the Department of Immigration and Border Protection (DIBP) is currently conducting a review of the Skilled Migration and the 400 Series Visa Programmes. A Discussion Paper was issued in September 2014 and a Proposal Paper³ issued in December 2014. The proposal paper made a number of recommendations, including in relation to temporary skilled and short-term mobility visas. We would say that many of the recommendations of the Independent Review and the DIBP review are yet to be implemented and as such the benefits of those (or not) are yet to be realised.

The South Australian wine industry

The South Australian wine industry is internationally recognised as a premium wine producer. 75% of Australia's premium wines are produced in South Australia and South Australia makes up 60% of Australian wine exports. South Australia generated \$1.86 billion in Gross Wine Revenue of which approximately \$1.2 billion were generated through exports⁴. In addition, 48% of the total area of wine grape plantings is located in South Australia.

South Australia has got the second largest number of wine producers in the country, 28% of all producers. South Australia's 18 wine regions stretch from Southern Flinders Ranges in the North to Mount Gambier in the South, Kangaroo Island in the West to Riverland in the East.

² Roach Review August 1995, Neville J Roach; External Reference Group Review June 2002, Peter McLaughlin, Joint Standing Committee on Migration August 2007, Don Randall MP; External Reference Group Review April 2008, Peter Coates; Deegan Review October 2008, Barbara Deegan; 457 Reforms Interdepartmental Committee December 2008, DIAC, DEEWR, Treasury, DFAT, Finance and PM&C; Legal and Constitutional Affairs References Committee June 2013; Independent Review into Integrity in the Subclass 457 Programme September 2014, John Azarias, Jenny Lambert, Prof. Peter McDonald and Katie Malyon.

³ DIBP 2014, *Proposal Paper: Simplification of the skilled migration and temporary activity visa programmes – December 2014*.

⁴ PIRSA 2013, *Wine: A Partnership 2010-2015, 2013 Update*; PIRSA 2014a, *Wine Opportunities in South Australia*; PIRSA 2014b, *Food and Wine ScoreCard 2013-2015*;

Temporary work visas in the wine industry

The *Migration Act 1958* defines a “temporary visa as:

A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- a) during a specified period; or
- b) until a specified event happens; or
- c) while the holder has a specified status.

The Department of Immigration and Border Protection (DIBP)⁵ in turn categorises the following visa classes as temporary work visas:

- 400 - Temporary Work (Short Stay Activity)
- 401 - Temporary Work (Long Stay Activity)
- 403 - Temporary Work (International Relations)
- 416 - Seasonal Worker Program
- 420 - Temporary Work (Entertainment)
- 417 - Working Holiday
- 461 - New Zealand Citizen Family Relationship (Temporary)
- 462 - Work and Holiday
- 457 - Temporary Work (Skilled)
- 476 - Skilled - Recognised Graduate
- 485 - Temporary Graduate
- 488 - Superyacht Crew
- 942 - Crew Travel Authority
- 988 - Maritime Crew

Statistically temporary work visas are not used on a regular basis in the wine industry. However, where temporary work visas have been utilised this has been in situations where there has been an insufficient number of applicants for casual vineyard or crushing work during the vintage (harvest) period or where skilled positions such as winemaker or viticulturist has been unable to be filled.

In relation to casual vintage work employees holding a Working Holiday visa (subclass 417) or a Work and Holiday (Temporary) visa (subclass 462) have been utilised. Casual vintage workers performing largely unskilled work who are prepared to work long shifts during a condensed period of time (3-10 weeks) can expect to earn an income of approximately \$1,600-\$1,700 per week⁶ taking, shift loadings, weekend and overtime penalties under the Wine Industry Award 2010 into account.

In relation to skilled applicants, over the last 10 years the Temporary Work (Skilled) visa (subclass 457) has been utilised to recruit approximately 38 winemakers and viticulturists to South Australian wine industry employers.⁷ Data from the DIBP indicates that over the same period other skilled positions, including accountant, finance manager, logistics manager,

⁵ DIBP 2014, *Discussion Paper: Reviewing the Skilled Migration and 400 Series Visa Programmes*, September 2014; DIBP 2015a, “Temporary Work Visa”, <https://www.immi.gov.au/visas/temporary-visa/>; DIBP 2015b, “Find a Visa”, [http://www.immi.gov.au/Visas/Pages/Find-a-visa.aspx?Purpose=Work+in+Australia&Nationality=All&ApplyFrom=All&Age=All&Stay=Temporary&Length=All&Family=All](http://www.immi.gov.au/Visas/Pages/Find-a-visa.aspx?Purpose=Work+in+Australia&Nationality=All&ApplyFrom=All&Age=All&Stay=Temporary&Length=All&Family=All&Sponsor=All)

⁶ This is equivalent to an annual salary of \$83,200-\$88,400

⁷ DIBP 2015, “Subclass 457 visas granted 2014-15 to 31 December 2014 – comparison with previous years, Pivot Table,

production manager, maintenance manager and maintenance personnel have also been filled by 457 visa holders.⁸

The cost of engaging an overseas worker through a 457 visa arrangement is considerable more expensive than hiring a domestic applicant. This is because of the sponsor application and nomination fees of \$420 and \$330, the extensive compliance requirements, the need to seek professional migration advice from a migration agent, the minimum salary threshold of \$53,900 and the training benchmarks requiring up to 2% of the payroll costs to be allocated to an industry training fund. Therefore, there is a strong financial incentive for employers to exhaust all opportunities to recruit locally before seeking to nominate an overseas worker.

In the past the 457 visa has enabled regional wine industry employers to fill long term vacancies. In addition, particularly in relation to winemaking and viticulturist positions, employees with experience and skills from key overseas winemaking countries, including Spain, Italy, France, Chile, Argentina, USA and South Africa can bring important know-how and different perspectives and skills regarding wine grape growing and winemaking to the benefit of the South Australian wine industry. Just as Australian winemakers and viticulturists can take bring their different experience and skills with them to overseas vintage/wine industry work arrangements.

On the few occasions the Temporary Work (Long Stay Activity) visa (subclass 401) has been utilised, this has involved larger industry employers who are part of global group with overseas offices offering employment in Australia to overseas staff under a staff exchange program.

Employee entitlements and compliance

Wine Industry employers are predominately covered by the Wine Industry Award 2010. This Modern Award covers employees in the following seven streams:

- bottling;
- cellar;
- cellar door sales;
- laboratory;
- vineyard;
- warehouse and supply; and
- coopers.

However, larger wine industry employers tend to be covered by enterprise agreements.

SAWIA works closely with our members to ensure compliance with industrial instruments and industrial law and to provide assistance with a range of employment relations and human resources matters.

In relation to the level of compliance with sponsor obligations, we note that since 2007, the percentage of sponsors who have faced sanctions or cancellation of the sponsorship has been very low, ranging from 0.5% to 1.4% of all sponsors (across all industries).⁹

Conclusion

The temporary work visa system ensures that in the event wine industry employers are unable to fill skilled or unskilled positions by recruiting domestic applicants, overseas labour

⁸ Ibid

⁹ , John Azarias, Jenny Lambert, Prof. Peter McDonald and Katie Malyon, *Independent Review into Integrity in the Subclass 457 Programme September 2014*, p. 85

can be utilised. SAWIA does not support the imposition of additional rules and requirements aimed at restricting the access to the temporary work visa system and further adding to the cost of utilising employees with temporary work visas.

The most recent review into the 457 visa - the Independent Review into Integrity in the Subclass 457 Programme has made a number of recommendations to improve education, monitoring, inter-agency cooperation and sanctions. It is important that the DIBP is given sufficient time to implement these reforms.