

Senate Education and Employment References Committee
Questions on Notice – Thursday 17 July 2015
Canberra, ACT

The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders

Question number	Hansard page number	Witness	Question asked by	Answered
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6	54-55	Department of Immigration and Border Protection	Lines	Yes
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9	Written QoN's	Department of Immigration and Border Protection	McKenzie	Yes
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1	52	Department of Employment	Lines	Yes

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CHAIR: We are not seeing evidence of that. I would be grateful if either now or on notice you could point us to examples of where 457 workers are being used alongside of the training up of the local workforce. That would be a good model for us to have a look at.

Ms Wilshire: Case studies specifically?

CHAIR: Yes.

Ms Wilshire: It is in the survey work, but we can have a look at whether we can find some case studies.

“More than Temporary: Australia’s 457 visa program”

The survey asked both employers and employees a series of questions around training. The results refute previous conceptions of a one-way negative effect on training; the survey shows a positive correlation between temporary migration and the development of human capital.

Over three-quarters (76 per cent) of 457 visa holders help to train or develop other workers. The emphasis on training was echoed by employers, 68.5 per cent of whom said they were using 457 visa holders to train Australian counterparts. For the largest employers, of over 500 people, this rose to 74 per cent. Moreover, 85 per cent of employers listed strong skills in teamwork and people management as an important factor in assessing a potential nomination.

Perhaps the most significant indicator of the importance of the program in upskilling Australia is that nearly four in every five multinational organisations surveyed specified that they use 457 visa holders to train and develop Australian workers.

Profile in same report:

“In the recent Asian Century White Paper, the Gillard Government committed that by 2025, 10 of Australia’s universities will be in the world’s top 100. This focus on higher education is at the heart of establishing Australia as a knowledge leader in the 21st Century. The 457 program will play a vital role in facilitating this commitment. In 2011-12, the higher education sector sponsored over 1500 visa holders on 457 visas as university lecturers. This was over a 100 per cent increase on the year before and 2.3 per cent of all visa grants. Peter is a researcher at a Group of Eight university. He has a European background, obtained his PhD in the United States and has worked in a variety of roles, including for the World Bank. He came to Australia in 2008 on a 457 visa to undertake a threeyear post-doctoral position. His background in economic development was integral to supporting new research centred on governance in the Asia-Pacific region. In describing his work environment, Peter said he could not wish for a better faculty. “My workplace is highly supportive and I have the opportunity to work among some of the best researchers in the world as well as unmatched conditions for work and research. Up and down the corridor I work in, world-class academics occupy every office. I have the opportunity to share my skills and background with others who I also learn from.” Peter currently teaches and undertakes research. Despite this, Peter says life as a migrant in Australia can be complex. Support through networks is more difficult to attain, as they must be built from scratch, while identifying with Australian culture can be challenging. “Racism is still prominent in Australia. The lack of diversity across leadership positions in society is startling. In the United States, your background doesn’t matter. Your accent and your skin colour are irrelevant. In Australia, perhaps this is true to a lesser extent. I sense that sometimes migrants living in parallel with Australians is not ‘good enough’. This comes back to attitudes around what is expected of migrants to integrate into Australia.” Peter’s employer only uses the 457 program to hire academic staff. Sarah, a human resources manager, said administrative and other staff are all Australian citizens, permanent residents or do not

require sponsorship. She described the 457 visa process as “seamless” and does not report any issues. She said the university advertises globally to attract world experts in their fields and that all appointments are merit-based. All staff are employed under an agreed Enterprise Agreement. “Researchers and academics like Peter bring a wealth of experience that sometimes isn’t widely available in Australia. Last year we hired 15 new academics on 457 visas with a total faculty of about 200.” Peter is in the process of becoming a permanent resident, sponsored by his employer. His experience highlights how two-step migration works in practice. Nearly 70 per cent of all employer sponsored permanent residency visas are granted to migrants who already live and work in Australia on 457 visas. Peter believes universities can play an important role in the integration of migrants to Australia. “Meritorious hiring practices by Australian universities in a global industry ensure students are exposed to a range of perspectives and people. Hearing a French, German or Chinese lecturer and interacting with teachers from all over the world is a positive experience for young adults. Small symbols can multiply over time and help integration within society”.

Second profile in same report:

Almost all of the ASX200 companies use the 457 program. Among the original rationales listed for introducing long-term visas for temporary migrants was to enable global firms to move employees from one country to another. David, a senior HR manager at a multinational retail firm operating in Australia and over 200 other countries, explains how 457 visa holders have added to his firm.

“We have between 10 to 15 senior executives on 457 visa holders from a total staff population of over 5000. The vast majority of all recruitment is Australian as we consider the firm to be highly competitive in the labour market.” “Temporary migration allows these highly experienced managers to hit the ground running. We operate across all regions of the world and through a number of subsidiary firms. They bring knowledge and skills along with a proven, qualified background. This is vital for our business model and when change occurs.”

“Being a multinational firm, the majority of these are ‘internal transfers’, bringing with them an understanding of the firm’s culture, existing manufacturing and sales methods. Being located in Australia is also a major attraction to some.” David says in very select circumstances, the firm also targets ‘hot spots’. He said recently this occurred with hiring a handful of engineers given competition from the resource industry. However, there are also downsides. “There are drawbacks for us. The process is expensive and bureaucratic. We use an external migration agent. The firm also wears potential risk under the conditions of the 457 program. This is why we use the program only when necessary and do so judiciously.” He says that recent changes to short-term business visas have negatively impacted the firm. “These changes now require more temporary, short-term jobs to undertake the 457 visa process. This has really impacted on ancillary services, such as IT support, where short-term jobs are common. Global firms require flexibility with staff movement otherwise inefficiencies and bottlenecks are quickly created where there was none before.”

“As a global multinational, part of Microsoft’s attraction to new and existing employees is the opportunity it provides to move from one part of the world to another. Microsoft offers employees the experience of working overseas without disconnecting from their profession.

It does this by advertising all jobs internally so around three-quarters of vacant positions are filled by existing staff (globally or locally), and the remainder from local talent outside of Microsoft.

It is not often commercially viable to relocate new external staff because of the lack of local market knowledge and Microsoft experience. For these reasons, it is unlikely that a new employee would be recruited and relocated, unless they were substantially better than all other applicants, including existing and local staff.

There are very few international recruits that are not already Microsoft employees or who do not already have Australian permanent residency.

The benefits to Microsoft are that globally experienced staff bring greater cultural understanding and empathy, and this helps the company get things done ‘better and faster’. Particularly for more senior staff, Microsoft values diversity in order to obtain the necessary balance of experience, gender, styles and thinking in a team. Experience of global markets is particularly desirable.

Microsoft helps employees relocate where this is required to meet an identified Microsoft skills need. This will include the costs of physically moving, finding schools, and appropriate accommodation costs. Where staff wish to relocate for personal rather than professional reasons (such as to follow a partner), Microsoft will try to match their skills with available vacancies in the new location.”

Source: Microsoft Australia (via the Business Council of Australia)

The upskilling of Australians by 457 visa holders occurs frequently in the mining sector. Some examples of up-skilling in the resources and infrastructure industry, provided by an MCA member company, are as follows:

Project Director

- Participated in the firm's leadership program, designed for employees to participate in a structured learning and mentoring program.
- Recommended employees to participate and complete the firm's Diploma of Project Management.
- Mentored middle management, package leaders, project leadership teams and engineers.

Senior Project Manager

- Mentored & up-skilled package leaders & project teams throughout the duration of the project. Due to the exemplary leadership exerted by this employee, the project has been selected as a finalist in the industry Awards.
- Participated in the firm's leadership program.
- Recommended employees to participate and complete the firm's Diploma of Project Management.

Construction Manager

- Completed firm's Diploma of Project Management.
- Mentored site & project engineers on the project.
- Mentored graduates.

Profile from the Minerals Council Australia.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/017) – Parliamentary Inquiry - Operation Cloudburst -

Asked:

CHAIR: Okay. That is what I was talking about before. I might still want to go to Cadena, but I was asking about Cloudburst. Some concerns have been raised. Those 38 workers did not have the relevant visas, as I understand it. Is that correct?

Mr Nockels: Yes—potentially unlawful citizens.

CHAIR: So they were deported?

Mr Nockels: I do not know exactly of the 38. I can check for you, but generally if they are unlawful citizens then ultimately that is the pathway.

Answer:

36 of the 38 unlawful non-citizens detained as part of Operation Cloudburst have been removed from Australia. One will be removed shortly and one remains in detention.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/018) – Parliamentary Inquiry - Benara Nurseries -

Asked:

CHAIR: In relation to Benara Nurseries in Western Australia, have they been fined in relation to employing workers without the formal documentation?

Mr Nockels: I do not know that answer. I would have to check for that.

Answer:

No, the Department of Immigration and Border Protection has not fined Benara Nurseries in relation to employing workers.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/019) – Parliamentary Inquiry - 457 compliance monitoring -

Asked:

Senator RICE: Are there particular work types that you monitor as a matter of course?

Mr Wilden: As a matter of course, there are certain occupations which regularly appear in our non-compliant type area. We could probably get together something for you that highlights what they are. Again, a lot of it comes down to geography, occupation, salary level—those are the sort of indicators. If I can, I will take that on notice—

Senator RICE: Yes, take it on notice.

Mr Wilden: and come back to you with a short paper that sets out the characteristics or the issues that we look at.

Answer:

The Department of Immigration and Border Protection's monitoring of the 457 programme is framed according to a standard compliance model used by most integrity units. That is, the monitoring response increases proportionately to the level of non-compliance of the Sponsor and their culpability.

The indicators considered for the purposes of targeted monitoring include:

- allegations from visa holders, community members and other third parties
- information obtained through other areas of the department such as 457 processing areas or compliance activity
- trends of concern and emerging risks
- referrals from the Fair Work Ombudsman
- analysis of data within departmental systems, for example industry group of Sponsor, number of nominations, annual turnover of company, classification level of occupation and salary level, and/or
- identified links between non-compliant sponsors and other sponsors.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/020) – Parliamentary Inquiry - Student visa eligibility -

Asked:

Mr Wilden: The challenge will always be that one of the control points there is that if you are here you have to abide by the conditions of the visa, not only for us but by the conditions of your study as an international student. That means attending classes and doing all those sorts of activities, which immediately puts a limiter, if you like. Changes to the student program in recent years have shifted the onus onto universities to make sure that their students are appropriately enrolled and attending et cetera. We have been focusing at that end as well. Reporting of abuse in that system is not as high. I would argue that is probably because to come here as an international student is a very expensive business, so you are probably finding that to pay the fees—

Senator RICE: You might want to work more than 20 hours a week then.

Mr Wilden: Or, conversely, if you can afford to pay the fees and show us—because you have to show evidence of funds to the department before you enter the country. I cannot remember the figure off the top of my head, but I will get it for you. That is set at a limit that shows you can support yourself without the need to work. There is a break on that automatically. Yes, you can work if you wish, but if you choose not to the terms of your visa being granted go to your ability—you have to pay the fees and show you have enough money to support yourself in Australia for the duration of your study. That is not a requirement of the working holiday visa, other than the first few thousand dollars; you have to show that you have some money to come here.

Answer:

In order to meet the financial requirements for the grant of a Student visa, applicants must be able to demonstrate or declare that they have sufficient funds to cover the cost of living and to meet their tuition and travel costs while studying in Australia.

Student visa applicants who are processed under Assessment Level (AL) 1 and streamlined visa processing (SVP) arrangements are required to declare that they have sufficient funds and generally do not need to provide formal evidence of funds to the department.

Student visa applicants who are processed under AL2 and AL3 must provide formal evidence to the department of funds to cover tuition and living costs for the first 12 months of study in Australia for both themselves and any dependents. They must also provide evidence of funds to cover their travel to Australia and school study costs for any dependent children.

Under AL2 and AL3, the amount of funds that students must evidence is as follows:

- tuition costs – as per education provider fees;
- living costs – \$18,610 plus an additional 35 per cent of this amount if a spouse is included, plus a further 20 per cent if a dependent child is also included then a further 15 per cent for every other additional dependent child;
- study costs for dependent children – \$8,000 per child; and
- travel costs – cost of travel to and from Australia (as applicable) for all family members.

In addition, while in Australia, students are required to continue to satisfy the criteria for the grant of their visa, including having access to sufficient funds. Failure to do so may result in visa cancellation.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/021) – Parliamentary Inquiry - monitoring of 417 and the 462 visas -

Asked:

Senator RICE: What resources does the department put into monitoring the 417 and the 462 visas?

Mr Wilden: I will have to come back with a number for you, because we have undertaken quite a lot of change with the Border Force creation. We used to have a student compliance team who used to do all of that—the investigation, desktop monitoring, investigating dob-ins et cetera. I do not know where they have ended up in the new structure.

Senator RICE: It would be good if you could take that on notice. Thank you.

Mr Wilden: Yes, that is fine.

Answer:

The Department has increased its resourcing to detect, deter and respond to allegations of exploitation within the Working Holiday Maker (WHM) visa programme (subclass 417 and 462 visas), in conjunction with the Fair Work Ombudsman (FWO).

Taskforce Cadena, a joint Department and FWO effort, has been established to coordinate a Whole of Government effort to reduce the exploitation of foreign workers, working as required with other relevant agencies, including the Australian Federal Police, the Australian Securities and Investment Commission, the Australian Taxation Office, and State and Territory law enforcement agencies. The Australian Border Force is also undertaking additional supporting enforcement activities – such as Operation Cloudburst in May 2015 – which target exploitative behaviour.

Operation Cloudburst involved approximately 120 officers from the Department, working with inspectors from the FWO and State and Federal police, to undertake 11 operations in all states.

Where possible breaches of Australian workplace law are encountered during monitoring operations, these are referred to the FWO.

The compliance and enforcement activities also focus on deterrence and ensuring overseas workers know their rights. In cooperation with the FWO, the Department has reviewed and strengthened the information provided to Working Holiday Makers through its website and the visa grant letters that are sent to every visa holder, to help them find out about their workplace rights and the role of the FWO.

Within the WHM visa programme, the Department operates a targeted audit process of second Working Holiday (subclass 417) visa applications to verify 'specified work' employment claims. Additionally, a new pay slip evidence requirement is currently being introduced from 31 August 2015 onwards, to ensure that participants who undertake 'specified work' are being appropriately remunerated.

These coordinated and calibrated activities across government are helping to detect, deter and respond to compliance issues within the WHM visa programme and also within temporary resident visa programmes more broadly.

The Department also has a range of mechanisms in place for the reporting of compliance issues. These include a public dob-in line for reporting matters of concern, and call centres which cater to enquiries and reports from visa holders, employers and members of the public. Information is able to be provided to the Department via phone, fax, letter, email or online report.

Additionally, the Department's Visa Entitlement Verification Online (VEVO) provides an online service for visa holders to check their visa details and entitlements including the work entitlement. Employers can also use VEVO to check if a visa holder is able to work or undertake other activities in Australia, such as study. VEVO is accessible from the Department's website (<http://www.border.gov.au/vevo>) or through a new mobile application (myVEVO – available free from app stores).

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/022) – Parliamentary Inquiry – Conversion to Permanent Residency from 457 visas

Asked:

CHAIR: Do you keep stats on what percentage of 457 workers convert to—
Mr Wilden: We do. I do not think that I have them with me, but we can certainly provide them.

CHAIR: Can you give those to us on a yearly breakdown?

Mr Wilden: Over the last five years?

CHAIR: Yes.

Mr Wilden: Okay.

Answer:

Please see below for the percentages of Subclass 457 workers who have converted to permanent or provisional visas over the last five years.

Subclass 457 visa holders with a visa expiring in a financial year by next substantive visa held

Source: Department of Immigration and Border Protection, 2015 (BE8564.01)

	Financial year of subclass 457 visa expiry				
	2010-11	2011-12	2012-13	2013-14	2014-15
<i>Percentage (%) moved to a permanent / provisional visa</i>	49.6%	50.2%	53.7%	54.5%	44.0%

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/023) – Parliamentary Inquiry – Visa eligibility

Asked:

CHAIR: Presumably, as you said, once you have been here—two years, is it?

Mr Wilden: Two years minimum, yes.

CHAIR: Presumably your English has increased. So what tests do you need to meet?

Mr Wilden: Rather than run through that now off the top of my head, I will provide for you the criteria for 457 visas and the criteria for employer sponsored visas. They are the two main ones that people come in on. People coming here as tourists apply for permanent employment. It is only what you are allowed to do onshore or offshore.

Answer:

The pathway most used by Subclass 457 visa holders to gain permanent residence is the Temporary Residence Transition stream of the Employer Nomination Scheme or the Regional Sponsored Migration Scheme.

The International English Language Testing System (IELTS) test score requirement to gain permanent residence through the Temporary Residence Transition stream is at least a score of five (5) in each of the four test components.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/024) – Parliamentary Inquiry - numbers of visas held -

Asked:

CHAIR: Yes, that is the point I am making. So there are at least two visas there.

Mr Wilden: Yes.

CHAIR: For that whole period of time their entitlements might change as well.

Mr Wilden: As a student probably not. The conditions of being here are pretty similar across them. It is just a boarding school is different than an independent adult at—

CHAIR: Yes, that is right.

Mr Wilden: There would be criteria that would be different.

CHAIR: But do you keep stats on that conversion? If someone is here as a boarder on that visa then becomes a vet or a university student, presumably there is a change in the visa, is there?

Mr Wilden: You have to change visas, yes.

CHAIR: So are you keeping stats on that progression?

Mr Wilden: We keep an enormous amount of data. We would not keep that as a matter of course, but we could find it. If required, we can run reports.

Answer:

In programme year 2014-15, there were 3,050 student visas granted to Schools Sector student visa holders to progress to the Higher Education Sector.

A further 458 student visas were granted to student visa holders progressing from the Schools Sector to the Vocational Education and Training Sector.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 17 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(TWVP/025) – Parliamentary Inquiry - 457 Visa sponsors -

Asked:

a) Are there any 457 visa holders sponsored by any of the following employers, either in respective national offices, or by any of their state branches?

- i. Australian Council of Trade Unions
- ii. Australian Education Union
- iii. Australian Institute of Marine and Power Engineers
- iv. Australian Manufacturing Workers' Union
- v. Australian Maritime Officers Union
- vi. Australasian Meat Industry Employees Union
- vii. Australian Nursing and Midwifery Federation
- viii. Australian Services Union
- ix. Australian Workers Union
- x. Community and Public Sector Union
- xi. Construction, Forestry, Mining and Energy Union
- xii. Electrical Trades Union
- xiii. Finance Sector Union
- xiv. Health Services Union
- xv. Maritime Union of Australia
- xvi. Media, Entertainment and Arts Alliance
- xvii. National Tertiary Education Union
- xviii. National Union of Workers
- xix. Shop Distributive and Allied Employees Association
- xx. Transport Workers Union
- xxi. United Voice (formerly LHMU)

b) If so, how many visa holders are currently under their sponsorship, respectively?

c) What is their nominated occupation, salary, and nationality?

d) Have any of the same unions sponsored any 457 holders in the last five years, and, if so, how many, and for what periods?

e) What labour market testing was undertaken by the relevant employing sponsors? If LMT was not undertaken, why not?

f) Have any of these unions ever been found by the Department to have not complied with their sponsorship obligations?

Answer:

a) There are 457 visa holders currently sponsored by the following employers:

Australian Council of Trade Unions	No	
Australian Education Union	Yes	<5
Australian Institute of Marine and Power Engineers	No	
Australian Manufacturing Workers' Union	No	
Australian Maritime Officers Union	No	
Australasian Meat Industry Employees Union	No	
Australian Nursing and Midwifery Federation	No	
Australian Services Union	No	
Australian Workers Union	No	
Community and Public Sector Union	No	
Construction, Forestry, Mining and Energy Union	No	
Electrical Trades Union	No	
Finance Sector Union	No	
Health Services Union	No	
Maritime Union of Australia	No	
Media, Entertainment and Arts Alliance	No	
National Tertiary Education Union	No	
National Union of Workers	No	
Shop Distributive and Allied Employees Association	Yes	<5
Transport Workers Union	No	
United Voice (formerly LHMU)	Yes	9

b) United Voice/LHMU are currently sponsoring nine visa holders. Each of the remaining unions are sponsoring less than five visa applicants. The Department is unable to provide additional information on individual sponsorships in this situation due to privacy reasons.

c) Workplace Relations Advisor is the most frequently sponsored occupation, with the other sponsored occupations being Copywriter, Organisation and Methods Analyst, Database Administrator and Training and Development Professional. The majority of visa holders come from the United Kingdom and the United States of America with the other nationalities sponsored being India, the Netherlands, Canada and Singapore. The average salary is \$72,479, with the minimum salary being \$52,080 and the maximum salary being \$118,502. The Department is unable to provide information relating to individual nominated occupations, salaries and nationalities due to privacy reasons.

d) In addition to the current sponsorships, the Australian Services Union, Finance Sector Union, Maritime Union of Australia, National Tertiary Education Union and Transport Workers Union have sponsored 457 visa holders in the previous five years. Departmental records indicate that all of the above employers have together sponsored a total of 41 individuals over the last five years.

e) Labour Market Testing was introduced on 29 June 2013 and provides for a number of exemptions, which include nominated occupations in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) skill levels one and two. The 41 nominations were not required to provide evidence as to whether labour market testing had been undertaken as they were all either lodged before 29 June 2013 or were exempt because of the ANZSCO skill level they related to.

f) No.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/001 – Australia's temporary skilled migration program

Asked:

Can the department provide an overview of the legislative and regulatory framework which governs Australia's temporary skilled migration program?

Answer:

Through its administration of the *Migration Act 1958* and the Migration Regulations 1994, the Department of Immigration and Border Protection is responsible for the entry of temporary skilled migrants to Australia.

The *Migration Act 1958* determines which non-citizens can come to and remain in Australia. The Migration Regulations 1994 identify the attributes ('prescribed criteria') a non-citizen applicant must have to be granted a visa and the requirements for employers to become a sponsor of a visa holder. Where a conflict exists, the Act will always prevail over the Regulations.

Policy instructions provide guidance on interpreting legislation and government programs.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/002 – Visa categories for temporary skilled migration

Asked:

What are the main visa categories for temporary skilled migration?

Answer:

The Temporary Work (Skilled) visa (subclass 457) programme is the primary programme used by employers to sponsor overseas workers to work in Australia on a temporary basis. In addition to the 457 visa, other subclasses which facilitate temporary skilled migration are:

- Temporary Work (Short Stay Activity) visa (subclass 400)
- Temporary Work (Long Stay Activity) (Subclass 401) visa
- Training and Research (Subclass 402) visa
- Temporary Work (International Relations) (Subclass 403) visa
- Temporary Work (Entertainment) (Subclass 420) visa

A full list of temporary visas with work rights is provided at Attachment C (p 22) of the Whole of Government submission to the inquiry.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/003 – 457 Programme

Asked:

What are the main legal processes and requirements employers have to comply with to sponsor workers on 457 visas?

Answer:

Application

There are three processing stages in sponsoring an overseas worker under the 457 programme:

Sponsorship: The employer applies for approval to become a standard business sponsor. This is required to nominate an occupation and position for a 457 visa.

Nomination: The employer nominates an occupation and position within their business, and a prospective skilled worker for the role.

Visa application: The person nominated to work in the nominated occupation applies for the 457 visa. This is the final step to obtaining a 457 visa.

Becoming a standard business sponsor

As detailed on pages 2-3 of the Whole of Government submission to the inquiry, to nominate skilled overseas workers for a 457 visa, the employer must become an approved standard business sponsor. The requirements for approval are:

- must have applied in the correct manner, that is, used the correct form and paid the correct fee;
- must be lawfully operating a business in or outside Australia;
- must indicate the number of positions to be nominated over the term of the approved sponsorship;
- if lawfully operating a business in Australia and traded for 12 months or more, must meet the prescribed training benchmark;

- if lawfully operating a business in Australia and has been trading for less than 12 months, must have an auditable plan to meet the prescribed training benchmark;
- if a lawfully operating a business in Australia, must attest, in writing, that they have a strong record of, or a demonstrated commitment to, employing local labour and non-discriminatory employment practices;
- if a lawfully operating a business overseas but not in Australia, must be seeking to be approved as a standard business sponsor with the intention of sponsoring a person under the 457 programme to either:
 - establish, or assist in establishing, a business operation in Australia with overseas connections, or
 - fulfil, or assist in fulfilling, their contractual obligation;
- there is no adverse information known to the department about the sponsor, or a person who is associated with the sponsor. The department may disregard any adverse information if it is satisfied that it is reasonable to do so;
- if a lawfully operating a business in Australia, and have previously been approved as a standard business sponsor, that the sponsor has fulfilled any commitments made in meeting the training requirements during the period of the most recent approval as a standard business sponsor; and
- must not have recovered, transferred or taken any action that would result in another person paying costs associated with the business becoming a sponsor or recruiting a proposed visa holder.

These requirements apply to all applicants whether they are individuals, businesses, in or outside Australia with the exception that overseas standard business sponsors are neither subject to the training requirements nor the attestation.

Nominating a position

Equivalent Terms & Conditions of Employment and Minimum Salary Levels

Employers must ensure that 457 visa holders are afforded equivalent terms and conditions of employment as Australians engaged to work in that occupation in the local labour market. This requirement ensures that 457 visa holders are not paid less than the market rate, and accordingly cannot be engaged to undercut local employment conditions and wages.

In addition to this, the market salary rate must be greater than the Temporary Skilled Migration Income Threshold (TSMIT) which is currently set at \$53,900 p.a. While the TSMIT does not replace the need for employers to pay the market salary rate, it plays an important role in the 457 programme by providing a minimum entry level into the programme and a further level of protection for 457 visa holders to ensure that they can be self-reliant and can maintain a reasonable standard of living in Australia.

Labour Market Testing

The Labour Market Testing (LMT) requirement applies to approved standard business sponsors for skill level 3 occupations (Technicians and Trades Workers) on the Australian and New Zealand Standard Classification of Occupation (ANZSCO) and nurses and engineering occupations, unless exempt under international trade obligations. In certain circumstances the LMT requirement will also need to be met

for positions that have become available following the retrenchment or redundancy of an Australian citizen or permanent resident.

Under LMT employers are required to provide evidence that they have adequately tested the local labour market prior to engaging a 457 visa holder, including submitting details of advertising expenses and other recruitment activities. This requirement helps to ensure that Australian citizens and permanent residents are provided with the opportunity to apply for positions first.

If an Australian citizen or permanent resident has been retrenched or made redundant from a business, or an associated entity, within the four months prior to that business lodging a nomination for an overseas worker, they must provide information about those redundancies or retrenchments and evidence of their labour market testing.

Genuine Position

Employers must demonstrate that there is a genuine position that needs to be filled. This allows the department to consider a range of factors including whether it is an existing or new position within the business and whether the occupation fits within the scope, scale and size of the business. It also enables the department to seek further information where there are integrity concerns.

Sponsorship Obligations

All approved standard business sponsors of 457 visa holders must meet a range of obligations to ensure that visa holders are treated appropriately, protected from exploitation, and are not used as a substitute for Australian workers or to undercut local wages. These obligations include: providing a monetary contribution towards the training of Australian workers, paying sponsorship fees and recruitment costs, and paying return travel costs for visa holders on request.

Approved sponsors must comply with their sponsorship obligations for the time specified under each obligation with some applying after the sponsorship agreement has ceased. Sponsors are monitored regularly by the department to ensure they are complying with their sponsorship obligations and may be subject to various sanctions for not meeting them. If a sponsor is found to have failed one of their sponsorship obligations, the department institutes appropriate action, which may take the form of imposing administrative sanctions, issuing infringement notices, executing an enforceable undertaking or applying to the federal court for a civil penalty order.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/004 – Granting 457 visas

Asked:

What are the main legal and administrative processes the Minister and the department follow in considering whether to grant 457 visas?

Answer:

Decisions on 457 visa applications are made by the department based on all the information provided by the applicant and in accordance with the relevant requirements for visa grant, which include health and character requirements.

Standard Business Sponsor

To grant a 457 visa under the standard business sponsor stream the department assesses whether the 457 visa applicant has demonstrated that:

- both the applicant and the occupation specified in the visa application are the subject of an approved nomination which has not ceased to be in effect;
- the applicant has a genuine intention to perform the occupation, and the position associated with the occupation is genuine;
- the applicant has the necessary skills and experience to perform the occupation;
- the applicant meets the English language proficiency requirement (unless exempt);
- if required to do so, that the applicant has the relevant licensing and registration required to perform the duties of the nominated occupation in Australia.

There must be no adverse information known about the visa applicant's sponsor or a person associated with the sponsor. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

Labour Agreements

To assess the eligibility of an applicant for the grant of a 457 visa under the labour agreement stream, the department considers the following:

- the occupation specified in the visa application must be the subject of a labour agreement;
- both the applicant and the occupation specified in the visa application must be the subject of an approved nomination by the party to the labour agreement which has not ceased to be in effect;
- the applicant must, if required to do so, demonstrate that they have the necessary skills and experience to perform the occupation;
- the applicant must, if required to do so, demonstrate that they have the relevant licensing and registration required to perform the duties of their nominated occupation in Australia.

There must also be no adverse information known about the party to the labour agreement or a person associated with the party to the labour agreement. The department may disregard any adverse information if it is satisfied that it is reasonable to do so.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/005 – Work agreements

Asked:

Noting that (i) The Migration Act 1958 ("the Act") defines work agreements in subsection 5(1); (ii) Section 140GC of the Act provides that for the purposes of the definition of work agreement, the regulations may prescribe requirements that a work agreement must satisfy; (iii) The Migration Regulations 1994 ("the Regulations") in Regulation 2.76 further defines work agreements and prescribes requirements for work agreements; and (iv) Section 140H of the Act provides that work agreements may vary sponsorship obligations which would otherwise be imposed by the Regulations and that work agreements may themselves impose sponsorship obligations: Are there any other relevant provisions in the Act or the Regulations which define or affect the operation of work agreements?

Answer:

There are no other provisions in the *Migration Act 1958* or the Migration Regulations 1994 which define or affect a work agreement.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/006 – Work agreements

Asked:

Can the Department provide an explanation of how work agreements fit into the legal and regulatory framework for temporary migration?

Answer:

The Legal framework detailing Work Agreements, often referred to as Labour Agreements, can be found at s140GC of the *Migration Act 1958*, s5(1) of the *Migration Act 1958* and Regulation 2.76 of the *Migration Regulation 1994*.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/007 – Work agreements

Asked:

What is the legal status of a work agreement?

Answer:

A work agreement is a deed under contract law.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/008 – Work agreements

Asked:

What is the legal authority or basis on which the Minister negotiates work agreements?

Answer:

The power to enter into a work agreement derives from the Executive Power of the Commonwealth pursuant to s 61 of the Constitution.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/009 – Work agreements

Asked:

In practice, are work agreements negotiated by the Minister personally or is the Minister's authority delegated to officers of the department? If delegated, how does the delegation occur?

Answer:

The Minister has authority to enter into work agreements at his/her discretion. In certain circumstances (as agreed between the Minister and the Department), the Minister can authorise the Department to enter into a work agreement on his/her behalf.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0010 – Work agreements

Asked:

Are there any legal constraints on what the Minister or the Department may include in a work agreement?

Answer:

Regulation 2.76 of the Migration Regulations 1994 confines the subject matter of the agreement.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0011 – Work agreements

Asked:

Are there any legal provisions or administrative guidelines which deal with the way the Department or the Minister are to exercise any discretion they have in negotiating a work agreement? If so, can the provisions be identified or guidelines be provided?

Answer:

Regulation 2.76 of the Migration Regulations 1994 confines the subject matter of work agreements and they must be consistent with statute and the general law. The Department has policy guidelines to support its assessment of nominations and visa applications made under work agreements.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0012 – Work agreements

Asked:

Where do Enterprise Migration Agreements, Labour Agreements and Designated Area Migration Agreements fit into the work agreement framework?

Answer:

The Enterprise Migration Agreement programme is no longer in effect.

Project Agreements, Labour Agreements, Designated Area Migration Agreements are each discrete programmes under the broader Labour Agreement programme.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0013 – Work agreements

Asked:

Are Enterprise Migration Agreements, Labour Agreements and Designated Area Migration Agreements types of work agreements?

Answer:

Yes, if they meet the definition in Regulation 2.76 of the Migration Regulations 1994. The Enterprise Migration Agreement programme is no longer in effect.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0014 – Work agreements

Asked:

Are there types of work agreements other than Enterprise Migration Agreement, Labour Agreements and Designated Area Migration Agreements?

Answer:

No. The Enterprise Migration Agreement programme is no longer in effect.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

***(Impact of Australia's Temporary Work Visa Programmes)* – Parliamentary Inquiry – TWVP/0015 – Free Trade Agreements**

Asked:

Noting that as part of the China-Australia Free Trade Agreement package, the Australian Government and the Government of the People's Republic of China have signed a Memorandum of Understanding on Investment Facilitation Arrangements ("the IFA MOU") and this IFA MOU provides that the Department may enter Investment Facilitation Arrangements (IFAs), IFA project agreements and labour agreements under an IFA:

- a) What is the legal status of each of these types of agreements?
- b) What is the legal basis on which the Department will enter IFAs or IFA project agreements?
- c) What is the legal basis on which the Department will enter labour agreements under an IFA?
- d) Are IFAs or IFA project agreements a type of work agreement? If yes, how is it that there can be a separate labour agreement with a direct employer sitting under an IFA or the IFA project agreement? If no, what is the legal status of IFAs and IFA project agreements?
- e) Are labour agreements under IFAs a type of work agreement? If yes, what are the legal, regulatory and administrative requirements governing how these agreements are negotiated and what can be included in these agreements? If no, what is the legal basis for the Department to enter labour agreements under IFAs?
- f) Is the Department required to enter into a labour agreement with a direct employer if there is an IFA or an IFA project agreement in place?
- g) Will there be any changes to the Act, the Regulations or any other legislative instruments to give effect to these Investment Facilitation Arrangements? If yes, please give details.
- h) What legal status does the IFA MOU have? Does it give rise to any legal obligations on the Minister or the Department? If yes, please give details.

Answer:

a) What is the legal status of each of these types of agreements?

The legal status of a Labour Agreement is the same as it is for a work agreement.

b) What is the legal basis on which the Department will enter IFAs or IFA project agreements?

The IFA MOU is an Instrument of less than treaty status. The MOU creates bilateral obligations between governments. Information on the operation of Project Agreements, through which IFAs will operate, have been published on the Department of Immigration and Border Protection website. A labour agreement 'under' an IFA may be a type of work agreement if it meets the requirements for being a work agreement in Regulation 2.76.

c) What is the legal basis on which the Department will enter labour agreements under an IFA?

The Legal framework detailing Work Agreements, often referred to as Labour Agreements, can be found at Section 140GC of the Migration Act, Section 5(1) of the Migration Act and Regulation 2.76 of the Migration Regulations.

d) Are IFAs or IFA project agreements a type of work agreement? If yes, how is it that there can be a separate labour agreement with a direct employer sitting under an IFA or the IFA project agreement? If no, what is the legal status of IFAs and IFA project agreements?

The IFA is an MOU. Project Agreements sit under the MOU and provide endorsement for the project company to enter into a Labour Agreement with the Department.

e) Are labour agreements under IFAs a type of work agreement? If yes, what are the legal, regulatory and administrative requirements governing how these agreements are negotiated and what can be included in these agreements? If no, what is the legal basis for the Department to enter labour agreements under IFAs?

A labour agreement 'under' an IFA may be a type of work agreement if it meets the requirements for being a work agreement in Regulation 2.76.

The legal and regulatory requirements governing how labour agreements are negotiated and what requirements can be included are dealt with in question TWVP/0015c above and question TWVP/0011.

The legal basis for entering into a labour agreement is also dealt with above.

f) Is the Department required to enter into a labour agreement with a direct employer if there is an IFA or an IFA project agreement in place?

No.

g) Will there be any changes to the Act, the Regulations or any other legislative instruments to give effect to these Investment Facilitation Arrangements? If yes, please give details.

No.

h) What legal status does the IFA MOU have? Does it give rise to any legal obligations on the Minister or the Department? If yes, please give details.

The IFA MOU is an Instrument of less than treaty status. The MOU creates bilateral obligations between governments.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 09 July 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(Impact of Australia's Temporary Work Visa Programmes) – Parliamentary Inquiry – TWVP/0016 – Labour Market Testing and Free Trade Agreements

Asked:

Noting that (i) Section 140GBA of the Act imposes a labour market testing condition in certain cases where sponsors seek to utilise temporary skilled migrant workers; (ii) Sub-sections 140GBA(1)(c) and 140GBA(2) provide that labour market testing is not required where it would be inconsistent with any international trade obligation of Australia, as determined by the Minister; (iii) Chapter 10 of the China-Australia Free Trade Agreement on the Movement of Natural Persons provides that Australia will not require labour market testing in relation to certain categories of Chinese nationals; (iv) the National Interest Analysis of the China-Australia Free Trade Agreement states at paragraph 23 that to implement the obligations under the agreement there will need to be a Migration Act determination in relation to labour market testing; and (v) paragraph 8 of the IFA MOU states that the sponsorship obligations under an IFA labour agreement may include labour market testing requirements: Will the Government retain the ability to require labour market testing under IFA labour agreements? Is it open to the Minister to determine under sub-section 140GBA(2) that labour market testing under IFA labour agreements is inconsistent with Australia's international trade obligations under the China-Australia Free Trade Agreement?

Answer:

The *Migration Act 1958* contains provisions which require Labour Market Testing to apply to certain sponsors, but only where it would not be inconsistent with international trade obligations specified in a legislative instrument. This Determination will be updated to include commitments once the treaty-making processes are finalised for the China-Australia Free Trade Agreement (ChAFTA).

The contents of the IFA MOU do not fall within scope of the Determination. Project companies under the IFA are expected to provide robust labour market analysis of current and projected labour needs. Employers or sub-contractors seeking to access a labour agreement under the project agreement must provide evidence that they have made significant efforts to recruit suitably qualified Australians.

Senate Education and Employment References Committee
Questions on Notice Department of Employment– Thursday 17 July 2015
Canberra, ACT

**The impact of Australia's temporary work visa programs on the Australian labour market and on
the temporary work visa holders**

1. HANSARD, PAGE 52

CHAIR: We heard today—I cannot remember which group it was; it was one of the migration groups—that you were undertaking surveys.

Ms Parker: Employer surveys—yes.

Senator McKENZIE: The Migration Council this morning.

CHAIR: Yes. I am wondering whether this issue of the 417 visa is something you were looking at, in terms of the impact it is having in reducing pay rates across an industry.

Ms Parker: That is an interesting question. I will find out for you.

Response:

The Department of Employment and the Department of Immigration and Border Protection have commissioned a joint research project on the Experiences of Temporary Residents. This research project includes surveys of employers and visa holders which will collect data on employment and wage rates which may inform future analysis on the economic and labour market impact of working holiday and other temporary visa holders.