

Introduction

- 1.1 The Committee maintains that the highest priority must be placed on providing Australians with job opportunities and training. However, given the strong economy and low unemployment rate of skilled Australians at the present time¹ and that Australia faces the prospect of a declining rate of growth in its workforce age population,² temporary skilled migration represents an important strategy to meet short-term skills needs in some areas.
- 1.2 While temporary skilled migration to fill proven labour shortages offers a useful mechanism in the short term, a continuing strong focus on expanding training opportunities for Australians and building workforce participation and diversification therefore offers a more important, longer term solution to the skills shortage.
- 1.3 The temporary skilled migration program seeks to provide business with ready access to the global skilled labour market through streamlined visa processing arrangements to ensure the continued growth of the Australian economy, while safeguarding employment and training opportunities for Australian workers. As the Australian Mines and Metals Association commented, for example:

The resources sector will contribute minerals and energy exports in the order of \$110 billion in 2006-2007. This represents approximately two thirds of Australia's total

1 The unemployment rate for 'skilled' Australians (workers having an occupation in Australian Standard Classification of Occupations groups 1-4) is currently 'less than two per cent', Commonwealth Government, *Submission No. 33*, p. 4.

2 See Treasury, *Intergenerational Report 2007*, April 2007, <http://www.treasury.gov.au/igr/IGR2007.asp> (accessed 25 June 2007).

commodity export earnings ... Whilst the majority of the resource sectors labour requirements are sourced from within Australia, it is vital that where skill shortages exist at the macro or micro level alternative sources of labour are readily accessible in order to ensure the continued contribution of the resource sector to the Australian economy.³

- 1.4 The major visa class used for temporary skilled migration is the Temporary Business (Long Stay) visa (subclass 457) – the 457 visa. As will be detailed later, the number of 457 visas granted has increased markedly over recent years. A growing number of 457 visa holders are also applying for and successfully being granted permanent residency. Against this background, it was therefore timely for the Committee to conduct an inquiry into temporary business visas and, in particular, the 457 visa category.
- 1.5 In recent times there has also been some controversy surrounding the 457 visa. This has been for a range of reasons, including media publicity about abuses of the 457 visa program. The recent announcements by the Minister for Immigration and Citizenship to improve monitoring and compliance under the program and the fact that there were recently two major inquiries into the visa running concurrently – this inquiry and the Council of Australian Governments (COAG) review – reinforce that it is in Australia's interests to ensure the effectiveness, fairness and integrity of this important temporary business visa.
- 1.6 The Committee welcomed the Minister's announcements on changes to the 457 visa program over the course of this inquiry (see Appendix D), addressing areas of concern raised in evidence to the Committee. The presence of officials from the Department of Immigration and Citizenship (DIAC) was noted at the majority of the public hearings. The Committee is pleased that the inquiry process precipitated prompt action in this regard, even prior to the Committee tabling its report.
- 1.7 To conclude, it is the Committee's view throughout this report that the 457 visa is a skilled visa – it is, and should remain, a means through which Australian businesses can employ skilled workers. The extension of the 457 visa to try and meet unskilled labour shortages would undermine the rationale for the visa and put at risk its acceptability to the general community.

3 Australian Mines and Metals Association, *Submission No. 30*, pp. 3-4.

Temporary business visa program

- 1.8 The temporary residence program has three streams:
- economic
 - social and cultural exchange
 - international relations.⁴
- 1.9 A range of temporary business visas fall under the economic stream, as is discussed later in this chapter. DIAC highlights some of the benefits to Australia of the economic stream of the temporary residence program as including:
- employment creation
 - enhancement of our skill and technology base
 - development of cutting edge technologies and industries and increased competitiveness and an expansion of international trade and trading links.⁵
- 1.10 During 1995-96, the temporary business visa program underwent significant change as a result of the recommendations of the Roach report, entitled *Business Temporary Entry – Future Directions*.⁶ This major review of the program also resulted in the introduction of the 457 visa, in August 1996.⁷ A further review of Australia's temporary business visa program was undertaken in June 2002 as part of an inquiry into Australia's temporary residence program.⁸

Workplace arrangements

- 1.11 While 457 visa sponsoring employers and workers are governed in much that they do by the provisions of the *Migration Act* 1958, they are also firmly part of Australia's workplace arrangements and many

4 DIAC website, http://www.immi.gov.au/media/fact-sheets/46temporary_entry.htm (accessed 7 June 2007).

5 DIAC website, http://www.immi.gov.au/media/fact-sheets/46temporary_entry.htm (accessed 7 June 2007).

6 Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry – Future Directions*, Department of Immigration and Ethnic Affairs, Canberra, August 1995 (chaired by Mr Neville Roach).

7 Media release by the Hon Philip Ruddock MP, former Minister for Immigration and Multicultural and Indigenous Affairs, 'Streamlined temporary business entry approved', 5 June 1996, <http://www.minister.immi.gov.au/media/media-releases/1996/r96021.htm>.

8 External Reference Group, *In Australia's Interests: A Review of the Temporary Residence Program*, Department of Migration and Indigenous Affairs, Canberra, June 2002.

are therefore governed by the provisions of the federal *Workplace Relations Act 1996*.⁹

- 1.12 The polarised views expressed at times about Australia's workplace relations system in the context of this inquiry could have complicated discussion on some of the key issues that are the subject of this report. However, it must be emphasised that the Migration Committee is not a workplace relations committee or an employment committee or an industry committee. The Committee's first priority is dealing with migration matters.
- 1.13 It is also noted that, during the course of the inquiry, the Prime Minister announced changes to Australia's workplace relations system through the introduction of a 'stronger safety net for working Australians'.¹⁰

Ensuring effectiveness, fairness and integrity

- 1.14 While the Committee was aware of diverging views on certain aspects of the 457 visa program, there was broad agreement on other fundamental aspects of the program.
- 1.15 Firstly, the Committee noted general agreement amongst those who participated in the inquiry – across employer and union groups, state governments and industry sector representatives – that Australia currently faces a temporary skills shortage in some areas:

... action needs to be taken to address the current and future skill needs of Australian industry.¹¹

After more than a decade of robust economic growth, Australia is experiencing serious skilled labour shortages ... across broad areas of Australian commerce and industry.¹²

Western Australia has been experiencing record low levels of unemployment (averaging 3.6 percent last year) and even with high participation rates, there are still severe shortages of skilled workers ... Western Australia has projects worth

9 Some workers are covered by state workplace relations legislation – see 'WorkChoices and who is covered', <https://www.workchoices.gov.au/ourplan/publications/html/WorkChoicesandwhoiscovered.htm> (accessed 25 June 2007).

10 Media release by the Prime Minister, 'A stronger safety net for working Australians', 4 May 2007, http://www.pm.gov.au/media/Release/2007/Media_Release24302.cfm.

11 Australian Council of Trade Unions, *Submission No. 39*, p. 7.

12 Australian Chamber of Commerce and Industry, *Exhibit No. 6*, p. 1.

more than \$69 billion underway or planned over the next few years, requiring more than 40,000 workers.¹³

The Australian resources sector ... is experiencing difficulties in securing sufficient skilled labour and professionals.¹⁴

The ANF recognises that Australia is facing a skills shortage, including a nursing shortage ...¹⁵

The tourism, transport and infrastructure industries have acknowledged ... that workforce shortages are a growing challenge to delivering efficient and effective business operations.¹⁶

- 1.16 As is discussed below, the Committee also noted that in the face of this skills shortage many industry participants provided evidence to the inquiry on their efforts to source Australian workers for the skill sets they required. Further, the 457 visa program was viewed as only a short-term 'fix', with expanded training opportunities for Australians and increased workforce participation and diversification being regarded as more important solutions to the skills shortage.
- 1.17 That said, however, the Committee acknowledges that a range of views were expressed on the question of why Australia faces a skills shortage. For example, a falling birth rate, the ageing population, a decline in university places and local training rates, the 'boom' in the resources sector, inefficiencies in the internal labour market, low unemployment rates and a buoyant economy were variously cited as contributory causes to the skills shortage.¹⁷
- 1.18 The Committee agrees that the reasons for the skills shortage are complex and varied – there is no single reason for the current shortage of skills in Australia. Of interest in this regard is that the

13 WA Government, *Submission 68*, p. 1.

14 Australian Mines and Metals Association, *Submission No. 30*, p. 5.

15 Australian Nursing Federation, *Submission No. 63*, p. 3.

16 Tourism and Transport Forum and Infrastructure Partnerships Australia, *Submission No. 28*, p. 3.

17 For a cross-section of views in this regard, see the Australian Mines and Metals Association, *Submission No. 30*, p. 6; the Migration Institute of Australia, *Submission No. 9*, p. 3; the Australian Manufacturing Workers Union, *Submission No. 40*, p. 32; and Engineers Australia and the Association of Professional Engineers, Scientists and Managers Australia, *Submission No. 54*, p. 4.

Productivity Commission is currently conducting a research project into the 'Theory and evidence of skill shortages in Australia'.¹⁸

- 1.19 Secondly, the Committee observed general support, across a diverse range of representatives, for a temporary business visa program per se:

The 457 visa program is critical to addressing Australia's already serious skills shortages ...¹⁹

I should be clear in concluding that, where there is no other option, the ACTU does not oppose the use of temporary overseas skilled workers. Such programs, however, must be subject to sound regulation and compliance.²⁰

Temporary business visas are highly valued by industry as a means to source temporary skilled labour at a time of high skill shortages and the system has our strong support.²¹

Our general approach as a union is that we believe temporary visa arrangements can have a valid place in our society, but only as a small niche program that has integrity ...²²

The restaurant and catering industry (and other sectors of the hospitality industry) are strong users of temporary business migration (in particular the 457 Visa).²³

... the LHMU does envisage a role for temporary business visas for skilled employees.²⁴

... my Government is very supportive of skilled migration programs, including the 457 visa scheme, provided that adequate protections and procedures are in place for both employers and employees.²⁵

18 'While much has been written about skill shortages in Australia, there is scope for more independent, rigorous analysis. The aim of this project is to synthesise, within an economic framework, current theory and evidence on skill shortages in Australia', Productivity Commission website, <http://www.pc.gov.au/researchproject/2006/061205.html> (accessed 15 June 2007).

19 Australian Chamber of Commerce and Industry, *Submission No. 74*, p. 2.

20 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 2.

21 Australian Industry Group, *Submission No. 57*, p. 3.

22 Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 68.

23 Restaurant and Catering Australia, *Submission No. 50*, p. 15.

24 Liquor, Hospitality and Miscellaneous Union, *Submission No. 20*, p. 3.

25 WA Government, *Submission No. 68*, p. 2.

- 1.20 That said, however, the Committee again acknowledges that a range of views were evident on what form such a program should take and therefore on the level of change required to the existing 457 visa program to ensure its effectiveness, fairness and integrity. Some argued for minimal change:

Commerce and industry regards the 457 visa program as generally working well, with few changes needed (and then only at the margin).²⁶

The MIA considers it important to leave the current eligibility requirements generally undisturbed and to only implement change at the margins to what is already there.²⁷

- 1.21 Others argued for major change:

It is our view that the current issues arising from the growth of the use of 457 visas cannot be fixed by mere tinkering around the edges of the 457 visa program. In this respect, we believe a full regulatory overhaul of the system is required.²⁸

The Queensland Government has repeatedly called for urgent reforms to Australia's temporary skilled migration program and, more specifically, the visa subclass 457.²⁹

- 1.22 On this point, it needs to be noted that over the course of the inquiry several changes to the 457 visa program were announced by the Minister for Immigration and Citizenship, including new civil penalties for sponsoring employers who breach the law, greater powers for DIAC and the Workplace Ombudsman to investigate employers, and higher English language requirements (see Appendix D for further details), which would appear to address some of the concerns of those arguing for major change.

Training and workforce participation

- 1.23 The Committee emphasises that, while temporary skilled migration offers a useful mechanism to address Australia's skills shortage in the short term, increasing investment in the training of Australian workers and encouraging higher rates of workforce participation and

26 Australian Chamber of Commerce and Industry, *Submission No. 74*, p. 1.

27 Migration Institute of Australia, *Submission No. 9*, p. 5.

28 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 2.

29 Queensland Government, *Submission No. 65*, p. 1.

diversification are undoubtedly more important, longer term solutions to the skills shortage. This point was reinforced by a number of contributors to the inquiry:

The 457 visa is a short-term option; it is not a substitute for other approaches. We hear often people say, 'It's a substitute for education and training'. It is not. It is not one or the other; it is both.³⁰

Access to temporary and permanent overseas skilled labour is a small but important component of a resources sector employer's workforce. The intention of resources sector employers in the long term is to up skill and supplement the Australian workforce, not replace it.³¹

Temporary visa arrangements should not become a substitute for ... Australians training their own skilled workforce.³²

- 1.24 Temporary skilled migration to fill proven labour shortages is therefore just one way of addressing the skills shortage and there is a need for a continuing strong focus on expanding training opportunities for Australians. The Committee was therefore pleased to hear of efforts by resources and engineering bodies, for example, to encourage new entrants to their industry; expand training opportunities; employ additional graduates, apprentices and trainees; and promote their sector through school and university careers initiatives.³³
- 1.25 A number of submissions, including from the Australian Council of Trade Unions (ACTU), called for the abolition of the Trade Skills Training visa (subclass 471), which allows new apprentices to receive a working visa to undertake an apprenticeship in Australia.³⁴

30 Dr Davis, Australian Chamber of Commerce and Industry, *Transcript of Evidence*, 1 June 2007, p. 41.

31 Australian Mines and Metals Association, *Submission No. 30*, p. 9.

32 Mr Sutton, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 16 May 2007, p. 68.

33 See, for example, Mr Bamborough, Baker Hughes Australia, *Transcript of Evidence*, 30 April 2007, p. 33; Australian Mines and Metals Association, *Submission No. 30*, p. 9; and Ms Motto, Association of Consulting Engineers Australia, *Transcript of Evidence*, 16 May 2007, p. 35.

34 ACTU, *Submission No. 39*, p. 6. See also the Victorian Government on the 471 visa, *Submission No. 72*, p. 7. A small number of Trade Skills Training visas (subclass 471) have been granted to date – see Mr Parsons, DIAC, in *Transcript of Senate Standing Committee on Legal and Constitutional Affairs, Estimates*, 21 May 2007, p. 64.

1.26 Greater diversification of the workforce through broadened participation from women and Indigenous people was highlighted as another way of increasing the available labour force. For example, the Transport Workers Union spoke of the need for the transport sector to 'make the industry more attractive to new entrants, including women'.³⁵

1.27 The range of initiatives being taken in this area was best summed up by the Chamber of Minerals and Energy WA and the Minerals Council of Australia:

The industry has been proactive in developing strategies in addressing the chronic and acute skills/people shortages. The industry is working on three fronts:

- awareness – the industry currently directly funds around \$6.5 million per year for education initiatives across the three levels of primary, secondary and tertiary education, promoting awareness of the industry, enhancing tertiary education in earth sciences, metallurgy and engineering, and promoting careers in the industry;
- attraction – addressing barriers or impediments to new entrants to the industry, specifically school leavers, Indigenous Australians, women and mature age workers from other industries, and skilled migration in mining related professional and trade skills occupations;
- retention – improving retention rates specifically through upskilling the existing workforce, fatigue management, addressing location and lifestyle attractiveness.³⁶

1.28 The 457 visa program has a formal training requirement as a central component, as is discussed in Chapter 2.

Labour shortages and lower skilled workers

1.29 Some participants to the inquiry maintained that Australia was facing not only a skills shortage but a broader labour shortage:

HMAA is concerned that the debate in this area continues to focus on the skills shortage which is a single (albeit very important) component of the broader problem of a general

35 Mr Crosdale, Transport Workers Union, *Transcript of Evidence*, 13 June 2007, p. 1. See also Ms Sykes-Hutchins, Globe Communications, *Transcript of Evidence*, 13 June 2007, p. 3.

36 Chamber of Minerals and Energy WA and the Minerals Council of Australia, *Exhibit No. 2*, p. 3. See also Mr Howard-Smith, Chamber of Minerals and Energy WA, *Transcript of Evidence*, 30 April 2007, p. 9.

shortage of labour in many areas of Australia, especially those impacted by the resources boom.³⁷

- 1.30 The 457 visa program does not enable sponsorship of low skilled/unskilled workers. However, a number of representatives from the tourism, agricultural and hospitality sectors put the case that the program should be broadened to encompass such workers:

Restaurant and Catering Australia believes that, if the level of service provided by the industry is to continue, a new source of unskilled labour needs to be found. It is suggested that the need for unskilled labour should be regarded as inevitable and some work done to pilot approaches in perhaps a geographically or occupationally bounded way.³⁸

We consider the time is right for the Government to redress this problem and introduce a new visa or add to the conditions to the current 457 that allow unskilled labourers to be brought to Australia for a specific period of time to meet an identified shortage of workers.³⁹

The state government gave a presentation to the federal minister for immigration at a recent consultation forum. We put to him that there is probably a strong argument in Western Australia for the introduction of a new visa to address the semi- and non-skilled areas. For instance, the hospitality industry and the agricultural food industry are struggling right now for labour across their areas.⁴⁰

- 1.31 The Committee notes the concerns raised in this regard but emphasises that there is considerable and proper sensitivity in the Australian population about entry arrangements for overseas workers other than those which exist already under the temporary skilled migration provisions. For example, while the unemployment rate for skilled Australians is currently 'less than two per cent', the unemployment rate for unskilled Australians is 'around six per cent'.⁴¹

37 Hotel Motel and Accommodation Association, *Submission No. 10*, p. 8.

38 Restaurant and Catering Australia, *Submission No. 50*, p. 20.

39 Snedden, Hall and Gallop Lawyers, *Submission No. 17*, p. 5.

40 Mr Moir, Small Business Development Corporation, WA, *Transcript of Evidence*, 30 April 2007, p. 15. See also Infrastructure Partnerships Australia and Tourism and Transport Forum Australia, *Submission No. 28a*, p. 4.

41 Commonwealth Government, *Submission No. 33*, p. 7.

- 1.32 Further, the Committee emphasises that there are other migration mechanisms which have been implemented to ease labour shortages in the agricultural, hospitality and tourism sectors – for example, the ongoing changes to the working holiday maker program.⁴² As the Committee heard during the inquiry process:

... a couple of initiatives related to the 457 visa system ... have worked very well for our sector. One is the granting of the second working holiday visa to those who have worked in regional Australia in horticultural and agricultural positions for a minimum of three months of their first working holiday visa. This is beginning to have an impact in our industry. The extension of countries with reciprocal agreements for working holiday visas is also a tremendous help.⁴³

- 1.33 The Committee also notes the recent recommendation by the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, as a result of its inquiry into workforce challenges facing the Australian tourism industry, that a second-year extension to the Working Holiday Maker visa be implemented for ‘individuals who undertake at least three months work in a regional or remote location in the tourism and hospitality industry’.⁴⁴
- 1.34 However, the Committee is aware that some regions are experiencing labour shortages and that certain sectors are finding it difficult to recruit and retain staff. It is therefore acknowledged that distinct sectoral and regional issues, as well as seasonally significant variations to workforce demand, complicate this matter. As one submission emphasised: ‘a complex and difficult problem such as this needed to be addressed on a number of fronts and through a significant commitment across numerous areas of policy, Government administration, and industry practice’.⁴⁵

42 Media release by Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, ‘Working Holiday Visa enhancements a boost for backpackers and regional employers’, 9 May 2006, <http://www.minister.immi.gov.au/media/media-releases/2006/v06109.htm>.

43 Mrs Carstairs, Rural Enterprises, *Transcript of Evidence*, 30 April 2007, p. 36.

44 House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, *Current Vacancies: Workforce Challenges facing the Australian Tourism Sector*, Canberra, June 2007, p. xvii.

45 Hotel Motel and Accommodation Association, *Submission No. 10*, p. 15.

- 1.35 The Committee is therefore pleased to note that these issues have properly been addressed by several recent Committee inquiries dealing with labour shortages in particular sectors:
- Senate Standing Committee on Employment, Workplace Relations and Education – inquiry into workforce challenges in the transport industry (ongoing);
 - *Current Vacancies: Workforce Challenges facing the Australian Tourism Sector*, House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation (June 2007);
 - *Servicing our Future: Inquiry into the Current and Future Directions of Australia's Services Export Sector*, House of Representatives Standing Committee on Economics, Finance and Public Administration (May 2007);
 - *Skills: Rural Australia's Need*, House of Representatives Standing Committee on Agriculture, Fisheries and Forestry (February 2007); and
 - *Perspectives on the Future of the Harvest Labour Force*, Senate Standing Committee on Employment, Workplace Relations and Education (October 2006).
- 1.36 To conclude, it is the Committee's view that the 457 visa is a skilled visa – it is, and should remain, a means through which Australian businesses can employ skilled workers. The extension of the 457 visa to try and meet unskilled labour shortages would undermine the rationale for this visa and put at risk its acceptability to the general community.

Overview of temporary business visa categories

- 1.37 The DIAC website lists three 'skilled worker temporary visas':⁴⁶
- Temporary Business (Long Stay) visa (subclass 457)
 - ⇒ Standard Business Sponsorship
 - ⇒ Labour Agreements
 - ⇒ Service Sellers
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⁴⁶ DIAC, 'Skilled workers temporary visa options', <http://www.immi.gov.au/skilled/skilled-workers/visa-temporary.htm> (accessed 7 June 2007).

⇒ Invest Australia Supported Skills Program

- Medical Practitioner visa (subclass 422)
- Educational visa (subclass 418)

1.38 Aside from these visas, there are a range of business visitor visas:⁴⁷

- Business (Short Stay) visa (subclass 456)
- Sponsored Business Visitor (Short Stay) visa (subclass 459)
- Electronic Travel Authority⁴⁸ (Business Entrant – Short Validity) visa (subclass 977)
- Electronic Travel Authority (Business Entrant – Long Validity) visa (subclass 956)

1.39 There are also two training visas, where visa holders train in a business environment:

- Trade Skills Training visa (subclass 471)
- Occupational Trainee visa (subclass 442)

Focus of report

1.40 Based on the nature of the evidence received by the Committee and given that the terms of reference for the inquiry particularly singled out the 457 visa as being of interest, this report will focus on the Temporary Business (Long Stay) visa (subclass 457) – Standard Business Sponsorship and Labour Agreements.

1.41 However, two other temporary business visa categories were also highlighted for attention in evidence to the Committee, particularly in terms of their interaction with the 457 visa: the Medical Practitioner visa (subclass 422) and the business visitor visas, including the Business (Short Stay) visa (subclass 456). Accordingly, these visas are briefly discussed below.

1.42 There were also issues raised about the Occupational Trainee visa (subclass 442). While this visa category essentially falls outside the terms of reference for this inquiry in that it is principally a training

⁴⁷ Commonwealth Government, *Submission No. 33*, p. 4.

⁴⁸ An ETA is an electronically stored authority for travel to Australia. Passport holders from over 30 countries are eligible to apply for an ETA.

rather than a business visa, concerns were raised about possible misuse of this visa for work purposes and its interaction with the 457 visa. The 442 visa is therefore also briefly discussed below.

Temporary Business (Long Stay) visa (subclass 457)—Standard Business Sponsorship and Labour Agreements

- 1.43 The 457 visa is Australia's main temporary skilled work visa.⁴⁹ Standard Business Sponsorship and Labour Agreements both fall under the 457 visa category. For the financial year 2006-07 (to 17 June 2007), grants to primary applicants totalled 40,720 for Standard Business Sponsorship and 3,170 for Labour Agreements.⁵⁰ Labour Agreement sponsorship therefore currently represents some eight per cent of the overall 457 visa program. (Unless specified, further references to the 457 visa in this report generally refer to the Standard Business Sponsorship aspect of the visa, with Labour Agreements discussed separately.)
- 1.44 The 457 visa allows approved employers to sponsor overseas workers for up to four years to fill skilled positions that meet minimum skill and salary levels. The DIAC website sets out in detail the eligibility requirements and conditions of the 457 visa program for both sponsoring employers and visa holders.⁵¹ These requirements and conditions were also set out in detail in the Commonwealth Government submission to the inquiry. (For ease of reference, these are reproduced at Appendix E of this report.)
- 1.45 There are currently some 12,000 employer sponsors under the 457 visa program⁵² and, as at 17 June 2007, some 57,130 visa holders working in Australia under the visa (that is, as a cumulative total from previous years).⁵³ The number of primary 457 visas granted grew

49 Workers entering Australia under the 457 visa are entitled to bring family members, known as secondary applicants. This report is principally concerned with primary applicants rather than secondary applicants. References to 457 visa holders in this report therefore generally apply to the primary applicants unless specified.

50 DIAC, *Submission No. 86a*, p. 24.

51 DIAC website, <http://www.immi.gov.au/skilled/skilled-workers/sbs/index.htm>.

52 Ms Daniels, DIAC, *Transcript of Evidence*, 1 June 2007, p. 74.

53 DIAC, *Submission No. 86a*, p. 24. This is from a total of some '105,000 primary and secondary 457 visa holders onshore' — see Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, p. 81.

from 27,350 in 2004–05 to 39,530 in 2005–06, an increase of around 44 per cent (see Table 1.1).

Table 1.1 Primary and secondary 457 visa grants: 1997-2007⁵⁴

Program year	Primary	Secondary	Total
1997–98	16 550	14 330	30 880
1998–99	16 080	13 250	29 320
1999–00	17 540	13 530	31 070
2000–01	21 090	15 810	36 900
2001–02	18 410	15 100	33 510
2002–03	20 780	16 020	36 800
2003–04	22 370	17 130	39 500
2004–05	27 350	21 250	48 590
2005–06	39 530	31 620	71 150
2006–07 ⁵⁵	34 170	30 290	64 460

Source Janet Phillips, *Research Note No. 15*, 2006–07, ‘Temporary (long stay) business visas: subclass 457’, data for 1997–2006 (Answer to Question on Notice No. 53, Budget Estimates, Immigration Portfolio, 22 May 2006), <http://www.aph.gov.au/library/pubs/RN/2006-07/07rn15.htm>, p. 2; and Commonwealth Government, data for 2006–07 (to 31 March 2007), *Submission No. 33b*, p. 7.

1.46 Table 1.2 sets out the number of primary 457 visa grants in 2006–07 by state/territory. Table 1.3 sets out the top 15 citizenship countries for primary 457 visa grants in 2006–07. (Other statistics on the 457 visa for 2006–07, including on salaries and occupations, are set out in the Commonwealth Government submission.⁵⁶)

1.47 While DIAC has primary responsibility for administration of the 457 visa program, it ‘works closely with DEST and DEWR in terms of matters such as skills assessment and training requirements for Australians’.⁵⁷ DIAC also works closely with other Commonwealth and state/territory agencies whose legislation may be affected by the entry of people on 457 visas – for example, the Workplace Ombudsman and state/territory agencies responsible for workplace relations, fair trading and OH&S matters.

⁵⁴ Figures exclude Independent Executives and are rounded to the nearest 10.

⁵⁵ Figures to 31 March 2007 only.

⁵⁶ Commonwealth Government, *Submission No. 33b*.

⁵⁷ Commonwealth Government, *Submission No. 33*, p. 4.

Table 1.2 Primary 457 visa grants in 2006-07 (to 31 March 2007) by state and territory

State/Territory	Primary grants
ACT	500
NSW	11 900
NT	660
QLD	6 120
SA	1 070
TAS	290
VIC	7 400
WA	6 040
Not Recorded	190
Total	34 170

Source Commonwealth Government, *Submission No. 33b*, p. 7.

Table 1.3 Top 15 countries for primary 457 visa grants in 2006-07 (to 31 March 2007)⁵⁸

Country of citizenship	2005-06	2006-07
United Kingdom	7 390	7 880
India	2 930	4 700
Philippines	1 680	2 900
China, Peoples Republic of	1 630	1 890
United States of America	1 570	1 880
South Africa, Republic of	1 560	1 790
Germany, Federal Rep. of	1 080	1 170
Irish Republic	1 250	1 150
Canada	1 000	990
Japan	930	880
Malaysia	590	830
France	620	640
Netherlands	470	520
Singapore	290	420
Zimbabwe	290	420
Indonesia	330	410
Others	5 780	5 720
Total	29 370	34 170

Source Commonwealth Government, *Submission No. 33b*, p. 11.

58 Comparative data 2005-06 (to 31 March 2006) and 2006-07 (to 31 March 2007), see Note 1, '[t]his report is based on ... data recorded for visa subclass 457 in the 2006-07 financial year and provides a comparison with the same period in the previous year', Commonwealth Government, *Submission No. 33b*, p. 4.

457 visa program objectives and principles

1.48 DIAC sets out the objectives and principles underlying the 457 visa program as follows:

The Subclass 457 visa provides Australian businesses with rapid access to the global pool of skilled workers in order to help business to meet their needs at a time of significant skill shortages.

It is not intended that these visas provide a vehicle for employers to minimise their obligation to hire and train Australians. Consequently employers who participate in this programme must demonstrate a commitment to training Australians ...

Given the unemployment rate of skilled Australians is now less than two per cent, and we face the prospect of a declining rate of growth in our workforce age population, a mechanism that provides rapid access to global skills is central to Australia's prosperity.

By delivering urgently needed skills, this visa helps the Australian economy to grow and become more competitive internationally. This is key to job creation.

The design principles of the visa seek to establish the most efficient means of achieving its objective. These principles include:

- an effective and efficient process to meet the needs of business;
- ensuring that this visa does not undermine the commitment of business to training Australians and improve the skills base of their workforces;
- ensuring this visa does not undermine Australian conditions;
- adopting a risk management approach to targeting the areas and degree of checking claims made in sponsorship/visa applications (and follow-up monitoring and site visits) noting that the majority of employers who use the visa are compliant;
- recognising the special needs of regional Australia;
- leveraging off the information, intelligence and expertise of other agencies;

- using objective visa criteria and electronic support wherever possible to assist sponsor and visa applicants to self-select and streamline processing;
- establishing separate arrangements for dealing with exceptional circumstances;
- making employer undertakings as clear as possible;
- collaborating with Commonwealth and State agencies to increase compliance;
- strengthening and better tailoring penalties to breaches; and
- recognising that Australia's obligations under international trade agreements ... include legally binding commitments that do not permit labour market testing in certain circumstances. It is under these commitments that Australian companies are able to use Australian expertise in delivering overseas contracts.⁵⁹

Key issues

- 1.49 The wide scope of the inquiry terms of reference – examining the adequacy of current eligibility requirements and the effectiveness of compliance arrangements, and identifying areas where procedures can be improved – inevitably raised numerous concerns. This report necessarily focuses on the broad key issues. It was therefore beyond the scope of this report, for example, to review visa arrangements for secondary applicants under the 457 visa program.

Security and health checks

- 1.50 The Committee acknowledges the crucial importance of two 'threshold' eligibility criteria for 457 visa applicants – that is, the need to meet character and health requirements. These criteria are fundamental to ensuring the integrity of the 457 visa program and, first and foremost, the safety and welfare of the Australian population.
- 1.51 As the following information on the character requirements on the DIAC website suggests, all 457 visa applicants are assessed against a 'character' test⁶⁰ but police checks are not routinely carried out on all applicants:

59 Commonwealth Government, *Submission No. 33*, pp. 5-6.

60 As defined under section 501 of the *Migration Act 1958*, http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s501.html (accessed 5 July 2007).

Everyone who wishes to enter Australia must be assessed against the character requirements ...

For the Australian Government to determine whether you are of good character, you may be asked to provide police certificates for each country you have lived in for 12 months or more over the last ten (10) years since turning 16.⁶¹

- 1.52 The DIAC fact sheet on the character requirement further states that 'Section 501 of the Act contains a character test to ensure that visa applicants and visa holders are of acceptable character. The test puts the onus on visa applicants, and visa holders, to show that they are of good character'.⁶²
- 1.53 DIAC form 80, 'Personal particulars for character assessment', requires applicants to provide information on previous addresses; passports and citizenship; employment and education history; and visits to Australia and other countries. The form also seeks information about criminal convictions or involvement in terrorist activities, as well as background information on parents and siblings.⁶³ Other DIAC forms require applicants to provide police certificates⁶⁴ and information on any previous criminal charges, convictions or fines.⁶⁵
- 1.54 The Committee received some commentary relating to police and security checks for doctors under the 457 visa:

The Subclass 457 Visa has a quicker approval process than the Subclass 422 Visa. Specifically, the Subclass 457 Visa application and approval process is more expedient and facilitates the quick placement of doctors in rural and remote communities. Effectively it means that RWAs can get a doctor on the ground faster. [The Subclass 457 Visa does not require medical practitioners to have police clearances to be undertaken, whereas the Subclass 422 Visa does. This means that if there are issues regarding police clearances, and the

61 DIAC website, <http://www.immi.gov.au/allforms/character-requirements/index.htm> (accessed 5 July 2007).

62 DIAC, Fact Sheet 79, 'The character requirement', 30 January 2007, <http://www.immi.gov.au/media/fact-sheets/79character.htm> (accessed 5 July 2007).

63 DIAC Form 80, July 2007, <http://www.immi.gov.au/allforms/pdf/80.pdf> (accessed 5 July 2007).

64 DIAC Form 47P, 'Character requirements: penal clearance certificates', July 2007, <http://www.immi.gov.au/allforms/pdf/47p.pdf> (accessed 5 July 2007).

65 DIAC Form 1101, 'Police records check', July 2007, <http://www.immi.gov.au/allforms/pdf/1101.pdf> (accessed 5 July 2007).

medical practitioner has used the Subclass 457 Visa these problems will not be picked up until the candidate applies for Permanent residency in Australia. However, the police checks requirement of the Subclass 422 Visa do cause the visa process to be delayed for several months.]⁶⁶

The main difference between the 422 visa and the 457 visa is that police clearance is mandated for the 422 but is not usually requested for a 457, although a case manager may request additional character check information as required even with a 457. The 457 visa process can therefore be a quicker process than the 422 if the applicant does not have to undertake police clearances as in some countries these can take months to obtain.⁶⁷

- 1.55 It is crucially important that DIAC ensure the integrity of security and police checks of 457 visa applicants so there is no risk to the Australian public, while still ensuring streamlined visa processing arrangements for employers. The Committee also draws attention to the high position of trust in which doctors, regardless of whether they are overseas or locally trained, are placed in the community.
- 1.56 On 8 July 2007, the Prime Minister announced the introduction of stronger border controls, encompassing Australia's visa system. The Prime Minister commented that the new border control system would include 'more efficient systems with enhanced auditing capacity to ensure that security requirements do not slow down processes affecting legitimate business and tourism'.⁶⁸

Recommendation 1

- 1.57 **The Committee recommends that the Department of Immigration and Citizenship, together with the Australian Federal Police and other relevant agencies, review the character requirements of the 457 visa program to ensure the integrity of security and police checks, particularly with reference to any variations in these procedures for overseas trained doctors entering under the Medical Practitioner visa (subclass 422) and the 457 visa.**

66 Australian Rural and Remote Workforce Agencies Group, *Submission No. 47*, p. 3.

67 Australian General Practice Network, *Submission No. 52*, pp. 2-3.

68 Media release by the Prime Minister, 'Stronger border control', 8 July 2007, http://www.pm.gov.au/media/Release/2007/Media_Release24420.cfm.

- 1.58 The DIAC website sets out information on the health requirements for visa applicants as follows:

Temporary visa applicants

Health examinations will depend on your circumstances, your intended activities in Australia, and your country of origin or residence. You will need to undertake a health examination if:

- you are likely to enter a hospital or other health care environment, including nursing homes as either a patient, visitor, trainee or employee
- you are likely to enter a classroom environment, including preschool, creche and child care situations
- you are known or suspected of having a medical condition, regardless of your length of stay
- you are aged 70 years or older
- there are indications that you may not meet the health requirement.⁶⁹

- 1.59 Again, the Committee emphasises the crucial importance of DIAC ensuring the integrity of its health checking processes under the 457 visa program so that the health of the Australian population is not compromised.

Sectoral issues

- 1.60 The Committee found that 457 visa usage sometimes varied depending on the sector, with sponsoring employers across the meat processing and resources sectors, for example, having quite different experiences of the program:

AMIC and its members have been exposed to many issues which have resulted in access to 457 labour being denied since March 2006. The meat industry has 457 labour accessed prior to this date but has not been able to supplement these numbers since. Attempts to resolve issues delaying access to 457 labour have been unsuccessful and clearly demonstrate that the system is not working for the meat industry.⁷⁰

69 DIAC website, <http://www.immi.gov.au/allforms/health-requirements/index.htm> (accessed 5 July 2007).

70 Australian Meat Industry Council, *Submission No. 26*, pp. 2-3. On 31 July 2006, the former Minister for Immigration and Multicultural Affairs, Senator the Hon Amanda Vanstone, stated, 'I'm aware that there are some problems in the meat industry with the use of this visa ... There are some people misbehaving', *7.30 Report*, <http://parlinfoweb.parl.net/>

AMMA members have voiced their support for the 457 visa and generally have been complimentary in respect to processes involved.⁷¹

- 1.61 The scope of this report does not allow for detailed industry case studies and investigation of sectoral impacts of the 457 visa. However, the Committee believes this to be an important area of investigation for DIAC in further refining temporary skilled migration policy and the 457 visa program. (The brief discussion in Chapter 2 on use of the 457 visa in the meat processing industry suggests that such research might usefully commence with this sector.)

Recommendation 2

- 1.62 **The Committee recommends that the Department of Immigration and Citizenship commission research into sectoral usage of the 457 visa program, commencing with the meat processing sector, with a view to further refining temporary skilled migration policy and the 457 visa program with reference to specific industry sector needs.**

Permanent residency

- 1.63 An important feature of Australia's temporary business visa program, as the Migration Institute of Australia (MIA) commented, is that:

... a significant proportion of temporary business entrants go on to change their status to that of permanent resident after arrival in Australia. As such, temporary business entry has been a significant feeder into Australia's migration program ...⁷²

- 1.64 This distinguishes Australia's temporary skilled migration program from the 'guest worker' programs of other countries, where temporary, often low-skilled, workers do not have access to permanent residency or citizenship. As Ms Bissett from the ACTU commented, '[w]e recognise the absolute difference between the 457 visa program and guest worker programs, which we oppose absolutely'.⁷³

parlinfo/Repository1/Media/tvprog/VCFK60.doc.

71 Australian Mines and Metals Association, *Submission No. 30*, p. 14.

72 MIA, *Submission No. 9*, p. 4.

73 Ms Bissett, Australian Council of Trade Unions, *Transcript of Evidence*, 14 March 2007, p. 5.

- 1.65 About 25 per cent of temporary skilled migrants obtain permanent residence each year.⁷⁴ The Association of Consulting Engineers Australia advised that ‘the bulk (80%) of 457 visa holders in [the] industry become permanent residents’.⁷⁵
- 1.66 In 2005-06, some 13,300 subclass 457 visa holders applied to stay in Australia permanently.⁷⁶ DIAC further advised that 18,352 people obtained permanent residence in 2006-07 (to 17 June 2007) where the last substantive visa held was a 457 visa.⁷⁷ Over the last four years, the highest number of permanent visa grants, where the last substantive visa was a 457 visa, has been for registered nurses.⁷⁸
- 1.67 The Committee regards the permanent residency outcome offered by the 457 visa as beneficial to both the individual concerned and the broader Australian community.

Committee findings on other temporary business related visa categories

Business visitor visas

- 1.68 Australia’s business visitor visas, as listed earlier, provide for stay in Australia for periods of up to three months. (Table 1.4 sets out the number of business visitor visa grants by each subclass.) A single visa can provide for multiple entry arrangements for business visitors who come to Australia frequently for short periods. DIAC highlighted that the ‘main purpose’ of these visas is to:

... enable bona fide business visitors to come to Australia to transact business; attend conferences or seminars; undertake contract negotiations; receive or deliver business training; or explore business opportunities in Australia. The visas only provide holders to undertake salaried work in very limited circumstances. These are for work which:

74 Senator the Hon Amanda Vanstone, former Minister for Immigration and Multicultural Affairs, *Immigration Facts No. 10*, <http://www.minister.immi.gov.au/media/factsheets/fact-sheet-10-temp-great-asset.pdf> (accessed 16 July 2007).

75 Association of Consulting Engineers Australia, *Submission No. 14a*, p. 3.

76 DIMA, *Annual Report 2005-06*, Canberra, October 2006, p. 85.

77 DIAC, *Submission No. 86a*, p. 24.

78 Commonwealth Government, *Submission No. 33c*, p. 1.

- involves an emergency; and
- is very short term (a few days) in duration; and
- is highly specialised in nature (in ASCO major groups 1–4); and
- does not occur repeatedly.⁷⁹

Table 1.4 Business visitors—grants by subclass⁸⁰

Visa subclass	2004-2005	2005-2006	2006-07 to 30/04/07
Business (Short Stay) 456 visa	174 617	185 656	166 714
Sponsored Business Visitor 459 visa	107	634	2 126
Business Entrant (Long Validity) 956 visa	18 417	15 410	11 513
Business Entrant (Short Validity) 977 visa	146 283	166 633	160 560
Total	339 424	368 333	340 940

Source Commonwealth Government, *Submission 33a*, p. 1.

- 1.69 The 456 visas are ‘applied for on paper at the DIAC overseas posts and are most often used by nationals of non-ETA countries’. The 459 visas have the ‘same policy settings as the 456 visa but require the applicant to have an authorised sponsor’ (usually the Australian business with whom the applicant is dealing) and are ‘applied for on paper at the DIAC office nearest to the sponsor in Australia’.⁸¹
- 1.70 The 956 and 977 ETA visas are ‘most often applied for via travel agents or over the internet’.⁸² The 977 visa has similar conditions to the 956 visa but a shorter validity period – that is, a period of 12 months from the date of grant rather than for the life of an applicant’s passport, as is the case under the 956 visa.⁸³
- 1.71 The Committee heard of the difficulties encountered by business in obtaining an appropriate visa for someone to undertake specialist short-term work: ‘[m]any of our clients will have need of the services of an overseas specialist for only a short period of time – often for less

⁷⁹ Commonwealth Government, *Submission No. 33*, p. 4.

⁸⁰ Grant figures include both primary and secondary applicants.

⁸¹ Commonwealth Government, *Submission No. 33*, p. 5.

⁸² Commonwealth Government, *Submission No. 33*, p. 5.

⁸³ DIAC website, <http://www.immi.gov.au/skilled/business/956-977/index.htm> (accessed 13 June 2007).

than the three months which is stated as the minimum term of the 457 visa'.⁸⁴ In particular, concerns were raised about restrictions on the use of the 456 visa for short-term employment purposes:

It was intended by DIAC that the Business (short stay) 456 visa would suffice ... however following policy shifts, this visa is now much more aimed at applicants wishing to undertake business activity in Australia and not for employment. The description in DIAC policy guidelines of activities allowed on a 456 visa is vague and specifically discourages direct, full time short term (3 months) employment situations. Policy has diverged from the Migration Regulations in this area.⁸⁵

1.72 As a consequence, the Committee heard that employers have to use the 457 visa for this purpose:

Many resources sector employers have a much shorter requirement for overseas employees to work in Australia. Employees may be brought into Australia for trouble shooting for a few days where Australian expertise is not available or for the training of Australian residents for very short periods of time. In these circumstances the obligations required for a s.457 visa place an unnecessary and onerous burden upon employers. Where hands on work is performed there is no alternative visa.⁸⁶

1.73 A further problem in this regard is the current lengthy processing time for the visa: '6-10 weeks processing time to obtain a 457 visa ... makes it impossible to obtain a visa to meet the work requirements'.⁸⁷ One solution to this problem, as the MIA pointed out, is to 'enable much faster processing for short-term (less than 3 months) 457 applications'.⁸⁸

1.74 While the fast-tracking of visa applications for employers with a demonstrated record of complying with the 457 visa program, as

84 Australian Contract Professions Management Association, *Submission No. 76*, p. 18. See also Baker Hughes Australia Pty Ltd, *Submission No. 79*, p. 3; and MIA, *Submission No. 9*, p. 5.

85 MIA, *Submission No. 9*, p. 6. See also SGS Australia Pty Ltd, *Submission No. 41*, p. 5; and Mr Walsh, Fragomen Australia, *Transcript of Evidence*, 1 June 2007, p. 15.

86 Australian Mines and Metals Association, *Submission No. 30*, p. 15.

87 SGS Australia Pty Ltd, *Submission No. 41*, p. 4. See also Tourism and Transport Forum Australia and Infrastructure Partnerships Australia, *Submission No. 28a*, p. 3.

88 MIA, *Submission No. 9*, p. 6.

recently announced by the Minister, will go some way to addressing this issue, the Committee sees merit in clarification of the purpose of the 456 visa (and equivalent ETA visas), to remove ambiguity about using this visa for employment purposes as opposed to business visit purposes. The Committee also understands that, prior to July 2006, the 456 and ETA 977 and 956 visas permitted limited work rights of a short-term nature.⁸⁹

- 1.75 The Committee further believes it would assist if all the temporary business visas had consistent terminology, as it is not clear why the terms ‘business entrant’, ‘business visitor’ and ‘business short stay’ are variously used across these apparently similar categories:
- Electronic Travel Authority (Business Entrant – Short Validity) visa (subclass 977)
 - Electronic Travel Authority (Business Entrant – Long Validity) visa (subclass 956)
 - Sponsored Business Visitor (Short Stay) visa (subclass 459)
 - Business (Short Stay) visa (subclass 456).
- 1.76 The Business (Short Stay) visa (subclass 456) also confusingly sounds as though it is the short-stay version of the Temporary Business (Long Stay) visa (subclass 457), although, as discussed, they apparently have completely different purposes. The title of the 457 visa further adds to the confusion in this regard as it specifies ‘business’ rather than ‘employment’.
- 1.77 Renaming these visa classes to more accurately reflect their purpose would provide for a complete separation of temporary entry requirements for ‘employment’ and ‘business visit’ purposes. As the MIA emphasised:

For some years now the 457 Visa has been known officially as the Temporary Business (Long Stay) visa. Yet the whole purpose of the visa in policy terms is to facilitate the entry to Australia of skilled **employees** from overseas. Frankly the current name may not be the most suitable in our view. It misleads the public and employers and people overseas because it uses the word ‘business’ which to everyone implies entry to Australia to ‘do’ business, and not for employment ...⁹⁰

89 SGS Australia Pty Ltd, *Submission No. 41*, p. 5.

90 MIA, *Submission No. 9*, p. 5. See also Media, Entertainment and Arts Alliance: ‘[t]hat one class of business visa precludes employment whereas another is specifically for

Recommendation 3

- 1.78 The Committee recommends that the Department of Immigration and Citizenship:
- clarify the purpose of the Business (Short Stay) visa (subclass 456) in terms of whether it permits employment options – that is, valid entry for short-term specialists to meet the urgent needs of business;
 - work with stakeholders to ensure an effective, streamlined migration option to meet the short-term temporary employment needs of business; and
 - rename the long-stay and short-stay business visas and the business visitor visas to more accurately reflect their employment or business visit purposes, with consideration to be given to renaming the Temporary Business (Long Stay) visa as the Temporary Skilled Employment (Long Stay) visa.

Medical Practitioner visa (subclass 422)

- 1.79 Like the 457 visa, the Medical Practitioner visa (subclass 422) allows doctors (general practitioners and specialists) to work in Australia for a sponsoring employer for up to four years. However, DIAC currently encourages medical practitioners to apply for a 457 visa rather than the 422 visa:

Up until 1 April 2005, medical practitioners applied for a visa in Visa Subclass 422 Medical Practitioner. From that date, medical practitioners have been encouraged to apply for a Subclass 457 Visa.⁹¹

- 1.80 The Committee understands that the 457 visa has a ‘quicker approval process’ than the 422 visa.⁹² The Australian Medical Association (AMA) noted that around 2,500 doctors enter the country each year using business visa subclasses 457 and 422.⁹³

employment purposes can only cause confusion. The Alliance recommends ... the Temporary Business Entry Long Stay visa be renamed to appropriately reflect what it is designed to do’, *Submission No. 55*, p. 6.

91 Commonwealth Government, *Submission No. 33b*, p. 10.

92 Australian Rural and Remote Workforce Agencies Group, *Submission No. 47*, p. 3.

93 AMA, *Submission No. 43*, p. 1.

- 1.81 The recruitment of overseas trained doctors (OTDs) is a key part of Australia's response to medical workforce shortages, particularly to address the severe shortage of medical practitioners in rural and remote areas of Australia. As the AMA commented:

Over the last 10 years the percentage of doctors in Australia who have trained overseas has risen from about 20 per cent to about 25 per cent of the medical workforce. In rural and regional Australia it is up to 50 per cent in some areas.⁹⁴

- 1.82 A key aspect of this recruitment process is to ensure that every effort is made in the first instance to recruit locally trained doctors, that Australia does not actively recruit doctors from lesser developed countries and that the skills of OTDs are properly assessed.⁹⁵

- 1.83 Before a 457 or 422 visa can be approved, an OTD must obtain medical registration in the state/territory in which they intend practising. However, as the AMA emphasised:

Unfortunately, the processes and standards of OTD assessment and support vary from jurisdiction to jurisdiction. One example of such variability is that some states and territories will require an overseas trained specialist to submit to the Australian Medical Council specialist assessment process, whereas other jurisdictions may not enforce this process. Employers will also sometimes employ OTDs in 'non-specialist' positions to avoid the AMC specialist assessment process, and then require them to perform work that is specialist in nature.⁹⁶

- 1.84 The AMA's comments are of great concern to the Committee. The Committee notes that, in 2006, COAG agreed that health ministers would 'implement initiatives to establish by December 2006 a national process for the assessment of overseas-trained doctors'.⁹⁷ However, the Committee understands from the AMA that, while 'the Commonwealth has tried to achieve consensus amongst states and territories to move forward with this decision, some jurisdictions have been slow to sign up for strengthened assessment and support

94 Dr Haikerwal, AMA, *Transcript of Evidence*, 1 June 2007, p. 53.

95 AMA, *Submission No. 43*, p. 1.

96 AMA, *Submission No. 43*, p. 2. (For a detailed study on this area, see Professor L Hawthorne, Associate Professor G Hawthorne and Associate Professor Crotty, *Final Report: The Registration and Training Status of Overseas Trained Doctors in Australia*, University of Melbourne, February 2007.)

97 COAG Communique, 14 July 2006, <http://www.coag.gov.au/meetings/140706/index.htm>.

arrangements'.⁹⁸ As Dr Haikerwal, the immediate past President of the AMA, stated:

Unless all states sign up to the process being considered, that process will fall over and we will be left with the existing highly flawed arrangements – many of the consequences of which, of course, have been widely reported in the press in recent times.⁹⁹

1.85 The Committee strongly supports the COAG initiatives in this area and, in light of the concerns raised by the AMA and others, points to the urgent need for implementation of a national assessment process through the Australian Medical Council for overseas trained doctors and specialists.

1.86 The AMA also recommended that:

If these delays persist, the Commonwealth should close off opportunity for OTDs to slip through assessment processes by imposing the following new conditions on 457 and 422 visa applications:

- Formal assessment of the OTD's qualifications and skills by the relevant specialist College
- Evidence of appropriate arrangements to provide supervision and/or training as determined by the College assessment
- A requirement for the sponsor to provide the OTD with formal orientation to the Australian health system
- The appointment of a doctor with recognised Australian qualifications as a mentor for the OTD.¹⁰⁰

1.87 The Committee notes that the 457 visa program has strict skills assessment requirements where '[m]edical practitioners are required to provide evidence of registration to practise in the state or territory in which they will be working' before a visa can be granted.¹⁰¹ Further, the concerns raised by the AMA relate to current perceived deficiencies in state/territory registration processes for OTDs rather than any identified failing of the 457 visa program itself or its skills

98 AMA, *Submission No. 43*, p. 2.

99 Dr Haikerwal, AMA, *Transcript of Evidence*, 1 June 2007, p. 54. See also commentary on this matter by Dr Birrell and Mr Schwartz, 'Accreditation of overseas trained doctors: the continuing crisis', *People and Place*, Vol. 14, No. 3, 2006, pp. 37-46.

100 AMA, *Submission No. 43*, pp. 2-3.

101 DIAC, *Sponsoring a Temporary Overseas Employee to Australia*, Booklet No. 11, January 2007, p. 18.

assessment requirements: 'the 457 visa arrangements ... are heavily reliant on the states to get it right as far as assessing people as being of a suitable standard'.¹⁰² However, should there be further delays in resolution of a national registration process for OTDs, the Committee draws DIAC's attention to the AMA's recommendation.

Recommendation 4

- 1.88 **The Committee recommends that, in light of the serious concerns raised during the inquiry about skills assessment processes for overseas trained doctors (OTDs), the Department of Health and Ageing, together with the Department of Immigration and Citizenship, work to ensure initiatives announced by the Council of Australian Governments to establish a national process for the skills assessment of OTDs are implemented as a matter of urgency.**

Occupational Trainee visa (subclass 442)

- 1.89 The Committee was concerned to hear of alleged abuses of the Occupational Trainee visa (subclass 442). For example, the AMA commented that:

... the skills assessment requirements for this category of doctor are cursory and health departments do not have to seek an area of need declaration. They can be appointed in any hospital for up to 12 months on a 'structured' training program, although these often appear to be normal service positions ... in normal circumstances these doctors should be required to utilise a business visa, however, an Occupational Trainee visa appears to offer an easier, less rigorous option.¹⁰³

- 1.90 The Australian Doctors Trained Overseas Association (ADTOA) also raised concerns in this regard.¹⁰⁴ The AMA pointed to growth in the use of this visa category by the New South Wales Medical Board, in particular:

... in 2001/02 there were 725 occupational trainees registered with the NSW Medical Board. By 2005/06 this had nearly doubled to 1326 doctors. There is a reasonable suspicion that

102 Mr Hough, AMA, *Transcript of Evidence*, 1 June 2007, p. 55.

103 AMA, *Submission No. 43*, p. 3.

104 ADTOA, *Submission No. 56*, pp. 1-3.

many of these doctors are being used to plug workforce gaps, rather than work in structured training programs.¹⁰⁵

1.91 Further concerns were raised about nurses working on 442 visas. The Australian Nursing Federation commented that some individuals registered as nurses in their home country who had entered Australia on such visas had allegedly been:

- recruited on the understanding that they would be offered training in Australia enabling them to work as registered nurses and then been charged for a training course that is not a requirement of Australian nursing registration authorities;
- overcharged for the education they received; and
- subjected to a 'clinical placement' in a residential aged care facility, 'working all shifts, overtime, public holidays with no penalties, less than acceptable pay, few leave entitlements and certainly with no educational support or supervision'.¹⁰⁶

1.92 Given these comments from two major representative bodies for medical practitioners and nurses, the Committee refers the possible misuse of this visa class to DIAC for further investigation.

Recommendation 5

1.93 **The Committee recommends that the Department of Immigration and Citizenship investigate alleged misuse of the Occupational Trainee visa (subclass 442) and take action to address any problems identified with the program.**

105 AMA, *Submission No. 43*, p. 3. See also ADTOA, *Submission No. 56a*, pp. 1-2.

106 Australian Nursing Federation, *Submission No. 63*, p. 9. See also the discussion in Chapter 3 on workers with overseas nursing qualifications entering under the 457 visa program.

