

CHAPTER 2

Overview of temporary visa programs

Background

2.1 The assumption that Australia is solely a country of permanent settlement is now outdated.¹ Labour mobility is a key feature of globalisation and has led to a dramatic increase in the global migration for work.² Within Australia, the increasing reliance on temporary (as opposed to permanent) migration marks a transformation in the nature of Australia's migration program away from previous assumptions that migrants to Australia would become permanent residents and citizens.³

2.2 Australia's approach to skilled migration has undergone significant change in the last 20 years, most notably with the introduction in 1996 of the Temporary Work (Skilled) (Subclass 457) Program (457 visa program).

2.3 As the terms of reference for this inquiry make clear, the committee was directed to examine the impact of the full range Australia's temporary work visa programs on the Australian labour market and on temporary work visa holders.

2.4 The value of the broad scope of the inquiry was reaffirmed during 2015 as two separate media investigations exposed a range of exploitative practices associated with the employment of temporary migrant visa holders other than 457 visa holders.

2.5 First, on 4 May 2015, an investigation by the Australian Broadcasting Corporation's *Four Corners* program revealed exploitation of certain groups of migrant workers, many on Working Holiday Maker (WHM) (417 and 462) visas, in the meat processing and horticulture industries. Issues included the underpayment of wages, long working hours, and sub-standard living conditions. Unscrupulous labour hire contractors were implicated in many of the instances of non-compliance with Australia's workplace laws.⁴

2.6 Then, on 31 August 2015, a joint investigation by *Four Corners* and Fairfax Media revealed the deliberate falsification of employment records by employers (franchisees) and the systemic underpayment of the wages and entitlements of international students working on temporary visas in many 7-Eleven convenience stores across Australia.⁵

1 Associate Professor Joo-Cheong Tham, *Submission 3 (supplementary)*, p. 5.

2 Dr Joanna Howe and Associate Professor Alexander Reilly, *Submission 5*, p. 4.

3 Migration Council Australia, *Submission 27*, p. 3.

4 Caro Meldrum-Hanna and Ali Russell, 'Slaving Away: The dirty secrets behind Australia's fresh food', *Four Corners*, Australian Broadcasting Corporation, broadcast 4 May 2015.

5 Adele Ferguson and Klaus Toft, '7-Eleven: The price of convenience', *Four Corners*, Australian Broadcasting Corporation, broadcast 31 August 2015.

2.7 The inquiry therefore considered not only dedicated visas that facilitate temporary migrant work such as the 457 visa program and the Seasonal Worker program (subclass 416 Special Program visa), but also a range of temporary visas that have work rights attached to them including New Zealand (subclass 444), Student (subclasses 570 to 576), Temporary Graduate (subclass 485), and Working Holiday Maker (417 and 462) visas.

2.8 The plethora of temporary visas with work rights attached each raise their own specific and related issues including impacts on the Australian labour market, exploitation of vulnerable migrant workers, non-compliance by employers with workplace laws, and gaps in the regulatory system.

2.9 However, the interaction between the various temporary visa programs also raises fundamental questions for Australian society, including the potential unintended consequences of a growing cohort of indefinitely temporary migrants.⁶ Given the over-arching aspect of the interaction between the various temporary visa programs, and the broader context that it gives this report, these matters are covered later in this chapter.

2.10 The notion of 'indefinitely' temporary suggests that the terms 'temporary migrant work', 'temporary work visa programs' and 'temporary work visa holders' invite further analysis. Associate Professor Joo-Cheong Tham defines temporary migrant work as 'work performed by those who have a limited right of residence in Australia' and notes:

Temporary migrant workers are only 'temporary' in the sense that they have a limited right of residence. They are not necessarily 'temporary' in terms of the length of their residence in Australia – many of them would have lived in this country for years. Neither are temporary migrant workers, according to this definition, necessarily 'temporary' in terms of their intention to continue residing in Australia – many aspire to secure permanent residence in this country. Further, reliance on such workers is not necessarily 'temporary' – many key sectors like hospitality and agriculture heavily rely upon temporary migrant workers. These enduring aspects of temporary migrant work in Australia make it apt to speak of the 'permanence of temporary migration'.⁷

2.11 Temporary migrant work also includes 'work performed by migrants who have no legal right to participate in the Australian labour market, for example, tourists and those with an irregular status'.⁸

2.12 The committee acknowledges that much of the policy focus to date on temporary visas has been focussed specifically on the 457 visa program. By examining the range of temporary visas with work rights, this report shines a light on

6 The term 'indefinitely temporary' is used by Peter Mares; see Peter Mares, *Submission 2*.

7 Associate Professor Joo-Cheong Tham, *Submission 3*, p. 4.

8 Associate Professor Joo-Cheong Tham, *Submission 3*, p. 4.

hitherto less explored aspects of temporary migration policy and makes recommendations across a range of areas.

2.13 This chapter therefore begins by providing an overview of the various temporary migration visas with associated work rights. Next, it outlines various labour agreements under which temporary migrant workers can be brought into Australia. It then summarises the various reviews of the 457 visa program and the key recommendations made by those reviews. The Northern Australia White Paper is briefly considered. The chapter finishes by exploring the implications that arise from the interactions between Australia's various temporary visa programs.

Temporary visas with associated work rights—an overview

2.14 This section gives a brief overview of the various visa programs with work rights attached, beginning with the 457 visa program.

457 visa program

2.15 The 457 visa program allows skilled workers to come to Australia and work for an approved business for up to four years. The joint submission from the Department of Employment, the Department of Immigration and Border Protection (DIBP), the Department of Education and Training (DET), the Department of Industry and Science, the Department of Social Services (DSS), the Fair Work Ombudsman (FWO) and Safe Work Australia (the Australian Government Departments' submission) states that the 457 visa program:

...enables employers to address short to medium term workforce needs by sponsoring skilled overseas workers on a temporary basis to fill positions where suitably skilled Australian citizens or permanent residents cannot be found.⁹

2.16 The three regulatory phases of business sponsorship instituted at the inception of the 457 visa program remain today:

- approval of the employer as a business sponsor;
- approval of the employer's nomination of the position; and
- the grant of a 457 visa to the worker.

2.17 The Australian Government Departments' submission notes that the 457 visa program is uncapped and driven by employer demand and that:

The flexibility of the programme is beneficial to the Australian economy, contributing to productivity by responding to skills gaps in the Australian labour market.¹⁰

9 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia [hereafter Australian Government Departments], *Submission 41*, p. 1.

10 Australian Government Departments, *Submission 41*, p. 1.

2.18 The employer-driven element of the 457 program and the claims of flexibility and responsiveness stand in contrast to the permanent migration intake which is determined and capped on an annual basis by government. The planned permanent migration intake for 2014–15 is 190 000 (128 550 in the skilled stream and 60 885 in the family stream).¹¹

2.19 A 457 visa is increasingly seen as a pathway to permanent migration. In 2014–15 to 31 March 2015, the number of 457 visa holders who were granted a permanent residence or provisional visa was 37 430, an increase of 5.2 per cent compared with the same period in the previous program year.¹²

2.20 Table 2.1 below shows the percentages of 457 visa holders who have converted to a permanent or provisional visa over the last five years.

Table 2.1: percentages of 457 visa holders who have converted to a permanent or provisional visa over the last five years.

| | 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% |

Source: Department of Immigration and Border Protection, answer to question on notice, 17 July 2015 (received 11 August 2015).

2.21 The pathway most used by 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 in each of the four test components.¹³ IELTS assesses English proficiency on a scale of 1–9 in four skills: listening, reading, writing and speaking.¹⁴

2.22 Beyond the 457 visa program, however, other temporary visas provide a pathway to permanent residency. The Migration Council of Australia advised the committee that 'in 2013–14, over 58 per cent of new permanent residency visas were granted to people already in Australia on temporary visas'.¹⁵ The links between the

11 Department of Immigration and Border Protection, Fact Sheet: Migrant— Migration programme outcomes for 2010–11 to 2013–14 and planning levels for 2014–15, available at <http://www.border.gov.au/about/corporate/information/fact-sheets/migrant> (accessed 18 August 2015).

12 Department of Immigration and Border Protection, Subclass 457 quarterly report, 31 March 2015, p. 1; see also Dr Joanna Howe, 'Is the net cast too wide? An assessment of whether the regulatory design of the 457 visa meets Australia's skill needs', *Federal Law Review*, vol. 41, 2013, p. 2.

13 Department of Immigration and Border Protection, answer to question on notice, 17 July 2015 (received 11 August 2015).

14 International English Language Testing System (IELTS), Australia—What score do you need?, <https://www.ielts.org/what-is-ielts/ielts-for-migration/australia> (accessed 10 March 2016).

15 Migration Council Australia, *Submission 27*, p. 3.

temporary and skilled migration programs and arguments about the respective merits of the two programs are discussed in chapter 3.

2.23 As at 31 March 2015, there were 106 755 primary 457 visa holders in Australia compared to 111 781 at 31 March 2014. This is a reduction of 4.5 per cent (see Table 2.2 below).¹⁶

Table 2.2: Primary Subclass 457 visa holders in Australia at 31 March 2015, compared with same date in previous program year.

| | at 31/03/14 | at 31/3/15 | % change |
|--|-------------|------------|----------|
| Subclass 457 primary visa holders in Australia | 111 781 | 106 755 | -4.5% |

Source: Australian Government Departments, *Submission 41*, Attachment B, Table 1, p. 20.

2.24 It is important to note that the partners and children of 457 visa holders (secondary visa holders) are not subject to the same restrictions as the primary visa holder and have the right to undertake unskilled work.¹⁷

2.25 There has been a reduction in the numbers of primary and secondary 457 visas granted over the last year (see Table 2.3 below). However, the 71 316 visas granted in 2014–15 is still significantly higher than the 25 786 visas granted in 1996–97.¹⁸

Table 2.3: Primary Subclass 457 visas granted in 2014–15 to 31 March 2015, compared with same date in previous program year.

| Applicant Type | 2013–14 to 31/03/14 | 2014–15 to 31/03/15 | % Change |
|----------------|---------------------|---------------------|--------------|
| Primary | 39 767 | 38 134 | -4.1% |
| Secondary | 36 247 | 33 182 | -8.5% |
| Total | 76 014 | 71 316 | -6.2% |

Source: Australian Government Departments, *Submission 41*, Attachment B, Table 2, p. 20.

16 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia, *Submission 41*, Attachment B, p. 20.

17 Dr Joanna Howe and Associate Professor Alexander Reilly, *Submission 5*, p. 5.

18 Janet Phillips and Harriet Spinks, 'Skilled migration: temporary and permanent flows to Australia', *Background note*, Table 3: Temporary migration: overseas student and business long stay (subclass 457) visa grants since 1996–97, Parliamentary Library, Parliament of Australia, 6 December 2012.

2.26 The perception that 457 visas are granted solely to recipients in a foreign country is no longer accurate. Indeed, almost half of all 457 visas granted in 2014–15 (18 118 out of 37 127) were to persons already in Australia (see Table 2.4 below).

Table 2.4: Primary subclass 457 visas granted in 2014–15 to 31 March 2015 where the client was onshore by last visa held.

| Visa category – Last visa held | 2014–15 to 31/03/15 |
|---------------------------------------|----------------------------|
| Subclass 457 visa | 4 599 |
| Student visa | 5 532 |
| Temporary Graduate visa | 912 |
| Temporary Resident visa | 554 |
| Working Holiday Maker | 4 612 |
| Visitor visa | 1 773 |
| Other visa | 128 |
| Unknown | 8 |
| Onshore Total | 18 118 |
| Offshore | 19 009 |
| Onshore and Offshore | 37 127 |

Source: Australian Government Departments, *Submission 41*, Attachment B, Table 3, p. 20.

2.27 The issue of whether a 457 visa recipient is onshore or offshore at the time of the granting of a 457 visa is relevant to the debate over the relative cost of employing a 457 visa worker as opposed to hiring an Australian citizen or permanent resident. This matter is discussed in chapter 3.

2.28 There are over 1.8 million temporary visa holders in Australia (see Table 2.5 below).

Table 2.5: Temporary visa holders in Australia at 31 March 2015 by visa category

| Visa category | Primary | Total |
|--|------------------|------------------|
| Bridging visa holders | 108 947 | 111 173 |
| New Zealand (subclass 444) visa holders | 648 993 | 648 993 |
| Student visa holders | 361 742 | 413 123 |
| Temporary graduate (subclass 485) visa holders | 18 220 | 23 021 |
| Temporary skilled (subclass 457) visa holders | 106 755 | 193 158 |
| Visitor visa holders | 285 598 | 285 641 |
| Working holiday maker visa holders | 160 275 | 160 275 |
| Other temporary visa holders | 28 954 | 36 267 |
| Total | 1 719 484 | 1 871 656 |

Source: Australian Government Departments, *Submission 41*, Attachment B, Table 4, p. 21.

2.29 Of the total population of temporary visa holders, approximately 1.4 million temporary visas held in Australia at 31 March 2015 have work rights attached to them. The types of visas held by temporary visa holders include:

- New Zealand (subclass 444);
- Student (subclasses 570 to 576);
- Temporary graduate (subclass 485);
- Temporary skilled (subclass 457); and
- Working Holiday Maker (subclasses 417 and 462).¹⁹

2.30 Removing the large number (648 993) of New Zealand citizens who are visa holders from the calculations still leaves approximately three quarters of a million temporary visa holders in Australia with work rights.

Seasonal Worker Program

2.31 The original version of the seasonal worker program was introduced in 2008 to allow workers from certain Pacific island countries to work in the Australian horticulture industry for up to seven months.

¹⁹ Australian Government Departments, *Submission 41*, Attachment B, Table 4, p.21 and Attachment C, p. 22.

2.32 The seasonal worker program has since been expanded to the agriculture and accommodation industries in specified locations. The program is now uncapped with take-up determined by employer demand.²⁰

2.33 Participating countries include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu. Seasonal workers can be employed for up to six months, and seasonal workers recruited from Kiribati, Nauru or Tuvalu can be employed for up to nine months due to the higher costs of transportation to and from Australia for citizens from these countries.²¹

2.34 For all periods of employment, approved employers must guarantee a minimum average of 30 hours' work per week to seasonal workers. Approved employers also need to test the labour market before recruiting seasonal workers.²² (The seasonal worker program is covered in greater detail in chapter 5).

Working Holiday Maker visa program

2.35 The Working Holiday Maker (WHM) program includes the Working Holiday (subclass 417) and Work and Holiday (subclass 462) visas. As at 31 March 2015, there were 160 275 WHM visa holders in Australia.²³

2.36 The WHM visa program began in 1975 and allows young adults (aged 18 to 30) from eligible partner countries to work in Australia while having an extended holiday. It has consistently been seen as a cultural program 'facilitating the travel of young people to and from Australia to have a cultural experience, supplemented with a limited opportunity to work'.²⁴ Indeed, the DIBP states that 'work in Australia must not be the main purpose of the visa holder's visit'.²⁵

2.37 However, the WHM (subclass 417 and subclass 462) visa allows work for the full 12 months of the visa, with the sole restriction on the work rights of a WHM visa holder being that they cannot work for the same employer for more than six months.²⁶

2.38 Furthermore, since 1 November 2005, a first-time WHM (subclass 417) visa holder who has carried out 88 days of 'specified work' in regional Australia is eligible

20 Australian government, Seasonal Worker Programme expansion—Q & A, available at http://docs.employment.gov.au/system/files/doc/other/expansion_of_the_seasonal_worker_programme_-_faqs.pdf (accessed 19 August 2015).

21 Australian government, Seasonal Worker Programme expansion—Q & A.

22 Australian government, Seasonal Worker Programme expansion—Q & A.

23 Australian Government Departments, *Submission 41*, Attachment C, p. 22, Attachment B, Table 4, p.21.

24 Dr Joanna Howe and Associate Professor Alexander Reilly, *Submission 5*, p. 5.

25 Department of Immigration and Border Protection, What is the Working Holiday Maker program?, available at <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-the-working-holiday-maker-program> (accessed 19 August 2015).

26 Migration Regulations 1994 [F2015C00584], regulations 417.611, 462.611 (by operation of mandatory visa condition 8547).

to apply for a second WHM visa. 'Specified work' includes agriculture, mining and construction.²⁷

2.39 The number of second WHM visa grants has grown rapidly since the program's inception. There were 2692 grants in 2005–06 compared with 45 952 grants in 2013–14.²⁸ Of the 45 952 second visa grants, 11 295 (24.6 per cent) were to WHM visa holders from Taiwan.²⁹

2.40 In 2013–14, approximately one in four first-time WHM visa holders acquired a second WHM visa. The second WHM visa program constituted 20 per cent of the overall WHM program as at 30 June 2014 compared to just 3.3 per cent as at 30 June 2006.³⁰

Student visa program

2.41 All eligible international students holding visa subclasses 570–576 are permitted to work 40 hours per fortnight during the course of their studies (under visa condition 8104).³¹

2.42 As at 31 March 2015, there were 413 123 student visa holders in Australia.³² Although precise numbers are difficult to ascertain, it was estimated that in 2011, more than 200 000 international students were in paid work.³³

Temporary graduate visa program

2.43 International students who have recently graduated from an Australian educational institution can apply for a subclass 485 visa that allows them (and their family) to remain and work in Australia temporarily after completing their studies.³⁴

27 Migration Regulations 1994 [F2015C00584], regulations 417.211; Department of Immigration and Border Protection, Working Holiday Maker visa programme report, 30 June 2014, p. 4, available at <https://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-jun14.pdf#search=working%20holiday%20maker%20visa%20program%20report> (accessed 19 August 2015).

28 Department of Immigration and Border Protection, Working Holiday Maker visa programme report, 30 June 2014, p. 4.

29 Department of Immigration and Border Protection, Working Holiday Maker visa programme report, 30 June 2014, p. 7.

30 Department of Immigration and Border Protection, Working Holiday Maker visa programme report, 30 June 2014, p. 4.

31 Migration Regulations 1994 [F2015C00584], regulations 570.617, 571.614, 572.617, 573.617, 574.617, 575.617, 576.614 (by operation of visa condition 8104).

32 Australian Government Departments, *Submission 41*, Attachment B, Table 4, p. 21.

33 Associate Professor Joo-Cheong Tham, *Submission 3*, p. 15.

34 Department of Immigration and Border Protection, Graduate visa (subclass 485), available at <https://www.border.gov.au/Trav/Visa-1/485-#> (accessed 20 August 2015).

As at 31 March 2015, there were 23 021 temporary graduate visa holders in Australia.³⁵

2.44 The 485 visa has two visa streams. The Graduate Work stream is for international students with an eligible qualification who graduate with skills and qualifications that relate to an occupation on the Skilled Occupation List (SOL). A visa in this stream is granted for 18 months from the date of grant.³⁶

2.45 The Post-Study Work stream is for international students who graduate with a higher education degree from an Australian education provider, regardless of their field of study. A visa in this stream can be granted for up to four years.³⁷

Labour agreements

2.46 In contrast to the 457 visa program, the labour agreement stream (Labour Agreements, Project Agreements and Designated Area Migration Agreements) allows for the sponsorship of semi-skilled workers. The Australian Government Departments' submission notes:

A labour agreement is a formal arrangement negotiated between an employer and the Australian Government. It aims to provide a migration pathway for businesses and industries that need semi-skilled and skilled workers for occupations that are not covered by the standard subclass 457 programme. The labour agreement document defines employer obligations such [as] the training requirements for Australian employees.³⁸

2.47 Labour agreements are bound by certain conditions which the DIBP assesses on a case by case basis:

Employers seeking to enter into a labour agreement are required to provide a comprehensive submission to DIBP which provides a compelling evidence-base demonstrating there is a genuine skills shortage and there are no suitably qualified or experienced Australians available. Consultation with relevant stakeholders is a mandatory part of the labour agreement process.

All employers seeking access to a labour agreement must provide evidence of labour market need, including evidence of their genuine on-going recruitment efforts for the last six months. DIBP also consults with the Department of Employment for its assessment of the labour market in the requested occupations.

While marginal concessions to the TSMIT [Temporary Skilled Migration Income Threshold]³⁹ may be approved in limited circumstances where there

35 Australian Government Departments, *Submission 41*, Attachment B, Table 4, p. 21.

36 Department of Immigration and Border Protection, Graduate visa (subclass 485).

37 Department of Immigration and Border Protection, Graduate visa (subclass 485).

38 Australian Government Departments, *Submission 41*, p. 10.

39 The Temporary Skilled Migration Income Threshold (TSMIT) provides an income floor for 457 visa holders. The TSMIT is covered in greater detail in chapter 3.

is a compelling business case, DIBP must be satisfied that overseas workers have sufficient income to support themselves and their dependants, as they do not have access to the same range of benefits and services as Australians. Regardless, the terms and conditions of employment for overseas workers under labour agreements must, at all times, be no less favourable than those for Australian citizens or permanent residents performing the same duties at the same location.

English language proficiency requirements under labour agreements are broadly consistent with the standard business sponsorship stream of the subclass 457 programme. Concessions are only considered where there is a strong business case and the concession would not constitute a work, health or safety risk. Further, employers must demonstrate that overseas workers can adequately access workplace relations protections and can participate in the community.

Consistent with the standard subclass 457 programme, approved sponsors under labour agreements are also required to meet a range of sponsorship obligations, including a satisfactory record of, and an ongoing commitment to, the training of Australians.⁴⁰

2.48 An on-hire labour agreement (OHLA) is a formal arrangement negotiated between an on-hire (also known as labour hire) business and the Australian government. The OHLA is a template agreement which means that the negotiations are restricted to a discussion about occupations, numbers and salaries, and do not include the terms and conditions of the OHLA.⁴¹

In recognition that many Australian companies do not directly recruit or employ all their own staff but instead use the legitimate business services of companies in the On-hire sector (which includes recruitment agents, labour hire and contract management firms), the On-hire Template Labour Agreement was introduced in 2007. The template allows for labour agreements to be entered into without negotiation on the conditions of the labour agreement. Beyond the ability to on-hire workers to other employers, there are no additional concessions under the template and all nominations must meet the same minimum requirements of the standard subclass 457 programme. Only occupations that are eligible for the standard subclass 457 programme and that are listed on the Consolidated Sponsored Occupation List (CSOL) may be sponsored.⁴²

40 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia, *Submission 41*, p. 16.

41 Department of Immigration and Citizenship, On-hire labour agreements—Information for employers about labour agreement submissions, October 2012, available at <https://skilledmigration.govspace.gov.au/files/2012/10/ON-HIRE-Labour-Agreement-information-booklet-October-2012.pdf> (accessed 19 August 2015).

42 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia, *Submission 41*, p. 10.

2.49 The Australian Government Departments' submission also notes that labour agreements are designed to 'complement' the 457 visa program in that 'they are commonly used by employers in regional areas, to fill niche occupations that few Australians are qualified in or are unavailable'.⁴³

Designated Area Migration Agreements

2.50 A Designated Area Migration Agreement (DAMA) allows states, territories or regions to negotiate an agreement 'under which employers in areas experiencing skills and labour shortages can sponsor skilled and semi-skilled overseas workers'.⁴⁴

2.51 A DAMA has a two tiered structure:

- an over-arching agreement between a Designated Area Representative that is endorsed by a state or territory government and the Australian Government to bring overseas workers to a designated area; and
- individual agreements between employers and the Australian Government that allow employers to sponsor overseas workers to the designated area under the terms and conditions agreed to in the over-arching agreement.⁴⁵

Project Agreements

2.52 A Project Agreement 'allows infrastructure or resource development projects experiencing genuine skills or labour shortages access to temporary skilled and specialised semi-skilled temporary overseas workers through the subclass 457 visa'.⁴⁶

2.53 A Project Agreement also has a two-tiered structure:

- A project company representing employers within a project will enter into an overarching project deed of agreement with the department. This agreement will be in the form of a 'deed of agreement' and it will outline, among many matters, the occupations and any concessions agreed to, that will facilitate the recruitment of overseas workers on a project.
- Under the overarching project deed of agreement, selected employers endorsed by the project company will enter into a labour agreement with the

43 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia, *Submission 41*, p. 16.

44 Department of Immigration and Border Protection, Designated Area Migration Agreements—Information about requesting and managing a designated area migration agreement, August 2014, p. 4, available at <http://www.border.gov.au/WorkinginAustralia/Documents/dama.pdf> (accessed 19 August 2015).

45 Department of Immigration and Border Protection, Designated Area Migration Agreements—Information about requesting and managing a designated area migration agreement, August 2014, p. 4.

46 Department of Immigration and Border Protection, Project Agreements—Information about requesting and managing a project deed of agreement, May 2015, p. 6, available at <http://www.border.gov.au/WorkinginAustralia/Documents/project-companies-submission-information.pdf> (accessed 19 August 2015).

Commonwealth to sponsor overseas workers on the project under the terms and conditions agreed to in the overarching deed of agreement. A labour agreement will only be approved where suitably qualified Australians are not available.⁴⁷

Enterprise Migration Agreements

2.54 The Enterprise Migration Agreement Program has ceased due to the softening labour market in the resource sector.⁴⁸

Reviews and reforms of temporary visa programs

2.55 As the principal dedicated temporary skilled migration program, the 457 visa program has been subject to several specific and related inquiries (the first inquiry being undertaken before its inception). There have, however, been inquiries related to other temporary visa programs such as the Knight review⁴⁹ of the student visa program.

2.56 This section provides a brief summary of various reviews including:

- an inquiry into the temporary entry of business people and highly skilled specialists (the Roach report) (1995);⁵⁰
- an inquiry by the External Reference Group chaired by Mr Peter McLaughlin into temporary residence (2002);⁵¹
- an inquiry by the Joint Standing Committee on Migration into temporary business visas (2007);⁵²
- an inquiry by the Visa Subclass 457 External Reference Group chaired by Mr Peter Coates into the capacity of temporary migration to ease labour shortages (2008);⁵³

47 Department of Immigration and Border Protection, Project Agreements—Information about requesting and managing a project deed of agreement, May 2015, p. 6.

48 Department of Employment, Department of Immigration and Border Protection, Department of Education and Training, Department of Industry and Science, Department of Social Services, Fair Work Ombudsman and Safe Work Australia, *Submission 41*, p. 16.

49 Mr Michael Knight, Strategic Review of the Student Visa Program, *Report*, Australian Government, 2011.

50 Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry: Future Directions*, August 1995.

51 Department of Immigration, Multicultural and Indigenous Affairs, *In Australia's interests: A Review of the Temporary Residence Program*, 2002.

52 Joint Standing Committee on Migration, Inquiry into temporary business visas, *Temporary visas...permanent benefits: ensuring the effectiveness, fairness and integrity of the temporary business visa program*, August 2007.

53 Department of Immigration and Citizenship, *Final Report to the Minister for Immigration and Citizenship*, April 2008.

- the Visa Subclass 457 Integrity Review (the Deegan review) arising from concerns about the exploitation of temporary migrant workers (2008);⁵⁴
- Strategic Review of the Student Visa Program 2011 (the Knight review);⁵⁵
- an inquiry into the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 [Provisions] by the Senate Standing Committee on Education, Employment and Workplace Relations;⁵⁶
- an inquiry into the framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements by the Senate Legal and Constitutional Affairs References Committee (2013);⁵⁷
- the Independent Review into Integrity in the Subclass 457 Programme (the Azarias review) (2014);⁵⁸ and
- the Skilled Migration and 400 Series Visa Program Review by the DIBP (commenced 2014).⁵⁹

2.57 The Roach review was commissioned by the Keating government. The review found that temporary business migration (and in particular, of highly skilled business executives) to Australia was beneficial and recommended that a streamlined single visa replace the multiple business visas existing at that time.⁶⁰ The incoming Coalition government accepted the broad thrust of the Roach report and implemented the 457 visa program in 1996.

2.58 However, skill shortages in the Australian labour market during the 2000s led to significant changes in the 457 visa program with both a substantial expansion in the

54 Department of Immigration and Citizenship, *Visa Subclass 457 Integrity Review Final Report*, October 2008.

55 Mr Michael Knight, Strategic Review of the Student Visa Program, *Report*, Australian Government, 2011.

56 Senate Education, Employment and Workplace Relations Legislation Committee, *Inquiry into the Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 [Provisions]*, 12 March 2013.

57 Senate Legal and Constitutional Affairs References Committee, *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*, 27 June 2013.

58 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014.

59 Department of Immigration and Border Protection, *Reviewing the Skilled Migration and 400 Series Visa Programmes, Discussion Paper*, September 2014; Department of Immigration and Border Protection, *Simplification of the skilled migration and temporary activity visa programmes, Proposal Paper*, December 2014.

60 Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists, *Business Temporary Entry: Future Directions*, 1995.

numbers of 457 visas granted and the inclusion of 'a broader range of skilled occupations, including trades'.⁶¹

2.59 Labour market testing had been part of the 457 visa program when it was introduced on 1 August 1996. But, on 1 July 2001, the provision was removed with the early implementation by the Coalition government of a recommendation by the External Reference Group review that labour market testing be replaced with a skills and salary threshold.⁶²

2.60 The Joint Standing Committee on Migration recommended that the Departments of Immigration and Citizenship and Employment and Workplace Relations apply greater rigour to their assessment of occupations experiencing skill shortages so that the gazetted list of approved occupations 'lists only skilled migration occupations in demand'.⁶³

2.61 The report by the Visa Subclass 457 External Reference Group was produced at the height of the resources boom, a time of low unemployment. The report noted certain parts of the economy (such as the resources sector) were facing general labour shortages and that even though the 457 visa program had become 'a general labour supply visa' by default, it was 'not suitable to meet the market requirements for semi-skilled and unskilled labour'. The report therefore recommended that the 'Australian Government pilot other approaches to the provision of a range of labour in specific industries'.⁶⁴

2.62 The Visa Subclass 457 Integrity Review by Australian Industrial Relations Commissioner Barbara Deegan (the Deegan review) was triggered by concerns arising from the expanded nature of the 457 visa program including the exploitation of temporary migrant workers and fears that Australian jobs were being taken by 457 visa workers.

2.63 Noting that workers on a 457 visa only had twenty-eight days before their visa expired to find a new job if they left their sponsored employment, the Deegan review pointed out that the twenty-eight day rule allowed unscrupulous employers to intimidate temporary migrant workers with the threat of being forced out of the country unless they adhered to their employers' demands. One of the key

61 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, p. 20.

62 Department of Immigration, Multicultural and Indigenous Affairs, *In Australia's interests: A Review of the Temporary Residence Program*, 2002, pp 29–30, 122–125.

63 Joint Standing Committee on Migration, Inquiry into temporary business visas, *Temporary visas...permanent benefits: ensuring the effectiveness, fairness and integrity of the temporary business visa program*, August 2007, Recommendation 12, p. xviii.

64 Department of Immigration and Citizenship, *Final Report to the Minister for Immigration and Citizenship*, April 2008, pp 10–11, 37.

recommendations of the Deegan review was that the time limit for a 457 visa worker to find alternative employment be extended to ninety days.⁶⁵

2.64 The Deegan review also recommended a 'salary floor' and an obligation on all 457 visa employers to pay market salary rates to all 457 visa workers.⁶⁶

2.65 The Knight review into the Student Visa Program is of relevance to this inquiry in so far as one of the key findings was that the availability of post-study work rights was an essential element in Australian universities remaining a viable destination for overseas students:

The absence of a clearly defined post study work rights entitlement puts Australian universities at a very serious disadvantage compared to some of our major competitor countries. In the past the absence of such an entitlement has not proven to be a dramatic hindrance to Australian universities recruiting international students. But the world has changed. Global competition for quality international students is intensifying and almost certainly will continue to further intensify. Allowing a moderate period of post study work rights will be essential to ensuring the ongoing viability of our universities in an increasingly competitive global market for students.⁶⁷

2.66 In 2013, the former Labor government introduced the Migration Amendment (Temporary Sponsored Visas) bill 2013. The *Migration Amendment (Temporary Sponsored Visas) Act 2013* (Migration Amendment Act) amended the *Migration Act 1958* to:

- require the minister to establish the Ministerial Advisory Council on Skilled Migration to provide advice in relation to the temporary sponsored work visa program;⁶⁸
- require sponsors participating in the temporary sponsored work visa program to undertake labour market testing in relation to nominated occupations;⁶⁹
- provide that labour market testing is undertaken after redundancies and retrenchments have occurred;⁷⁰
- provide for enforceable undertakings between the minister and approved sponsors in relation to sponsorship;⁷¹ and

65 Department of Immigration and Citizenship, *Visa Subclass 457 Integrity Review Final Report*, October 2008, p. 13.

66 Department of Immigration and Citizenship, *Visa Subclass 457 Integrity Review Final Report*, October 2008, p. 8.

67 Mr Michael Knight, Strategic Review of the Student Visa Program, *Report*, Australian Government, 2011 p. viii.

68 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 1.

69 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 2.

70 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 2.

71 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 5.

- enable Fair Work inspectors to monitor sponsorship compliance.⁷²

2.67 The Migration Amendment Act also amended the Migration Regulations 1994 to give workers on a 457 visa ninety consecutive days to find a new employer,⁷³ as recommended by the Deegan review.

2.68 The most contentious element of the Migration Amendment Act was the decision to reintroduce labour market testing.

2.69 Despite bipartisan support for a system of skilled migration, the Azarias review noted that the number of inquiries into the 457 visa program was 'a clear indication that it faces a politically and economically divided environment':

In a nutshell, on the one side are those, largely business owners, who need overseas workers to supplement their workforces, while on the other are those, mainly unions, who seek primarily to safeguard the job opportunities and entitlements of workers in Australia.⁷⁴

2.70 The Azarias review sought to answer two key questions:

- how to ensure that the occupations that sponsors seek to recruit for are genuinely skilled ones; and
- how to ensure the Australian public can be certain that Australians have been given first opportunity to fill these jobs.⁷⁵

2.71 The Azarias review proposed the formation of a tripartite ministerial advisory council (to replace the existing Ministerial Advisory Council on Skilled Migration) 'to make recommendations on the occupations that should be included in the department's 457 occupation list'. The review argued that the proposal had several advantages:

It replaces two flawed requirements, the lack of responsiveness of the current occupations list and the inadequacy of labour market testing, with a system which is transparent to all stakeholders; which benefits from their full participation and buy-in; which responds quickly to the dynamic changes in the Australian labour market; which is based on factual evidence rather than poorly substantiated claims; which is objectively analysed by technical experts; and which considerably reduces government silos.

Once the system is up and running, employers will have the flexibility, responsiveness and certainty they need, and their regulatory burden should accordingly be lessened, with no concomitant risk to the community; and

72 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 6.

73 *Migration Amendment (Temporary Sponsored Visas) Act 2013*, Schedule 3.

74 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, p. 7.

75 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, p. 8.

stakeholders, including the Australian public, will be more confident about the integrity of the programme.⁷⁶

2.72 The basis for, and composition and role of, a ministerial advisory council is one of the key areas that the committee's inquiry investigated (see chapter 3).

2.73 The Azarias review also recommended changes to the training requirements imposed on visa sponsors. The review found 'strong support for the principle that sponsors should make a contribution to training Australians in return for being able to sponsor 457 visa holders'. However, the review found:

...little support by either sponsors or labour representatives for the current training benchmarks, whose success in achieving the desired outcomes was repeatedly questioned, and whose application was considered to be overly complex.⁷⁷

2.74 Consequently, the Azarias review recommended the training benchmarks be abolished and replaced by a fixed amount (for example, \$400) for each 457 worker employed.⁷⁸

2.75 The Senate Legal and Constitutional Affairs References Committee inquiry into the framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements in 2013 made eleven recommendations.⁷⁹ The committee notes that two of the recommendations made by the Senate Legal and Constitutional Affairs References Committee were not supported by the government, three were supported in principle, and six were referred to the Azarias review for further consideration.⁸⁰ This report revisits several of the recommendations in later chapters.

76 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, p. 9.

77 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, pp 11 and 12.

78 Mr John Azarias, Ms Jenny Lambert, Professor Peter McDonald and Ms Katie Malyon, *Robust New Foundations: A streamlined, transparent and responsive system for the 457 programme*, September 2014, p. 12.

79 Senate Legal and Constitutional Affairs References Committee, *Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*, 27 June 2013, pp ix–x.

80 Australian Government, *Response to the Senate inquiry report: The Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements*, July 2014.

2.76 The DIBP is currently conducting a review of the Skilled Migration and 400 series visa programs.⁸¹ The committee notes that the Working Holiday visa (subclass 417) and the Work and Holiday visa (subclass 462) are not included within the DIBP review of the 400 series visa programs.⁸²

2.77 With respect to the DIBP review, the committee received evidence on a gap between the 457 visa program and the subclass 400 visa. The subclass 400 visa can be issued for up to six months' duration, but is generally approved for stays of up to three months. Global immigration law firm, Fragomen, argued that the subclass 400 visa was much more appropriate than the 457 visa for short-term work, but that the criteria for the subclass 400 visa were overly restrictive. Fragomen therefore proposed 'allowing a total of six months' stay in Australia, but over a validity period of 12 months from date of first entry; and removing the initial entry date restriction'.⁸³ The committee makes no further comment on this suggestion as it understands this matter will be considered by the DIBP review.

Northern Australia White Paper

2.78 The Abbott government White Paper on Developing Northern Australia (the White Paper) released in June 2015 proposed changes to some of Australia's temporary visa programs. With regard to DAMAs, the White Paper noted:

Australia's first DAMA commenced in the Northern Territory on 10 February 2014. A memorandum of agreement for up to 500 workers is currently in place pending a three year agreement. This is an umbrella agreement that will allow employers in the Northern Territory to sponsor temporary workers including chefs, child care and aged care workers, office managers, and truck drivers.

The Western Australia Government is currently working with the Department of Immigration and Border Protection and the Pilbara Regional Council on a proposed DAMA for the Pilbara region.⁸⁴

2.79 With respect to the WHM visa program, the White Paper stated the government will amend the operation of the program to allow a WHM visa holder to work an additional six months with one employer in northern Australia if they work in the following high demand areas:

- agriculture, forestry and fishing;
- tourism and hospitality;

81 Department of Immigration and Border Protection, *Reviewing the Skilled Migration and 400 Series Visa Programmes*, Discussion Paper, September 2014; Department of Immigration and Border Protection, *Simplification of the skilled migration and temporary activity visa programmes*, Proposal Paper, December 2014.

82 Department of Immigration and Border Protection, *Reviewing the Skilled Migration and 400 Series Visa Programmes*, Discussion Paper, September 2014, p. 16.

83 Fragomen, *Submission 21*, p. 18.

84 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 111.

- mining and construction;
- disability and aged care.⁸⁵

2.80 In addition, the government proposed giving a WHM (subclass 462) visa holder the opportunity to access a second 12 month visa if they work for three months in agriculture or tourism in the north. Given that a WHM (subclass 417) visa holder already has access to a second 12 month visa, the change meant WHM visa holders 'could potentially be able to work for the entire duration of their two year stay in Australia'.⁸⁶ The committee makes a recommendation in chapter 8 on the rights and protections available to temporary visa workers under any new visa class or extension to a visa issued under changes arising from the White Paper.

2.81 The White Paper also announced changes to the Seasonal Worker program, stating the government would:

- remove the cap on the number of workers participating in the Seasonal Worker program, making it an employer demand-driven scheme;
- expand the Seasonal Worker program to the broader agriculture industry and the accommodation sector on an ongoing basis;
- invite northern Australia's tourism industry to suggest proposals to trial the Seasonal Worker program in tourism sectors other than accommodation from 1 July 2015;
- remove the minimum stay requirement of 14 weeks, provided workers receive a net financial benefit of at least \$1000 during their stay; and
- simplify cost sharing arrangements by combining the employer's contribution to each seasonal worker's international and domestic airfare to a total of \$500.⁸⁷

2.82 The White Paper also flagged that, subject to the conclusion of the Pacific Agreement on Closer Economic Relations, the government will invite additional Pacific Island Forum countries to participate in the Seasonal Worker program, potentially adding the Cook Islands, Federated States of Micronesia, Niue, Palau and the Republic of Marshall Islands.

2.83 The White Paper noted, however, that employers will still be required to test the local labour market to see if Australian workers are available. In addition, the government 'will have the discretion to cap, exclude and review the placement of

85 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 112.

86 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 112.

87 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 113.

seasonal workers in areas with high unemployment and low workforce participation rates'.⁸⁸

Interactions between the various visa programs

2.84 As the above sections demonstrate, temporary visa programs tend to be seen and reviewed in isolation from each other. A consequence of this segregated approach has been that a key feature of Australia's system of temporary migration, the interaction between the various temporary visa programs, has been relatively unexamined.

2.85 This section therefore considers the interaction of temporary visa programs in creating a 'two-step' migration program, and the corresponding potential for unintended consequences such as the creation of a group of indefinitely temporary migrants.

2.86 The notion of an indefinitely temporary cohort of migrants has been explored by Mr Peter Mares, Adjunct Fellow at the Institute for Social Research at Swinburne University of Technology. Mr Mares noted it has become increasingly common for 'a migrant to spend time in Australia on a temporary visa or a series of temporary visas (such as 457 and student visas), before taking the next step to become a permanent migrant'.⁸⁹

2.87 As noted earlier, temporary visas provide a pathway to permanent residency. In 2013–14, over 58 per cent of new permanent residency visas were granted to people already in Australia on temporary visas.⁹⁰ A similar trend has occurred in the family stream of the migration program in 2013–14, with 33 per cent of family visas in the permanent migration program granted onshore, often the result of temporary migrants partnering with Australian citizens and permanent residents.⁹¹

2.88 Submitters such as Mr Mares and the Australian Chamber of Commerce and Industry acknowledged that a 'two-step' migration program, (that is an opportunity to progress from temporary migration to permanent migration), has much to recommend it in terms of a 'try before you buy' approach to migration.⁹²

2.89 However, Mr Mares pointed to the prospect of an increasing number of indefinitely temporary migrants arising from the potential mismatch between a capped permanent migration program and an uncapped temporary migration program:

A two-step migration program has much to recommend it, but it has a potential downside. Since the annual *permanent* migration program is

88 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 114.

89 Mr Peter Mares, *Submission 2*, p. 7.

90 Migration Council Australia, *Submission 27*, p. 3.

91 Mr Peter Mares, *Submission 2*, p. 7.

92 Australian Chamber of Commerce and Industry, *Submission 10*, p. 9; Mr Peter Mares, *Submission 2*, p. 7.

capped, but the temporary migration program is open-ended, there is a potential for a mismatch to emerge between the aspirations of *temporary* migrants to become permanent residents and their capacity to do so (in terms of places in the program).

This raises the very real possibility that a large and growing number of temporary migrants will extend their stay in Australia by moving from one temporary visa to another—thus raising the potential for Australia to have an emerging cohort of migrants who are indefinitely temporary.⁹³

2.90 The three visa programs at the heart of this inquiry, the 457, WHM, and international student visa programs are central to this scenario. As noted earlier, all three visa programs have grown substantially over the last ten to twenty years and all are now entrenched features of the Australian labour market.

2.91 Mr Mares outlined a scenario under which a person could easily spend a decade and a half in Australia on a series of temporary visas:

An international student arrives in Australia at age 16 to complete the final two years of high school, before a three year undergraduate degree, a year of honours and a two year masters program (or eight years of study in total). The student then spends three years on a 485 graduate post-study work visa. When this visa expires the student is granted a 457 visa for four years.

At the end of this period, this student graduate would be aged 31 and would have spent almost half his or her life in Australia—15 formative years—on a series of temporary visas.⁹⁴

2.92 However, despite having lived in Australia for 15 years, paid taxes, and abided by Australian laws and regulations, the person would not necessarily be able to access the rights of a resident or citizen:

The person in question, however, will not necessarily be on a pathway to becoming an Australian resident and enjoying the rights and entitlements that go with permanent residency and ultimately, citizenship—including the right to vote or stand for office that is fundamental to the meaningful operation of a system of representative democracy.⁹⁵

2.93 This scenario is likely to be exacerbated by the growing trend to promote an Australian high school education to overseas students as a means to create a steady stream of international students for Australia's higher education system. While the above scenario featured a student completing their final two years of high school in Australia, Mr Mares told the committee that Australia is actively encouraging the arrival of children as young as twelve or thirteen to study in Australian high schools.⁹⁶

93 Mr Peter Mares, *Submission 2*, p. 7, emphasis original.

94 Mr Peter Mares, *Submission 2*, p. 9.

95 Mr Peter Mares, *Submission 2*, p. 9.

96 Mr Peter Mares, *Submission 2*, pp 9–10.

2.94 There is no data on the number of long-term temporary migrants in Australia because the DIBP does not collect data in a form that would allow for it to be calculated. However, Mr Mares provided a range of data that indicated not only an increasing tendency for 'for temporary visa holders to cycle through a range of different temporary visa options', but also the potential for a growing cohort of temporary migrants who fail to progress towards permanent residency and therefore become indefinitely temporary.⁹⁷

2.95 Mr Mares observed at least 2000 people have been in Australia on a temporary visa for at least 10 years and another 18,000 have been in Australia for eight years or more on temporary visas. Mr Mares also noted that about 3000 people who met the eligibility criteria for permanent residency, and who have paid for and had applications for permanent residency lodged for more than five years, are still awaiting a response from the DIBP about their application.⁹⁸

2.96 Both Eventus Corporate Migration and Mr Mares drew attention to the treatment of New Zealanders who arrived in Australia after 2001. As noted earlier, there are approximately 650 000 New Zealanders in Australia. Those that came before 2001 are special category visa holders and are, to all intents and purposes, permanent residents. However, a group of approximately 200 000 New Zealanders that arrived after 2001 do not have a clear pathway to permanent residency.⁹⁹ New Zealanders in this latter category are on a visa that is 'officially categorised as a temporary visa by the immigration department, even though it allows an indefinite stay'. In other words, New Zealanders in this category are indefinitely temporary.¹⁰⁰

2.97 Being indefinitely temporary has consequences in terms of a lack of access to rights and entitlements:

They will never vote and they will never run for office. They pay taxes and they do have access to Medicare, but they do not have access to Centrelink, apart from a very limited six-month window after 10 years. They have to pay full up-front fees for their students to go to university and they pay for the National Disability Insurance Scheme but they cannot access the National Disability Insurance Scheme.¹⁰¹

2.98 While Mr Mares did not place an upper limit on the amount of time that a person could reside in Australia as a temporary migrant, he did point out that indefinitely temporary migrants are 'at risk of being permanently excluded from the political community of the nation and permanently denied the benefits and rights of citizenship'.¹⁰²

97 Mr Peter Mares, *Submission 2*, pp 10–11.

98 Mr Peter Mares, private capacity, *Committee Hansard*, 19 June 2015, pp 47–49.

99 Eventus, *Submission 25*, p. 21.

100 Mr Peter Mares, private capacity, *Committee Hansard*, 19 June 2015, p. 47.

101 Mr Peter Mares, private capacity, *Committee Hansard*, 19 June 2015, p. 47.

102 Mr Peter Mares, *Submission 2*, p. 14.

2.99 Mr Mares proposed two alternative approaches to this dilemma. The first would be to give much greater weight to time spent in Australia on a temporary visa in applications for permanent residency. Mr Mares noted that European Union member states are required to grant 'permanent or long term residence status to foreign nationals who have been long-term temporary residents, usually for at least five years duration' (with time spent on a student visa discounted by 50 per cent compared to time spent working). The second approach would be to cap Australia's various temporary migration programs, particularly the international student, 485 and 457 visa programs on an annual basis.¹⁰³

2.100 Mr Mares argued that:

A migrant who lives in Australia for a significant period of time, who contributes to the economic life of the nation through their labour and their taxes, who has quite possibly paid fees to study here, is a person who for all intents and purposes, makes Australia their home.

The more time temporary migrants spend living, working and studying in Australia, the more financial, cultural, psychological and emotional attachments they are likely to develop.¹⁰⁴

2.101 Given that one of the fundamental tenets of Australian society is that those subject to the laws of a nation should have a say in how those laws are developed and administered, a question arises as to when a temporary migrant accumulates the rights of a resident of Australia. These rights include:

...rights to have a say in how those taxes are spent, rights to receive protection when they fall on hard times—for example, health care, disability assistance, unemployment benefits and so on—and rights to access to services—child care, education.¹⁰⁵

2.102 Related to this discussion about rights and responsibilities is the type of migration system that Australia currently has and consequently the type of society that Australia has become. According to Mr Mares, there is a risk that Australia is moving away from a multicultural society based on citizenship to a society where a growing cohort of migrants miss out on the rights that accrue to permanent residents and citizens.¹⁰⁶

Committee view

2.103 Australia's migration program, particularly since the end of World War Two, has resulted in a citizenship-based multicultural society that stands in stark contrast to the guest-worker model in many other societies.

2.104 Over the last two decades, however, as temporary migrants have become increasingly valuable to Australia, new visa categories have been created such as the

103 Mr Peter Mares, *Submission 2*, pp 14–15.

104 Mr Peter Mares, *Submission 2*, p. 15.

105 Mr Peter Mares, private capacity, *Committee Hansard*, 19 June 2015, p. 45.

106 Mr Peter Mares, private capacity, *Committee Hansard*, 19 June 2015, pp 45–46.

485 post-study work visa. Changes to, and the expansion of, various temporary migration visas have been made to accommodate various needs or demands in different sectors of the economy.

2.105 Yet while these changes may have been necessary or beneficial, the range of temporary visa programs and the potential to move from one visa to another has created a range of incentives for temporary migrants to remain in Australia. Running alongside these incentives is an expectation that a temporary migrant will be able to become a permanent resident.

2.106 However, the potential for unintended consequences arises when the numbers of temporary migrants seeking to become permanent residents exceeds the capacity of the permanent migration stream to accommodate them. In this case, a situation may arise where a number of temporary migrants, some of whom may have been in the country for eight years or more, are unable to transition to permanent residency.

2.107 The risk for Australia is the creation of an indefinitely temporary cohort of migrants who lack access to the rights and entitlements of permanent residents and citizens. These are serious issues for an inclusive liberal democracy such as Australia that, historically, has built a citizenship-based multicultural society.

2.108 In order to resolve the issues of a permanently temporary cohort of migrants, the committee received evidence to suggest that time spent living in Australia should be given greater weight in consideration of applications for permanent residency. It was also proposed that eight years continuous residence was a reasonable period of time to fully qualify a temporary migrant for a permanent visa assuming there were no serious character concerns.

2.109 The committee has not formed a view on the weight that should be attached to length of residence in Australia, or the length of time after which it would be reasonable to resolve the status of a temporary visa holder. However, the committee is persuaded that these are matters which merit serious consideration.

2.110 The committee heard that the DIBP gathers information on a temporary visa holder based on the last time they entered the country. However, the DIBP does not appear to have a system that can aggregate the data to provide figures on the number of temporary visa holders that have been in Australia on a series of temporary visas and for how long in total. In terms of ascertaining the number of long-term temporary migrants and designing appropriate policy in this area, the lack of this type of data is a serious deficiency.

Recommendation 1

2.111 The committee recommends that the Department of Immigration and Border Protection routinely publish data on the number of temporary migrants resident in Australia by length of stay. This data should account for transitions between temporary visa categories. The committee also recommends that brief periods of time spent outside Australia during a transition between visas should not restart the clock on calculating the total length of time spent in Australia on temporary visas.

Recommendation 2

2.112 The committee recommends that the Department of Immigration and Border Protection conduct a review of proposals to give greater weight to time spent living in Australia in consideration of applications for permanent residency. The review should also consider the merits of setting a limit on the period of time after which it would be considered reasonable for a temporary visa holder to qualify for permanent residency.