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The Parliament of the Commonwealth of Australia

# Temporary visas ... permanent benefits

**Ensuring the effectiveness, fairness and integrity of the  
temporary business visa program**

Joint Standing Committee on Migration

August 2007  
Canberra

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# Contents

Foreword.....	vii
Committee membership.....	ix
Terms of reference.....	xi
List of abbreviations.....	xii
List of recommendations.....	xv
Inquiry process.....	xxiii
Adoption of inquiry.....	xxiii
Conduct of inquiry.....	xxiv
Structure of report.....	xxiv
Developments during inquiry process.....	xxv
<b>1 Introduction.....</b>	<b>1</b>
<b>Temporary business visa program.....</b>	<b>3</b>
Workplace arrangements.....	3
Ensuring effectiveness, fairness and integrity.....	4
Training and workforce participation.....	7
Labour shortages and lower skilled workers.....	9
Overview of temporary business visa categories.....	12
Focus of report.....	13
<b>Temporary Business (Long Stay) visa (subclass 457)—Standard Business Sponsorship and Labour Agreements.....</b>	<b>14</b>
457 visa program objectives and principles.....	17
Key issues.....	18

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Security and health checks .....	18
Sectoral issues.....	21
Permanent residency .....	22
<b>Committee findings on other temporary business related visa categories .....</b>	<b>23</b>
Business visitor visas .....	23
Medical Practitioner visa (subclass 422) .....	27
Occupational Trainee visa (subclass 442) .....	30
<b>2 457 visa eligibility requirements: key issues and improved procedures .....</b>	<b>33</b>
<b>Introduction .....</b>	<b>33</b>
<b>Salary requirements.....</b>	<b>33</b>
Establishing rates of pay .....	35
Regional salary concession .....	40
Non-salary benefits, deductions and other expenses.....	42
Ensuring minimum wage standards are met .....	47
Comparison between 457 visa and H-1B visa in the United States .....	49
<b>Skill requirements .....</b>	<b>53</b>
Australian and New Zealand Standard Classification of Occupations .....	56
Regional skills concession .....	63
Sectoral difficulties in obtaining visas—skill issues .....	64
Skills assessment.....	69
<b>Regional Certifying Bodies .....</b>	<b>71</b>
Organisational structures .....	72
Operational issues .....	73
<b>Labour market testing .....</b>	<b>76</b>
<b>English language requirements.....</b>	<b>82</b>
Occupational health and safety .....	87
<b>Training requirements .....</b>	<b>89</b>
<b>Labour hire industry .....</b>	<b>93</b>
Overseas labour hire industry .....	97
<b>Labour Agreements .....</b>	<b>98</b>
Industry experiences .....	100

<b>3</b>	<b>457 visa compliance arrangements, communication and program administration: key issues and improved procedures.....</b>	<b>107</b>
	Introduction .....	107
	Monitoring, reporting and enforcement .....	108
	Need for improved monitoring, reporting and enforcement arrangements .....	111
	Previous DIAC arrangements for monitoring, reporting and enforcement .....	121
	Suggestions for improvement.....	124
	Reinforced integrity measures.....	126
	Mechanism for reporting alleged breaches .....	129
	Cessation of employment.....	132
	Commonwealth, state and territory collaboration in compliance .....	134
	<b>Communication</b> .....	<b>136</b>
	DIAC’s communication with sponsors, visa holders and other stakeholders.....	136
	<b>DIAC program administration</b> .....	<b>140</b>
	Visa processing times .....	140
	Industry Outreach Officers .....	144

## **ADDITIONAL COMMENTS**

Additional comments.....	147
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## **APPENDICES**

Appendix A: List of submissions.....	149
Appendix B: List of witnesses .....	155
Appendix C: List of exhibits .....	163
Appendix D: Ministerial announcements on temporary business visa program.....	169
Appendix E: 457 eligibility requirements and sponsorship undertakings .....	175
Appendix F: Major sub-group occupations for ASCO levels 1-9 .....	181

**LIST OF TABLES**

Table 1.1	Primary and secondary 457 visa grants: 1997-2007 .....	15
Table 1.2	Primary 457 visa grants in 2006-07 by state and territory .....	16
Table 1.3	Top 15 countries for primary 457 visa grants in 2006-07 .....	16
Table 1.4	Business visitors—grants by subclass .....	24
Table 2.1	Top 15 occupations for primary 457 visa grants in 2006-07.....	54
Table 2.2	Primary 457 visa grants in 2006-07 by industry classification of sponsor .....	55
Table 2.3	Major ASCO groups and skill level.....	56
Table 2.4	Comparison between ANZSCO and ASCO groups and skill levels .....	57
Table 3.1	DIAC compliance data: 2003-04 to 2005-06 .....	120
Table 3.2	457 sponsor investigations by outcome: 1 July 2006 to 30 April 2007 .....	120
Table 3.3	457 sponsor sanctions by reason: 1 July 2006 to 30 April 2007 .....	120

**LIST OF FIGURES**

Figure 3.1	Penalties to strengthen integrity of temporary skilled migration program.....	109
Figure 3.2	DIAC's existing compliance arrangements.....	122



## Foreword

Migration, in its many forms, has made an important contribution to the economic development of Australia and the creation of a diverse, vibrant society. In recent years, the Australian Government has increased significantly the level of temporary skilled migration in response to critical skills shortages throughout Australia. In my own state of Western Australia, the mining boom has led to increased demands for skilled workers, and in many cases this need can only be met by overseas workers. The situation in Western Australia is replicated in other industry sectors throughout Australia.

A range of business visas facilitate the entry of skilled workers to fill positions on a temporary basis. Of these, the 457 visa has gained considerable public attention, largely through reports of abuse<sup>1</sup> of the visa and those workers brought to Australia under its auspices. While few would deny the skills shortages facing Australia due to a strong economy and historically low levels of unemployment, public support for temporary business visas has the potential to be undermined by abuse of the system. The Committee therefore decided to examine the adequacy of eligibility requirements and the effectiveness of monitoring, enforcement and reporting arrangements for these types of visas. The integrity of the system needs to be protected and strengthened and, with it, public acceptance of the need for temporary skilled workers from overseas to meet proven skill shortages in key industry sectors. Employers also need to be reminded that access to skilled temporary workers is a privilege, not a right. Abuses of the system should and will be met by strong penalties and withdrawal of their access to this type of labour.

Bringing in skilled workers from overseas, however, is not a long-term solution to the skills shortages facing Australia. Training Australians, and providing them with job opportunities, has to have highest priority. Employers must demonstrate a commitment towards training an Australian workforce, rather than relying on accessing skills from a global, but at times limited, pool of workers. One of the

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1 For more information, see Table 3.2 in Chapter 3 of the report.

prime components of the temporary business visas is the need for employers to demonstrate a commitment to training of Australians, and the Committee saw this as of fundamental importance in examining the use of such visas.

While there is a need, from the viewpoint of business, to have such skilled workers identified and brought to Australia as quickly as possible through streamlined processes, that must also be weighed against the need for sufficiently rigorous checking of the credentials and background of these workers. As events in recent weeks have shown, the Australian public would also expect that overseas workers are thoroughly assessed to determine if they might pose a security risk to this country.

I would like to thank all of the groups and individuals who made submissions to the inquiry and appeared at public hearings as it was essential that the Committee hear first hand the experience of both employers and workers utilising these visas. I would also place on record my thanks to all members of the Committee who approached this inquiry in a bipartisan way. Discussion at times was vigorous, but all came from a perspective of wanting the best possible system for Australia.

Don Randall MP  
Chair





## Committee membership

Chair Mr Don Randall MP

Deputy Chair Senator Helen Polley (from 7 December 2006)

Members Senator Andrew Bartlett

Senator Alan Eggleston

Senator Linda Kirk (to 6 December 2006)

Senator Stephen Parry

Mr Laurie Ferguson MP

Mrs Julia Irwin MP

Mr Michael Keenan MP

Hon Dr Carmen Lawrence MP

Dr Andrew Southcott MP

## Committee Secretariat

Secretary	Ms Joanne Towner
Inquiry Secretary	Dr Kate Sullivan
Senior Research Officers	Ms Zoë Smith
	Ms Julia Searle (from 11 June 2007 to 18 July 2007)
Administrative Officer	Ms Melita Caulfield



## Terms of reference

On 6 December 2006 the Joint Standing Committee on Migration adopted the following inquiry:

**Inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas**

1. Inquire into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particularly Temporary Business (Long Stay) 457 visas and Labour Agreements; and
2. Identify areas where procedures can be improved.



## List of abbreviations

ANZSCO	Australian and New Zealand Standard Classification of Occupations
ASCO	Australian Standard Classification of Occupations
COAG	Council of Australian Governments
CSWP	Commonwealth/State Working Party
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
ETA	Electronic Travel Authority
IELTS	International English Language Testing System
IOO	Immigration Outreach Officer
JSCM	Joint Standing Committee on Migration
MCIMA	Ministerial Council on Immigration and Multicultural Affairs
MIA	Migration Institute of Australia

MSL	Minimum Salary Level
OH&S	Occupational Health and Safety
OTD	Overseas Trained Doctor
OWS	Office of Workplace Services
RCB	Regional Certifying Body
RWA	Regional Workforce Agency





# List of recommendations

## 1 Introduction

### Recommendation 1

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.

### Recommendation 2

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.

### Recommendation 3

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.

#### Recommendation 4

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.

#### Recommendation 5

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.

## 2 457 visa eligibility requirements: key issues and improved procedures

#### Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship, together with the Department of Employment and Workplace Relations, investigate and report to the Minister for Immigration and Citizenship on the adequacy of the salary system under the 457 visa program, underpinned by the minimum salary level, to identify if viable alternatives exist for calculating salary levels.

#### Recommendation 7

The Committee recommends that the Australian Government proceed with its proposal to index the salaries of 457 visa holders in line with increases to the minimum salary level or, alternatively, the award conditions under which the visa was granted.



### Recommendation 8

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- work with stakeholders to review the impact on the 457 visa program of the transition from the Australian Standard Classification of Occupations to the Australian and New Zealand Standard Classification of Occupations (ANZSCO);
- regularly review the list of approved occupations gazetted under the Migration Regulations 1994 that meet the minimum skill level for the 457 visa as defined under the new ANZSCO to ensure that this list maintains the integrity of the 457 visa program in listing only 'skilled' occupations; and
- communicate to stakeholders and the Australian public what impact the adoption of the ANZSCO system will have on the definition of a 'skilled' occupation under the 457 visa program in terms of ensuring a continued benefit to Australia.

### Recommendation 9

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve the flexibility of the Australian Standard Classification of Occupations and the Australian and New Zealand Standard Classification of Occupations in defining new/emerging occupations and specialisations.

### Recommendation 10

The Committee recommends that the existing 457 visa subclass be maintained in its current form and not be divided into two visa subclasses for higher and lower (regional) Australian Standard Classification of Occupations classifications. However, the Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations further investigate this area, with a view to enhancing monitoring and reporting, and improving arrangements for regional areas of Australia.

### Recommendation 11

The Committee recommends that the Department of Immigration and Citizenship commission an independent review of the structure and roles of Regional Certifying Bodies (RCBs), with particular regard to:

- the capacity of RCBs to fulfil their specified functions;
- the differing organisational structures of RCBs; and
- the adequacy of the 'regional' 457 visa and associated concessions.

In addition to reporting on the issues outlined above, this review should aim to:

- produce clear operational guidelines for RCBs; and
- identify mechanisms for the communication of relevant procedural, legislative and statistical information to RCBs.

#### Recommendation 12

The Committee recommends that, to ensure the 457 visa program is limited to skilled occupations where there are demonstrated skills shortages and there is no negative impact on Australian jobs, the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- regularly review the gazetted list of approved occupations and give consideration to ensuring that it lists only skilled migration occupations in demand – for example, through the possible implementation of a Temporary Migration Occupations in Demand List; and
- work with industry and other stakeholders to trial a limited labour market testing process to agreed standards for a narrow range of identified occupations.

#### Recommendation 13

The Committee recommends that, in referring specific cases for formal English language testing with a focus on occupations with a high occupational health and safety (OH&S) risk or history of sponsor non-compliance, the Department of Immigration and Citizenship also take into account that the need for 457 workers to have a higher level of English language proficiency for OH&S and broader communication reasons remains relevant, regardless of the sector or region in which they work.

#### Recommendation 14

The Committee recommends that the Department of Immigration and Citizenship:

- work with stakeholders to develop best practice benchmarks for training requirements to be met by sponsoring employers – this should ensure effective training objectives under the 457 visa program that uphold the commitment to training Australians;
- implement mechanisms to ensure improved communication of training requirements under the program and training outcomes; and
- ensure that appropriate resources are committed to monitoring compliance with training requirements under the program.

#### Recommendation 15

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve:

- the process of negotiating Labour Agreements;
- the consistency of such agreements with aspects of the overall 457 visa program; and
- the operation and transparency of such agreements.

### 3 457 visa compliance arrangements, communication and program administration: key issues and improved procedures

#### Recommendation 16

The Committee recommends that, given the number of significant changes made to the 457 visa program in 2007 and past concerns about the program, the Department of Immigration and Citizenship commission an independent review of the program in 2008-09 to assess the impact of these changes on the program's effectiveness, fairness and integrity.

#### Recommendation 17

The Committee recommends that the Department of Immigration and Citizenship ensure that adequate resources are allocated to the compliance regime under the 457 visa program and, in particular, to the implementation and enforcement of the new arrangements.

**Recommendation 18**

The Committee recommends that the Department of Immigration and Citizenship regularly report on its website details of monitoring and enforcement activities – for example, on the number of employer sponsors monitored, sites visits conducted, sponsor approvals cancelled, sponsors banned and sponsors fined.

**Recommendation 19**

The Committee recommends that the Department of Immigration and Citizenship introduce a more comprehensive, confidential complaints mechanism so that 457 visa holders are able to report potential breaches of visa requirements without provoking retaliatory action. This mechanism should also be widely promoted to 457 visa holders.

**Recommendation 20**

The Committee recommends that the Department of Immigration and Citizenship (DIAC) develop and distribute promotional material for 457 sponsors and visa holders that clearly sets out the rights of visa holders and the process that follows employment cessation. This information should:

- clearly state that DIAC has the power to allow 457 visa holders to stay beyond a 28-day period following the cessation of employment;
- be distributed to all new 457 visa holders and sent to the known postal addresses of 457 visa holders currently in Australia; and
- be provided in both English and the first language of the visa holder.

**Recommendation 21**

The Committee recommends that the Department of Immigration and Citizenship develop a communications strategy to ensure that stakeholders, including sponsors and visa holders, and the broader Australian population are adequately informed of the proposed changes to the 457 visa program. This should provide clarity on sponsors' legal obligations, including the payment of travel costs, medical expenses, recruitment and migration fees, and the necessity of adequate record keeping.

**Recommendation 22**

The Committee recommends that the Department of Immigration and Citizenship (DIAC) provide clear guidelines for 457 sponsors and visa holders on their rights and obligations. At the time of granting a visa DIAC should provide:

- sponsors with a checklist outlining their obligations; and
- visa holders with a list of their rights and their sponsor's obligations in both English and their first language.

In addition, this information should be provided to existing sponsors and visa holders in Australia.

**Recommendation 23**

The Committee recommends that the Department of Immigration and Citizenship collect and publish, as appropriate under privacy laws, more detailed statistics on the 457 visa program – for example, on the occupations and actual base salaries of 457 workers – to enhance transparency and reinforce public confidence in the operation of the program.

**Recommendation 24**

The Committee recommends that, to ensure fast-tracked service standards for processing times are met, the Australian National Audit Office undertake a performance audit of the administration of the 457 visa program next financial year. This audit should examine processing efficiency – that is, the extent to which the fast-track processing initiative leads to faster processing times compared to the rest of the caseload.

**Recommendation 25**

The Committee recommends that the Department of Immigration and Citizenship improve its visa electronic lodgement procedures to ensure the effectiveness of the 457 visa program.





# Inquiry process

## Adoption of inquiry

Section 1(b) of the Resolution of Appointment of the Joint Standing Committee on Migration states:

Annual reports of government departments and authorities tabled in the House shall stand referred to the committee for any inquiry the committee may wish to make. Reports shall stand referred to the committee in accordance with a schedule tabled by the Speaker to record the areas of responsibility of each committee, provided that:

- (i) any question concerning responsibility for a report or a part of a report shall be determined by the Speaker; and
- (ii) the period during which an inquiry concerning an annual report may be commenced by a committee shall end on the day on which the next annual report of that Department or authority is presented to the House.<sup>2</sup>

The Department of Immigration and Multicultural Affairs (DIMA) *Annual Report 2005-06* was tabled in Parliament on 18 October 2006. The report makes reference to the administration of the temporary business visa program.<sup>3</sup> Given the ongoing concerns about the use of such visas, the Committee adopted an inquiry into this matter on 6 December 2006.

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<sup>2</sup> Committee website, <http://www.aph.gov.au/house/committee/mig/resolution.htm>. The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The Resolution of Appointment for the 41st Parliament was passed by the House of Representatives and the Senate on 18 November 2004.

<sup>3</sup> DIMA, *Annual Report 2005-06*, Canberra, 2006, p. 37, p. 54 and pp. 84-86.

## Conduct of inquiry

The inquiry was advertised in *The Australian* on 13 December 2006 and letters were sent to over 200 organisations and individuals with a possible interest in the matter. The Committee received 89 submissions, 22 supplementary submissions and 36 exhibits. Details are at Appendices A and C to this report.

Public hearings were held in Melbourne (14 March 2007), Brisbane (16 April 2007), Perth (30 April 2007), Sydney (16-17 May 2007), Canberra (1 June 2007 and 13 June 2007) and Cairns (3 July 2007). Details of witnesses are at Appendix B.

The Committee appreciated the detailed input it received from a wide range of interested groups and individuals.<sup>4</sup>

## Structure of report

The report consists of three chapters. Chapter 1 provides an introductory overview of the temporary business visa program and clarifies issues pertinent to the Committee's terms of reference. It also outlines the Committee's focus on the Temporary Business (Long Stay) visa (subclass 457) – Standard Business Sponsorship and Labour Agreements – and provides a summary of the Committee's findings on some other temporary business related visas.

Chapter 2 covers a range of key issues relating to the eligibility requirements of the 457 visa program, particularly concerning minimum salary and skill requirements and regional concessions to those requirements. The central role played by the Australian Standard Classification of Occupations system in defining what constitutes a 'skilled' occupation under the program is also discussed. Other topics include Regional Certifying Bodies, labour market testing, and English language and training requirements. The chapter concludes with a discussion on the on-hire and recruitment industry and its interface with the 457 visa program, and on Labour Agreements as a mechanism to address identified skills shortages in Australia.

Chapter 3 discusses the important area of monitoring, enforcement and reporting under the 457 visa program. This area is essential to reinforcing the integrity of the program and ensuring public confidence in 457 visas, while still meeting the needs

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4 Because of variations in pagination style among the submissions received, footnote references in the report refer to the page number of the pdf copy of the submission, as published on the Committee's web site. Similarly, page references in transcripts are to the document as it appears electronically, not as it may appear in hard copy, because of variations in printer drivers.



of business for streamlined arrangements. Other matters discussed include Commonwealth, state and territory collaboration in compliance; an improved mechanism for 457 visa holders and others to report alleged breaches of program requirements; and clarification of the '28-day' rule for visa holders to find a new employer sponsor.

The chapter also looks at communication processes under the program – in particular, communication between the Department of Immigration and Citizenship (DIAC) and employer sponsors, visa holders and other stakeholders – and how this area might be improved. The chapter concludes by looking at issues relating to DIAC's administration of the program – most notably, 457 visa processing times, which was raised as a major area of concern during the inquiry.

As set out in the terms of reference, areas where processes can be improved are identified throughout these chapters.

## **Developments during inquiry process**

On 14 July 2006, prior to the Committee adopting the terms of reference for this inquiry, the Council of Australian Governments (COAG) announced that it had:

... asked the Ministerial Council on Immigration and Multicultural Affairs (MCIMA) to identify and implement cooperative measures to ensure the effectiveness, fairness and integrity of the temporary skilled migration arrangements, including appropriate and consistent minimum standards.<sup>5</sup>

MCIMA also met on 14 July 2006 and established a Commonwealth/State Working Party (CSWP) on Skilled Migration to develop recommendations to COAG. MCIMA agreed that the CSWP would:

- ... consider and report back on measures within the 457 visa category to better:
- enforce minimum conditions that do not undercut national and/or state employment standards;
  - ensure commitment to training by employers;
  - enable cooperation between relevant Commonwealth/State agencies to ensure expedient referral and investigation of potential breaches and secure compliance with Australian laws;
  - ensure Subclass 457 visa workers are appropriately informed of their rights and entitlements, and mechanisms in place are
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5 Council of Australian Governments Communique, 14 July 2006, <http://www.coag.gov.au/meetings/140706/index.htm#temporary>.

reviewed to ensure 457 workers are better able to report potential breaches; and

- examine the ability for Commonwealth/State agencies to exchange information in this area.<sup>6</sup>

In February 2007, DIAC provided the Committee with an update on the work of the CSWP:

A range of Commonwealth/State agencies are represented on the CSWP, which has to date met on four occasions to develop a draft report to COAG ... The report is currently being updated and is expected to be considered by COAG senior officials in late February 2007 for release for consultation with key stakeholders. A report will then be finalised for COAG consideration.<sup>7</sup>

In June 2007, DIAC also provided the Committee with a document, entitled 'Temporary entry and employment of skilled migrants', containing discussion points developed by the CSWP 'for the purpose of consultation with key stakeholders'.<sup>8</sup> The Committee heard that, earlier in April, the Minister for Immigration and Citizenship had invited some 130 key stakeholders to provide written submissions on the discussion paper and that 45 submissions had been received in reply.<sup>9</sup> At the time of drafting this report, there had been no further updates on the COAG process.

The proceedings of the COAG/CSWP review are classified as COAG-in-confidence and, as such, were not made available to the Committee. Accordingly, several key contributors to this inquiry (such as DIAC and the state/territory governments) commented that they were unable to provide detailed input to the Committee and/or comment on any issues that COAG might be looking at:

The attached Commonwealth submission seeks to address the JSCM inquiry's terms of reference to the extent possible, but without going into matters being considered by the COAG inquiry.<sup>10</sup>

In light of input to date, and the confidential nature of the Council of Australian Governments related proceedings, the Queensland Government believes that it would be inappropriate to

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6 Ministerial Council on Immigration and Multicultural Affairs, '457 Visa', 14 July 2006—see Commonwealth Government, *Submission No. 33*, p. 16.

7 Commonwealth Government, *Submission No. 33*, p. 1.

8 DIAC, *Exhibit 26*, p. 1.

9 Mr Parsons, DIAC, *Transcript of Evidence*, 1 June 2007, pp. 68-69.

10 Commonwealth Government, *Submission No. 33*, p. 1.

comprehensively address the full breadth of issues within this submission.<sup>11</sup>

On 23 January 2007, the Prime Minister announced the appointment of the Hon Kevin Andrews MP as the Minister for Immigration and Citizenship, replacing Senator the Hon Amanda Vanstone in that role. At this time, the Prime Minister also announced that the existing Department of Immigration and Multicultural Affairs (DIMA) would become the Department of Immigration and Citizenship (DIAC).

As this change occurred during the period of this inquiry, some of the evidence to the Committee referred to DIMA rather than DIAC. This report refers consistently to DIAC but references to DIMA in quoted material have therefore been left unchanged.

On 26 April 2007, the Minister for Immigration and Citizenship announced changes to skilled temporary visa laws, including new civil penalties for employers who breach the law, greater powers for DIAC and the Workplace Ombudsman (formerly the Office of Workplace Services) to investigate employers, faster processing of applications for some employers and a higher English language requirement to be eligible for a skilled temporary visa. On 26 June 2007, the Minister announced specific details regarding the higher English language requirement for the visa.

A number of these changes require an amendment to the *Migration Act 1958*. Accordingly, the Migration Amendment (Sponsorship Obligations) Bill 2007 was introduced into Parliament on 21 June 2007. The bill proposes new enforcement and sanction provisions by way of civil penalties if an approved sponsor breaches their obligations under the program and allows for the cancellation of approval as a sponsor or barring of a sponsor where an obligation has been breached. At the time of finalising this report, the proposed legislation was still before the Parliament.

Appendix D provides details of each of these announcements.

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

