

**Visa Subclass 457
External Reference Group**

Final Report to the Minister for Immigration and Citizenship

April 2008

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Overview of this report

This Report includes the following sections:

- Executive summary
- List of recommendations
- A summary of the establishment, Terms of Reference, membership and operation of the Visa Subclass 457 External Reference Group (ERG)
- An overview of the current status of the Australian labour market and predicted future employment trends in certain sectors
- An analysis of the contribution migration can make to the alleviation of labour skills shortages
- An examination of processes around the granting of Visa Subclass 457 visas (the primary visa for temporary work) along with recommendations for streamlining the processing of 457 visas, while protecting the integrity of the system
- A 'Further options' section which considers other issues raised over the course of the reference group's deliberations, including the demand for semi-skilled and unskilled labour and the international effectiveness of Australia's skilled migration program.

The report includes the following attachments:

- A list of the references used in the compilation of this report
- The text of the media release from the Minister for Immigration and Citizenship announcing the establishment of the ERG, and the text of the media release announcing the Minister's receipt of the group's interim report
- The text of written submissions received during the ERG consultation process.

Note on nomenclature

When the phrase 'the department' is used in this report without further attribution it should be read as "the Department of Immigration and Citizenship (DIAC)".

References to submissions in this report refer both to written submissions and conversations with stakeholders.

Note on references

To avoid repetition, references in this report are generally concise. Full details on each reference may be found in the references list in **Attachment A**.

Where a recommendation in the body of the text refers to a recommendation by number, the reference is to the numbered list of recommendations in section two of this report.

List of abbreviations

| | |
|-------|---|
| ABS | Australian Bureau of Statistics |
| ACTU | Australian Council of Trade Unions |
| ASCO | Australian Standard Classification of Occupations |
| DEEWR | Department of Education, Employment and Workplace Relations |
| DIAC | Department of Immigration and Citizenship |
| ERG | Visa Subclass 457 External Reference Group |
| JSCM | Joint Standing Committee on Migration |
| MSL | Minimum Salary Level |
| RET | Department of Resources, Energy and Tourism |

Section 1 - Executive summary

Concerns have been raised by a number of industries in Australia, particularly in the resources, construction and tourism sectors, regarding labour and skill shortages in the Australian labour market. On 17 February, 2008 the Minister for Immigration and Citizenship, Senator Chris Evans, unveiled a package of migration measures designed to address Australia's skills and labour shortages.

As part of this package Senator Evans announced the formation of an External Reference Group (ERG) to examine how selected temporary skilled migration measures can help ease labour shortages. The ERG met between February and April 2008 with the Terms of Reference outlined in section three of this report.

The deliberations of the ERG were carried out with consideration of the current labour market pressures, the relationship between migration and labour skill shortages, and the history and operation of the Visa Subclass 457 temporary work visa system.

The key factors within the economy at present are the historically low unemployment rate and the high rate of participation. The labour market appears unable to supply skilled workers rapidly enough to respond to the needs of industries, particularly in a number of regions and sectors.

The unemployment rate is very low in states with a large resources sector (primarily Queensland and Western Australia). Unemployment rates in some skill categories are also extremely low nationally, with unemployment in Managerial and Professional categories below 2 per cent. Unemployment rates are also low in semi-skilled and even unskilled categories. As at November 2007 Australia's unemployment rates across all occupational groups were at historically low levels.

Wage growth has been particularly strong in those industries affected by skills shortages, with the mining industry recording the highest wages growth of any sector in the economy. This is likely to be adding to inflationary pressures more broadly.

The ERG carried out a program of consultation with key industry groups that reinforced the message of skill and labour shortages and the need to reduce visa processing times and improve the flexibility of temporary skilled migration programs.

The ERG notes that the Australian Government has developed a range of strategies to reduce skills shortages including the planned establishment of Skills Australia (the Skills Australia Bill 2008 had its second reading in the House of Representatives in February 2008). As a number of submissions to the ERG noted, training is a key measure to alleviate skills shortages in the medium to long term, while temporary skilled migration is an essential short to medium term measure. Permanent migration will also be important in addressing long term labour market needs given the demographic outlook for Australia.

To respond to immediate labour market pressures and enable a more rapid response to the needs of key industries the ERG proposed a number of improvements to the procedures and processes around the temporary skilled migration program. These are outlined in the List of recommendations included in section two of this report. Care has been taken to ensure these recommendations complement broader skills strategies and maintain the integrity of the temporary skilled migration program.

The recommendations are divided into the following seven sections:

- better long term planning
- streamlining application and approval processes
- improving the effectiveness of government resources
- elimination of duplication and unnecessary administration
- providing scope for flexibility
- remaining competitive
- branding.

The role of long term planning was supported in a number of submissions received by the ERG. **Recommendation 1** proposes development of a long term strategy to respond to aggregate labour market and skill needs and population trends.

A number of submissions received during consultations commented positively on the Industry Outreach Program managed by the Department of Immigration and Citizenship (DIAC) and suggested an extension of the program would be beneficial. **Recommendation 2** proposes an expansion of the department's outreach program to help reduce visa processing times. This would enhance the service provided to clients employing, or considering employing, temporary overseas skilled workers and would increase the proportion of 'decision-ready' applications received by the department leading to a reduction in processing times. This proposal is supported by **Recommendation 3**, which deals with improving DIAC and Department of Education, Employment and Workplace Relations (DEEWR) back-office processing.

During its deliberations the ERG noted that processing times were often extended due to the large numbers of applications that are not 'decision-ready', and which require follow up by the department. **Recommendation 4** proposes a process of accreditation, which would 'fast-track' applications received from accredited employers who meet a set of standards. If this recommendation is adopted accreditation would result in faster processing times across the program as it would allow for resources to be better targeted towards higher risk applications.

Adoption of this recommendation would also provide additional incentive for employers to comply with the conditions of sponsorship as accredited employers who breach these requirements could lose their accredited status and hence the ability to fast-track visa approvals.

The Migration Institute of Australia in their submission to the ERG note that, amongst their client group, "20 per cent of employers bring in 80 per cent of workers" under the temporary visa work scheme. These figures are consistent with departmental statistics which show that for the 457 visa overall 20 per cent of sponsors bring in approximately 75 per cent of workers. This suggests that accreditation could lead to significantly improved processing times for a large proportion of visa applications.

The ERG considered the possibility of developing a similar accreditation program for migration agents, but concluded that ultimately it is employers who bear responsibility for sponsorship compliance, and accreditation should therefore rest with them. This means employers should be confident that any agents acting on their behalf are of a high standard.

While noting that the English language requirement itself is not an issue, a number of submissions to the ERG reported anecdotal evidence that in some countries there are waiting

times of up to five months to take the required language test, **Recommendation 5** responds to this issue.

While some respondents in the consultation process were satisfied with the department's service levels, there was more generally recognition that service levels in temporary work visa processing were not being met, and that even these standards were not high enough in the current economic environment. **Recommendations 6 and 7** address these concerns with proposals designed to improve measured performance.

Further administrative improvements to the system to reduce processing times for all clients are proposed in **Recommendations 8 and 9** along with the development of an improved risk management approach that will ensure applications receive attention appropriate to their assessed risk level.

As part of its deliberations the ERG also reviewed submissions to the 2007 Joint Standing Committee on Migration review of temporary visas and noted community concerns over potential exploitation of employees. **Recommendation 10** goes on to propose mechanisms to strengthen the integrity of the program.

Recommendation 11 responds to the concerns raised in the Terms of Reference about the ability of firms to rapidly start up new and significant projects due to skilled workforce shortages. It recommends increased use of DIAC facilitated Labour Agreements, which would be available to those firms requiring skilled and semi-skilled labour for large projects of economic benefit to Australia.

Comments were received from a number of industry representatives that the current Visa Subclass 457 visa process was too onerous for small business and infrequent users and did not meet their recruitment needs. In **Recommendation 12** the ERG suggests a number of measures to improve the flexibility of the process while maintaining its integrity.

Recommendation 13 recommends that the government pilot other approaches to the provision of labour in those situations where the Subclass 457 visa is not suited to market requirements.

Recommendation 14 addresses the need for Australia to remain competitive in an increasingly global labour market and is supported by **Recommendation 15** which proposes an evaluation of the recommendations adopted from this ERG review process.

Recommendation 16 proposes a new name for the Visa Subclass 457 program to improve its market recognition and reinforce its applicability in the labour market.

Section 2 - List of recommendations

Introduction

Following its deliberations, and careful consideration of the submissions received during its consultations, the Visa Subclass 457 External Reference Group (ERG) notes the labour market pressures and skills shortages apparent in the Australian economy.

In this context Australia's skilled migration programs (both permanent and temporary) are seen as important in addressing these pressures. Access to global skills is crucial for the ongoing competitiveness of business in Australia.

Labour market pressures are expected to increase in future due to long term demographic and economic trends. The recommendations below should be considered as part of a package of measures (including training and skilling of Australians) the Australian Government should implement to address Australia's skills and labour shortages.

Throughout its work the ERG has been focused on the importance of maintaining the integrity of the 457 visa program and ensuring ongoing public support.

Recommendations

Better long term planning

Recommendation 1

The ERG recommends that the Australian Government develop a long term strategy to respond to aggregate labour market and skill needs and population trends, with specific reference to the role of temporary and permanent migration in responding to structural changes in the composition of the population and labour force.

Streamlining application and approval processes

Recommendation 2

The ERG recommends that the department expands its front-end support to employers and industry, through its industry and regional outreach programs, with a focus on developing guidelines and training to help industry increase the proportion of 'decision-ready' applications.

Recommendation 3

The ERG recommends that relevant government agencies (DIAC, DEEWR) strengthen their back-office processing for temporary skilled migration visas and Labour Agreements to improve speed and effectiveness of processing. To support this measure the government agencies should establish:

- dedicated specialised teams on an industry / sector basis to facilitate and process applications
- 'centres of excellence' for temporary skilled migration visa processing.

The ERG recommends that additional resources be allocated on a temporary basis to eliminate the backlog of applications currently on hand within the temporary skilled migration program by end 2008 (at the latest).

Recommendation 4

The ERG recommends that DIAC and DEEWR establish a system of accreditation for employers who exhibit a set of low-risk characteristics, including an exemplary record of compliance with immigration and industrial relations laws. Accredited employers would have applications fast-tracked.

Recommendation 5

The ERG recommends that the department consider providing applicants with alternative mechanisms for taking the English language tests by increasing competition between providers to improve effectiveness and efficiency of the English language testing service.

Improving the effectiveness of government resources

Recommendation 6

The ERG recommends that the department develop and implement a comprehensive staff training program for all staff contributing to the temporary skilled migration program (with particular regard to the improved risk-management procedures proposed in recommendation 9) to improve efficiency and effectiveness of the program and deliver improved long term capacity and capability.

Recommendation 7

The ERG recommends that resource requirements to support the 457 program be reviewed, taking into account expectations regarding improved processing standards.

The potential need for additional resourcing, including any up front investment to improve processes and training, needs to be balanced against increased productivity and efficiency gains (see for example recommendation 8) and the negotiation of suitable Key Performance Indicators (KPIs). Resourcing requirements are to be agreed in conjunction with the Department of Finance and the Treasury with a view to improving measured performance.

Elimination of duplication and unnecessary administration

Recommendation 8

The ERG recommends that the department eliminate elements of duplication that exist in the visa processing system (including addressing potentially unnecessary steps such as the nomination process) with a view to improving processing times.

Providing scope for flexibility

Recommendation 9

The ERG recommends that the department develop a risk management approach to visa processing based on an agreed matrix of risk characteristics to facilitate improved processing while also allowing for resources to be better targeted to higher risk applications.

Recommendation 10

The ERG recommends that mechanisms be developed to provide employers and workers with more information as to their rights and responsibilities under the system.

The ERG recommends increasing the flexibility of movement of workers between sponsors.

Recommendation 11

The ERG recommends that Labour Agreements be promoted as a tool to manage the temporary entry of overseas workers to meet the range of labour needs for large projects that are in the national interest and have significant economic benefit to Australia. Steps to this end could include:

- the development and provision of improved information regarding relevant criteria and procedures
- the allocation of dedicated teams to facilitate applications.

The ERG recommends that, to encourage community acceptance of the wider use of Labour Agreements, the process be made more transparent, while ensuring:

- consultation does not convey a power of veto over the proposed agreement
- applications remain Commercial-in-Confidence during negotiations.

Recommendation 12

The ERG recommends that DIAC and DEEWR investigate processes to improve the flexibility of the temporary skilled migration program in meeting the needs of small business and infrequent users. Such improvements could include review of areas such as:

- difficulties in meeting the training requirement of the current visa process, and scope for more flexible training options (considering the potential use of a training levy or other mechanisms to support government training programs). Noting however, that care needs to be taken that there is no disincentive in this process for firms meeting their current training obligations
- developing opportunities for small and medium size businesses to take advantage of economies of scale (for example, by allowing on-hire firms or industry representative bodies to meet all relevant sponsorship requirements).

Recommendation 13

The ERG is of the view that the Visa Subclass 457 visa is not suitable to meet market requirements for semi-skilled and unskilled labour except through Labour Agreements for semi-skilled. Hence, the ERG recommends, in addition to the broader utilisation of Labour

Agreements proposed in recommendation 11, that the Australian Government pilot other approaches to the provision of a range of labour in specific industries.

Remaining competitive

Recommendation 14

The ERG recommends that the department regularly review and benchmark its practices against comparable countries to ensure Australia's competitiveness in the international labour market.

Recommendation 15

The ERG recommends that an evaluation of the recommendations implemented from this review should be undertaken two years following their introduction.

Branding

Recommendation 16

The ERG recommends that the Visa Subclass 457 be renamed the Temporary Skilled Migration (TSM) visa to improve market recognition of the visa and its applicability in the labour market.

Section 3 - The Visa Subclass 457 External Reference Group

Following concerns raised in a number of industries (particularly in the construction, mining and tourism sectors) the Australian Government announced a package of measures designed to address skills and labour shortages within the Australian economy. These were unveiled on 17 February 2008 by the Minister for Immigration and Citizenship, Senator Chris Evans (see **Attachment B**).

As part of this package Senator Evans announced the formation of an External Reference Group (ERG) to examine how selected temporary skilled migration measures can help ease labour shortages. This paper is the final report from the ERG for the information of the Minister.

Terms of Reference

The Terms of Reference (ToR) of the ERG are included below:

1. Concerns have been raised by the States and the resources, construction and tourism industries regarding their ability to rapidly start up new and significant projects due to skilled workforce shortages.
2. The External Reference Group will examine how selected skilled migration measures can contribute to the alleviation of these shortages. Major infrastructure, construction, tourism and resource sectors will be the focus of the Reference Group.
3. To give effect to this, the group will provide specific advice on:
 - a. ways to ensure the temporary work visa system (Subclass 457) operates as effectively as possible in contributing to the supply of skilled labour;
 - b. the current skilled labour supply situation for each of the identified sectors;
 - c. current and anticipated future employment trends; and
 - d. need for overseas recruitment, including specific occupations in the identified sectors.
4. The Reference Group should be mindful that any development, priorities or initiatives complement broader labour market skills strategies.
5. At the discretion of the Minister for Immigration and Citizenship, members will be pre-eminent experts in the identified sectors.
6. The Reference Group will provide an Interim Report to the Minister for Immigration and Citizenship by 14 March 2008.
7. The Reference Group will provide a Final Report back to the Minister for Immigration and Citizenship by April 2008.

Members of the External Reference Group

The following are the members of the ERG:

PETER COATES (Chairman)

Peter Coates BSc (Mining Engineering) is a past Chairman of the Minerals Council of Australia, the NSW Minerals Council and the Australian Coal Association. He was also a member of the APEC 2007 Business Consultative Group and the 2007 Emissions Trading Task Group.

Mr Coates is currently Chairman of Xstrata Australia, and former CEO of Xstrata Coal, a position he held since the company's inception as Glencore Coal in 1994. He is also a director of Santos Ltd and Minara Ltd and a member of the NSW Minerals Ministerial Advisory Council.

TIM SHANAHAN

Between 2001 and 2007, Tim Shanahan was the Chief Executive of the Western Australian Chamber of Minerals and Energy, the state's peak industry body for the resources sector.

He has recently taken up a position as the Director, Energy and Minerals Initiative at The University of Western Australia.

From 1989 to 2000, Mr Shanahan was the Executive Director of the Western Australian Municipal Association. He is a Trustee of the Committee for the Economic Development of Australia (CEDA), WA Advisory Committee Member and Chairman of the Australia Day Council (WA).

Mr Shanahan also serves on a number of boards, and is the Senior Vice President of the RAC WA and has been on the Board of the WA Local Government Superannuation Plan since 2004.

In January 2001, he was awarded the Public Service Medal for outstanding service to Local Government and in April 2003, he was awarded a Centenary Medal for service to local government in Western Australia.

MELINDA CILENTO

Melinda Cilento joined the Business Council of Australia in April 2002.

Ms Cilento has significant public and private sector experience in economic policy development and analysis.

Prior to joining the Business Council of Australia Ms Cilento worked with County Investment Management (now Invesco) as Head of Economics.

Ms Cilento has also worked with the Department of Treasury in various roles, and spent two years working at the International Monetary Fund as the technical assistant to the Australian Executive Director.

Ms Cilento has a Bachelor of Arts (Psychology) and a Bachelor of Economics (Honours) from Flinders University, and a Masters of Economics from the Australian National University.

Secretariat

The Secretariat function to the group has been provided by staff from:

- The Department of Immigration and Citizenship

Kruno Kukoc - Assistant Secretary, Temporary Entry, Head of the Secretariat
Tony Davison - Senior Adviser Special Projects
Scott Mann - Assistant Director, Temporary Business Policy & Procedures
- The Department of Resources, Energy and Tourism (RET)

Chris Stamford - General Manager, Mining Industries Branch
Peter Tucker - Acting Division Head, Tourism Division
Peter van Rens - Manager, Industry Liaison
- The Department of Education, Employment and Workplace Relations

Jane Press - Director, Migration Policy & Analysis

Secretariat members coordinated the activities of the ERG, provided expert advice in their departmental domain, drafted discussion papers and reports, managed meetings and assisted with the ERG consultation process.

External Reference Group Meetings

The ERG met on the following occasions:

- 22 February 2008 (teleconference)
- 27 February 2008 (in Melbourne)
- 12 March 2008 (in Sydney)
- 20 March 2008 (in Sydney)
- 9 April 2008 (in Sydney)

The ERG also carried out a program of consultation with a range of organisations and individuals. The consultation process incorporated a mix of direct consultation and written submissions designed to maximise the range of opinions received in the limited time available. The written submissions received are included in **Attachment C**.

The ERG would like to thank all of the groups and individuals who made submissions to the enquiry at very short notice.

The issues discussed at the ERG meetings and the information received during the consultation process form the basis of the analysis in this report.

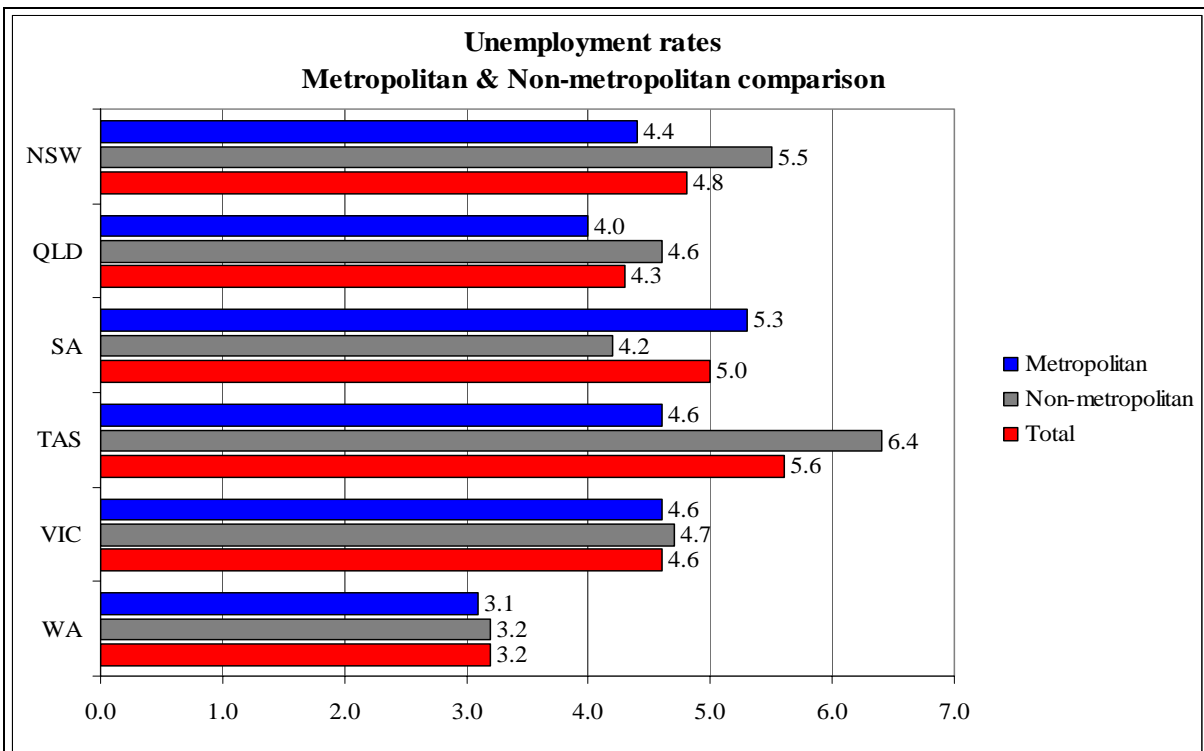
Section 4 - Australian labour market and employment trends

Unemployment rate

Australia has reached its lowest unemployment rate in over 30 years. As at February 2008, the seasonally adjusted unemployment rate was 4.0 per cent, which is well below the 30-year average unemployment rate of 7.2 per cent. Total employment continues to grow strongly and has increased by 2.9 per cent over the last year.

Metropolitan and non-metropolitan unemployment

The chart below shows unemployment rates by state. Western Australia and Queensland have the lowest unemployment rates in their capital cities (3.1 per cent and 4.0 per cent respectively). Western Australia also has the lowest unemployment rate outside of its capital city (3.2 per cent). As a result these two states have the lowest overall unemployment rates of 3.2 per cent and 4.3 per cent respectively, reflecting the tight labour market in those states with a significant resources sector.



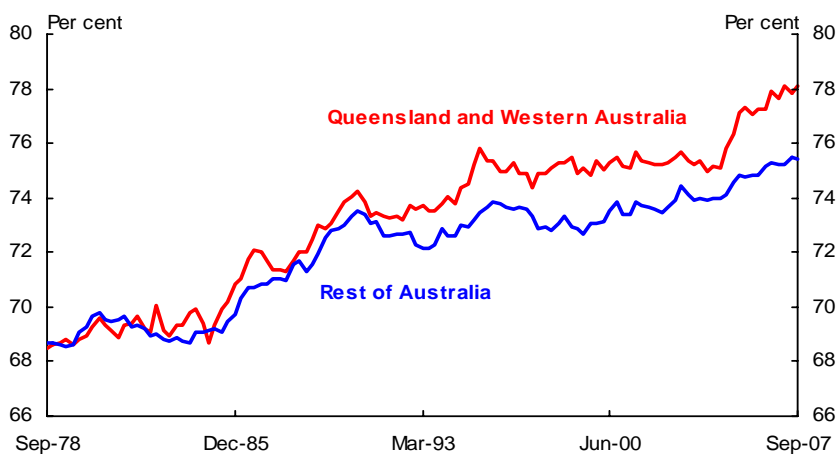
*Figures are original data as at February 2008.

*No metro / non-metro split is available for NT (5.5% unemployment rate) or ACT (3.2%).

Source - ABS.

Labour force participation rates

Labour force participation is currently at a record level, with around 75 per cent of people aged 15 to 64 participating. The unemployment rate patterns discussed above are mirrored in the labour force participation data. That is, very high rates of participation are being recorded in the resource states as shown in the chart below.



Participation rates (15-64 years) - Source: ABS and Treasury.

Research by Dr Steven Kennedy (2007) suggests that “Australia had the 5th highest participation rate in the OECD in 2005, with only Iceland, New Zealand, Canada and Switzerland being higher. This is substantially higher than our ranking of 10th derived from OECD estimates that do not correct for differences in labour force collection methodologies”. Given the rise in participation since 2005 as shown in the chart above, it is likely that Australia currently maintains one of the highest levels of participation in the OECD.

Supply constraints are the major problem for the economy at present. Labour and skill shortages and infrastructure bottlenecks in particular have emerged. Addressing infrastructure bottlenecks will likely worsen the labour and skill shortage situation over the next few years. There are limits to what higher participation rates can achieve in this context given already high participation rates in Australia.

Unemployment by occupational group

The unemployment rate for occupational groups generally reflects skill levels. Highly skilled occupational groups experience lower rates of unemployment, while higher unemployment rates are generally associated with less skilled occupations. As at November 2007, Australia’s unemployment rates across all occupational groups were at historically low levels.

DEEWR labour market research confirms, but does not quantify, skill shortages in a number of key trade occupations of which the industries under consideration by the ERG are significant employers including:

- Construction and major infrastructure - quantity surveyor, architect, bricklayer, cabinetmaker, carpenter/joiner, plasterer (fibrous and solid), electrician, plumber, floor finisher, roof slater-tiler, locksmith, welder, metal fabricator etc
- Mining - civil engineer, mechanical engineer, mining engineer, petroleum engineer, chemical engineer and many of the trades occupations also associated with the construction industry
- Tourism - chef and cook (linked to the hospitality sector).

Recent employment growth and unemployment rates by occupational group are summarised in the table below.

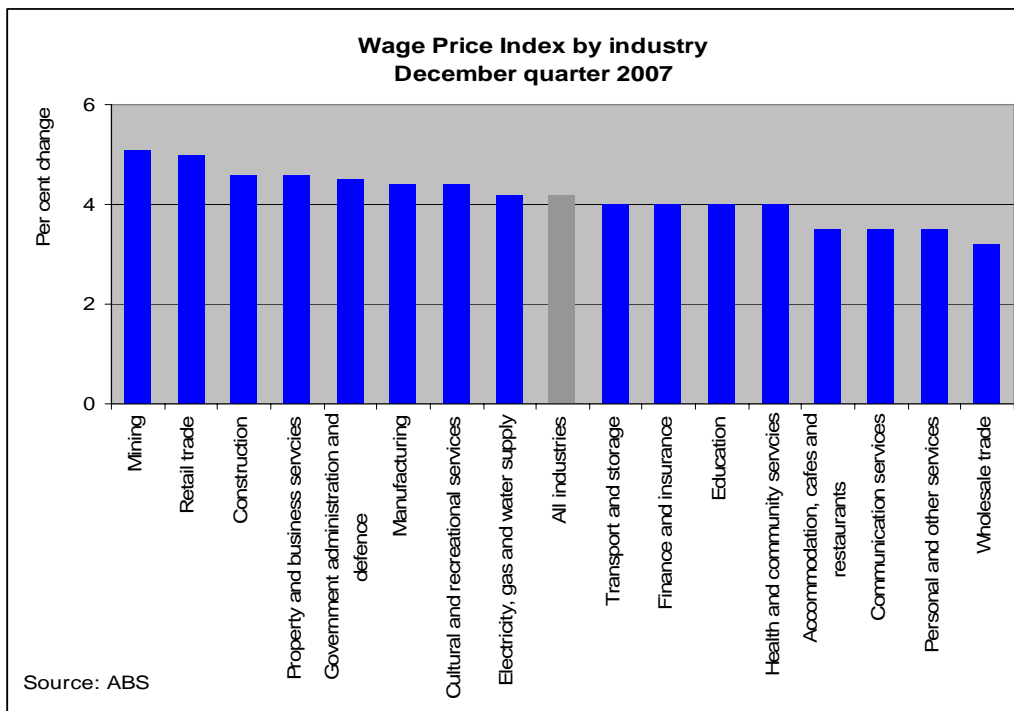
| Percentage Growth Rates in Employment in the 12 months to February 2008 | | Unemployment Rate at February 2008 | |
|--|-------|---|------|
| Managers and Administrators | 3.1% | Managers and Administrators | 1.2% |
| Professionals | 7.7% | Professionals | 1.6% |
| Associate Professionals | 0% | Associate Professionals | 1.8% |
| Tradespersons and Related Workers | 5.1% | Tradespersons and Related Workers | 2.2% |
| Advanced Clerical and Service Workers | -1.9% | Advanced Clerical and Service Workers | 1.3% |
| Intermediate Clerical, Sales and Service | 3.0% | Intermediate Clerical, Sales and Service | 2.8% |
| Intermediate Production and Transport | 0.9% | Intermediate Production and Transport | 2.9% |
| Elementary Clerical, Sales and Service | 2.6% | Elementary Clerical, Sales and Service | 4.7% |
| Labourers and Related Workers | -2.3% | Labourers and Related Workers | 6.6% |

Source: DEEWR

Wages growth - inflationary pressures of low unemployment

The Non-Accelerating Inflation Rate of Unemployment (NAIRU) is usually defined as the lowest rate of unemployment that can be sustained without accelerating inflation given the structure of the economy. While there is uncertainty surrounding estimates of the NAIRU, recent analysis by Dr Steven Kennedy suggests that state NAIRUs currently range from 3.8 per cent (WA) to 4.6 per cent (NSW). This means that most states and territories are close to, or even below, the rate of unemployment that may accelerate wage pressures and inflation.

Strong wage outcomes stemming from mining and construction activity is already evident in accordance with the distribution of those industries across the states. At this stage, these wage increases appear to be mostly contained to the sectors experiencing strong labour demand, with more moderate wage growth in the rest of the economy as shown in the chart below.



Future employment trends by industry sector (Source: DEEWR / RET)

Construction

Employment growth in the construction industry to 2012-13 is expected to average 2.2 per cent per annum compared to 1.5 per cent for all industries. At November 2007, total employment in the construction industry was estimated at 939 200 with employment growth of 1.3 per cent in the previous 12 months.

In their submission to the ERG the Housing Industry of Australia estimate that an additional 20 000 skilled trades people will be required before 2010 to meet existing and projected demand for housing. They go on to state that “neither apprentices currently enrolled in apprenticeships or the current skilled migration program will adequately address shortages in the residential building industry”. Their submission also notes that industry skills shortages are leading to increased trade contractor prices, which in turn leads to increased house prices and inflationary pressures in the economy as a whole.

Minerals / Mining

Employment in the minerals sector has grown by 54 000 in the last five years, during this time the shortfall in skilled and semi-skilled employees has increased dramatically. The Minerals Council of Australia submission to the ERG states that “job vacancies in the minerals sector have grown five-fold since 2002, and skills shortages are causing delays in some projects, the indefinite mothballing of others, and higher costs across the sector. ... Unless the pool of skilled and semi-skilled employees can be expanded to meet this demand, substantial growth opportunities, particularly in regional and remote regions, will be lost”.

Output projections from the report, *The Labour Force Outlook in the Mineral Resources Sector: 2005 to 2015*, prepared for the Minerals Industry National Skills Shortage Strategy by the National Institute of Labour Studies (Flinders University) suggest that the fastest growth

in the industry will occur between 2006 and 2010. In light of existing shortages, this reinforces the need for immediate action to address skills and labour needs. These shortages will continue to worsen as the growth rate of projected labour demand remains above the capacity of the labour market to respond.

Industry projections suggest that the minerals sector will require an additional 70 000 employees by 2015. The largest shortages are projected to be in the non-professional occupational classifications with the greatest absolute increases being in tradespersons (26 983 additional workers required) and semi-skilled workers (22 058 additional workers required). The fastest growing demand for workers will be in copper, nickel, bauxite and potentially uranium mining.

Of the 70 000 additional employees required, almost 42 000 will be required in Western Australia, almost 15 000 in Queensland, and approximately 5 000 in both New South Wales and South Australia. There are also discipline-specific differences, the most acute shortages will be for mechanical and electrical tradespeople and mine operators. Specifically, the industry will require an additional 27 000 trades people, 22 000 skilled operators with vocational qualifications and skill sets, and over 7 500 mining industry professionals.

Annual employment growth in the mining industry to 2012-13 is expected to be 2.9 per cent compared to 1.5 per cent for all industries. At November 2007 total employment in the mining industry was estimated at 141 000 with employment growth of 3.4 per cent (or 4 600 persons) in the previous 12 months.

Tourism

Based on data from the National Tourism Industry Strategy Research Report, there were 536 600 jobs in the tourism industry in 2003-04.

There are many industries that make up the tourism industry, such as retail, accommodation, cafes and restaurants. Together the accommodation (15.6 per cent) and the cafes and restaurants (11.0 per cent) sectors represent over a quarter of the Australian tourism jobs in 2005-06. Retail is however the single largest industry accounting for 24 per cent in 2005-06.

Employment growth in accommodation and cafes and restaurants to 2012-13 is expected to average 1.7 per cent per year, compared to 1.5 per cent for all industries. At November 2007, total employment was 295 800, with employment growth of 5.0 per cent (14 200) in the previous 12 months.

Studies suggest an additional tourism sector labour demand of 130 000 persons by 2013-14. Around 36.5 per cent of tourism employment is in regional and rural Australia, and it is estimated that approximately 48 000 additional workers will be required by the industry in regional and rural Australia by 2013-14.

The tourism workforce is young relative to other industry sectors. More than 35 per cent of the tourism workforce was aged between 15-24, double the all-industry average percentage (ABS 2003). Overall the tourism industry accounted for 10-11 per cent of total national employment in the 15-24 year age group, double its overall share of employment of 5.6 per cent (ABS March Quarter 2005).

The pool of young workers which the tourism industry can draw from in the future is shrinking in relative terms as a result of the ageing of the Australian population.

Consequently, the industry will need to refocus its recruitment policies towards different domestic demographic groups, including older people.

Casual and part-time employment is prominent in the tourism industry and its use has increased steadily between 1997-98 and 2003-04. Around 37 per cent of the tourism workforce was employed on a part-time or casual basis, well above the all-industry average of 29 per cent. Part-time and casual employment is generally high in the hotel, restaurant and catering sectors of the industry.

According to the ABS (March 2005) more than 60 per cent of tourism employees work in Australian Standard Classification of Occupations (ASCO) categories 5-9, reflecting the less complex skills required compared with just 40 per cent across all industries.

High staff turnover is also a feature of the industry. For example, just 68 per cent of employees in accommodation, cafes and restaurants had worked in the same job for more than one year in February 2004, below the all-industry average of 80 per cent (ABS 2004). However, it should be noted that in the current (2008) tight labour market, there are reports indicating that full-time employment is increasing to meet the labour demand and retain existing employees.

Based on projected population growth and 2004-05 workforce participation rates, it was anticipated that there would be a shortfall of 90 300 employees by 2013-14, because of the relatively lower population and employment growth projected for younger age groups from which the tourism industry draws heavily as a source of employment. The Queensland Tourism Industry Council state that “the available labour pool is shrinking and insufficient to accommodate current demand, let alone any future growth”.

The most significant growth is projected for the accommodation, restaurants and cafes, education and retail trade sectors.

Section 5 - Migration and labour market pressures

Over the longer term, investment in education and training is the primary means for addressing skill needs, but skilled migration will need to play a useful complementary role in responding to short to medium term skill needs (which can emerge quickly). Permanent migration is also necessary to address labour market pressures in the long term arising from demographic trends.

Against the backdrop of current low unemployment levels (as outlined in the previous section) Australia's demographic trends and future requirements for labour will drive increases in demand for sustained and growing immigration. To maintain labour force growth at only one per cent per annum, net immigration would have to rise to 227 000 by 2021 (see the table below).

Table: Population and annual net immigration if labour force growth is assumed to be constant at 1 per cent per annum, Australia 2006-2051

| Year | Population (millions) | Annual net migration (thousands) |
|------|-----------------------|----------------------------------|
| 2006 | 20.6 | 160 |
| 2021 | 25.3 | 227 |
| 2031 | 28.9 | 227 |
| 2041 | 32.3 | 266 |
| 2051 | 36.2 | 316 |

Source: McDonald, P, Withers G, Occasional Paper 1/2008 Policy Paper #7, *Population and Australia's Future Labour Force*, The Academy of the Social Sciences in Australia, 2008.

Much higher immigration levels, both permanent and temporary, are required if Australia's labour force is to grow by 1.9 per cent annually, as was the case in the period 1980 to 2005.

In a recent study Temple and McDonald (2008) note that "even with very high levels of migration by historical standards and very high labour force participation rates by recent standards, in the next 20 years, Australia's labour supply would grow by just 26 per cent for men and 34 per cent for women, that is, about half the level of growth of the past 20 years".

The role of temporary skilled migration in alleviating labour market pressures on the economy

Permanent migration is crucial for managing long term demographic and labour market trends. However, temporary skilled migration is demand driven and as such is more responsive to the short term needs of the labour market than permanent migration. Also, temporary skilled migration is solely focused on labour market needs while permanent migration has additional long term objectives.

Most long-term temporary immigrants are permitted to work in Australia. Their contribution to the labour force is not insignificant, particularly in certain industries (including hospitality and retail where many students and working holiday makers work) and in specialised skills that are in scarce supply (the 457 visa).

The ERG noted that an increased intake of skilled workers would place added pressure on the services and infrastructure that supports such workers. This could lead to more demand for less skilled or unskilled labour.

While unskilled migration can have a positive (albeit small) impact on reducing the rate of population ageing and addressing the slowing in labour supply growth it also has the potential to undermine Australian Government policies to increase the participation of a range of lower skilled Australian job seekers and benefit recipients. Given the relatively higher rates of unemployment in unskilled and semi-skilled categories, greater attention needs to be paid to ensuring that overseas workers at these skill levels do not diminish opportunities for resident workers.

While noting the important role played by migration in meeting Australia's economic needs McDonald and Withers suggest that "the Federal Government should adopt a forward-looking population policy that incorporates both domestic population growth and migration, acknowledges their impact on Australia's economic, social and environmental goals, and design population and complementary strategies accordingly. The population policies should include fertility, migration, population distribution and social integration and settlement. Complementary policies should include education and training, infrastructure and housing, and energy and the environment. These need to be effectively coordinated with State and Territory Governments, and their absence would be a sufficient reason for restricting immigration increases."

The role of long term planning was supported in a number of other submissions received by the ERG, with the Australian Chamber of Commerce and Industry suggesting that Australia needs a transparent long term population policy of which temporary migrants are one component. Tourism and Transport Forum Australia expressed similar sentiments in their submission. The Australian Tourism Export Council note that the greatest competitive threat to solving labour and skills shortages in tourism and hospitality is the mining sector, suggesting the need for a holistic approach to the resolution of the problem.

Recommendation

The ERG recommends that the Australian Government develop a long term strategy to respond to aggregate labour market and skill needs and population trends, with specific reference to the role of temporary and permanent migration in responding to structural changes in the composition of the population and labour force.

Section 6 - Visa Subclass 457

Visas for employers and employees

A range of options are available for businesses seeking to recruit staff from overseas for temporary entry to Australia. The primary visa in this area allows businesses to recruit staff from overseas for periods between three months and four years on a Temporary Business (Long Stay) visa (Subclass 457). Businesses may also sponsor secondary persons to accompany overseas staff to Australia.

The majority of 457 Visas are granted under arrangements for:

- sponsorship by Australian or overseas businesses
- Labour Agreements.

457 visas are also available under the following, more limited, arrangements:

- Invest Australia Supported Skills agreements (these agreements offer both permanent and temporary entry to key executives and specialists who are essential to the establishment and management of an international firm's Australian operations)
- Service Sellers (the purpose of this visa is to allow representatives of overseas suppliers of services to stay in Australia to negotiate, or enter into, agreements to supply services in Australia).

Australia has a range of other temporary and permanent visas that cater for the needs of Australian employers and business people that include:

- Short Stay Business Visitor visas
- Independent Executive Further Application Onshore visas
- The Employer Nomination Scheme
- Labour Agreements (permanent visas)
- Regional Sponsored Migration Scheme
- Business Migration
- Working Holiday visa program for young people
- Student visas (may work up to 20 hours a week).

Recommendation

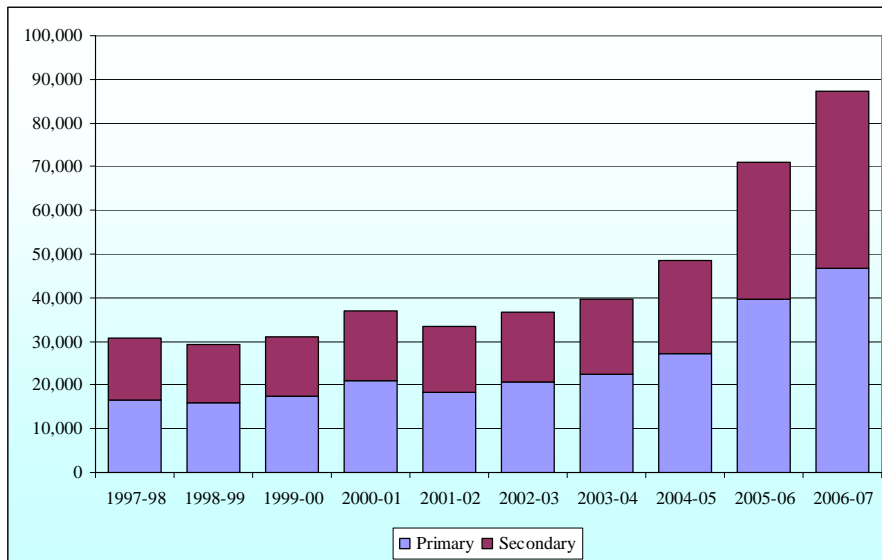
The ERG recommends that the Visa Subclass 457 be renamed the Temporary Skilled Migration (TSM) visa to improve market recognition of the visa and its applicability in the labour market.

As at 13 February 2008 there were 125 390 Subclass 457 visa holders in Australia, comprising 67 410 primary visa holders (nominated skilled workers) and 57 980 secondary visa holders (family members). The average length of stay for a Subclass 457 visa holder is two years. The program provides a well-utilised pathway to permanent residence with around 20 per cent moving to permanent residence in one of the employer-sponsored

migration categories (Employer Nomination Scheme (ENS) or Regional Sponsored Migration Scheme (RSMS)).

457 visa trends

The Subclass 457 program has grown strongly since 2003-04, increasing from 22 370 primary visas to 46 680 visas in 2006-07. At the same time, there has been an increase in overseas workers seeking to access the program who are from countries where fraud is prevalent or in lesser skilled occupations, which are more prone to exploitation, requiring greater care in processing and subsequent compliance monitoring. As a consequence, processing times for the Subclass 457 visa have increased. The long term trend in applications is shown in the chart below.



Subclass 457 Visa Grants - Long-term Trend. Source: DIAC.

A high proportion of 457 visa applications received by the department are incomplete. This contributes to delays in processing as the cases are not 'decision ready' requiring the department to seek additional documentation and information.

A number of the submissions received by the ERG commented favourably on the support provided by DIAC Industry Outreach Officers (IOOs). For example, in their submission to the group the Chamber of Minerals and Energy Western Australia supported the provision of outreach officers by the department as they provided a two-way communication that improved industry understanding of the processes involved in applying for Visa Subclass 457 visas. This was a view supported by the Australian Petroleum Production & Exploration Association (APPEA) who said that outreach officers from the department offered "very large benefits" to its membership.

Recommendation

The ERG recommends that the department expands its front-end support to employers and industry, through its industry and regional outreach programs, with a focus on developing guidelines and training to help industry increase the proportion of 'decision-ready' applications.

This would enhance the service provided to clients employing, or considering employing, temporary overseas skilled workers by increasing the proportion of 'decision-ready' applications received by DIAC and reducing processing times.

Managing the 457 visa program

Managing the program poses two critical and potentially competing challenges:

- remaining internationally competitive in facilitating labour movement, particularly skilled labour, in the context of Australia's changing demographic and skill needs, and in meeting international trade commitments
- protecting employment and training opportunities for Australians and protecting overseas workers from exploitation.

The challenge is reflected in comments received from the Australasian Institute of Mining and Metallurgy who recommend the development of "more effective temporary and skilled migration measures that meet the needs of employers, protect employees and do not erode the entitlements of the Australian workforce".

In responding to these challenges, the 457 visa program has experienced a significant deregulation over the last decade. From August 1996, the 457 visa criteria did away with labour market testing for many employers and many (but not all) skill or job categories. In 2001, the labour market test was removed completely from the 457 visa criteria for all employers and all eligible occupations.

At the same time the monitoring and compliance framework has been strengthened to ensure the employment and wage conditions of Australian workers are protected and to protect against exploitation of migrant workers.

First, the number of occupations for which Subclass 457 visas could be granted was limited. A list of 457-eligible occupations known as the Employer Sponsored Temporary Entry List (ESTEL) was developed. ESTEL essentially defined 457-eligible occupations as those in the Australian Standard Classification of Occupations (ASCO) major groups 1 to 4 (with some exceptions). These groups are:

- Managers and Administrators
- Professionals
- Associate Professionals
- Tradespersons and Related Workers.

Second, a Minimum Salary Level (MSL) for the Subclass 457 visa was established in July 2001. From that date, employers had to formally agree to pay the 457 visa holder at least this minimum amount as a gross annual base salary (that is including tax but excluding other payments such as superannuation and various additional allowances).

Third, the monitoring of employer compliance was significantly expanded.

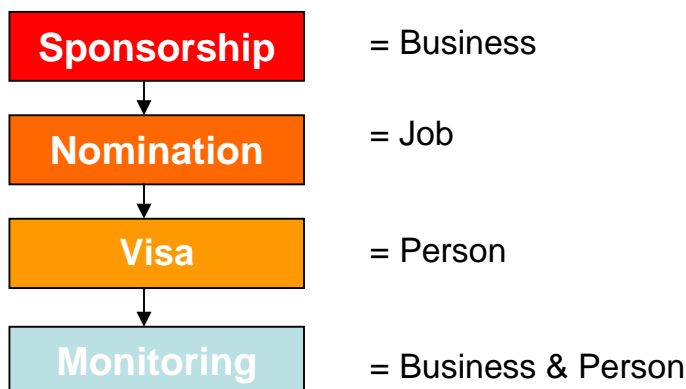
Other developments with the Subclass 457 visa have included:

- introduction from 1 November 2002 of regional concessions that allow access in regional Australia to less-skilled positions and for the minimum salary level to be waived. Regional Certifying Bodies certification ensures the salary level is reasonable for the occupation in the region, or that lower skilled occupations could not reasonably be filled locally
- introduction of electronic lodgement of applications from 1 November 2003
- introduction of a separate MSL for Information and Communication Technology occupations from 11 February 2004
- international commitments that Australia has made on the entry of skilled intra-corporate transferees
- the Thailand-Australia Free Trade Agreement (TAFTA) entered into force on 1 January 2005 to allow ongoing entry for highly skilled workers
- revision of the MSLs on 3 May 2006 (benchmarked to August 2005 average weekly earnings)
- further revision of the MSLs based on a standard 38-hour week, introduced from 1 July 2006 for regionally certified positions
- eligibility of interdependent partners and their dependant children to apply as Subclass 457 visa secondary applicants.

An English language requirement was introduced from 1 July 2007. All primary Subclass 457 applicants must meet the English language requirement unless they have been nominated for a position that does not require English language for licensing or registration and any one of a list of exempted person categories applies. Applicants must meet a higher level of English proficiency where this is required for licensing or registration in their nominated occupation.

457 visa processing process

There are currently three processing steps in the Subclass 457 visa program, followed by ongoing monitoring, as shown in the following diagram:



Processing in the business sponsorship step involves assessing the employer to ensure:

- they are actively and lawfully operating
- the entry of the visa holder will benefit Australia, such as by contributing to Australian trade, improving international business links, contributing to competitiveness
- they will either introduce new technologies to Australia or demonstrate a record or commitment to training Australians
- they are directly employing the visa holder
- they are able to meet their sponsorship obligations.

Business nomination involves the assessment of the position (job) to ensure it meets minimum skill and salary requirements. This assessment duplicates some of the steps carried out in the assessment of sponsorship. As one example, at both of these stages an assessment is made on the position to be filled by the skilled worker. The work at the nomination stage could be incorporated at the visa application stage which would make savings in relation to data entry and double handling of information relating to a single application.

Subclass 457 visa processing assesses the:

- appropriateness of the match between the nominated position and the personal attributes/employment background of the 457 visa applicant
- applicant against health and character requirements
- extent to which the nominated salary is known to the applicant and meets the minimum salary requirement.

The duties of the position sought must be equivalent to those of a Gazetted Occupation and the position must attract a salary in line with Australian industrial instruments and at least the MSL that applies at the time a decision is made on the visa.

This process is administratively heavy, and as the Queensland Resources Council suggest “companies are always looking for increased efficiency in the processes they are party to”. With the Australian economy operating at or close to full employment as discussed in earlier sections, it is essential that the skilled migration program operates as effectively and efficiently as possible to deliver responsive service to stakeholders at minimum cost to the Australian taxpayer.

457 visa processing improvements

The ERG discussed a range of possible short-medium term improvements to the Subclass 457 process, these included:

- exploration of options to improve processing times (including improved departmental processes and improvements in application processes)
- reviewing sponsorship and nomination procedures.

One area with potential for improvement involves the modification of sponsorship, nomination and visa legislative requirements to reduce unnecessary administration. For example, the nomination stage could be streamlined or removed, noting that there is duplication of processing at each visa stage.

Recommendation

The ERG recommends that the department eliminate elements of duplication that exist in the visa processing system (including addressing potentially unnecessary steps such as the nomination process) with a view to improving processing times.

There are also other administrative steps that the department is not well placed to perform effectively. For example, the sponsorship stage of the process includes an assessment of the business' capacity to meet their sponsorship undertakings. At present this is assessed in terms of the business' financial viability/capacity to meet financial obligations, such as payment of the MSL and any removal costs should the visa holder fail to depart at the end of their visa validity period.

The capacity and expertise of the department to make such assessments in a robust way is limited and anecdotally there are few refusals made on this basis. Accordingly, and given that there are a broad number of other external factors that can impact on business viability/financial performance, there could be value in exploring modification or abolition of this requirement to improve processing times.

In addition to eliminating red tape, improved staff training would improve speed and efficiency of visa processing. Inherent in the options considered by the ERG is the need to have well-trained staff to deliver the proposed improvements, and provide a consistent service as suggested in a number of submissions.

Improved training should also result in greater consistency of decision-making, which would satisfy requests such as that from Fragomen Global to the effect that “officials of the department be expected to administer immigration law in a consistent way across Australia so that employers can have certainty as to the decision making process”.

Recommendation

The ERG recommends that the department develop and implement a comprehensive staff training program for all staff contributing to the temporary skilled migration program (with particular regard to the improved risk-management procedures proposed elsewhere in this report) to improve efficiency and effectiveness of the program and deliver improved long term capacity and capability.

This option is meant to deliver a comprehensive staff training program to improve decision making efficiency and effectiveness - leading to a higher output and greater consistency and quality in decision making. There would be a minimal impact on existing services as staff are trained and as improved processes are designed and implemented (with an underlying assumption that better trained staff would recognise ways to improve their work procedures).

Processing turnaround times

While some of the submissions received during the consultation process were satisfied with the turnaround time on visa applications, many were keen to see improved and predictable processing times. The Migration Institute of Australia suggested "the Government would

show a real commitment to improved processing times by the injection of funds to increased processing staff - this would be readily apparent to employers and all those involved in processing applications and could be achieved quickly”.

The Minerals Council of Australia stated that a shortage of case officers is causing delays in the processing of Subclass 457 visa applications. Processing service standards for the Subclass 457 visa are based around 75 percent of cases being finalised within a specified period. Service categories depend upon whether or not the client is from a low immigration risk country (that is, one that has been given access to Electronic Travel Authority arrangements). The department is presently outside of service standards in all areas as shown in the table below.

| Risk category and Service Standard | Proportion of cases where service standard is being met (as at 31 January 2008) |
|---|--|
| Onshore low risk (two months) | 63 per cent |
| Offshore low risk (two months) | 68 per cent |
| Onshore high risk (three months) | 70 per cent |
| Offshore high risk (three months) | 63 per cent |

A processing time of around four weeks (compared to the current standards of two-three months) was suggested in a number of submissions received by the ERG, including the Australian Mines and Metals Association, who also noted that achieving this sort of timely processing would “be assisted by additional resources in DIAC”. The ERG is of the view that even more ambitious targets should be considered for ‘decision ready’ applications.

Suggesting that “it currently takes a considerable length of time to process and approve 457 visas”, the Queensland Tourism Industry Council “recommends that greater resources are allocated to ensure that processing times are reduced”.

This recommendation is also supported by the comments of Fragomen Global who added “we are not only requesting sufficient resources be devoted to 457 visa processing but that the department have regard, to the extent possible, to consistency in processing times”.

Recommendation

The ERG recommends that resource requirements to support the 457 program be reviewed, taking into account expectations regarding improved processing standards.

The potential need for additional resourcing, including any up front investment to improve processes and training, needs to be balanced against increased productivity and efficiency gains and the negotiation of suitable Key Performance Indicators (KPIs). Resourcing requirements are to be agreed in conjunction with the Department of Finance and the Treasury with a view to improving measured performance.

In conjunction with improvements brought about from a review of resourcing, the Australian Hotels Association are keen to see improved effectiveness of resource utilisation involving better collaboration and cooperation between departments.

Improved utilisation of resources would see specialised teams dedicated to regions, industries and projects experiencing critical shortages. This would allow a more responsive service with greater continuity and less likelihood of processing backlogs. The increased responsiveness would extend to changing industry demands and changing policy.

Recommendation

The ERG recommends that relevant government agencies (DIAC, DEEWR) strengthen their back-office processing for temporary skilled migration visas and Labour Agreements to improve speed and effectiveness of processing. To support this measure the government agencies should establish:

- dedicated specialised teams on an industry / sector basis to facilitate and process applications
- 'centres of excellence' for temporary skilled migration visa processing.

The ERG recommends that additional resources be allocated on a temporary basis to eliminate the backlog of applications currently on hand within the temporary skilled migration program by end 2008 (at the latest).

The allocation of additional resources to reduce the backlog in 457 visa processing could involve higher departmental resource costs in the short-term, as resources would still need to be made available for less time-critical visa processing while the backlog is reduced. Bearing this in mind, the ERG are of the opinion that implementing this recommendation should not be at the expense of other areas / backlogs.

The Minerals Council also suggested that the department investigate the option of allowing online tracking of application progress in light of the uncertainty over processing times. The ERG noted that improving processing times via the recommendations in this report should make such tracking unnecessary.

Sponsor requirements

A key reason for sponsorship in the 457 program is to ensure that the Australian tax payer is not held responsible for certain costs. It was also designed to ensure that a 457 visa holder did not compete with Australian workers for jobs other than the specific vacancy for which the visa holder was allowed entry into Australia. Though the sponsorship concept was developed at a time when unemployment among Australian workers was at a much higher level than today these issues are still relevant to some stakeholders such as the Australian Council of Trade Unions (ACTU). In their submission to the ERG the ACTU cited cases where, because of a national shortage of a certain skill, employers in areas where that particular skill is plentiful were still able to import labour under the scheme.

However, the sponsorship requirement can be onerous for small business or those making infrequent use of the system. Sponsorship (through the undertakings each sponsor agrees to) mandates that the costs pertaining to certain medical expenses and potential detention location and removal, are the responsibility of the sponsor.

This view is supported by Restaurant and Catering Australia in their recommendation “that the Australian Government re-establish Labour Agreements as a means of streamlining the employer nomination / sponsorship arrangement for groups of employers operating under common conditions”. The wider use of Labour Agreements is discussed later in this report, but in this context they could allow small to medium size businesses access to workers through an industry representative body.

In addition, the Migration Institute of Australia note that there are circumstances where demonstrating a training record (another sponsorship requirement) is difficult and there “would be public policy benefit in allowing commitment to training to be demonstrated in other ways”. The submission received from the Recruitment and Consulting Association notes the linkage between difficulties in meeting the training requirement and the unique nature of on-hire firms and suggest that “training benchmarks should be proportional to the number of 457 visa holders they sponsor”.

Recommendation

The ERG recommends that DIAC and DEEWR investigate processes to improve the flexibility of the temporary skilled migration program in meeting the needs of small business and infrequent users. Such improvements could include review of areas such as:

- difficulties in meeting the training requirement of the current visa process, and scope for more flexible training options (considering the potential use of a training levy or other mechanisms to support government training programs). Noting however, that care needs to be taken that there is no disincentive in this process for firms meeting their current training obligations
- developing opportunities for small and medium size businesses to take advantage of economies of scale (for example, by allowing on-hire firms or industry representative bodies to meet all relevant sponsorship requirements).

This greater flexibility is supported in submissions such as that from the ACT & Region Chamber of Commerce and Industry who note the high proportion of small and micro businesses in the region who require more flexible assistance when applying for 457 visas and by Connections Migration who stress the important role that on-hire and contract management firms play in helping ease skills shortages in the economy.

Accreditation

A number of submissions received by the ERG were interested in processes to ‘fast track’ applications, with the Association of Consulting Engineers supporting a simple two tier fast tracking model. The Australian Constructor’s Association noted that most major contractors would be very pleased to put some significant effort in pre-qualification. The Australian Mines and Metals Association proposed “the urgent implementation of Priority Processing for 457 visa nominations for sponsors with a demonstrated proven track record of compliance with all 457 obligations”.

The ACTU added the proviso that companies should be able to provide a business plan which showed their future skills requirements and how the company was dealing with the issue in the longer term; they emphasised the point that 457 visas were a short term emergency response to a longer term issue which should be resolved by recruitment and training.

Recommendation

The ERG recommends that DIAC and DEEWR establish a system of accreditation for employers who exhibit a set of low-risk characteristics, including an exemplary record of compliance with immigration and industrial relations laws. Accredited employers would have their applications fast-tracked.

If this recommendation is adopted accreditation would result in a better allocation of resources according to risk, leading to faster processing times across the program. The criteria which would apply need to prevent firms unable or unprepared to meet their ongoing sponsorship requirements from taking advantage of the system and would necessarily involve stricter compliance and monitoring for start-up firms.

Adoption of this recommendation would provide additional incentive for employers to comply with the conditions of sponsorship, as accredited employers who breach these requirements could lose their accreditation, reducing their ability to respond quickly to market conditions and their immediate skills and labour needs.

The Queensland Resources Council caution that pre-qualification will not be successful if the department takes a 'zero-tolerance' approach to mistakes made by accredited companies in processing, and applies a heavy penalty regime. They suggest that ultimately there should be a more sophisticated approach that assures the Minister that the system is functional and operating with integrity.

Establishment of an accreditation process would also answer concerns raised in the Fragomen Global submission to the ERG that "only a small minority of companies were subject to allegations of abusing the subclass 457 visa program or the holders of these visas and yet all of the decisions taken to address these concerns impacted on all companies without any recognition of companies doing the right thing". Accreditation would be a tangible reward for those companies who 'do the right thing'.

The ERG considered the possibility of developing a similar accreditation program for migration agents but concluded that employers ultimately bear responsibility for meeting sponsorship requirements and therefore accreditation should rest with them. This also implies a responsibility to deal only with agents of high standing. A number of groups consulted with suggested that industry bodies may be the best agents for smaller businesses in this regard.

Risk management

An enhanced, and more sophisticated, risk management process would reduce the chances of the system being undermined while being less complex administratively. As one example of greater sophistication; the current procedures classify level of risk based on the nationality of the applicant, yet the Migration Institute of Australia suggest that an applicant from a higher risk country who had been working for a multinational firm in the USA for the last 10 years could represent a lower level of risk than an applicant without this work history but from a lower risk country.

Recommendation

The ERG recommends that the department develop a risk management approach to visa processing based on an agreed matrix of risk characteristics to facilitate improved processing while also allowing for resources to be better targeted to higher risk applications.

A risk-based processing model, covering the processing of sponsorship, nomination and visa application components of the Subclass 457 visa program, was implemented by the department in November 2007 on a trial basis. The model is aimed at reducing processing times for identified low risk (highly skilled) applicants while maintaining controls on identified high risk applicants. Under this recommendation the model would be assessed and refined.

The department takes a targeted approach to monitoring to focus on the areas of the Subclass 457 visa program where breaches of sponsorship requirements are most likely to be found. The enforcement function of the 457 visa program, including the sanction process, is aimed at promoting compliance with sponsorship obligations. Significant sanctions, such as sponsorship cancellation and lengthy bars on sponsorships and nominations, are reserved for serious abuses of the program.

A monitoring summary for 2006-07 is included in the table below. The most common reason for imposing a sanction on a sponsor is for not meeting the requirement to pay the Minimum Salary Level (MSL). It is worth noting the small number of sanctions imposed as a percentage of total sponsors.

While the proportion of sanctions is low, the ERG notes that the department is now using a risk-based approach to better target investigations. This has led to a more effective monitoring and compliance process and an increase in formal warnings and sanctions over previous years. Even so, based on the 2006-07 data, less than one in 100 sponsors are sanctioned.

The ERG are of the view that greater use of a risk-based approach to processing as recommended above will lead to improved outcomes and efficiencies.

| Subclass 457 Sponsor Monitoring | | | | | | | | | |
|---|--------|------|-----|------|-----|-----|------|------|----------------|
| Performance Summary 2006-07 (Number) | | | | | | | | | |
| | ACT&RO | NSW | NT | QLD | SA | TAS | VIC | WA | National Total |
| Sponsors | 209 | 5881 | 240 | 2630 | 501 | 112 | 3103 | 2081 | 14780 |
| Monitored | 278 | 3370 | 69 | 767 | 397 | 44 | 928 | 1005 | 6858 |
| Site visits | 25 | 535 | 43 | 235 | 124 | 20 | 374 | 324 | 1680 |
| Investigations | 6 | 127 | 22 | 31 | 65 | 1 | 89 | 166 | 507 |
| Sanctions | 6 | 25 | 0 | 17 | 15 | 0 | 10 | 22 | 95 |
| Formal warnings | 0 | 30 | 1 | 6 | 16 | 0 | 22 | 18 | 93 |

Source: DIAC unpublished data; ICSE
Number of sponsors in Australia as at 1 July 2007 by onshore business location
Monitoring finalised data (ICSE)

Minimum Salary Level (MSL)

Noting there are no formal labour market testing requirements for the 457 visa, the MSL provides a price signal to Australian employers. The MSL encourages employers to both employ and train Australian workers before looking overseas to meet their skill needs, although the ERG notes that even without an MSL it could be expected that hiring an overseas worker is more expensive than employing local workers due to significant up-front costs. The exception to this would be situations of significant exploitation of foreign workers which are clearly unacceptable.

By establishing a clear minimum, the MSL seeks to minimise the potential for 457 visa holders to be exploited. But it is not a perfect solution. The ERG discussed the extent to which a lack of information on the part of employees and their reliance on an employer as the visa sponsor increased the need for such administrative measures to target exploitation.

With current market conditions, in an employees market, if more information were provided to all parties and skilled workers had greater flexibility of movement then there would be less probability of exploitation and there could be greater flexibility in the MSL.

Recommendation

The ERG recommends that mechanisms be developed to provide employers and workers with more information as to their rights and responsibilities under the system.

The ERG recommends increasing the flexibility of movement of workers between sponsors.

Firms who have invested time and resources on the sponsorship and nomination processes are reluctant to see their newly-acquired staff move to another employer, yet mobility of labour is one of the keys in ensuring that prices signals work effectively in the market. The market would operate more efficiently if employers protected their investment through normal contractual arrangements and not through restrictive visa conditions.

Increased labour mobility was supported from a different perspective by the Master Builders Association who noted that sometimes employers do not have guaranteed work for a period of time that justifies the cost of overseas recruitment and sponsorship.

A number of submissions received, particularly from the tourism and agriculture sectors (including the submission received from the Australian Tourism Export Council), suggested the MSL was set too high, greater flexibility in the application of the MSL may be one way to address such concerns.

The Australasian Institute of Mining and Metallurgy submission, while noting inconsistencies between the MSL and market wage rates, suggest “it is necessary to have a fair and equitable method of calculating a base salary for 457 visa holders, to provide them with monies necessary to live in Australia and contribute to the economy, and to protect Australian employees”. They propose that the MSL should be determined annually by reference to a ‘market rate’ for individual occupations, region-by-region.

Commerce Queensland however “strongly opposes the suggestion that MSLs, including the regional MSL, be indexed annually”. They claim that this would “require employers to keep track of changes to the MSL and amend employee pay rates continually, resulting in an

increased compliance burden for many employers, especially small to medium sized businesses”. However, the improved information mechanisms proposed under this recommendation should help businesses keep abreast of current requirements.

The ERG felt further work needs to be done in this area and were reluctant to recommend changes to the MSL in light of ongoing developments in the workplace relations environment. This view is supported by comments from the Australian Constructors Association that MSLs are not an issue in the construction and resource industry as the market rules - because of real labour shortages employees quickly move to an employer who is providing better pay and conditions.

English Language requirement

A related issue raised in some submissions was the need for an English language requirement for all visa applicants (the Australian Industry Group for example feel that English language testing should be more on a case by case basis), or across all four components of the current English test (as mentioned by the ACT & Region Chamber of Commerce and Industry). The ERG are of the opinion that English skills help migrants work safely, adapt to the Australian community, and ensure that workers are aware of their rights and confident of their ability to maintain them, which are key to having market forces operating effectively and an important precondition to having greater flexibility in the MSL.

Labour Agreements

Labour Agreements aim to provide a flexible response to the needs of employers experiencing ongoing skill shortages, while at the same time ensuring that any overseas recruitment does not prevent the longer term improvement of employment and training opportunities for Australians. Labour Agreements mostly operate where standard visa arrangements do not meet employer needs and a significant economic benefit or public interest case can be established. There are approximately 50 Labour Agreements currently in place. However, the negotiation process can be lengthy and administratively onerous on all involved.

During ERG consultation the Australian Constructors Association noted that project specific Labour Agreements were worth thinking about, but they suggested that there is potential for too many parties to become involved and for the ‘lowest common denominator principle’ to make them cumbersome and unattractive.

The Chamber of Minerals and Energy Western Australia noted that the Labour Agreement potentially provides flexibility and control not available under standard business sponsorship provisions.

The Australian Industry Group were supportive of the Labour Agreement concept but concerned with untargeted and disproportionate training obligations and stated that requirements for consultation with trade unions were difficult to meet, particularly for firms with no union presence. In discussion with the ERG Qantas expressed a preference for one point of approval from the Australian Government while InterStaff noted the conflict between compliance requirements and commercial imperatives.

However, it is also imperative to maintain public confidence in the system, which can be achieved by having a more transparent process which also protects the commercial interests of the parties to the agreement during negotiations. On behalf of its members the

Recruitment and Consulting Services Association called on the Australian Government to “implement levels of transparency back into the process of negotiating Labour Agreements so skilled labour can be sourced from overseas to support the Australian Industry that is suffering from a skills shortage”.

Recommendation

The ERG recommends that Labour Agreements be promoted as a tool to manage the temporary entry of overseas workers to meet the range of labour needs for large projects that are in the national interest and have significant economic benefit to Australia. Steps to this end could include:

- the development and provision of improved information regarding relevant criteria and procedures
- the allocation of dedicated teams to facilitate applications.

The ERG recommends that, to encourage community acceptance of the wider use of Labour Agreements, the process be made more transparent, while ensuring:

- consultation does not convey a power of veto over the proposed agreement
- applications remain Commercial-in-Confidence during negotiations.

The Australian Mines and Metals Association (AMMA) are supportive of Labour Agreements, but noted in their submission to the ERG that “currently the waiting time for Labour Agreements can take 12 months and longer. As the processing time is so long, employers end up with different obligations than existed when they first made application. While there is a necessity to keep the process open and transparent, there should also be certainty in what is required to achieve an Agreement”. The allocation of dedicated teams to facilitation should speed processing while still ensuring transparency of decision making.

Section 7 - Further options

The potential process improvements summarised earlier in this report provide a range of options for delivering a better service to stakeholders and a more flexible response to skills shortages in various sectors of the economy. The possibility remains that, faced with full employment and historically high participation rates, improvements to the Subclass 457 visa alone will not fully alleviate current and anticipated workforce shortages in the economy. The following options outline measures which were considered as complementary initiatives to manage anticipated future employment trends.

Semi-skilled and unskilled labour

The 457 visa was developed in the mid 1990s as a skill gap visa in conditions of high unemployment in Australia and was never envisaged as a general labour supply visa (which it has become by default). As such, it may not suit the broader demands of the current labour market, and future labour market and population trends, in isolation.

Increasing the permanent skilled migration stream to account for long term shortfalls in skills as predicted by current employment and population trend projections would support the operation of broader labour market skills and infrastructure strategies. A number of the labour supply and infrastructure development programs being developed by the government are also expected to be effective in the longer term (such as the establishment of Skills Australia and Infrastructure Australia).

Increased skilled migration needs to be balanced by the need for increased migration across the skills spectrum. This may also include some unskilled migration. This view is supported by the findings of the Minerals Council of Australia in their *Staffing the Supercycle* report where they note that, while facing a skills shortage in some areas of the industry “the projected gaps are largest in occupational classifications with low skill levels, the labour shortage problem identified here in the minerals sector is not one that training policy can necessarily address. It is more a matter of attracting *people* to the industry. In other words, what the sector is facing is a *people shortage*, not necessarily a skills shortage per se”. This analysis reinforces the need to consider labour market approaches complementary to the recommendations outlined earlier in the report.

Recommendation

The ERG is of the view that the Visa Subclass 457 visa is not suitable to meet market requirements for semi-skilled and unskilled labour except through Labour Agreements for semi-skilled. Hence, the ERG recommends, in addition to the broader utilisation of Labour Agreements proposed earlier in this report, that the Australian Government pilot other approaches to the provision of a range of labour in specific industries.

In their submission to the ERG, Restaurant and Catering Australia state that “if the level of service provided by the industry is to continue, a new source of unskilled labour needs to be found”, and they go on to recommend “that the Australian Government, as a matter of some urgency, pilot approaches to unskilled migration to Australia”.

International competitiveness

Access to global labour markets is critical for Australian businesses and industries. With increased competition from other developed countries in the international labour market the ERG considered it was important to regularly review the effectiveness of Australia's migration programs to ensure they remain relevant and are effective in attracting the mix of workers required to meet skills and labour shortages in the economy.

These views are supported by the Chamber of Minerals and Energy WA who suggested that Australia benchmark itself against major competitors, noting that New Zealand and Canada are positioning themselves competitively, based on ease of immigration, in the global labour market. The Hotel, Motel and Accommodation Association agree, recommending that "Australia must compete globally, but must make it a priority to be a dominant player within the labour market in our own region. In these emerging regional and global markets for skills and labour, first mover advantage will be critical".

Recommendation

The ERG recommends that the department regularly review and benchmark its practices against comparable countries to ensure Australia's competitiveness in the international labour market.

With the need to benchmark performance, and with a background of long-term demographic and labour market changes in the Australian economy and the role of immigration in this process; the ERG notes the lack of current capacity within the department to conduct demographic and labour market research or analysis in conjunction with other Australian Government agencies. The importance of this inter-agency coordination is supported by the Australian Hotels Association who state that there is a "lack of connectedness between agencies with information / data on labour market developments and outlook".

To ensure that international competitiveness is maintained it is essential that changes to visa policies and processing are fully evaluated for effectiveness.

Recommendation

The ERG recommends that an evaluation of the recommendations implemented from this review should be undertaken two years following their introduction.

Need for a new visa

Some of the submissions received by the ERG (including the submission from the Australian Mines and Metals Association) proposed new visa types - either to provide workers more quickly, or to provide workers in skills areas not covered by the current 457 visa.

The ERG are of the view that adoption of the recommendations made in this report should meet most of these requirements.

Applicable Laws

In their submission Fragomen Global suggested “that employers not be burdened by two sets of laws and obligations under employment law and under immigration law”. They note that firms can potentially be in breach of immigration law with regard to 457 visa holders for practices that meet employment law for non-457 workers doing the same jobs at the same location.

Similarly, Commerce Queensland note that “some employers are unclear about the overlap between DEEWR and DIAC legislative requirements, and the extent to which either can over-ride the other”.

The ERG consider that relevant agencies should review such potential inconsistencies while introducing the changes flowing from the adoption of the recommendations in this report.

Testing the English language requirement

While noting that the English language requirement itself is not an issue, a number of submissions to the ERG, including that of Commerce Queensland, reported anecdotal evidence that in some countries there are waiting times of up to five months to take the required language test.

Recommendation

The ERG recommends that the department consider providing applicants with alternative mechanisms for taking the English language tests by increasing competition between providers to improve effectiveness and efficiency of the English language testing service.

Skills categories

A number of submissions received by the ERG reflected the view of Growcom that 457-eligible ASCO codes did not reflect occupational requirements in their industry, and that “ASCO codes be reviewed and updated to accurately reflect these occupations, including emerging skill requirements”. The ERG notes that the 2007 Joint Standing Committee on Migration (JSCM) made a recommendation to the effect that DIAC and DEEWR “regularly review the list of approved occupations”.

Attachment A - References

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Attachment B - Minister's media releases

Included below is the text of the media release from Senator Chris Evans on 17 February 2008 announcing the establishment of the ERG. The biographies of the reference group members included in the original media release are included in section three of this report.

Following this media release is the Minister's media release of 26 March 2008 announcing his receipt of the ERG's interim report.



Immigration package to ease skills shortage

Sunday, 17 February 2008

The Minister for Immigration and Citizenship, Senator Chris Evans, today unveiled a package of migration measures designed to address Australia's skills and labour shortages.

Senator Evans said the package had the potential to provide thousands of additional workers in the short term, especially for the labour-strapped mining and construction industries.

An External Reference Group made up of industry experts will also examine how selected temporary skilled migration measures can help ease labour shortages in the medium to long term.

Senator Evans said the package would complement the Rudd Government's move to fast-track the establishment of Skills Australia in order to help lift the productive capacity of the Australian economy and fight inflation.

The Minister said that concerns had been raised by the states and a number of industries regarding their ability to rapidly start up new and significant projects because of skilled labour shortages.

"Skills and labour shortages are also a major cause of inflationary pressures in the economy," Senator Evans said.

As an immediate measure, the Skilled Migration program will be increased by 6,000 places in 2007-08. The increase will be made up of permanent employer sponsored visas and General Skilled Migration visas.

“Employer sponsored visas are the highest priority because they put a migrant worker directly into a skilled job,” Senator Evans said.

The General Skilled Migration program selects people with the right skills and qualifications to work in industries where labour is in demand.

The additional 6,000 places will bring to 108,500 the total number of permanent visas granted under the Skill Stream of the migration program in 2007-08.

Senator Evans said that negotiations were also underway with other countries to expand the reciprocal Working Holiday visa program for young people.

“The tourism and primary industry sectors in particular will benefit as the pool of young people coming to Australia on working holidays continues to grow,” Senator Evans said.

The number of people on Working Holiday visas has grown from 85,200 in 2001-02 to 126,600 in 2006-07.

To specifically assist the construction industry, changes to the Working Holiday visa program will enable people who undertake at least three months work in the construction sector in regional Australia to extend their 12 month working holiday visa by another year.

This provision is already available to people who work in primary industry in regional Australia, which includes the agriculture, forestry, fishing and mining industries.

Senator Evans said that the number of people who had extended their working holiday visa by another year under the scheme had almost trebled from 2,690 in 2005-06 to 7,990 in 2006-07 and was expected to increase by 51 per cent this financial year to more than 10,000.

“It is estimated that extending this working holiday visa concession to work in the construction industry in regional Australia could attract a further 5,000 workers to that industry alone,” Senator Evans said.

“Addressing Australia's long-term skills shortages is vital to tackling the inflationary pressures left behind by the Howard-Costello Government.”

Senator Evans said the construction, major infrastructure, tourism and the resources sectors would be the focus of the External Reference Group.

“The group will provide me with specific advice on ways to ensure the temporary work visa system, also known as the Subclass 457 visa program, operates as effectively as possible in contributing to the supply of skilled labour,” Senator Evans said.

The Temporary Business (Long Stay) visa (Subclass 457) allows businesses to recruit skilled labour from overseas for temporary entry to Australia for between three months and four years.

In addition, the reference group will advise the Minister on current and anticipated future employment trends and the need for overseas recruitment in the identified sectors.

The Minister said the group would ensure any recommended initiatives would complement existing government labour market skills strategies.

The industry experts who will make up the reference group are:

Peter Coates (Chairman) – Former Chairman, Minerals Council of Australia; Chairman, Xstrata Australia.

Melinda Cilento – Deputy Chief Executive, Business Council of Australia.

Tim Shanahan – Director, Energy and Minerals Initiative, University of Western Australia; Former CEO, WA Chamber of Minerals and Energy.

The reference group will provide an interim report to the Minister by 14 March with a final report due in April.

In addition to the new migration measures, Skills Australia will oversee the Rudd Government's commitment to providing an additional 450,000 training places over the next four years and 820,000 over the coming decade.

The first 20,000 of the Rudd Government's additional training places will be available by April.

Media Contact: Simon Dowding – (02) 6277 7860 or 0411 138 541



Media release

Senator Chris Evans

Leader of the Government in the Senate
Minister for Immigration and Citizenship

Minister welcomes interim report on skilled migration

Wednesday, 26 March 2008

The Minister for Immigration and Citizenship, Senator Chris Evans, today welcomed an interim report from a group of industry experts on Australia's temporary skilled migration program.

The External Reference Group has consulted more than 40 stakeholders to date, including industry groups, major companies and unions, about ways to streamline visa processing times and improve the flexibility of the temporary skilled migration program (subclass 457 visa).

'Concerns have been raised by the states and industry groups over skilled labour shortages and the increasing inability to start up significant projects,' Senator Evans said.

'The External Reference Group has consulted widely and I am buoyed by the good work the members have done so far.

'The reference group will now build on the interim report and provide more detail on how to improve the temporary skilled migration program while maintaining the integrity of the system.'

Among the interim report's recommendations is the consideration of establishing an accreditation system whereby 'low risk' employers with a good track record of compliance with immigration and industrial relations laws can have 457 visa applications fast-tracked by the department.

The report has also suggested scope for improvements in administration through the elimination of duplication in visa processes along with the need for providing employers and workers with better information about their responsibilities and rights under the 457 visa system.

The group stated that it had received a number of submissions outlining the importance of training as a key measure to alleviate the skills shortage in the medium to long term.

The group's recommendations will be considered by Cabinet and will form the basis for the development of additional measures to address Australia's skills shortage.

'These measures will complement the Rudd Government's establishment of *Skills Australia*, which includes funding an additional 450 000 training places over the next four years, with 20 000 of these training places available from next month,' Senator Evans said.

Last month, the Government outlined a package of migration measures designed to address Australia's skills and labour shortages in the short term.

The temporary and permanent skilled migration program has been increased by 6000 places for 2007-08, bringing to 108 500 the total number of visas granted under the Skill Stream of the migration program this financial year.

Changes to the Working Holiday visa program will enable people who undertake at least three months work in the construction sector in regional Australia to extend their 12-month working holiday visa by another year.

'Australia currently has a skills crisis and we are competing for skilled labour in a global marketplace,' Senator Evans said.

'The Rudd Government is determined to address the issues of skills and labour shortages and we are working with industry to improve our skilled migration program while ensuring we continue to provide employment and training opportunities for Australian workers.

'Addressing Australia's long-term skills shortages is also vital to tackling the inflationary pressures left behind by the Howard-Costello government.'

The reference group was established last month to examine how selected temporary skilled migration measures can help ease labour shortages and will deliver its final report later next month.

The industry experts who make up the External Reference Group are:

- Peter Coates (Chairman) – Former Chairman, Minerals Council of Australia; Chairman, Xstrata Australia
- Melinda Cilento – Deputy Chief Executive, Business Council of Australia
- Tim Shanahan – Director, Energy and Minerals Initiative, University of Western Australia; Former CEO, WA Chamber of Minerals and Energy.

Media Contact: Simon Dowding – (02) 6277 7860 or 0411 138 541

Attachment C - Submissions received by the External Reference Group

Attached to this report are the complete text of the written submissions received by the ERG during their deliberations.

An electronic copy of this material may be obtained on CD-ROM from:

Department of Immigration and Citizenship
Business Branch

Contact officer:

Mr Scott Mann
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Department of Immigration and Citizenship
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(**Note:** if the complete text of written submissions received is not included with your copy of this report it may be obtained as above)