

**Visa Subclass 457
Integrity Review**

Issues Paper #2:

**English Language Requirement /
Occupational Health and Safety**

August 2008

Version 1.0

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Overview of this issues paper

This paper includes the following sections:

- Executive summary
- The Visa Subclass 457 Integrity Review
- Visa Subclass 457
- English language requirement
- Occupational Health and Safety.

The paper includes the following attachments:

- a list of the references used in the compilation of this paper
- the text of the media release from the Minister for Immigration and Citizenship announcing the appointment of industrial relations commissioner Ms Barbara Deegan to examine the integrity of the temporary skilled migration program
- a summary of English language testing skill levels
- a list of major Australian Occupational Health and Safety legislation.

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.

List of abbreviations

ASCO	Australian Standard Classification of Occupations
DIAC	Department of Immigration and Citizenship
ENS	Employer Nomination Scheme
ERG	Visa Subclass 457 External Reference Group
IELTS	International English Language Testing System
OH&S	Occupational Health and Safety

Section 1 - Executive summary

This is the second in a series of issues papers to be released as part of the Visa Subclass 457 Integrity Review (the Review) being conducted by Ms Barbara Deegan. This paper will focus on the English language requirement and Occupational Health and Safety (OH&S), and will provide the basis for structured feedback from interested stakeholders.

The issues raised in the paper have been compiled from DIAC and Department of Education, Employment and Workplace Relations resources and from a series of informal consultative meetings between Ms Deegan and a selection of stakeholders. The issues outlined in this paper are designed to prompt debate and provide interested parties with an opportunity to provide the Review with written submissions.

This work builds upon stakeholder input to earlier reviews of the temporary skilled migration program, including the Joint Standing Committee on Migration of 2007 and the External Reference Group (ERG) earlier in 2008 (see Attachment A for references). It also incorporates comment received during informal consultation carried out between stakeholders and Ms Deegan following establishment of the Review.

Section 2 - The Visa Subclass 457 Integrity Review

Following concerns raised about the exploitation of migrant workers, salary levels and English language requirements within the temporary skilled migration program, the Minister for Immigration and Citizenship, Senator Chris Evans, announced the establishment of an integrity review process (see Attachment B) to be conducted by Barbara Deegan (a member of the Australian Industrial Relations Commission).

The terms of reference for the Review include examining:

- measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program
- the employment conditions that apply to workers employed under the temporary skilled migration program
- the adequacy of measures to protect 457 visa holders from exploitation
- the health and safety protections and training requirements that apply in relation to temporary skilled workers
- the English language requirements for the granting of temporary skilled migration workers' visas
- the opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The Review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented in October 2008.

The Review is independent of DIAC which provides accommodation and secretariat support.

The Integrity Review

Barbara Deegan

Barbara Deegan holds a law degree from the University of Tasmania. After a time in private practice, and then a period with a TAFE teachers' organisation, she joined the Australian Public Service in the Department of Employment and Industrial Relations.

She held the position of Assistant Secretary of the Legislation Branch of the Department of Industrial Relations for a number of years before being appointed as the Principal Registrar of the Australian Industrial Relations Commission.

Subsequently she became the Australian Government's representative at the International Labour Organisation in Geneva, and was appointed to her current position as a Commissioner with the Australian Industrial Relations Commission in 1996.

Secretariat

The secretariat function for the Review has been provided by the following DIAC staff:

- Tony Davison - Project Manager, Labour Market Branch
- Penelope Robinson - Director, Labour Market Branch
- Felicity Lloyd - Project Officer, Labour Market Branch.

Secretariat members coordinate the activities of the Review, draft discussion papers and reports, manage meetings and assist with the consultation process.

Please note that the members of the secretariat carry out their roles independently of DIAC and that the Review itself is being carried out independently of the department.

The temporary skilled migration reform agenda

The Skilled Migration Consultative Panel has been established to provide advice to the Government on proposals aimed at improving Australia's temporary skilled migration program and how it integrates with the employer sponsored permanent skilled migration program.

The Review is working closely with the Consultative Panel and will provide it with advice on integrity matters relevant to its operation. The Panel, in turn, will consider and provide advice on issues referred to it by the Review.

The independent work of the Review is limited to the scope of its terms of reference and the subject matter of the issues papers it will release from time to time.

If you are interested in contacting the Consultative Panel please address your correspondence to:

temporary.business.strategy@immi.gov.au

Submissions

The Review welcomes submissions on the issues raised in this paper and/or on its terms of reference. All submissions should be sent via email to the following email address:

457IntegrityReview@immi.gov.au

The closing date for submissions is 29 August 2008.

At the end of Sections four and five of this paper you will find questions in bold text (like this). These are designed to stimulate discussion on particular issues. The questions should be viewed as prompts and should not be seen as restrictive. Please feel free to provide comments on any issues of interest.

Please note that the content of submissions may be made public. If confidential submissions are provided they should be sent separately from any public submission and clearly marked as confidential and not for publication.

Future work program

This is the second in a series of issues papers the Review will be releasing to prompt discussion and seek submissions on integrity issues relevant to the temporary skilled migration program.

The first issues paper was on Labour Agreements / Minimum Salary Levels. It was released in July 2008.

The final issues paper will be on Integrity and Exploitation (it is expected to be issued in September 2008).

The content of submissions received on all three issues papers, along with input from face-to-face meetings, will inform the final report of the Review to the Minister for Immigration and Citizenship and the Deputy Prime Minister in October 2008.

Disclaimer

The views and issues in this paper do not necessarily reflect the views of the department or of the government. The paper is intended to stimulate discussion and covers a wide range of views and opinions, some of which may be contradictory.

Acknowledgements

The Review would like to thank all of the groups and individuals who have contributed to the Review to date through the initial consultation process and by submissions in response to the first issues paper.

Section 3 - Visa Subclass 457

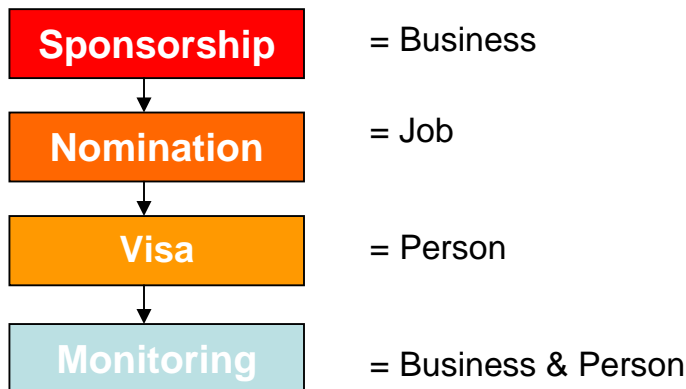
Managing the Subclass 457 visa program

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; and
- safeguarding employment and training opportunities for Australians and protecting overseas workers from exploitation.

Subclass 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:



The business sponsorship process 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 of, or commitment to, training Australians
- they are directly employing the visa holder
- they are able to meet their sponsorship obligations.

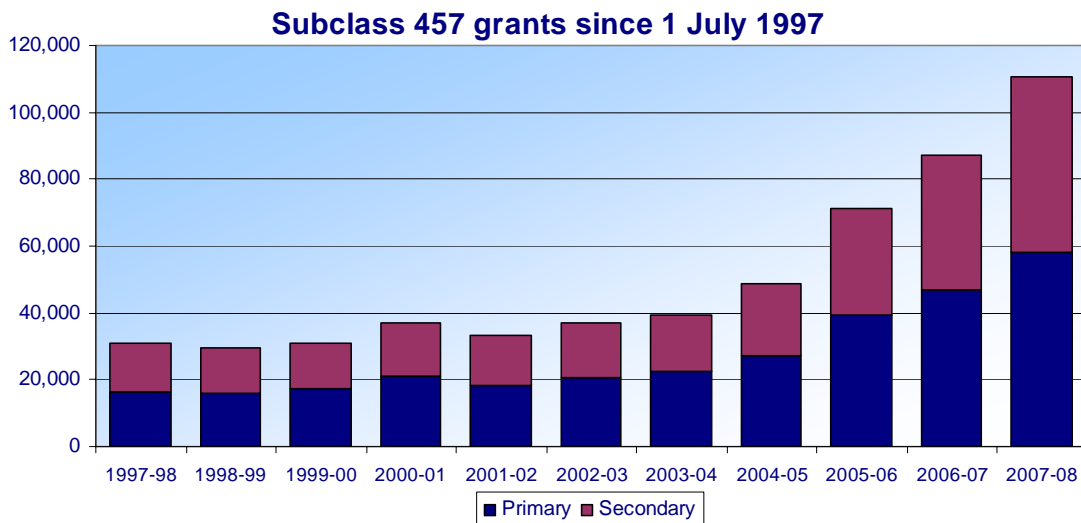
The nomination process involves the assessment of the position (job) to ensure it meets minimum skill and salary requirements.

The Subclass 457 visa application process assesses:

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

The duties of the position sought must be equivalent to those of an occupation prescribed under migration regulations and the position must attract a salary of at least the Minimum Salary Level set for the program.

The number of Subclass 457 visas granted over the last 11 years is shown in the graph below.



(Source: DIAC)

In this paper the term ‘Subclass 457 visa holder’ applies only to primary visa holders unless otherwise noted.

Section 4 - English language requirement

Background

This section considers the English language requirement applicable to the Subclass 457 visa. The requirement was introduced to the Subclass 457 program on 1 July 2007.

The visa requirement

The main characteristics of the requirement are:

- applicants are required to have proficiency in English equivalent to an average score of 4.5 across the four test components in the International English Language Testing System (IELTS) test
- applicants must meet a higher level of English proficiency where this is required for licensing or registration in their nominated occupation (such as for nurses and doctors).

Before 1 July 2007 applicants were only required to demonstrate English language proficiency where required for licensing or registration in their nominated occupation.

There are a number of exemptions from the test as described below.

What is the IELTS Test?

IELTS is a test of English language proficiency. It has an academic test and a general training test - visa applicants only need to take the general training test unless advised otherwise by a registration or licensing body. The tests are jointly managed by the University of Cambridge ESOL Examinations, the British Council and IDP Education Australia.

The test assesses the ability to listen, read, write and speak in English. The table in Attachment C outlines the band scale for the test.

Date of effect

Those who applied for a Subclass 457 visa prior to 1 July 2007 are not affected by the language requirement (unless required for licensing or registration). Applicants for a Subclass 457 visa after 1 July 2007 will need to meet the English language requirement, unless they are in an exempted person category described below.

The language requirement applies to Subclass 457 visa renewal applicants even if they had been working in Australia with no difficulty under a Subclass 457 visa prior to the applicable date (once again, bearing applicable exemptions in mind).

Rationale for the language requirement

The English language requirement is designed to ensure overseas workers in Australia on Subclass 457 visas are able to:

- understand and respond to occupational health and safety risks and practices in the workplace
- raise any concerns about their welfare with appropriate authorities
- benefit Australia by sharing their skills with other workers
- participate more effectively in the Australian labour market.

Test exemptions

All primary 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 the following exempted person categories apply:

- their first language is English and they are a passport holder from Canada, New Zealand, the Republic of Ireland, the United Kingdom or the United States of America
- their nominated occupation is within the highly skilled major groups 1-3 of the Australian Standard Classification of Occupations (ASCO), comprising managers, administrators, professionals and associate professionals
- they are to be paid at least a salary specified in a legislative instrument (initially a gross base salary of \$75 000 excluding all deductions and based on a 38 hour week) and the grant of the visa is of benefit to Australia. This salary is the minimum required to be paid for the duration of the visa.
- they have completed at least five years of continuous full time secondary and/or tertiary education at an institution where at least 80 per cent of instruction was conducted in English
- they hold a Subclass 457 visa that was granted before 1 July 2007 and have applied for a new Subclass 457 visa with a proposed period of stay that would not extend beyond the end date of their current visa.

Further arguments in favour of the language requirement

As many Subclass 457 visa holders work for a number of years in Australia, and some transition to permanent resident status, the English language requirement could be seen to have a role in helping visa holders to participate in Australian society.

There is also an English language requirement for General Skilled Migration (the permanent migration stream) which is set at a higher level (IELTS level 6, except for trade occupations which are IELTS level 5). This higher level recognises the more permanent nature of these visas and aims to minimise the difficulty workers have operating effectively in the community.

Some other arguments that have been advanced in support of the English language requirement include concerns that overseas employees with minimal or no English language competency may:

- be uncomfortable about coming forward with complaints about their treatment due to language barriers
- have an adverse impact on public services in small communities, particularly when arriving in large numbers with their families
- be at higher risk of non-compliance (through lack of comprehension) with Australian laws.

These issues have been of particular concern with workers from the lower ASCO codes (4 and below) which comprise around 20 per cent of Subclass 457 visa holders.

Integrity problems with the current requirement

Since the introduction of the English language requirement the department has noticed an increase in the number of visa applications lodged for ASCO levels 4 and below where salaries are in excess of \$75 000. Further investigation will be required to determine whether these are genuine salaries or an attempt to circumvent the language requirement.

The salary exemption has been criticised as possibly contributing to an increased OH&S risk, though relevant OH&S legislation continues to apply in the workplace. Similarly, English language concessions may be available under a Labour Agreement though once again all OH&S provisions will apply.

English language and the pathway to permanent residency

A significant proportion of Subclass 457 visa holders eventually move on to permanent visas, primarily in the 'Employer Nomination Scheme' (ENS) or 'Skilled - Independent' streams. Of these two groups around 75 per cent utilise the ENS which requires 'vocational' English unless special circumstances apply.

Of the other commonly used skill streams both 'Skilled - Sponsored' and 'Skilled - Independent' visas require a points assessment, with the 'independent' group currently requiring 20 more points than the 'sponsored' group. This raises the possibility that Subclass 457 workers seeking permanent residency who have zero points in English (which occurs below an IELTS level of 5 for skilled trade occupations and a level of 6 for General Skilled Migration) could be dependent upon employer support for a successful visa application. This dependency is a potential source of exploitation.

The dependency outlined above might be even more significant in the case of Subclass 457 visa holders who applied before the English language requirement was introduced and might have lower levels of English skills than more recent arrivals. Additionally, the 'independent' group must apply for their visas offshore, the cost factor involved might push them towards the 'sponsored' option, once again increasing their reliance on their employer.

While the link between English language and permanent residency may not be a concern for individual employers, it could be seen to inhibit the move to permanent residency for employees with an IELTS score at the basic required level of 4.5, and may have potential to increase dependency.

Issues raised by stakeholders

Some businesses have stated that the language requirement imposes additional ‘red-tape’ and lengthens visa processing times, while failing to sufficiently recognise the judgement of employers in determining their own workforce requirements. This view takes account of the obligation employers have to meet applicable OH&S requirements under workplace legislation and suggests that employers are best able to ensure that the English standard required is commensurate with the job that is performed by the visa holder.

An extension of the view that employers are best able to judge required English standards (commensurate with meeting their OH&S obligations) is the further suggestion that applicants be allowed to meet the required English proficiency levels either before or shortly after entry into Australia. Many employers claim that they have a demonstrated commitment to the provision of satisfactory English language training. Allowing applicants to develop the required English language proficiency levels while employed in Australia would ensure English language requirements do not hinder the speedy deployment of personnel while meeting the longer-term aims of the requirement.

In cases where visa holders do not have English language skills employers have noted that other mechanisms, such as the use of on-site translators, dual signage (either written or pictorial) or orientation programs, can be used to alert workers to OH&S requirements.

There have been complaints that it takes far too long to obtain an IELTS test in some countries. The ERG noted these concerns and recommended that the department consider providing applicants with alternative mechanisms for taking the tests by increasing competition between providers. The Review understands that steps are underway within the department to respond to this recommendation and more IELTS test dates are being made available in a range of countries.

A frequent complaint is that the language requirement test band has been set too high for particular industries. Other feedback, while recognising the need for certain levels of verbal or reading skills, has suggested that there should be no requirement for high-level written skills (as these are not seen as an OH&S requirement).

English Language Requirement - Some issues for consideration

Set out below are some of the issues that have been raised in relation to the English language requirement. Any comments concerning other relevant matters will be appreciated.

In what circumstances can the English language requirement contribute to the integrity of the Subclass 457 visa process?

If the English language requirement does contribute to the integrity of the system, is it necessary or desirable for Subclass 457 visa holders at all skill or salary levels?

What impact do the current English language requirement exemptions have on the integrity of the Subclass 457 visa process?

Should existing Subclass 457 visa holders who were not subject to the English language requirement by way of having applied for the visa prior to 1 July 2007 be required to meet the English language requirement if they apply for visa renewal?

Should variations in IELTS test band skill levels, between say writing and reading levels, be made more flexible?

If the English language requirement does contribute to the integrity of the system should it continue to be based on IELTS test bands?

- **If so, what level should it be set at?**
- **If not, what alternative testing mechanisms should be used?**

Should the English language requirement apply at the time of visa application?

Should employers be required to provide English language training to primary visa holders and their families if needed?

If the English language requirement is considered unnecessary, what measures could be put in place to achieve its original objectives (e.g. ensuring overseas workers raise welfare concerns with appropriate authorities, meeting OH&S requirements, benefiting Australia by sharing skills with other workers)?

Section 5 - Occupational Health and Safety

Introduction

The landscape of the Australian workplace is constantly changing which presents ongoing legislative challenges for effective workforce participation in OH&S and for compliance and enforcement of OH&S legislation.

This discussion is intended to encourage and generate suggestions about whether there is any need for different or special OH&S arrangements to apply to Subclass 457 visa holders at their workplaces.

State, Territory and Commonwealth OH&S legislation

All States, Territories and the Commonwealth have OH&S legislation aimed at preventing workplace disease, injury or death (see Attachment D). Each jurisdiction has legislation regulating OH&S and portfolios or agencies responsible for the administration and implementation of the legislation. The need for harmonised OH&S legislation has been recognised by the establishment of the National Review into Model Occupational Health and Safety Laws announced on 4 April 2008 by the Minister for Employment and Workplace Relations, the Hon Julia Gillard MP and in the most recent Council of Australian Governments' Communiqué on 3 July 2008.

A person's visa status does not alter their right to a safe workplace

At the outset it must be noted that a person's visa status does not alter their right to a safe workplace and that the same OH&S requirements applying to Australian employees in any workplace apply to Subclass 457 visa holders employed there by Australian employers.

Subclass 457 visa holders are subject to the same workers compensation legislation and obligations as all other employees of Australian employers operating in Australian workplaces. In relation to workers compensation the situation of Subclass 457 visa holders who are sponsored by overseas business sponsors (i.e. the employer company is based in another country) is less clear.

Examples of State-based legislation

Occupational Health and Safety Act 2004 (Victoria) and Occupational Health and Safety Regulations 2007

Under the Victorian *Occupational Health and Safety Act 2004*, all employees, regardless of whether they are employed directly by their employer or through a labour hire company, have the same legal rights regarding health and safety at work. Where a person is on-hired through a labour hire agency, the labour hire agency and the host employer must provide them with a working environment that is safe and without risks to health, so far as is reasonably practicable. Both the agency and the host employer share this duty, and it cannot be shifted from one to another through a contract.

Under the Victorian legislation all employees have the same rights, including:

- the right to a healthy and safe workplace
- the right to be represented and consulted in relation to their health and safety
- the right to refuse to perform unsafe work
- the right to be protected from discrimination if they raise a health and safety issue or concern.

It should also be noted that subparagraph 22(1)(c) of the *Occupational Health and Safety Act 2004 (Victoria)* set out below clearly provides that employers must as far as is reasonably practicable provide employees with OH&S instructions in an appropriate language.

“22. *Duties of employers to monitor health and conditions etc.*

(1) *An employer must, so far as is reasonably practicable—*

(a) *monitor the health of employees of the employer; and*

(b) *monitor conditions at any workplace under the employer's management and control; and*

(c) *provide information to employees of the employer (in such other languages as appropriate) concerning health and safety at the workplace, including the names of persons to whom an employee may make an enquiry or complaint about health and safety.*

Penalty: 240 penalty units for a natural person;

1200 penalty units for a body corporate.”

Occupational Health and Safety Act (1984) (Western Australia) and Occupational Safety and Health Regulations 1996

WorkSafe WA is a division of the Department of Consumer and Employment Protection, the Western Australian State government agency responsible for the administration of the *Occupational Health and Safety Act 1984*. A major role of WorkSafe WA is to promote and provide information to industry and the community to assist in the prevention of workplace injury and disease.

Under section 19 of the *Occupational Health and Safety Act 1984* employers must, so far as is practicable, provide and maintain a working environment where their employees are not exposed to hazards. The legislation requires employers to provide employees with the necessary information, instruction, training and supervision to carry out their work safely. Where employees do not speak English or are unable to read English, employers should find an alternative method of providing information and training.

Due to the nature of some industries legislation will specify particular English language requirements. For example, in order to undertake high risk duties in the WA mining industry the *Mines Safety and Inspection Regulations 1995 (Western Australia)* contain specific legislated English language requirements for miners underground and those in positions of responsibility.

Workplace fatalities

The Australian Safety and Compensation Council (ASCC) recorded 72 notified work-related fatalities for the six month period 1 July 2007 to 31 December 2007. These were the work-related deaths notified to OH&S jurisdictions under their OH&S legislation.

- Of the 72 notified work-related fatalities there were 62 workers and 10 bystanders.
- The majority of fatalities were male, 65 in total (including 4 bystanders).
- Three industries accounted for close to three-quarters (72%) of all notified work-related fatalities:
 - 28% of fatalities occurred at a workplace primarily engaged in construction
 - 28% in transport and storage
 - 17% occurred at an agriculture, forestry and fishing workplace.
- The most common causes of work-related fatalities were:
 - vehicle accident (16 fatalities)
 - being hit by falling objects (13 fatalities)
 - being hit by moving objects (12 fatalities)
 - falls from a height (7 fatalities)
 - vehicle accident - rollover (6 fatalities).

For the previous year between 1 July 2006 and 30 June 2007 the ASCC reported that there were 162 notified work-related fatalities, 146 of whom were workers and 16 bystanders.

Five industries accounted for seven out of every ten notified work-related fatalities:

- 17% of fatalities occurred at a workplace primarily engaged in construction
- 17% in agriculture, forestry and fishing
- 17% in transport and storage
- 11% in manufacturing
- 9% in mining.

The most common causes of notified work-related fatalities in 2006-2007 were:

- vehicle accidents (30 fatalities)
- being hit by moving objects (29 fatalities)
- being hit by falling objects (29 fatalities)
- falls from a height (28 fatalities)
- electrocution (13 fatalities)
- being trapped by moving machinery (11 fatalities).

Industries where Subclass 457 visa holders are located

DIAC State/Territory Summary Report (ID BR0008) on Subclass 457 visas shows that around 10 per cent of Subclass 457 primary visa holders work in construction, just over 10 per cent in manufacturing and around 7 per cent in mining. These three industry sectors are among those reporting the highest numbers of workplace deaths for the population as a whole, which suggests that OH&S issues are particularly relevant for these visa holders. In addition they may be working in an unfamiliar linguistic and cultural setting.

Availability of data

There are no specific figures available from OH&S agencies on the number of fatalities or injuries involving Subclass 457 visa holders as a group. DIAC does not have useful data in this area. Data on OH&S incidents is collected by State and Territory agencies.

There have however been cases raised in the media relating to Subclass 457 visa holders involved in workplace accidents. For example, on 2 July 2008 in the Broadmeadows Magistrates' Court in Victoria Lakeside Packaging Pty Ltd (Lakeside) was convicted and fined a total of \$100 000 for seven breaches of the Victorian workplace safety laws following a complaint by two Subclass 457 visa holders. In that case the visa holders were Chinese nationals who spoke virtually no English. No work instructions or OH&S procedures were conveyed to them or provided in Mandarin. Lakeside was fined for, *inter alia*, failing to provide a safe workplace and failing to provide structure, instruction, training and supervision in a language understood by the employees.

Issues raised during consultation

English language requirement

During the consultation for this paper a number of stakeholders indicated that for Subclass 457 visa holders a lack of English language ability in the workplace should not be a particular concern as State-based legislation imposes an obligation on employers to provide workplace safety information in a language or manner which can be understood by their workers. As the focus of the legislation is on a safe system of work for all employees, employers are required to make special provisions for any employees lacking English language skills. This is important as Subclass 457 visa holders are not the only class of workers who may lack these skills.

A number of employees in any workplace may be from non-English speaking backgrounds. Refugees, some new migrants, people on working holiday maker visas and overseas students are not required to have any particular standard of English in order to be employed in most unlicensed or unregistered positions. The employer has an obligation to ensure that all employees, despite their level of English, are made aware of health and safety information.

It has been suggested, however, that employees who lack English language skills may be less confident in raising occupational health or safety concerns or seeking assistance in relation to any concerns. Therefore, an employee's inability to communicate readily in English may be less of a direct safety concern where the systems in the workplace have taken account of the differing communication and comprehension abilities of all employees. An inability to communicate readily in English may lead to OH&S risks not being brought to the attention of the appropriate persons or authorities.

There have however been a number of cases in the media which highlight the difficulties faced by Subclass 457 visa holders who come from non-English speaking backgrounds, which are in addition to those presented by the challenges of cross-cultural communication. In imposing the fines in the Lakeside matter the Magistrate noted:

“These facts highlight the need for every employer to ensure that there are proper work procedures for individual tasks and that the employees are properly trained and instructed in them. This is particularly so with vulnerable employees such as foreign nationals who come to this country on limited work visas and no command of the English language.

The communication to be effective must be in a language understood by the employees, and the employer must ensure that they feel no undue pressure to ‘get the job done’ regardless of issues of safety.”

Impact of other aspects of Subclass 457 visa holders on workplace safety

There is an argument that those Subclass 457 visa holders who are particularly vulnerable may, out of fear of losing their employment and consequently their visa status, be reluctant to complain about or bring to the attention of responsible persons unsafe work practices.

Various stakeholders have suggested that an employee's visa status is a significant issue which impacts upon their willingness to access legal and medical assistance or to protect themselves against unsafe work practices. In such circumstances the fact that the employee is in Australia on a visa sponsored by their employer may make them reluctant to report unsafe conditions at their employer's workplace. This concern may bear no relationship to the employee's ability to communicate in English.

English language ability may assist an employee to find out about their entitlements but cannot ensure that these will be enforced if the employee is reluctant to pursue a concern out of fear of losing their employment and thus their visa status. It has been suggested, however, that those Subclass 457 visa holders who have poor English language skills or who cannot otherwise access information in their local language are less likely to raise OH&S concerns in the workplace. In such circumstances, the importance of disseminating information in local languages to visa holders (either before they arrive in Australia or on arrival) so that they are aware of their rights and obligations, has been stressed.

State and Territory based OH&S agencies also provide information, including relevant contact information for reporting OH&S concerns, in languages other than English. Additionally, in accordance with sponsorship undertakings, a sponsor of a Subclass 457 visa holder may be responsible for the primary visa holder's public hospital medical expenses (and for those of any secondary visa holders that they have agreed to sponsor). Should a worker's compensation claim made by a Subclass 457 visa holder be refused, in some situations the employer maintains the obligation to cover any medical costs. A suggestion has been put that, as a consequence, employers may discourage Subclass 457 visa holders from making claims so as to avoid their own responsibility for any medical expenses.

In a report dated 8 May 2008, 'Report on the Investigation into Lakeside Packaging Pty Ltd', the Victorian Workplace Rights Advocate, Mr Anthony Lawrence noted that:

"It is of course, commonly recognised that employees from non-English speaking backgrounds are generally at a disadvantage in the workplace. For example where safety instructions, protocols or procedures are communicated solely in English, a worker without appropriate language skills is, all other things being equal, at a higher risk of injury than a worker fully conversant in English.

Equally, of course, there is a greater difficulty associated with making complaints about the workplace and working environment where the employee is unable to properly express their concerns.

.....Where employees have made a substantial payment to an employment agency to obtain a 457 visa they are in a position of particular vulnerability. This vulnerability is likely to militate against 457 visa holders raising a complaint in the workplace or making a complaint to an investigating agency. Further, the making of a complaint may potentially at least, lead to loss of employment, the cancellation of the 457 visa and therefore the right to lawfully remain in Australia."

Recent DIAC initiatives

DIAC is currently developing information exchange agreements with a number of State and Territory workplace safety agencies. These agreements will provide an important integrity improvement for the Subclass 457 visa arrangements. They will formalise arrangements for, amongst other things, the exchange of details about businesses using the program as well as the details of the foreign workers they employ. Access to this information will assist these agencies in planning their enforcement and educational activities. These agreements have been carefully considered to ensure they are consistent with the privacy laws that are in operation around the country.

OH&S - Some issues for consideration

Set out below are some of the issues that have been raised in relation to OH&S. Any comments concerning other relevant matters will be appreciated.

Does an employee's inability to speak, read and write English constitute an unacceptable occupational health and safety risk in a workplace or in a particular type of workplace?

How important is English language ability to understanding and enforcing OH&S rights and obligations?

Is there sufficient information about OH&S and the Subclass 457 visa program readily available in local languages? How far should this information provision extend?

How can Subclass 457 visa holders be encouraged to seek assistance (including medical or legal assistance) in respect of OH&S concerns or workers' compensation claims?

Does the risk of an OH&S incident depend on the type of sponsor a subclass visa holder has?

Should all relevant State and Territory and Commonwealth agencies with OH&S responsibilities be provided with information as to the workplace location and nationality of Subclass 457 visa holders prior to or on arrival in Australia?

Attachment A - References

Australian Safety and Compensation Council, *Notified Fatalities Statistical Reports*.

Department of Immigration and Citizenship, *Subclass 457 Business (Long Stay) - State/Territory Summary Report (Report Id: BR0008)*, 2007-08.

Joint Standing Committee on Migration, *Temporary visas ... permanent benefits*, Parliament of the Commonwealth of Australia, 2007

Victorian Workplace Rights Advocate, *Report on the Investigation into Lakeside Packaging Pty Ltd*, May 2008.

Visa Subclass 457 External Reference Group, *Final Report to the Minister for Immigration and Citizenship*, April 2008

Attachment B - Minister's media release

Included below is the text of the media release from Senator Chris Evans on 14 April 2008 announcing the establishment of the Integrity Review. The biography of Ms Deegan included in the original media release is included in Section two of this report.



IR expert to oversee temporary skilled migration review

Monday, 14 April 2008

The Rudd Government has appointed industrial relations commissioner Barbara Deegan to examine the integrity of the temporary skilled migration program, the Minister for Immigration and Citizenship, Senator Chris Evans said today.

Senator Evans said Ms Deegan will address concerns about the exploitation of migrant workers, salary levels and English language requirements

'Ms Deegan will draw on her extensive expertise in the industrial relations sector to review the Temporary Business Long Stay subclass 457 program and provide options to improve the integrity of the scheme,' Senator Evans said.

'Ms Deegan will take leave from her current position as Commissioner of the Australian Industrial Relations Commission for six months to undertake this independent role.

'Ms Deegan will consult with overseas workers, union and industry representatives as well as relevant Commonwealth, state and territory agencies.'

A working party of industry and trade union leaders will be formed to provide a forum for Ms Deegan to access relevant information.

The terms of reference for the review include examining:

- Measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program;
- The employment conditions that apply to workers employed under the temporary skilled migration program;
- The adequacy of measures to protect 457 visa holders from exploitation;

- The health and safety protections and training requirements that apply in relation to temporary skilled workers;
- The English language requirements for the granting of temporary skilled migration workers' visas; and
- The opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented by 1 October 2008.

Senator Evans said Ms Deegan's review would complement the recommendations of the External Reference Group, which was established in February to look at ways to streamline visa processing times and improve the flexibility of the temporary skilled migration program for employers.

'The Rudd Government is determined to address the skills and labour shortages we are currently experiencing,' Senator Evans said.

'We are working with industry to improve the efficiency of our skilled migration program while ensuring we continue to provide employment and training opportunities for Australian workers.

'The External Reference Group has consulted widely and in an interim report has flagged the concept of establishing an accreditation system whereby 'low risk' employers with a good track record can have 457 visa applications fast-tracked by the department.'

The final reports from Ms Deegan and the ERG form part of the Australian Government's medium and longer term strategy to improve the transparency, accountability and integrity of the temporary skilled migration program.

Any recommended initiatives will also complement broader labour market policies, including the development of a new fair and flexible workplace relations system.

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Attachment C - IELTS test bands

Band	Language skill level	Description
9	Expert user	Has fully operational command of the language: appropriate, accurate and fluent with complete understanding.
8	Very good user	Has fully operational command of the language with only occasional unsystematic inaccuracies and inappropriacies. Misunderstandings may occur in unfamiliar situations. Handles complex detailed argumentation well.
7	Good user	Has operational command of the language, though with occasional inaccuracies, inappropriacies and misunderstandings in some situations. Generally handles complex language well and understands detailed reasoning.
6	Competent user	Has generally effective command of the language despite some inaccuracies, inappropriacies and misunderstandings. Can use and understand fairly complex language, particularly in familiar situations.
5	Modest user	Has partial command of the language, coping with overall meaning in most situations, though is likely to make many mistakes. Should be able to handle basic communication in own field.
4	Limited user	Basic competence is limited to familiar situations. Has frequent problems in understanding and expression. Is not able to use complex language.
3	Extremely limited user	Conveys and understands only general meaning in very familiar situations. Frequent breakdowns in communication occur.
2	Intermittent user	No real communication is possible except for the most basic information using isolated words or short formulae in familiar situations and to meet immediate needs. Has great difficulty understanding spoken and written English.
1	Non user	Essentially has no ability to use the language beyond possibly a few isolated words.
0	Did not attempt test	No assessable information provided.

Source: IELTS internet site (http://www.ielts.org/pdf/IELTS_Handbook_2007.pdf)

Attachment D - Occupational Health and Safety legislation

AUSTRALIAN CAPITAL TERRITORY• *Occupational Health and Safety Act 1989*

COMMONWEALTH• *Occupational Health and Safety (Commonwealth Employees) Act 1991*

NEW SOUTH WALES• *Occupational Health and Safety Act 2000*

NORTHERN TERRITORY• *Work Health Act 2007; Work Health and Safety Act 2007 (not yet commenced)*

QUEENSLAND• *Workplace Health and Safety Act 1995*

SOUTH AUSTRALIA• *Occupational Health, Safety and Welfare Act 1986*

TASMANIA• *Workplace Health and Safety Act 1995*

VICTORIA• *Occupational Health and Safety Act 2004*

WESTERN AUSTRALIA• *Occupational Safety and Health Act 1984*

Source: Appendix B to National Review into Model Occupational Health and Safety Laws Issues Paper May 2008.