



Review of

ILLEGAL WORKERS

in Australia

Improving immigration compliance
in the workplace

Review of Illegal Workers in Australia
Improving immigration compliance in the workplace

was prepared by:

Compliance Strategy Section
Border Control and Compliance Division
Department of Immigration and Multicultural Affairs

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The Hon Philip Ruddock MP
Minister for Immigration and
Multicultural Affairs
Parliament House
CANBERRA ACT 2600

Dear Mr Ruddock

The external Reference Group guiding the Review of Illegal Workers in Australia is pleased the Department is presenting the Review's Report.

The Review found sufficient evidence to conclude that the extent of illegal workers in Australia is a significant problem that denies many Australians the opportunity to access a job. Illegal work also places an additional burden on the Australian taxpayer in terms of compliance costs, uncollected taxes and fraudulently claimed social security benefits. An education campaign is required in the community, in order to overcome currently widespread misconceptions. The opportunity to work illegally also encourages many others to attempt to enter unlawfully, either by boat or air, occasionally with catastrophic results.

The Report recommends the adoption of a range of measures to address the issues presented by illegal workers. In coming to its conclusions, the Department, guided by the Reference Group, has considered a range of issues and options, including those raised in submissions, and during consultations with other Departments and other interested parties.

The Reference Group would like to acknowledge the capable support that has been provided by staff from the Department. Their contributions and assistance have been invaluable.

The Reference Group members wish to thank you for the opportunity to contribute to the Government's strategy development in relation to reducing the extent of illegal work by non-citizens.

Yours sincerely

A handwritten signature in black ink that reads "Noel Hicks". The signature is written in a cursive style with a large, circular flourish at the beginning.

Noel Hicks
Chair

Table of Contents

Terms of Reference	vi
Membership of the Reference Group	vii
Glossary of Terms	viii
PART A: INTRODUCTION	9
1. Executive Summary	9
1.1 Purpose of the Review	9
1.2 The Review process	9
1.3 Key Review findings	13
1.4 Summary of recommendations	15
2. Introduction	18
2.1 Background and description of issues - Illegal workers	18
2.2 How serious are the consequences of people working illegally?	20
2.3 Existing enforcement resources, activity levels and unit labour costs	23
2.4 Problems encountered under the existing arrangements	25
2.5 Background and description of issues - Visitor visas with security bonds	26
2.6 Consultations summary - Illegal workers	27
2.7 Consultations summary - Visitor visas with security bonds	28

PART B: KEY ISSUES AND FINDINGS		29
3.1	Overseas Information Campaign	29
3.2	Information to ETA-holders	29
3.3	Supply of information to employers and visa-holders	31
3.4	Visa cancellation policy	34
3.5	Current sanctions	36
3.6	Proposed scheme of sanctions	37
3.7	What defence should employers and labour suppliers be able to rely upon?	41
3.8	Who will be affected by the proposed scheme of sanctions?	44
3.9	Likely benefits and costs and who will experience them	45
3.10	Cooperation with other Government agencies and departments	47
3.11	Problems with the existing visitor visa arrangements	48
3.12	How a visitor security bond system might operate	50
PART C: SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS		55
4.1	Key findings	55
4.2	Recommendations	57
PART D: ATTACHMENTS		61
Attachment A	Discussion Paper: <i>The Hidden Workforce: Illegal workers in Australia and those that would join them.</i>	62
Attachment B	Summary of submissions to the Review of Illegal Workers in Australia	87
Attachment C	Draft of proposed Work Right Declaration Form	133
Attachment D	Summary of employer sanctions in other countries	135

Terms of Reference

The Review of Illegal Workers in Australia is responsible for examining and providing policy advice on compliance and visa issues:

Compliance Issues

- The nature and impact of illegal workers on:
 - the operation of the immigration program; and
 - the Australian labour market;
- the adequacy of current compliance measures against illegal workers; and
- the role of the community, particularly employers, in ensuring that only people with work rights are recruited to jobs.

Visa Issues

- Information available to intending visitors/temporary residents on work restrictions;
- the adequacy of visa requirements authorising work in Australia; and
- the value of introducing a system of security bond payments, in particular cases, before visas may be granted.

Membership of the Reference Group

Chair:

Mr Noel Hicks
Former National Party MP for Riverina-Darling, NSW (1980-1998)
and former Chief National Party Whip

Members:

Mr Joseph Assaf
Chairman and Chief Executive
Ethnic Communications Pty Ltd

Ms Nicole Feely
Chief Executive Officer
Victorian Employers' Chamber of Commerce and Industry

The Hon. Gary Johns
Senior Fellow
Institute of Public Affairs
Former Labor Party MP for Petrie, Qld (1987-1996), Special Minister of State (1994-1996) and
Assistant Minister for Industrial Relations and Minister Assisting the Prime Minister for Public Service
Matters (1993-1996).

Mr Hugh King
Senior Partner, Phillips Fox Lawyers
Director, Tourism Council Australia

Glossary Of Terms

ATO	Australian Taxation Office
DEWRSB	Department of Employment, Workplace Relations and Small Business
DIMA	Department of Immigration and Multicultural Affairs
DPP	Director of Public Prosecutions
ETA	Electronic Travel Authority
TCA	Tourism Council Australia
TFN	Tax File Number
TTF	Tourism Task Force
WHM	Working Holiday Maker

1. Executive Summary

1.1 Purpose of the Review

1.1.1 The Review was asked to consider the current approach to combating illegal workers and whether there should be changes made to policy, practices and procedures, and/or legislation settings to improve the level of compliance in the workplace. The Review was also asked to consider what measures could be taken to address the high visitor visa application refusal rates at certain overseas posts and the correspondingly high non-return rates for nationals from those countries, while retaining the integrity of the visitor visa program.

1.2 The Review process

1.2.1 On 1 March 1999, the Minister for Immigration and Multicultural Affairs, the Hon. Philip Ruddock MP, announced that there would be a Review to target illegal workers in Australia and that an external Reference Group would guide the Review. The Reference Group was Chaired by Mr Noel Hicks, and included Ms Nicole Feely, the Hon. Gary Johns, Mr Joseph Assaf and Mr Hugh King.

1.2.2 On 6 May 1999, the Minister launched the Review of Illegal Workers in Australia and a range of measures aimed at helping employers check the work rights of their employees. The centrepiece of the current campaign, *Employing Overseas Workers - doing the right thing*, is an information kit which includes samples of visas and what employers should look for when checking work rights.

1.2.3 In launching the Review, the Minister reiterated the Government's commitment to curb abuse of Australia's visa system by illegal workers and determination to reduce unemployment for Australians. The Minister was keen to see measures developed that would reduce the burden on Australian taxpayers and maintain the integrity of Australia's borders.

- Illegal workers take jobs away from those with the right to work, primarily Australian citizens and permanent residents;
- the cost of physically locating, detaining and removing people who have arrived or remained unlawfully in Australia has been about \$50 million each financial year, until the recent dramatic increase in unlawful arrivals by boat, which will cause a significant increase in cost.

1.2.4 At the launch, the Minister strongly urged all employer and industry representatives to contribute to the Review. An invitation to the public and interested parties to submit their views on the options was published in the following papers on Saturday 8 May 1999:

- Weekend Australian (National);
- Canberra Times (ACT);
- Sydney Morning Herald (NSW);
- Courier Mail (Qld);
- Adelaide Advertiser (SA);
- The Age (Vic);
- The Mercury (Tas);
- West Australian (WA); and
- Northern Territory News (NT).

1.2.5 The Discussion Paper *The Hidden Workforce: Illegal workers in Australia and those that would join them*, was produced to assist people interested in making submissions to the Review. The Discussion Paper, which outlined various options including options about possible employer sanctions and security bond arrangements for close family visitors to Australia, was launched at the same time as the Review.

1.2.6 The invitation and Discussion Paper were placed on DIMA's Internet site.

1.2.7 Key stakeholders were consulted as part of the Review and submissions were invited from a range of peak representative bodies:

- Australian Chamber of Commerce and Industry;
- Australian Industry Group;
- National Farmers' Federation;
- Business Council of Australia;
- Housing Industry Association;
- The Tourism Task Force;
- Tourism Council Australia;
- Inbound Tourism Organisation of Australia;
- Migration Institute of Australia;
- Restaurant and Catering Australia;
- Australian Council of Trade Unions;

- Australian Fresh Stone Fruit Growers;
- Australian Mines and Metals Association Inc;
- Australian Apple and Pear Growers Association Inc;
- Australian United Fresh Fruit and Vegetable Association Ltd;
- Australian Wine and Brandy Producers Association;
- Federation of Ethnic Communities Councils of Australia; and
- Australian Chamber of Fruit and Vegetable Industries Ltd.

1.2.8 In addition, the Review Secretariat also contacted the following organisations:

- QANTAS;
- Ansett Australia;
- Hotel, Motel & Accommodation Association;
- Meetings Industry Association; and
- Committee for Economic Development of Australia.

Summary of submissions received

1.2.9 Of the forty-three submissions received:

- seventeen were from private individuals;
- twenty-four were from companies or other organisations;
- one from the Department of Industry, Science and Resources; and
- one from the Department of Employment, Workplace Relations and Small Business (DEWRSB).

1.2.10 Seventeen of the twenty-five organisations were horticultural/agricultural employer associations. Four submissions came from the Griffith area of NSW, and two from Kununurra in WA. The remainder of the submissions ranged from around Australia.

1.2.11 Most submissions focussed on the possible imposition of sanctions against employers who recruit people without authority to work. Eleven supported the imposition and/or increase of sanctions against employers, twenty opposed the imposition of sanctions, at least in part, and ten were undecided. There was relatively little comment on the introduction of a security bond system for specified visa applicants.

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- 1.2.12 The reasons given by those against sanctions included:
- the perceived administrative burden placed on employers required to check whether their potential employees have work rights;
 - the timing of checks - particularly where many employees are recruited quickly, for a short time;
 - the likely complexity of the checking process; and
 - the possibility of creating a less attractive Australia for tourism.
- 1.2.13 Further information about the views and issues raised in those submissions is at Attachment B and at paragraph 2.6 in the Consultations summary.

The role of the Reference Group

- 1.2.14 The Reference Group was asked to guide the Review by:
- ensuring that the Review remained within its Terms of Reference;
 - providing informed comment, based upon discussions and examination of issues being considered;
 - guiding its progress, drawing upon the experience of the Reference Group members; and
 - verifying its findings and recommendations.
- 1.2.16 In addition to examining submissions and related material, the Reference Group held three formal meetings on 11 June, 21 June, and 27 July 1999. Two teleconferences were also held on 30 June and 1 September 1999. At these meetings the following Issues Papers were considered:
- Issues Paper 1: *The current compliance program against illegal workers and implications for change;*
- Issues Paper 2: *Adequacy of information provided to visa holders on work rights;*
- Issues Paper 3: *Encouraging compliance: information campaign and penalties;*
- Issues Paper 4: *Industry demands for labour and linked government activities; and*
- Issues Paper 5: *Use of a security bond for certain visitors.*
- 1.2.17 Senior officers from DIMA including support staff from the Review Secretariat attended each of the meetings. In addition, officers from the Australian Taxation Office (ATO), DEWRSB and Centrelink attended the second meeting to assist members of the Reference Group examine issues of relevance to the work of those portfolios.

- 1.2.18 Within DIMA, ongoing consultations took place with the ATO, DEWR/SB and Centrelink, particularly during the preparation of the Discussion Paper and Issues Paper 4.

1.3 Key Review findings

- 1.3.1 The key findings of fact included:

Overstayers

- As at 30 June 1999, it was estimated that some 53,000 people had overstayed their visas and were unlawfully in Australia. Of that number, about 27%, or 14,500 people had been here for more than nine years. An unknown number may have also entered Australia unlawfully;
- without access to work over a sustained period, overstayers would find it difficult to support their unlawful extended stay in Australia;
- as well as those working without lawful immigration status (ie some of the 53,000 overstayers), illegal workers also comprise those who are in Australia lawfully but choose to work in breach of visa conditions;
- by employing a person without work rights, employers may close off access to the position to an Australian citizen or permanent resident;
- the presence of some 53,000 overstayers, with the consequent large proportion of illegal workers, is also at odds with an orderly immigration policy;
- to date DIMA has worked episodically to alert intending travellers from overseas of the problems associated with trying to enter unlawfully and/or work in Australia illegally. However, a small number of visitors are not informed that they will not hold work rights or their work rights will be limited;
- the visa label placed in passports may not be clear on whether a visa-holder has a right to work;
- the impact of the Employer Awareness Campaign has been variable. It has proved to be a useful information tool for employers who are interested in assisting the Government to maintain the integrity of its immigration laws. However, it has not been sufficient to discourage those employers who do not wish to comply with immigration law; and
- costs are incurred in both processing visitor visa applications from higher risk sources, and in locating, detaining and removing people who breach visa conditions or overstay their lawful permission to remain in Australia. In part, high refusal rates are a response to high non-return rates by visitors from some source countries.

Unlawful arrivals

- In recent years there has been an increase in the incidence of people smuggling. Large numbers of people attempt to come to Australia each year unlawfully, lured by promises of finding a better life and based on the prospect of working illegally. As at 30 October 1999, 926 people had entered Australia unlawfully by boat since 1 July 1999 – the same number as the whole of the previous year (ie 926 arrived in 1998-99). In 1998-99, 2,106 people were refused entry at Australia's airports (36% more than in 1997-98). If the current rate of unlawful arrivals at Australia's airports continues, the number of unlawful arrivals detected at Australian airports is expected to approach 3,000 in 1999-2000;
- In June 1999, the Minister for Immigration and Multicultural Affairs announced a range of new initiatives following an investigation into the increasing number of illegal boat arrivals. Those measures included the introduction of up to 20-years jail and fines for people smugglers, and increasing DIMA's presence at seven overseas posts and five key airports as well as working more closely with Indonesia and Papua New Guinea to help stop people smuggling; and
- In October 1999, the Minister announced more tough new initiatives. These included: excluding unlawful arrivals from accessing permanent residence by giving genuine refugees a three-year temporary protection visa or a short-term safe haven visa; stopping people who already have effective protection overseas from gaining onshore protection in Australia; and, using fingerprinting and other biometric tests such as DNA testing, face, palm or retinal recognition and voice testing to help ascertain the true identity of asylum seekers to ensure, where possible, they do not already have protection elsewhere or have been refused refugee status overseas.

1.3.2 The Review found that the current measures in place to combat illegal workers were insufficient to address the extent of the illegal worker population. In particular, the Review concluded that:

- while DIMA compliance action is increasingly successful, there is little prospect that the workload will diminish. The anticipated increase in visitors who come lawfully to Australia will result in a continued increase in the number who overstay their visas and/or work in breach of visa conditions, even if the rate of overstay remains steady;
- an increase in overstayers would ultimately require not only additional compliance staff to deal with the expected workload but greater capital expenditure on detention facilities and associated costs of removing unlawful non-citizens from Australia;
- to combat attempts to work illegally in Australia stronger measures are needed to discourage people from employing those without work rights, and to encourage the visa-holders to abide by the conditions of their visa; and
- those who support visitors to Australia are often not fully aware of the conditions of the visa issued to their guests and a revised information campaign would increase awareness about work rights.

- 1.3.3 The Review found that some employers, in particular in regional areas, may find it difficult to satisfy their labour requirements. This can be especially difficult at harvest time, when competition for workers is high amongst the employers, and there may be insufficient numbers of people willing or available to work in what are often arduous conditions.
- 1.3.4 The Review notes the current Government's initiatives to address these shortfalls of labour in regional Australia, through such measures as 'Project Contracting' and the establishment of a Working Group to oversee the development of a National Harvest Trail. Such initiatives are vital to the supply of legal labour to employers in areas where it has traditionally been hard to find.
- 1.3.5 The Review also found that there are misconceptions in the community about work rights. For instance, a large number of rural employers who submitted their views to the Review, are under the impression that a large majority of backpackers have work rights as Working Holiday Makers. This is not the case.

1.4 Summary of recommendations

- 1.4.1 The Review recommended the following measures which would require changes in policy, legislation, practice and procedure:
- (a) That an Overseas Information Campaign be developed, in order to discourage people from trying to enter Australia unlawfully and working illegally.
 - (b) That it be ensured that as many as possible ETA-holders receive information concerning their rights and obligations as visitors in Australia, including information about their work status.
 - (c) That the appearance of visa labels be revised in order to make it easier for employers to immediately understand whether the visa-holder has work rights.
 - (d) Alternatively, that a new stamp be introduced to be entered into the passports of all visa-holders and ETA-holders on entry into Australia, to advise potential employers of the visa-holder's work status.
 - (e) That employers be fully informed about their obligations and ways of discharging those obligations, through a revised Employer Awareness Campaign.
 - (f) That a Work Right Declaration Form be introduced to enable labour hire agents to more easily and efficiently check employees' work rights, and to evidence that checking, so that an employer can rely on those checks. *(This recommendation is linked to recommendation (k).)*
 - (g) That the policy on cancelling Temporary Residence and ETA visas is changed to remove the requirement of giving warnings before cancelling visas of those visa-holders who breach work conditions.

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- (h) That a system of sanctions be introduced to discourage business owners, employers and labour suppliers from recruiting illegal workers.
 - (i) That the scheme of sanctions has a range of offences and penalties available to reflect the seriousness of the offences committed, including the possibility of issuing an infringement notice for lower level offences.
 - (j) That employers and labour suppliers be encouraged to undertake checks of potential employees' work rights by being able to rely on statutory defences based on those checks.
 - (k) That the Work Right Declaration Form be used to ensure labour suppliers undertake reasonable checks of a potential employee's work status. The Form will also be useful as evidence for those wishing to rely on the proposed statutory defences. (*This recommendation is linked to recommendation (f).*)
 - (l) That steps be taken to improve the efficiency and effectiveness of data-matching, through legislative change to broaden the scope and means of matching, and through increased levels of matching activity and follow-up.
 - (m) That a whole-of-Government approach be adopted, including closer cooperation between DIMA, ATO, Centrelink and DEWRSB to address the problem of illegal workers.
 - (n) That any system of visitor security bonds be introduced only if there is a strong prospect that it would lead to a reduction in both rejection rates and non-return rates.
 - (o) That any system of visitor security bonds be introduced only in conjunction with sponsorship from an Australian close relative or a Commonwealth or State Government instrumentality, with future consideration to be given to Church groups, community leaders (eg Parliamentarians) or community groups.
 - (p) To ensure no negative impact on existing approval rates, that any system of visitor security bonds be introduced via a separate and new visa subclass (ie applicants continue to have all the visitor visa options they have currently without a bond).
 - (q) To improve compliance with the requirements of a genuine visit, there be a mandatory 'no further stay' condition attached to visas in the new subclass.
 - (r) That any new sponsored visa subclass operate in conjunction with limitations on any future sponsorship by persons who sponsor a visitor who contravenes visa conditions or seeks to remain in Australia beyond the period of the initial visitor visa. The limitation on future sponsorship should be five years.
 - (s) That the level of any bond be set at a fixed amount and that it be set at a level that will be sufficiently meaningful to encourage compliance.
 - (t) That all applicants in the new visa subclass be required to provide evidence of an Australian sponsor who is willing to pay the security bond and who has signed an undertaking to ensure that the visitor will abide by visa conditions.

- (u) That under any visitor visa subclass with a security bond option, decision-makers have the discretion to either:
 - grant a visa with the sponsorship undertaking and mandatory 'no further stay' condition but without a security bond; or
 - grant a visa with the sponsorship undertaking and mandatory 'no further stay' condition and a security bond; or
 - refuse the application even where there is a sponsorship and security bond offer because of concerns about bona fides or a sponsorship limitation.
- (v) Under any security bond arrangement, the security bond be subject to mandatory forfeiture for any breach of visa conditions (eg working illegally) or an unsuccessful application for waiver of the 'no further stay' condition. In cases where a visitor has applied for a protection visa, the release of the security bond be delayed until a decision on the protection visa application is made. If the protection visa is refused, the security bond will be forfeited. If the protection visa is granted the security bond will be released.
- (w) The security bond be payable at a range of convenient locations around Australia (eg a major bank with a network of outlets).
- (x) Any forfeited bond monies be used to fund the scheme and meet costs associated with compliance action on persons who breach visa conditions or become unlawful.
- (y) That information available to potential sponsors and visitor visa applicants be improved by making it more comprehensive, easy to understand and widely available.

2. Introduction

2.1 Background and description of issues – Illegal workers

- 2.1.1 Unrestricted access to the labour market is a privilege limited to citizens and permanent residents of a country. In Australia, permanent residents and New Zealand citizens, who enter Australia on a valid passport, have an unrestricted right to work, as of course do Australian citizens. Other people wishing to enter the country face the precondition that they have either no access or restricted access to the labour market.
- 2.1.2 Illegal workers comprise those currently in Australia legally but who work in breach of visa conditions, and those without legal immigration status. As at 30 June 1999, it was estimated that some 53,000 people were unlawfully in Australia. Of that number, about 27%, or 14,500 people had been here for nine years or more. An unknown number may have also entered Australia unlawfully.
- 2.1.3 It is estimated that some 50% of unlawful non-citizens are working illegally. In addition, unknown numbers of legal visitors are working in breach of their visa conditions. During the 1998-99 financial year, immigration officers in Australia cancelled a total of 5,110 visas (compared to 3,857 in 1997-98). Of these, 940 people, or 18.4%, had their visas cancelled for breach of work conditions (compared to 648 or 16.8% in 1997-98) and 516 student visas were cancelled for failure to satisfy course requirements (compared to 368 in 1997-98).

Table 1: Length of overstay - comparison of figures for 31 December 1998 and 30 June 1999

<i>Period of overstay</i>	<i>Number of overstayers as at 31 Dec 98</i>	<i>Percentage of all over-stayers</i>	<i>Number of overstayers as at 30 June 99</i>	<i>Percentage of all over-stayers</i>
Less than 1 year	11 648	22.8%	13 904	26.2%
Between 1 & 2 yrs	4 048	7.9%	6 499	12.2%
Between 2 & 3 yrs	2 564	5.0%	4 146	7.8%
Between 3 & 4 yrs	2 539	5.0%	2 460	4.6%
Between 4 & 5 yrs	1 886	3.7%	1 896	3.6%
Between 5 & 6 yrs	2 036	4.0%	2 026	3.8%
Between 6 & 7 yrs	3 287	6.4%	1 551	2.9%
Between 7 & 8 yrs	6 489	12.7%	1 561	2.9%
Between 8 & 9 yrs	4 373	8.6%	4 579	8.6%
9 yrs or more	12 130	23.8%	14 521	27.3%
TOTAL	51 000	100%	53 143	100%

Data source: DIMA Factsheet number 80, Locating Overstayers in Australia and DIMA overstay estimate as at 30 June 1999

The ten countries with the greatest number of estimated overstayers at 30 June 1999 are shown in Table 2.

Table 2: Number of overstayers by country of origin - top 10

<i>Period of overstay</i>	<i>Number of overstayers as at 30 Jun 99</i>	<i>Percentage of all over-stayers as at 30 Jun 99</i>	<i>Number of visitor arrivals in 1997-98</i>	<i>Rate of overstay as at 30 Jun 99</i>
United Kingdom	5 759	10.8%	454 255	0.1%
USA	4 646	8.7%	325 292	0.1%
People's Republic of China	3 492	6.6%	60 055	1.5%
Indonesia	3 358	6.3%	82 212	0.5%
Philippines	2 923	5.5%	31 328	1.3%
Japan	2 652	5.0%	766 186	0.0%
Korea	2 144	4.0%	119 447	0.3%
Malaysia	1 631	3.1%	112 822	0.1%
Germany	1 405	2.6%	129 907	0.1%
Fiji	1 386	2.6%	16 196	0.8%

Data source: DIMA Factsheet number 80, Locating Overstayers in Australia and DIMA overstay estimate as at 30 June 1999

- 2.1.4 Analysing the total number of overstayers from individual countries can be deceptive because it reflects, to some extent, the fact that many of these countries are also the source of the biggest number of visitors and temporary entrants. For instance the two countries with the highest number of visitors in 1997-98, Japan (with 766,186) and the United Kingdom (with 454,255), had overstay rates of 0.0 and 0.1% respectively as at 30 June 1999¹. This can be compared to the higher overstay rates from the countries listed in Table 3.

¹ It should be noted that the overstay rate is based on one year's data (ie how many people overstay their visa out of the total number of temporary entrants of that nationality). However, the total overstay numbers, as outlined in Table 2, represent the total number of overstayers of that nationality in Australia at any one time, calculated cumulatively. In other words, these overstayers may have entered Australia over several years.

Table 3: Rates of visitor overstay by countries of origin top 10 (with >500 arrivals)

Country	Number of overstayers as at 30 Jun 99	Percentage of all over-stayers as at 30 Jun 99	Number of arrivals in 1997-98	Rate of overstay as at 31 Dec 98
Tonga	126	3.6%	3 505	4.9%
Colombia	58	3.4%	1 719	3.2%
Republic of Yugoslavia	40	2.9%	1 362	2.5%
Vietnam	84	2.1%	4 069	2.0%
Peru	14	2.0%	719	1.0%
Samoa	39	1.8%	2 191	2.2%
People's Republic of China	881	1.5%	60 055	1.5%
Cambodia	12	1.4%	808	1.4%
Philippines	421	1.3%	31 328	1.3%
Bangladesh	17	1.3%	1 319	1.9%

Data source: DIMA TRIPS Database as at 30 June 1999

2.2 How serious are the consequences of people working illegally?

2.2.1 Employers may recruit a person without work rights for a range of reasons, including:

- ignorance of the lack of work rights;
- availability to commence work;
- willingness to undertake the work offered; and
- ability to pay lower rates of pay and lower overheads.

By employing a person without work rights, employers close the position to an Australian citizen or permanent resident. Further, employers who employ legal workers are disadvantaged in not being able to compete with the lower overheads of those who employ and under-pay illegal workers.

2.2.2 Information from field operations indicates that a large majority of these people are in low-skilled positions:

- often paid below official rates;
- some of whom are not paying tax, either at the correct rate or at all; and
- some are claiming social security benefits that they are not entitled to.

The top ten employer categories who employ illegal workers are shown in Table 4.

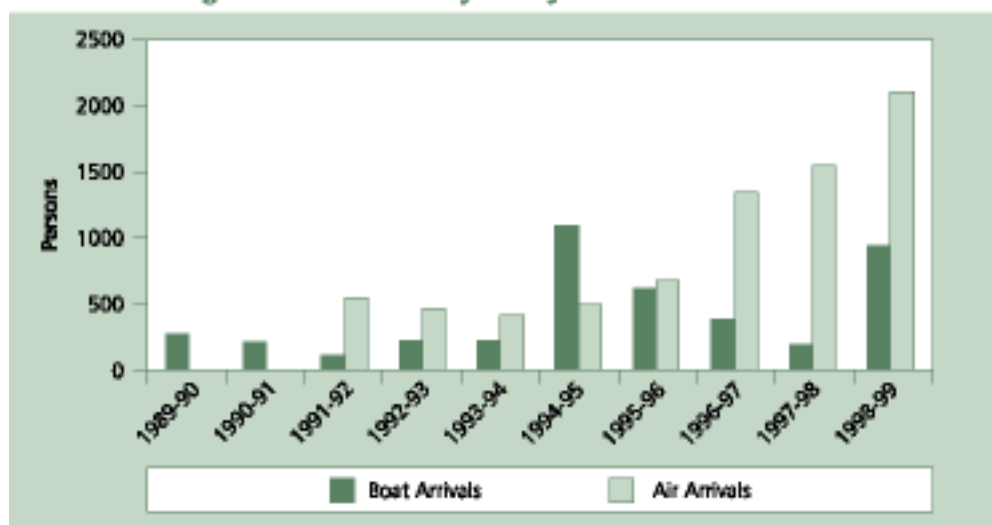
Table 4: Top employer categories of located illegal workers in 1998-1999

Employer Category	Number
Hospitality (including Restaurant (201), Accommodation/Hotel (141) and clubs (33))	375
Brothel	189
Factory	176
Rural	128
Shop	64
Commercial enterprise	50
Hospital/Medical	30
Office	27
Agent/Legal/Professional	19
Cleaning/Domestic/Laundry	15

Data source: DIMA compliance database as at 30 June 1999

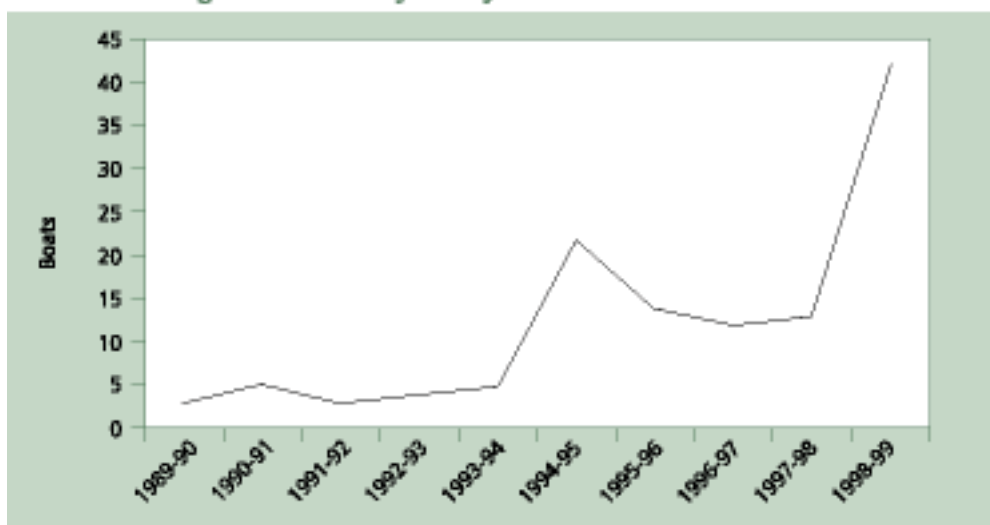
2.2.3 The number of unlawful immigrants coming to Australia both by boat and by air has increased dramatically in this financial year, as Figure 1 below illustrates.

Figure 1: Total number of unlawful arrivals 1989 - 1999



Data source: DIMA Fact sheet 81, *Unauthorized Arrivals by Air and Sea*, 13 July 1999

Figure 2: Number of unlawful boat arrivals, 1989 - 1999



Data source: DIMA Fact sheet 81, *Unauthorized Arrivals by Air and Sea*, 13 July 1999

2.2.4 In 1998-99, 926 people entered Australia unlawfully by boat. In 1997-98, only 157 people entered Australia this way. Figure 2 shows that 13 boats arrived in 1997-98, whereas 42 boats arrived in 1998-99. During 1998-99, 2,106 unlawful arrivals were detected at Australian airports, an increase of 35.8% on 1997-98. Table 5 summarises this information, and also shows the number of overstayers for the same periods. The majority of the attempts to enter Australia unlawfully are arranged by people smugglers.

Table 5: Overstayers, unlawful arrivals and location of overstayers

Year	a) Total number of overstayers	b) Number of unlawful arrivals		c) Number of overstayers located	% increase on previous year's number of overstayers located
		Boat	Air		
1996-97	45 100	365	1 350	10 138	29.9%
1997-98	51 000	157	1 555	12 679	25.0%
1998-99	53 143	926	2 106	13 485	6.35%

Data source: a) DIMA overstayer estimate as at 30 June 1999.
 b) DIMA unauthorised arrivals database 30 June 1999.
 c) DIMA compliance database 30 June 1999.

- 2.2.5 The presence of some 53,000 overstayers, with the consequent large proportion of illegal workers, is also at odds with an orderly migration program. In 1998-99 Australia granted nearly 68,000 migrant visas through its migration program, however, almost the same number of people were in Australia unlawfully. Planning the level for each stream of the migration program is tightly controlled. The levels are based on Australia's capacity to assist the settlement of newcomers, Australia's economic requirements and performance, its obligations to humanitarian entrants and to assist family reunion. Not only would failure to act against people who enter and remain unlawfully undermine the confidence and relevance of Australia's migration program, it would erode confidence in the border control system.
- 2.2.6 Migration policy is also designed to maximise the entry of skilled migrants who are going to contribute to Australia's economic performance. The entry of illegal workers, employed primarily in unskilled jobs is not likely to improve Australia's economic performance.
- 2.2.7 Other Government agencies are also concerned about the impact of illegal workers. The ATO is particularly concerned about the cash economy and undertakes compliance improvement activities in a range of industries that represent significant risks to the taxation and welfare systems.
- 2.2.8 Large numbers of people come to Australia each year, lured by promises of finding a better life. This includes large numbers of international sex workers. International sex workers have a higher prevalence of such diseases as hepatitis B, HIV, chlamydia, gonorrhoea, syphilis and genital herpes. The low use of prophylactics, lack of education and poor access to appropriate health services, are difficult to address because of the extent of control that the organisers of sex workers exert over their employees. Many of the sex workers are held in servitude. While some of the workers are aware of the type and extent of work expected, others are deceived into coming to Australia to work illegally, not realising the work involved nor the conditions under which they will be working.
- 2.3 Existing enforcement resources, activity levels and unit labour costs**
- 2.3.1 The Government has given high priority to compliance field operations aimed at locating overstayers and combating illegal work.
- 2.3.2 In the recent Portfolio Output Purchasing Agreement, negotiated by DIMA with the Department of Finance and Administration, it was assessed that the variable cost of locating an unlawful non-citizen in the community is approximately \$3,357 (including overheads and fixed costs). The cost is higher in more remote localities. This cost includes such things as staff salaries, overtime payments, temporary accommodation and transport costs for the detainees. The variable cost of an enforced departure is approximately \$3,680 (including overheads and fixed costs). The average total cost of detaining an unlawful non-citizen located in the community is \$105 a day. The average length of stay is 60 days and at \$105 a day amounts to \$6,300 for each detainee.

2.3.3 In 1997-98 and 1998-99 the Government spent approximately \$50 million each year locating, detaining and removing people who either arrived unlawfully or became unlawful by overstaying or working illegally. During this period the number of:

- people entering Australia illegally by boat increased by 223% from 157 in 1997-98 to 926 in 1998-99 (Table 5 summarises information on unlawful arrivals and location of overstayers);
- overstayers located increased by 6% from 12,679 in 1997-98 to 13,472 in 1998-99 (Table 7 provides further details of compliance activities); and
- unlawful non-citizens detained increased by 53% from 2,548 in 1997-98 to 3,574 in 1998-99 (Table 6 provides further details of the number of unlawful non-citizens detained and detention costs). It should be noted that not all of the unlawful non-citizens located are detained. Some are granted short-term visas, usually to allow them to make arrangements to depart Australia.

Table 6 indicates the increasing detention costs associated with DIMA's increased effectiveness in locating people who have overstayed and/or have breached visa conditions.

Table 6: Detention - numbers detained and costs

<i>Year</i>	<i>Number of unlawful non-citizens detained</i>	<i>% increase on previous year's number of overstayers located</i>	<i>Costs for detaining unlawful non-citizens</i>	<i>% change on cost in previous year</i>
1995-96	1 410	N/A	\$10.4 million	N/A
1996-97	2 095	45.0%	\$9.3 million	-11%
1997-98	2 548	21.7%	\$14.4 million	55.4%
1998-99	3 574	40.3%	\$17.3 million	20.1%

Data source: DIMA Annual Report 1997-98 and 1998-99

Table 7: Compliance activity

Year	Number of overstayers located	% increase on previous year's figures	Number of enforced departures	% increase on previous year's figures	Number of staff
1995-96	7 814	N/A	5 381	N/A	N/A
1996-97	10 138	29.7%	5 654	5.1%	200
1997-98	12 906 ²	27.3%	6 772	19.8%	220
1998-99	13 472	4.4%	7 706	13.8%	N/A

Data source: DIMA compliance database as at 30 June 1999

2.4 Problems encountered under the existing arrangements

- 2.4.1 Table 7 indicates that DIMA compliance action is increasingly successful. There is little prospect, however, that the workload will diminish. The anticipated increase in visitors who come lawfully to Australia will result in a corresponding increase to the number who overstay their visas and/or who work in breach of visa conditions.
- 2.4.2 The average non-return rate for all visitors was 2.18% as at 30 June 1999. At an average non-return rate³ of 2.18%, some 67,000 people are staying on in Australia, with nearly 14,000 of those becoming unlawful during 1998-99 by overstaying.
- 2.4.3 To the number of overstayers should be added the unknown number who enter Australia unlawfully. Addressing the problem of increasing overstayers and unlawful arrivals will require not only additional compliance staff to deal with the expected workload but greater capital expenditure on detention facilities and associated costs of removing people from Australia.
- 2.4.4 To combat attempts to work illegally in Australia, we need to augment traditional compliance measures to discourage people from working illegally. At the same time, we must be careful to introduce measures consistent with Australia's objective to attract genuine visitors and to minimise the burdens placed on society by any new measures.
- 2.4.5 The Government's compliance strategies are designed on the basis of there being substantial voluntary compliance. As such, the measures used to promote compliance thus far have been useful tools for those employers and visitors who wish to comply with Australia's immigration laws, but they do little to discourage those who wish to breach immigration law.

² (column 1, row 3): This figure differs from the earlier figure of 12,679 due to late data entry.

³ The non-return rate is calculated as a percentage of those people who entered Australia on a visitor visa and, on the date that visa expires, are still in Australia, either on another visa or unlawfully.

- 2.4.6 The Employer Awareness Campaign, for example, has proved to be a useful information tool for law-abiding employers, but it has not been able to encourage those employers who are not interested in cooperating with the Government to maintain the integrity of the immigration program.
- 2.4.7 If no action is taken, current compliance efforts indicate that increased numbers of people will try to enter Australia to work illegally. Market forces will favour the employment of illegal workers, who may be paid lower wages and work in sub-standard conditions, disadvantaging legal workers. Employers who employ legal workers at rates of pay and conditions consistent with Australian workplace relations legislation will have a competitive disadvantage.
- 2.4.8 If no action is taken to restrain illegal work the effect will be to:
- encourage further breaches by promoting Australia as being “soft” in its approach to the problem, thereby undermining the confidence and relevance of a managed immigration program;
 - encourage people smuggling and other unlawful immigration by providing job prospects for unlawful non-citizens, thereby undermining border integrity;
 - increase the likelihood of tax and social security fraud;
 - present a health problem to the Australian community, due to people bypassing the health checks normally undertaken by lawful longer-term residents; and
 - present safety risks to the Australian community, due to people bypassing the rigorous character checks normally undertaken by lawful long-term residents.

2.5 Background and description of issues - Visitor visas with security bonds

- 2.5.1 The Government is concerned about the high visa application refusal rates at certain overseas offices, the correspondingly high non-return rates, the associated costs of both those factors to the Federal Budget and the implications for the integrity of the migration program.
- 2.5.2 The Review considered the use of a security bond for certain visitors as a means of addressing the Government’s concerns. The options considered were to maintain current policy, which has no provision for the use of a security bond; to allow the imposition of security bonds without a sponsor; or, to allow the introduction of a system where a sponsor in Australia could lodge a security bond.
- 2.5.3 The Review noted that Australia’s tourism destination competitors have similar problems with the countries that Australia classifies as high risk and that many of these countries have a security bond system in place or are in the process of introducing such a system.

2.6 Consultations summary – Illegal workers

Who are the main parties affected?

2.6.1 The parties that will be most affected by the options recommended by this Review will be employers, labour suppliers, non-citizens without the right to work, citizens and lawful non-citizens with the right to work. These groups will be affected in the following ways:

Employers and labour suppliers –

- would need to spend a few minutes checking each new employee's right to work, which many already do. Those with a higher turnover of employees will be more affected, particularly fruit and vegetable producers where their staff turnover occurs over a short period of time; and
- would risk the imposition of a sanction were they to employ a non-citizen without work rights (ie two years imprisonment or fines of up to \$13,200, for an individual or \$66,000, for a body corporate, depending on the offence committed);

Labour suppliers –

- will need to complete their part of the proposed Work Right Declaration Form. Those with a higher turnover of employees will be more affected;

Non-citizens without the right to work –

- will face significantly reduced access to work opportunities and hence be less able to finance a prolonged stay in Australia by overstaying their visa period; and

Citizens, and non-citizens with the right to work, and the unions that may represent them

- will enjoy greater access to work opportunities, although they will need to take a few minutes to complete the proposed Work Right Declaration Form, where they seek recruitment through a labour supply agency.

What are the views of those parties?

2.6.2 The majority of employers and the peak bodies that represent them who forwarded submissions to the Review are not in favour of sanctions being imposed on employers. Most opposition came from fruit and vegetable growers. They argued that it is not always possible to attract sufficient legal workers during the harvesting period and that more should be done to develop and implement the concept of the National Harvest Trail. A list of the submissions received and synopses of these submissions can be found at Attachment B.

2.6.3 There was some support for sanctions, including from individual primary producers. This support was qualified by the view that checking work rights needs to be made quick and simple. Many raised the issue of having better and more comprehensive forms of identity documents, such as something along the lines of the rejected Australia Card.

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- 2.6.4 There was support for the provision of more employer education as well as for measures that would make legal labour easier to access. There was also support for sanctions where the employer had knowingly employed someone without work rights.

2.7 Consultations summary - Visitor visas with security bonds

What are the views of the community?

- 2.7.1 Following release of the discussion paper, forty-three submissions were received of which sixteen provided comment on the sponsored visa proposal. (Refer to Attachment B.) Whilst comments varied over a range of issues relating to the sponsored visitor option a few areas of consistent comment were received.
- 2.7.2 Twelve respondents favoured the introduction of a security on visitors at risk of breaching visa conditions, some for reasons concerned with ensuring compliance with visa conditions, others as a means of recovering costs associated with enforcement activities. Some of these respondents suggested further investigation before implementation of the security bond system.
- 2.7.3 Some comments expressed concern that any security bond would run the risk of being seen as a “buy a visa” option for non-genuine applicants. Other submissions argued that there was potential for people smugglers to use a security bond as a means of ensuring entry to allow access to the labour market.
- 2.7.4 There was a clear preference that a bond proposal should only allow Australian citizens and residents to sponsor and pay the security bond. Of those respondents that mentioned the security bond amount a number indicated that it should be at the discretion of the Department while others considered up to \$10,000 was an appropriate amount and should be fixed.
- 2.7.5 Very little comment was received on the issues of release and forfeiture of the security bond. Three respondents considered that the option of using a system where a sponsor in Australia could lodge a security bond should be adopted, as it would provide the best outcome for the objectives sought. Linking the security bond with sponsorship was considered necessary by most respondents who considered the matter in their comments.

Tourism Industry Views

- 2.7.6 The two major tourism industry responses differed. Tourism Council Australia (TCA) supported the introduction of a security bond while the Tourism Task Force (TTF) opposed the proposal. The TCA's support is qualified by a number of caveats but these focus on maintaining the integrity of existing visitor visa programs. The TTF considers any benefit from a bond arrangement would be outweighed by damage to our diplomatic and trade efforts as well as to the Australian tourism industry. The TTF, however, added that if a security bond were introduced then certain integrity measures should be incorporated as well as a review by the Productivity Commission.