Part D
attachments

Attachment A	Discussion Paper: *The Hidden Workforce: Illegal workers in Australia and those that would join them.*
Attachment B	Summary of submissions to the Review of Illegal Workers in Australia
Attachment C	Draft of proposed Work Right Declaration Form
Attachment D	Summary of employer sanctions in other countries

Attachment A

The Hidden Workforce:

Illegal workers in Australia and those that would join them

Purpose

On 1 March 1999, the Minister for Immigration and Multicultural Affairs announced that there would be a review to target illegal workers in Australia. The review is to consider the current approach to this matter and whether there should be changes to policy settings. An external Reference Group will guide the review.

2. The Government wants your views about many of the issues that relate to people working illegally in Australia. This paper discusses these matters and invites you to send your comments and reactions to these and related issues.

Terms of Reference

3. The Review of Illegal Workers in Australia is responsible for examining and providing policy advice on:

Compliance Issues

- The nature and impact of illegal workers on:
  - the operation of the immigration program
  - the Australian labour market.
- The adequacy of current compliance measures against illegal workers.
- 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.
- The value of introducing a system of bond payments, in particular cases, before visas may be granted.

4.This paper discusses these two broad areas of interest.

Background Reading

5. Unlike some aspects of the immigration program and temporary entry visa categories, relatively little has been written about illegal workers in Australia or their impact upon the economy, society or attitudes towards immigration rules.[1] The Joint Standing Committee on Migration (JSCM) published its first report in September 1990, titled *Illegal Entrants in Australia – Balancing Control and Compassion*, which looked at the issues related to illegal entry, focusing in particular upon the impact of migration law which had been introduced in December 1989.

6. The JSCM published reports on *Australia's Visa System for Visitors* in January 1997 and *Working Holiday Makers: More than Just Tourists* in August 1997. The former includes some discussion on border controls and policies of other countries as they relate to visitors. The latter examined the incidence of people working without authority, including the imposition of penalties on employers who recruit people without authority to work. Both reports examine the assessment of visa applications.

7. Those interested in more information on Australia's visa system and compliance activities in Australia may obtain Fact Sheets from the Department of Immigration and Multicultural Affairs. Topics covered in the series include, "Locating Overstayers in Australia", "Border Control", "Unauthorised Arrivals by Air and Sea", "The Movement Alert List", "The Electronic Travel Authority", "People Smuggling" and "Australia's Working Holiday scheme." Each of these issues is discussed in the course of this paper. Copies of Fact Sheets may be obtained from the Department's Internet home page (http://www.immi.gov.au) or from the Public Affairs Section, Department of Immigration and Multicultural Affairs, PO Box 25, Belconnen, ACT 2616 (Telephone (02) 6264-2244; Fax (02) 6264-2479).

Compliance Issues

The right to work

8. Unrestricted access to the labour market is a privilege restricted to citizens and permanent residents of a country. Other people wishing to enter a country will normally face the precondition that they have either no access or limited access to the labour market. In most countries, the means for controlling access to jobs for foreigners is through a visa system: People are granted visas or entry rights for particular reasons, which will specify what work rights they enjoy and how long they can legally remain in the country.

[1] Cf. *Australian Immigration: A Survey of the Issues*. M Wooden, R Holton, G Hugo & J Sloan (ed) (Canberra,1994) pp.45-7

9. Australia's immigration law requires that all who wish to enter Australia, who are not Australian citizens, must have authority to travel to and stay in Australia. Since 1975, this authority has taken the form of a visa, which, except for New Zealand citizens, must be obtained before travelling to Australia.

10. Some people will enter on a permanent entry visa, meaning that they have migrated and hold permanent resident status. In other cases people enter as temporary residents for their educational, employment and professional development or as part of a cultural exchange.

11. There are also visitors, including business visitors (who enter for a period of up to three months) and those whose purpose is to enjoy a holiday in Australia and/or visit family and friends.

Current government policy

12. Government policy is to facilitate the lawful international movement of people while regulating the entry and presence of non-citizens in Australia. The government's compliance strategies are designed to be supported by substantial voluntary compliance. Enforcement action for breaches of the law can involve counselling, investigation, visa cancellation, prosecution, detention and/or removal from Australia. Those found to have breached visa conditions could also be subject to barriers from re-entering Australia.

13. In December 1998 it was estimated that some 51,000 people were illegally in Australia. This included roughly 38,850 visitors, 3,400 students, 4,900 temporary residents and 3,850 from other visa categories. This compares with a total of 45,100 at the end of 1996. The 51,000 excluded people who remained a few days beyond the validity of their visa and then left. Of the total number, more than 25% or 12,000 people had been here for more than nine years. As with others who breach immigration law, these people run the risk of being detected, asked to repay any publicly funded assistance they may have received and returned to their own countries.

14. In 1997-98 the government spent $50 million locating, detaining and removing people who were here illegally and/or were working illegally. In addition to employing staff to locate such persons, facilities are maintained to detain people without legal immigration status. These facilities are at Port Hedland, Villawood, Perth and Maribyrnong. In 1997-98, 2,716 unlawful non-citizens were admitted to Australia's immigration detention facilities, with detainee days totalling 152,061.

15. To counter the efforts of criminal syndicates and others intending to enter Australia illegally, the Commonwealth Government has posted officers overseas to investigate and report evidence of people-smuggling operations. Australia cooperates with other governments in combating people smuggling (including the exchange of information) and conducts investigations into people living and working illegally in Australia.

16. These efforts are supplemented by the routine work of visa processing officers at diplomatic missions and in regional offices of the Department of Immigration and Multicultural Affairs.

The purpose of compliance work

17. It is argued that immigration enforcement efforts discourage people from breaching visa conditions. The view is that failure to remove people, who arrive illegally by boat or air, could result in increasing numbers of people trying to get to Australia illegally. Current policy is based on the position that Australia should retain the integrity of its borders, maintain a controlled immigration program that is fair and allow only people with the right to work to enter the labour market.

18. Other government agencies are concerned about the impact of illegal workers. The Australian Taxation Office (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. As part of these efforts, the ATO liaises with the Department of Immigration and Multicultural Affairs, Centrelink and law enforcement agencies to coordinate appropriate action aimed at illegal workers and businesses that employ them, to establish whether they have paid taxation at applicable rates. In a recent pilot study, Centrelink found a small number of a sample group, whose visitor visas had expired, drawing social welfare payments.

19. It could be argued that Australia does not have a major problem from the number of visitors coming here. In 1997-98 the overstay rate was 0.3% of temporary entrants, totalling some 51,000 people. To this number should be added a number of others who breach visa conditions, including people who work illegally and who never come to light.

20. Current projections for increasing visitor numbers mean that even if the rate of non-compliance with visa conditions remains constant, the numbers of people who breach visa conditions, including those who work illegally, could rise substantially. Information based on departmental compliance activities indicates that at least 50% of overstayers are working illegally. This would total more than 25,000 people currently working without authority. These people are filling jobs that could otherwise be taken by Australians and others with the right to work.

21. The relative importance of Australia's efforts against illegal workers must be balanced against the costs they impose. One element of this review will be to consider the extent that the public and government work together. Some threshold questions should be considered before looking at more detailed questions of policy. These include:

- **How serious are the consequences of people working illegally in Australia?**
- **What measures should be taken to improve compliance with immigration law?**
- **What role does the public have, including employers, sponsors of visa applicants and members of the general community, in supporting measures against those who work illegally?**

22. These issues will be explored further in this paper.

Who are illegal workers?

23. Illegal workers comprise those currently in Australia legally but who choose to work in breach of visa conditions and those without legal immigration status that are also working.

24. More than other countries, Australia is able to quantify the numbers of people illegally here at any one time. This is because Australia's entry and exit system is highly computerised and because we have no land borders. A computer record is held for each entry or exit by Australian citizens and foreigners, which includes details of their immigration or visa status. By running visa expiry information against people leaving Australia, it is possible to identify the number of people who have failed to leave Australia within the validity of their visa.

25. In many cases, illegal workers are young people who work on farms or in restaurants to help fund their holiday. But this is not always the case. There are also sinister aspects of the employment of people without work rights. Each year the Commonwealth investigates forms of people smuggling through which criminal syndicates set out to organise and facilitate the entry of people to countries, such as Australia, by using false identities. Such people will pay substantial amounts of money to enter Australia, often in the hope that they can work illegally and stay permanently. In the case of a recent unauthorised boat arrival in Australia, the passengers paid thousands of dollars to organisers with the false expectation that they could work in Australia.

26. Of the 1,555 people refused entry at Australian airports in 1997-98, 75% were believed to have been the subject of people trafficking. Immigration officers have detected people travelling on fraudulent documentation from many countries, including China, India, Sri Lanka, Somalia, Thailand, Indonesia, Iraq, Algeria and Malaysia. In 1997-98, a further 157 people arrived by boat without authority. Numbers are currently increasing: in the eight months to the end of February 1999, 1,397 people were refused entry at the border. Pro rata, this amounts to 2,095 for the full year compared to the 1,555 in 1997-98.

27. People trafficking can cause human tragedy. Amongst people who fraudulently enter Australia and work illegally are those who are employed in brothels in Australia. Some of these women are deceived about the nature of the work they were to do on arrival and their working conditions are often very poor. In most cases the women enter a debt bondage arrangement with the traffickers and they face a greater risk of HIV/AIDS than Australian sex workers do. (The Federal Parliament will shortly be considering a Bill focusing on slavery generally and the recruitment of people overseas for sexual servitude in Australia.)

28. There is little or no scope in distinguishing, under existing immigration law, between backpackers who might work illegally for a time to pay for their holidays, those who have come from third world countries seeking a better life by working without authority

(or at least to work long enough to save large amounts of money before being sent home), and those long-term over-stayers who use many government facilities and knowingly settle in Australia without the right to do so.

- **What would be the consequences for the immigration program of allowing illegal workers to remain?**

Encouraging compliance: the Australian community

29. To a large extent the detection and removal of people working illegally is seen to be solely a government function. In 1997-98 the government located 12,679 over-stayers in Australia, many of whom were working illegally. This compares with 10,138 people located in 1996-97. In the face of increasing workloads, government agencies are increasingly using data-matching techniques to identify the presence and activities of people working illegally. The details of people entering and leaving Australia are held by Department of Immigration and Multicultural Affairs. It has the ability to identify those who have not left when their visas run out. These people's details can then be checked against other agencies' information to identify their address and/or work place.

30. The location and detection of people working illegally in Australia does, however, involve the community in supplying information. In 1997-98 some 750 over-stayers, or slightly less than 6% located, were found as a result of information provided by the community. At present, information from the public has not been due to awareness campaigns inviting information. The increasing number of people visiting Australia means that the current immigration officials charged with locating illegal workers would be under greater strain. Increased community involvement could ease that pressure. Greater community cooperation could also be facilitated through a centralised "1300" number, made available in information pamphlets.

31. On the other hand, previous experience has shown that where members of the community are urged or invited to supply information, some people will use the opportunity to provide false or misleading information, often intended to harm an innocent party. A sufficiently large amount of bogus information can reduce immigration staff's effectiveness.

Employers: The right to know

32. More than members of the public, employers have a central role in the fortunes of intending illegal workers. Without job prospects, there is little point in a person staying illegally in Australia.

33. The decision by an employer to recruit a person to a position is often expensive: the recruit may need to be trained, wages must be paid, insurance costs must be met and all on the expectation that the new employee will be a productive worker.

34. By employing a person without work rights, employers not only close a position to an Australian citizen or permanent resident, they run the risk of prosecution under the Crimes Act and immediately losing the staff member if the latter is located and detained by compliance officers.

35. Since 1992, the government has worked, through the Employer Awareness Campaign (EAC), to ensure that employers only employ those people with work rights and it has provided information and briefings on what documents should be seen to check on the right of a person to take a job. Since 1995 approximately 25,000 employers have been given employer awareness presentations and 34,000 EAC kits have been printed and distributed. In addition, EAC information has been included in yearly Australian Taxation Office mail-outs to 900,000 employers. The EAC cost $680,000 per annum until 1998-99.

36. The campaign continues, with a new kit and information pamphlets being sent to employer groups from May 1999. This is being complemented by upgraded information on the home page of the Department of Immigration and Multicultural Affairs.

37. A study commissioned by the Bureau of Immigration and Population Research was published in 1995, titled *Employer Recruitment Practices Survey – 1994 Update*. It followed a pilot study in 1992. Both studies found that not all employers realised that they should only recruit people with work rights – although there had been an increase in the intervening period of those who did know, from 31% to 53%.

38. The 1994 study showed that a majority of employers believed that people without work rights should not be employed. A further 26% of employers felt that those who worked illegally worsened the employment prospects of resident Australians.

39. Despite these concerns, only 46% of employers claimed to check work rights. Of those who did not check work rights of intending employees, many claimed not to have any knowledge of the issue of foreigners working illegally, with almost as many assuming that someone would already have checked. Of those who sought evidence of the right to work, most relied upon the person's letter of permission to work, their citizenship certificate or the existence of a tax file number. The last of these is not satisfactory evidence of the authority to work.

40. More than three-quarters of employers who were surveyed were either partly or strongly in favour of the introduction of penalties against employers who recruited illegal workers.

41. The main source of information to employers, as reported in the survey, is newspaper reports on high profile cases. Departmental information followed, constituting the source of information to 25% of employers. Of the industries which often employ people without work rights, employers were more familiar with departmental advice.

42. Ninety per cent of employers stated that they believe that the government should continue to provide assistance to employers in identifying illegal workers.

43. If employers are to be expected to check the work rights of job applicants, and recruit only those with the right to work, the government will need to consider the adequacy of the information it provides as well as its regulatory role. In summary, the following questions should be addressed:

- **Should the Employer Awareness Campaign continue and, if so, what changes should be made?**
- **Is there a way to make it easier for employers to check whether people have work rights?**
- **Should the Department of Immigration and Multicultural Affairs devote greater resources to assist employers by introducing, for example, a "1300" telephone advice number?**

Employers: The duty of care

44. Similar to Australia, other Western governments have immigration officials who track illegal immigrants and those working illegally with a view to sending them to their own countries. Over recent years, in the face of increasing evidence of people working illegally, governments have introduced or have started to reinvigorate efforts to discourage people from working illegally, by placing a duty on employers to check whether an intending employee enjoys the right to work.

45. The Government of the United States of America has recently added provisions to the Immigration Reform and Control Act of 1986 to strengthen its powers. This Act imposes an obligation on employers to verify that an employee holds documents entitling him/her to work in the US. Civil and criminal penalties are imposed if employers knowingly recruit people without work rights and continue to employ a person who does not have the right to work. Most penalties are financial and the US government is currently streamlining the processes by making it easier for employers to identify who they can employ.

46. Canada's Immigration Act stipulates that every employer who knowingly employs a person who is not authorised to work is guilty of an offence and is liable to prosecution. The penalty can be a fine of up to $C 5,000 or up to two years imprisonment or both. In Canada, all workers must quote a discrete social insurance number to obtain work. In certain cases, the number will flag that the bearer is not a Canadian citizen or permanent resident, and the employer should then check the holder's right to work with Citizenship and Immigration Canada.

47. In New Zealand, it is an offence for an employer to recruit a person without checking their work rights. It is not necessary for prosecution to prove that the employer knew the person was not entitled to undertake employment.

48. In the United Kingdom, the Asylum and Immigration Act became law in 1996. It includes provisions for punishing employers who knowingly employ illegal workers. Employers are encouraged to make non-compulsory basic checks before recruiting a person. Non-compliance can result in a criminal conviction and a financial penalty. The penalty can amount to 5,000 pounds sterling.

49. If penalties against employers were introduced in Australia, each employer would need to keep records indicating that they had conducted checks. This places a duty on employers to check work rights and imposes an administrative burden, particularly for large employers and/or those with high staff turnover.

50. When employers recruit people who work illegally, not only is immigration law broken but others could be encouraged to work illegally. It could be argued that employers should be asked to do more to prevent people from working without authority.

51. The imposition of a duty on employers to check the work rights of employees relies upon both the availability of an effective penalty on employers who break the law and action by authorities to identify and punish the employer. As a result, delegated officials would need to police provisions and be prepared to act against employers. It could be argued that a regime of sanctions against employers would require an effective public information campaign.

52. In considering whether to impose a duty on employers to check people's work rights, the following questions would need to be addressed:

- **How can checking requirements be streamlined or improved to help businesses?**
- **What would need to be done to ensure that employers were aware of penalties if they recruited people without work rights?**
- **What checks would be needed by an employer to avoid a penalty?**
- **What penalties upon employers would be appropriate?**

The labour market

53. It could be argued that despite the Employer Awareness Campaign, too few employers check people's work rights. Some argue the case that illegal workers contribute to the economy by filling jobs not easily filled by Australian citizens or permanent residents. This is a suggestion sometimes raised in primary industries, where illegal workers have been found in seasonal jobs. If this is the case, the suggestion that illegal workers should not be removed from Australia could mean ceasing action against people working illegally, if they work in certain industries, and possibly at only certain times of the year.

54. Exempting some breaches of immigration law from censure runs the risk of encouraging a clandestine labour market, perhaps reliant upon a cash economy, thus affecting taxation revenues, the operation of local labour markets and establishing patterns of non-compliance with immigration law.

55. One option already available, is for people to apply for visas to enable them to work in rural sectors, although the visa criteria must be met, and the processes cost time for an employer eager for workers to fill jobs.

56. But not all producers rely on itinerant visitors for their labour nor is reliance upon foreign labour necessarily the long-term way to meet primary producers' needs. To address these concerns the Commonwealth Government has worked over the past few years with grower organisations to improve harvest labour services. From May 1998 a new service, under Job Network, known as Project Contracting, was established to enable employment service providers to mobilise labour into specified harvest areas. Work with relevant groups to develop a National Harvest Trail is also being pursued to provide worthwhile employment opportunities for young and unemployed Australians and to provide primary producers with a reliable and legal source of labour for the long run, particularly at peak harvest times.

57. In examining these issues, we could ask:

- **Are there alternative visa arrangements that could allow people to be recruited to seasonal low skilled jobs?**
- **Where Australians are in fact not ready or available to fill certain jobs, what would be the impact for local labour markets if they were to become at least partially reliant upon unskilled foreign labour?**
- **What are the taxation and other public interest implications of allowing visitors to work?**
- **How can programs to meet labour market needs be further improved?**

Visa Issues

Visitors and temporary residents

58. The availability of work for people without work rights is attractive for some people wishing to visit Australia. In 1995-96 almost 4 million foreigners visited Australia, and there were more than 4.2 million in the following two years. By 2000-2001, the year that Sydney will host the Olympic Games, more than 4.6 million foreigners are expected to visit Australia. Almost all of these people will contribute not only to Australia's economic performance, and the creation of jobs, but they carry home with them their impressions of Australia which they share with family, friends and acquaintances in their own countries. In some cases, this will include views on how to work illegally.

59. Of these visitors, 3.68 million are expected to travel on the electronic visa – the Electronic Travel Authority (ETA).[2] A further 920,000 will travel on the old style visa that they would have applied for at a diplomatic mission.

Informing visitors of their obligations

60. People who complete visitor and temporary resident visa applications sign a declaration that points out that if the visa is granted, they will not hold work rights or their work rights will be limited. A message is placed on the visa label which reads "No Work" or "Work Limitation" (depending upon the type of visa). People who travel to Australia using the ETA, however, have no visa label in their passport. Moreover, the passenger arrival card (which is completed by people before they enter the country) and the stamp placed in passports at entry points do not state that people entering as visitors, including those travelling on the ETA, do not enjoy work rights.

61. It might be argued that people visiting Australia, including those travelling on an ETA visa, should have known that they would not have work rights. After all, Australians visiting other countries are unlikely to expect the right to work. It could also be argued that people from countries that require visas for most, if not all, other countries know that they should not assume any right to work.

62. On the other hand, that view presumes knowledge of people who may not have travelled before. Should we make assumptions about what guests to our country know rather than telling them what they should know?

63. If we accept that people, who have completed a visa application form that refers to the fact that such a visa confers no work rights, know and understand their obligations, do we then expect those travelling on an ETA not to know their obligations? If so, immigration officers could theoretically detain those found working illegally if they have a visa label in their passport but not those who travelled on the ETA. This could provoke criticisms of inconsistency.

64. In addition, an immigration officer must decide at what point they take compliance action, particularly where the visa holder has inadvertently breached a condition. In some cases, a breach of immigration law may not be significant. But there should be a clear idea of what constitutes work and what warrants compliance action by the

[2] Australia's Electronic Travel Authority system enables visitors to Australia to obtain authority to enter Australia at the same time as they book their travel arrangements. There is no need for the traveller to complete an application form for a visa. The ETA is issued within seconds by computer links between the Department of Immigration and Multicultural Affairs (DIMA) and travel agents and airlines around the world. ETA arrangements are now available to passport holders from 29 countries.

Department of Immigration and Multicultural Affairs. In many instances people will breach their visa conditions by remaining in Australia for a few days or by accepting remuneration for a small task. Questions we should consider include:

- **Should work be limited to paid employment or any form of assistance that receives remuneration: financial or otherwise?**
- **Should a favour to a friend for a few dollars be enough to warrant compliance action or should the remuneration have a financial threshold?**

Deciding visa applications [3]

65. The ETA system has been introduced in countries where the visitors have demonstrated a proportionally low risk of over-staying their visas or otherwise breaching visa conditions and where the volume of travellers warrants the investment associated with the system. Despite the large impact of the ETA system, there remains a large body of visa applications processed in the conventional manner - an application is made at a diplomatic mission overseas, or at a regional office in Australia, and a decision is then made based upon the information submitted by the applicant. To be granted a visitor visa, applicants need to satisfy decision-makers that they have a genuine intention to visit Australia for the period of stay, for the purposes of tourism (including visiting relatives and friends) or business. This is referred to as the "bona fides" requirement.

66. In 1997-98 the 14 countries with the highest refusal rates of tourist visa applications had between 10% and 45% of applications refused (the global refusal rate average for tourist visas was 2.77%). In 1997-98 almost 65,000 visitor visa applications were refused in those 14 countries. The total global tourist visa refusals for the same period was around 85,000.

67. The refusal rate for visitor (tourist and business short stay) visa applications at an overseas office of the Department of Immigration and Multicultural Affairs reflects both the circumstances presented in an application as well as the known risks associated with the grant to applicants with certain characteristics, often referred to as the risk profile.[4]

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[3] In the context of this paper, a visitor visa is either a Subclass 676 Tourist (Short Stay) visa, Subclass 686 Tourist (Long Stay) visa or a Subclass 456 Business (Short Stay) visa.

[4] Risk profiles are based on experience and data indicating that clients with particular profiles represent the highest risk of breaching visa conditions and/or overstaying their visas. The circumstances of these profiles may include whether they are young, single, unemployed or in low paid employment with relatively modest prospects; there is no history of previous tourist travel; refused entry to other countries; current or previously refused applicants for migration; unable to provide a plausible reason for travel to Australia; and/or providers of fraudulent documentation. See data at Attachment B.

68. Some applicants may seek entry to Australia via a visitor visa for the sole purpose of remaining and working illegally in Australia for an extended period. Where such an intention is determined, the application is refused. There is no intention to adjust policy settings in relation to such applications.

69. Many other applicants, however, seek entry and short stay for legitimate purposes. Whilst the majority will depart Australia before the expiry of their visa, experience has shown that a significant number decide to remain in Australia at the expiry of that visitor visa. Some will lodge applications for further stay, including permanent residence, while others will remain unlawfully.

70. The administrative burden on the overseas processing office presented by applications from persons without strong claims for a visa is onerous. There is additional work involved in cases where the overseas office and an applicant's family in Australia become involved in correspondence about the application.

71. A decision-maker will focus on such issues as the extent of an applicant's links with Australia, the cost of travel for people with relatively low incomes, their previous immigration or tourist travel history and/or evidence that an applicant had submitted false documentation to assist their claim for a visa.

72. Many visa decisions are not easy and the consequences of refusing an application are potentially significant. The decision to refuse a visa may prevent people from visiting relatives, attending a sporting or other event, seeing friends or simply enjoying a holiday.

73. An assessment that a person would breach visa conditions by working illegally or overstaying depends upon assessing a person's actual intentions as opposed to their stated intentions. It may not be possible to eliminate doubts in a decision-maker's mind about a person's intentions. This may be despite the support of family and friends in the applicant's country, who claim that the applicant will return home, or similar assurances from friends and family or interested third parties in Australia.

74. The resources required to refuse a visa application are significantly greater than approvals. A refusal generally requires greater analysis, commonly involves further inquiries, and the decision must be fully documented. As a result, the overseas offices with higher rates of refusal must allocate correspondingly higher resources.

75. As outlined earlier, the cost of locating, detaining and removing persons who breach visa conditions or overstay their lawful permission to remain in Australia is in excess of $50 million per annum. This part of the paper looks to the possible selective use of a security bond as a means of increasing visitor visa approval rates while reducing the

incidence of non-compliance with visa conditions. It discusses, and seeks input into, how the implementation of a security bond in respect of certain visitor visa applicants may result in:

- **an increase in the number (and percentage) of visitor visa applications granted;**
- **an increased incentive for those visitors to abide by the conditions of their visa and depart Australia in a timely manner;**
- **lower numbers of overstayers;**
- **increased funding for enforcement activities such as locating and removing unlawful non-citizens; and,**
- **more efficient resourcing of both overseas and onshore processing offices.**

76. The workload parameters of overseas offices are decided by a combination of the demand for visas (ie, applications lodged), the risk profile of applications and the resources required to deal with those applications.

77. Table 1 (Attachment A) shows the countries with the highest 14 refusal rates of tourist visa applications by citizenship from the top 50 source countries for visitors. Offices in countries shown in Table 1 have higher than average levels of resourcing of the visitor visa processing function.

78. Current refusal rates reflect the assessed risk posed by certain applicants for tourist visas. Table 2 (Attachment B) shows the risk profile of the tourist visa grantees by citizenship. That is, it shows the numbers and the percentages of persons who do not depart Australia within the validity of the initial visa granted to them. Table 2 details the actions of persons previously determined to be genuine visitors who subsequently breached visa conditions. The details of those who fail to abide by visa conditions constitute the basis for risk profiles.

79. Applications from people in those countries mentioned in Table 2 can involve protracted processing times whilst departmental decision-makers allow the applicant (and relevant Australian parties) to provide additional information relevant to assessment of the application. Such delays increase processing costs and frustrate visa applicants.

80. The cost burden of dealing with applications that do not satisfy decision-makers that they meet the regulatory criteria, and therefore must be refused, is most clearly centred on the processing office. There are, however, other associated costs to the government. Many applications for tourist visas are the subject of representations to Department of Immigration and Multicultural Affairs offices both in Australia and overseas from Australian relatives or parliamentarians.

81. In addition to the known rates of legal departure and non-departure within initial visa validity, overseas offices need to deal with the issue of people smuggling. Australia is one of only a few countries targeted by operators of illegal migration. There are people

who are willing to risk, and pay, large sums of money for the opportunity to arrive in Australia with the belief they will be able to remain here and work, often in order to repay the cost of their illegal passage.

82. The organised nature of such activities means that overseas offices must be vigilant about operators seeking to secure official visas through deception as well as being aware of the organised illegal practices. The willingness of many foreign nationals to engage the services of illegal operators may lead them to try to use a bond arrangement as an alternative method of entry to Australia.

- **Are there means by which more visa applications might be approved without increasing non-departure rates?**
- **Is the current rate of non-departure acceptable?**
- **If not, what measures could be introduced to reduce the incidence of non-departure within initial visa validity whilst reducing incentives for people smuggling?**

Expectations of Australian relatives/sponsors

83. Australian relatives of overseas visitor applicants sometimes have strong expectations as to how the processing office should view applications from their overseas relatives.

84. Many overseas applicants expect their Australian relatives will be able to provide certain leverage in relation to visa applications they make. Australian relatives expect their "good name or integrity " to be a positive and determining factor in the assessment of their relatives' visa application.

- **Is it appropriate for Australian relatives to take some form of responsibility for compliance with visa conditions and lawful departure from Australia?**

Bond arrangements/proposals in other countries

85. A number of other countries either already have a security bond system for visitors and temporary entrants or are in the process of implementing such an arrangement. In Australia, the *Migration Act 1958* provides the power for authorised officers to request a security bond. This power is used currently in respect of certain Bridging Visa (E) (BVE) applicants. See below for further discussion of existing Australian bond arrangements.

86. The Governments of Canada, Singapore and South Africa use bond arrangements for visitor entry. The arrangements differ from country to country.

87. <u>Canada</u> determines admissibility of certain visitors at the border (eg, airport) and decision-makers have a discretion to request a bond before allowing admission. The bond must be paid by a third party Canadian. The amount of the bond is discretionary although policy guidelines indicate that bonds of less than $C 4,000 should not be considered sufficient.

88. Singapore has a system in place where bonds may be requested in respect of foreign nationals to whom visa-free arrangements do not apply – approximately 17 countries. A Singaporean citizen must pay the bond with the amount determined on a case-by-case basis. Examples of the bonds payable are rates of up to $SIN 5,000 (approx AUD 5,350) for applicants from the People's Republic of China, up to $SIN 3,000 for applicants from India, Bangladesh and Myanmar and $SIN 1,000 for applicants from the Commonwealth of Independent States.

89. Decision-makers in South Africa may require a bond equivalent to the cost of a return airfare from applicants, who a decision-maker believes, may be thinking of breaching visa conditions.

90. In both New Zealand and the United Kingdom the respective governments have recently introduced Immigration Amendment Bills into parliament that provide, inter alia, the power to impose bonds on certain visa applicants. Both bills provide for bonds on visitor visa applicants.

91. In New Zealand, the proposed power is intended to extend to other temporary entrants such as students and workers. Both proposals have been referred to committees of inquiry. The New Zealand proposal would impose bonds of an amount determined by the home region of the applicant and would equate to the cost of return air travel.

92. The UK intends to pilot the bond scheme following a consultative process on the design and implementation of the pilot. The bond proposal is linked to a proposal to introduce a review right for UK relatives of visitor visa applicants; bonds would be payable only by the UK relatives of visa applicants.

Security bond arrangements in Australia

93. Section 269 of the *Migration Act 1958* provides a discretionary power to impose a security bond to visa applicants. Currently, the Migration Regulations prescribe that a security bond may be requested in relation to applications for a BVE. The discretionary nature of the power means that the authorised officer can choose whether to require a bond of an applicant and can set the amount of the bond.

94. In 1997-98 security bonds were applied to 599 BVE applicants. The average value of the bonds applied was $4,186. However, in certain cases it was considered appropriate to set bonds over $10,000 and in one case a bond of $75,000 was set. Of the bonds imposed, 39 were forfeited at a total value of $185,000, at an average of $4,833 per bond. This may indicate that in the vast majority of cases bonds were set at realistic levels.

95. The forfeiture rate was 16%, indicating that the level of bonds in these cases was insufficient to be an adequate incentive to comply with the bond conditions. It should be noted, however, that visitor visa applicants overseas (to whom a bond might be applied) are not of the same category of persons as applicants for BVEs (ie, persons in detention for being unlawful).

To which application types could a bond be applied?

96. The focus of this paper in considering a bond is limited to Tourist (subclasses 676 and 686) and Short Stay Business (subclass 456) visas.

97. Many Australian businesses currently offer to lodge bonds to allow the entry of overseas business visitor applicants who may otherwise be refused a visa. The business background of an applicant and the reason for entry should be sufficient to establish genuine intentions. It could be argued that posting a bond would not affect an existing intention to breach visa conditions.

98. While the bona fides of Australian business "sponsors" are not in question, they risk losing a bond if they are deceived by offshore applicants. Whether a bond arrangement can operate and still provide the level of protection available through existing processing arrangements requires consideration.

99. In the context of Australian State and Territory governments seeking to engage business linkages in expanding markets, where visa risk profiles are high, there may be merit in considering sponsorship (including a bond) from these governments.

100. Including long stay tourist visas (Subclass 686) in a security bond proposal may be equally challenging as the length of stay for persons who present marginal claims for entry may view a bond as a "price" for a visa.

101. In these cases, a stay of 12 months may be seen by some applicants as sufficient time to "go underground" and/or to work illegally to earn incomes that would more than compensate for the "cost" or forfeiture of a bond.

102. Applicants for short stay tourist visas, however, frequently include people from disadvantaged backgrounds, with no previous travel history, who may have little incentive to abide by visa conditions. There is a need to identify which people in this group could have access to a bond.

- **On what basis is there a case to introduce bonds?**
- **Is a bond arrangement available only through government sponsorship appropriate in relation to business visitor applications?**
- **If so, in which circumstances would it be appropriate?**
- **Does a stay of 12 months allowed by visa subclass 686 pose sufficient risk of extended periods of illegal work so as to nullify the objective of the bond?**
- **What concerns, which currently lead to refusal decisions, might a bond overcome?**

Connections to Australia

103. Where applicants have close family in Australia and a genuine reason for entry but fall within the risk profile (see paragraph 67), they may still be refused a visa. This group is considered the most likely for whom a bond arrangement would be workable, primarily because it allows the bond to be imposed on a third party to the visa application (ie, the Australian relative). Importantly, this approach is likely to reduce perceptions of a visa "price" for the applicant.

104. When considering which Australian relatives should be able to "sponsor" and provide bonds, the closeness of the relationship would be an important factor. A prudent approach could be to allow bonds to be payable only by Australian relatives who meet the definition of "close relative" found in Regulation 1.03 of the Migration Regulations, ie a parent, sibling or child. Alternatively, a wide range of family relationships could be considered.

105. A bond arrangement is most likely to be effective where there is a close linkage with an Australian resident as Australians. Without family linkages to overseas applicants are easily "preyed upon" by prospective applicants with the sole intention of entering Australia to breach immigration laws. Australian family members can also be deceived by their overseas relatives' intention to breach visa conditions. A bond arrangement could be linked to the merits review framework to allow family members to support applications and take responsibility for adherence with immigration laws. Eligibility for merits review is limited to close relatives, which is another reason for limiting a bond proposal to applicants with close relatives in Australia.

- **Which Australian relatives should be able to put forward a bond on behalf of overseas relatives seeking short stay in Australia?**
- **Should a bond be linked only to Australian relatives with a review right in respect of visitor visa applications?**

Amount for a bond

106. A bond should be set at a level that encourages people to comply with the conditions of the visa. It could also be based on the estimated cost of compliance action should visa conditions be breached. The amount of a bond would need to be sufficiently high to discourage people who might see it as a necessary expense in gaining entry and working illegally.

107. Most overseas offices consider that bonds of less than $10,000 may be ineffective as a deterrent to applicants contemplating overstaying and working illegally. In fact, amounts lower than this may be seen as a reasonable price to pay in order to get into Australia.

108. Whilst such comments are relevant to independent applicants, consideration should be given to the different circumstances where Australian family members are lodging the bond. In this context, $5,000 may be more realistic in terms of both the relatives' ability to post the bond amount and be sufficient for them to convey the consequences of breaches to the visa holder. Forfeiture in such circumstances could also lead to the Australian relative being disqualified from sponsoring in future.

109. Current immigration law provides an unfettered discretion to authorised officers in determining a bond amount. However, fixed amounts provide consistency of approach and ease of understanding within the affected client groups. In addition, a fixed amount bond would remove potential for argument on whether a bond has been set at an appropriate level for a particular case.

- **What would be an appropriate bond amount in order to achieve stated objectives?**
- **Should the bond amount be set at a pre-determined level?**

Release and forfeiture of the bond

110. Grounds for release of the bond would be clear where the visa holder complies with the visa conditions and departs prior to the expiry of the visa.

111. Forfeiture may include circumstances where visa conditions are found to have been breached, a visa application is lodged in Australia or where the visa holder failed to depart in a timely manner, except in exceptional circumstances. Mandatory application of the "no further stay" condition in conjunction with a bond may also be appropriate.[5] Examples of exceptional circumstances where forfeiture may not be automatic and waiver of the "no further stay" condition might be appropriate, may include instances where the visa holder is unable to depart for medical reasons or where there are recognised safety issues, such as the outbreak of war in the visa holder's homeland.

112. Whilst it is clear that forfeiture of a bond should be enforced where a bonded visa holder breaches visa conditions, it may be less clear where bonded visitors make an application for further stay. This may be a major issue affecting the perceived success of a bond scheme, ie, the ability of the bond to deter blatantly unfounded visa applications. This is a relevant factor in developing a risk profile of non-genuine visitors to Australia.

113. The range of circumstances, which would allow forfeiture of a bond, may depend on the form and operation of the bond. Forfeiture of a bond lodged by a third party in Australia, however, would not prevent the lodgement of a Protection Visa application by the visa-holder who is the subject of the bond. Where a visitor visa holder, whose visa grant was the subject of a bond, apply for a Protection Visa, they would be permitted to stay until their status was determined.

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[5] This condition states that a visitor may not be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

114. One difficulty faced in dealing with the possible imposition of bonds, is the number of options that are available. For some options relating to the possible imposition of bonds for certain visitor visa applicants see Attachment C.

- **Should a bond aim to deter non-compliance by the visitor or to ensure that sponsors assist their visitors to honour visa conditions?**
- **If a bond were introduced, should it be paid by a sponsor in Australia?**
- **Should a bond operate in conjunction with a mandatory "no further stay" condition, noting that there is scope to waive this condition in exceptional circumstances?**
- **Under what circumstances should a bond be released or forfeited?**

Other issues

115. The Government would also welcome your comments about any other matters about illegal workers in Australia, which have not been covered in this discussion paper. Any comments would, however, need to address the review's Terms of Reference.

Process

116. The Department of Immigration and Multicultural Affairs invites your written submissions to be lodged by Friday 28 May 1999. Submissions should be forwarded to:

The Illegal Work Review Secretariat
Border Control and Compliance Division
Department of Immigration and Multicultural Affairs
PO Box 25
BELCONNEN ACT 2616

117. Please provide your name, the name of your organisation (if appropriate), address and daytime telephone and fax numbers with your submission.

118. Any queries about the process should be forwarded to the Secretariat at the above address. Telephone inquiries may be made on (02) 6264-2350.

Attachment A Table 1: Visitor Visa Refusal Rates 1997-98

Country (totals)	*Grants*	*Refusals*	*Applications*	*Refusal rate (%)*
Lebanon	2 963	2 396	5 359	44.71
Yugoslavia	4 228	2 230	6 458	34.53
Sri Lanka	4 801	1 908	6 709	28.44
Egypt, Arab Republic of	1 949	763	2 712	28.13
China, Peoples Republic of	56 401	19 406	75 807	25.60
Fiji	15 236	4 999	20 235	24.70
Chile	3 264	913	4 177	21.86
Russian Federation	6 597	1 646	8 243	19.97
Vietnam	4 961	1 156	6 117	18.90
India	21 454	4 361	25 815	16.89
Philippines	33 456	6 575	40 031	16.42
Indonesia	81 030	12 847	93 877	13.68
Poland	4 420	609	5 029	12.11
Thailand	37 567	4 184	41 751	10.02
TOTAL	**278 327**	**63 993**	**342 320**	**18.69**
All other countries	2 699 694	20 819	2 720 513	0.77
TOTAL VISITOR VISAS	**2 978 021**	**84 812**	**3 062 833**	**2.77**

Data source: Visitor Policy and Health Section, DIMA, 1999.

Attachment B Table 2 Risk Profiles by Citizenship

(1.7.96-30.6.97 Visaed Visitors as at 30.6.98)

Country of citizenship	*Arrivals*	*Legal departures*	*Non-departure within visa validity*
Chile	2286	2029 88.76%	256 11.19%
China, Peoples Republic of	55642	47370 85.13%	8120 14.59%
Egypt, Arab Republic of	1507	1442 82.42%	262 17.40%
Fiji	16555	15115 91.30%	1417 8.56%
India	23937	22180 92.66%	1735 7.25%
Indonesia	130026	126658 97.41%	3262 2.51%
Lebanon	3138	2326 74.12%	802 25.55%
Philippines	32752	28125 85.87%	4521 13.80%
Poland	3861	3323 86.07%	537 13.91%
Russian Federation	5429	5035 92.74%	391 7.20%
Sri Lanka	6632	5489 82.77%	1133 17.09%
Thailand	74327	73045 98.28%	1232 1.66%
Vietnam	3348	2630 78.55%	707 21.12%
Yugoslavia	2053	1616 78.71%	434 21.16%

Data source: Visitor Policy and Health Section, DIMA, 1999.