

CHAPTER 2 – TEMPORARY RESIDENCE POLICY

- 2.1 The more mobile nature of skilled people and greater levels of global economic integration mean that the volume of temporary entry will continue to rise. As discussed in Chapter 1, the temporary entry of skilled workers allow Australia to maintain its competitiveness in accessing skilled people who wish to work in Australia temporarily. Other types of temporary residents contribute to Australia in a range of other arenas.
- 2.2 Temporary residence policy and processes need to enable temporary entry to take place as easily as possible for the temporary entrants, while minimising impacts on Australian workers and the Australian community. Temporary residence policy and procedures are therefore designed so that they:
- select persons with the appropriate skills or attributes to make a contribution to Australia;
 - process their visa applications quickly and smoothly; and
 - minimise fees for clients and administration costs.
- 2.3 These objectives must be achieved while also pursuing the following policy parameters which address the possible impacts on the Australian community:
- employment opportunities of Australians are protected;
 - training opportunities of Australians are retained;
 - Australian pay and conditions continue to apply;
 - the Australian community is not exposed to financial cost ;
 - immigration integrity is maintained.
- 2.4 A key to this challenge is to identify the most cost-effective means of minimising potential negative impacts whilst streamlining all other processes. Possible options and issues in this regard are discussed in a generic sense in this chapter. Subsequent chapters discuss the application of these policy parameters to specific visa categories.
- PROTECTION OF EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS**
- 2.5 Entry arrangements for workers to Australia to meet temporary skill shortages currently use a number of mechanisms to ensure that this does not diminish employment opportunities for Australian workers. The mechanisms vary according to the particular labour market issues for each occupation and some mechanisms work better for certain occupations than others.
- 2.6 The mechanisms currently in use include:
- labour market testing for each position – various labour market testing arrangements are used to test the specific position in the specific market before the visa applicant can be approved for the position;
 - use of expert third parties for their view of the labour market implications of filling a proposed position with an overseas worker – for example, in the case of entertainment visa applicants who intend to work on a film or television production, there is a requirement to obtain a certificate from Department of Communications, Information Technology and the Arts, confirming that the production complies with Australian cultural policy requirements (for example in relation to Australian content and participation of Australian personnel);
 - objective thresholds whereby certain activities are considered to have no likely impact on employment opportunities for Australian workers – for example,

occupations on the gazetted list of skilled occupations under the temporary business entry (subclass 457) arrangements.

- 2.7 Some visas use a combination of these approaches, for example, for the medical practitioner visa, "labour market requirements" can be met either through labour market testing for the position or by the relevant State/Territory Health authority confirming that the position cannot be filled locally.

Labour Market Testing of Positions

- 2.8 Labour market testing is required for some medical practitioners applicants (under subclass 422), most education visa applicants (under subclass 418), and for sports instructors (under subclass 421), media representatives (under subclass 423) and applicants for domestic worker – executive visa (under subclass 427). However, in the case of applicants for temporary business visas, labour market testing has been replaced with skill and salary thresholds on 1 July 2001.

- 2.9 Prior to 1 July 2001, the labour market test for the temporary business entry (subclass 457) visa required the employer to have tested the labour market within the previous six months and to have done at least two of the following:
- advertised through local professional or trade journals and, where appropriate, the Internet or local community language newspapers;
 - lodged the position as a vacancy with a job placement service provider;
 - obtained advice from a recognised professional or industrial body acceptable to DEWR on the availability of specialist skills;
 - advertised the vacancy recently in a Saturday and a weekday edition of both a metropolitan and a national daily

newspaper (a total of four separate advertisements) or, if the business is outside the major metropolitan area, advertised the vacancy recently at least once in both the Saturday edition and a weekday edition of both a major local or regional and national daily newspaper (a total of 4 separate advertisements).

- 2.10 These four options recognised that ways of testing the market are no longer limited simply to the columns of newspapers. The labour market test for the other visas that have this requirement vary from this test, and vary according to proposed period of stay in Australia. However they are similar in nature to the former arrangements for temporary business visas and would suffer the same weaknesses. In the course of this Review, stakeholders raised a range of issues about these arrangements including:
- that the reported results of labour market testing by employers may be difficult to verify. It is a process that can be relatively easily contrived;
 - that labour market testing is an expensive and time-consuming imposition on employers who know their segment of the Australian labour market and would not seek an overseas employee if a suitable Australian was available for the position – recruiting from overseas involves considerable expense, delays and involves the employer in potentially costly financial obligations in relation to the temporary resident;
 - for temporary business visa applicants, whether formal labour market testing is required or not currently depends on whether the activity is classified as "key" or "non-key". This is often unclear to sponsors. As a result, the need for labour market testing is also unclear; and
 - that the current requirements do not reflect modern mechanisms for recruiting staff, for example the role played by recruitment agencies.

2.11 It is of considerable concern that the intent of these approaches can be circumvented by those who seek to do so and involve unnecessary costs and time for people genuinely finding it difficult to obtain skilled employees. Alternative, more appropriate means of addressing the labour market testing objectives are clearly needed and should be used wherever possible.

2.12 The ideal approach to labour market testing involves the use of relatively objective approaches to determining labour market needs, rather than traditional approaches which are easily circumvented and involve unnecessary costs and time for people genuinely finding it difficult to obtain skilled employees.

Use of Objective Thresholds and Expert Third Parties

2.13 Consistent with DIMIA's strategic plan (see paragraph 1.36), the use of objective criteria are preferable to subjective criteria as a means of assessing whether the entry of a temporary resident will impact on employment opportunities for Australian workers. They are clearer for clients, quicker for staff to assess and therefore contribute to faster processing. They provide for more certain outcomes for clients and lead to more consistent decision making.

2.14 Use of an expert and independent third party is preferable as they specialise in their occupation(s) and their labour market Assessments by these experts are also more likely to be accepted by clients. They constitute an objective threshold that consists of an assessment from an independent third party.

2.15 Expert third parties are already used under current arrangements for some visas:

- Sponsors of entertainment visa applicants are usually required to have consulted with the relevant union about the proposed activity. Also, in the case

of film and television productions, a certificate must be obtained from DCITA, which involves an assessment of the proposed activity against Australian content guidelines. These arrangements seem to be working reasonably well. Chapter 10 discusses some refinements to arrangements for entertainment visa applicants.

- Senior academic positions are not required to be labour market tested, unlike other education visa applicants. This is because it is accepted that a high degree of mobility may be expected of academic staff at this level and that institutions advertise widely to attract highly specialised and skilled professionals to Australia.
- DIMIA seeks advice regarding the entry of overseas doctors from State health authorities and DoHA, and DEWR depending on the area in which they intend to practise.

2.16 Where the proposed work or activities require a high level of skill, there is a low level of risk that Australian workers will be displaced by the employment of an overseas temporary resident. This is because there are relatively low levels of unemployment in this segment of the labour market (for example, the unemployment rate of managers and administrators was nearly one sixth the rate for labourers in February 2001; unemployment rates for professionals and associate professionals are similarly low – see April 2001 Jobs Review published by DEWR). Therefore, where high levels of skills are involved, objective thresholds are more efficient and more effective than traditional labour market testing. This would also be consistent with the approach taken in the Independent Skilled migration category and the approach taken in relation to the recently introduced skill threshold for temporary business entrants (subclass 457). Employers can be expected to use local workers, where they are available, in

preference to overseas workers, because the recruitment of local workers involve less delays and expense, and do not require the employer to take on sponsorship obligations as are required for overseas workers. Because of these additional costs and responsibilities, it is possible to be confident that employment opportunities for local employees will not generally be affected and so other, more time consuming and expensive labour market testing mechanisms are not required.

- 2.17 However, these approaches are not considered appropriate in the case of low skill positions. Higher levels of unemployment in this area suggest that it is appropriate to require employers to meet a high standard of proof that the entry of the overseas worker will not take away an opportunity for an Australian worker. This is because it is unlikely that an employer would genuinely not be able to find a local employee for a position, unless the position was particularly unattractive for some reason. Even if an employer can demonstrate that no local employee can be found who could do the work, it should be relatively easy to train a person to perform unskilled work. While the entry of temporary unskilled workers is not prohibited under the temporary resident arrangements, opportunities are limited and consultation with DEWR and possibly relevant unions may be appropriate. This should continue to be the case.

- 2.18 On the basis of the experience with current mechanisms in use, the following points and key conclusions can be made:
- the traditional labour market testing arrangements do not work well in all circumstances;
 - the ideal approach to labour market testing involves the use of relatively objective and independently developed criteria to determining labour market needs;

- where high levels of skills and high levels of salary are involved, this is generally sufficient to be confident that local employment opportunities will not be affected and so other labour market testing mechanisms are not required;
- where an objective assessment or measure is not appropriate and a subjective assessment needs to be made, it is preferable that it be made by an expert third party;
- only where these more preferable options are not available or not appropriate should traditional labour market testing mechanisms (involving advertising the position) be used.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

- 2.19 Australia's Temporary Residence Program is designed to provide opportunities for Australian employers to bring in overseas workers to meet specific skill shortages. It is a fundamental principle of Australia's temporary residence arrangements that Australian employers are expected to participate in training Australians, even though there is provision to bring in overseas workers to meet specific skill shortages. It is accepted that employers may need some temporary workers from overseas and that Australia cannot expect to be self-sufficient in all skills at all times. However, it is not intended that Australian employers abrogate their responsibilities/ minimise their involvement in providing training opportunities for Australian workers, on the basis that they can obtain a worker from overseas.
- 2.20 Because of the increasing mobility of skilled people, it is possible for an employer to have an excellent training record, but to lose staff to other employers who, for example, pay higher salaries. Therefore an employer may still need to bring in overseas workers even where they have a good

training record. This may be an increasing problem in the context of the persistent shortages of highly skilled workers.

Assessing Commitment to Training Australians – Current Arrangements

- 2.21 Under current arrangements, formal arrangements for assessing an employer's commitment to training Australians are in place for temporary business visa sponsors (subclass 457 visas) only. All business sponsors must demonstrate their commitment to training Australian workers, unless they are exempt from this requirement on the basis that their business introduces to Australia, or utilises or creates in Australia new or improved technology or business skills. Currently it is estimated that less than 10 per cent of businesses meet this requirement and are therefore eligible for exemption from the training requirement.
- 2.22 The mechanisms currently used to assess whether an employer has a commitment to training Australian workers are:
- a requirement that the sponsor provide information about their training records and training plans (this can include information about training programs, budget spent on training, proportion of Australian versus overseas workers in the company). This information is included with the sponsorship application (in most cases). This information is required for all employers unless their business will be introducing to Australia, or utilising or creating in Australia, new or improved technology or business skills; and
 - a declaration on the sponsor form to the effect that the sponsor accepts the desirability of providing training and career opportunities for Australians and that any recruitment of overseas workers must not undermine the Government's training policies and objectives for the Australian workforce.
- 2.23 It is seen as desirable to retain the requirement for Australian employers to demonstrate their commitment to training Australian workers if they are to be allowed to bring in overseas workers. It is not considered appropriate to let employers use overseas temporary workers to meet their needs for skilled workers instead of investing in training Australians. Employers should only be allowed to bring in overseas workers when their training efforts have not resulted in all shortages being met. While it may be appropriate to allow first-time sponsors to make undertakings in relation to future training of Australians, 'repeat' sponsors should be required to demonstrate their past commitment to training Australians.
- 2.24 The requirement for sponsors of temporary business visa applicants to provide information about their commitment to training continues to be appropriate and should therefore be retained.
- 2.25 For other visas involving sponsored employees, the sponsors are not required to provide information about training nor are they required to make a declaration in relation to their commitment to training Australian workers. There is nevertheless an underlying expectation that such a commitment to training Australians exists for these other visas. It would be preferable if there was some mechanism to support this expectation and preferable if the mechanism is standardised across the temporary resident visas.
- 2.26 It is essential that employers of overseas workers acknowledge the importance of providing training opportunities for Australians and contribute to training the Australian workforce as appropriate. Ideally all sponsors should be required to demonstrate their commitment to training Australians, although there may be some circumstances where this requirement would be inappropriate (discussed below).

A standardised approach for all sponsors of employees is also clearly desirable. This approach would have the support of unions:

It is the view of the CFMEU that in cases where the Department approves applications for work visas they have a duty to...ensure that the applicant company puts a training plan into place to train local labour for the future. (Submission from the Construction, Forestry, Mining & Energy Union)

2.27 In some cases this requirement would not be appropriate, for example:

- sponsors of entertainment visa applicants – these do not generally have an employer/employee relationship with the visa applicants, for instance they may be a promoter organising a tour of an entertainer;
- sponsors of foreign government agency representatives – it might not be appropriate to require a training commitment from these sponsors in recognition of the international relations aspects of these visa arrangements; and
- sponsors of medical practitioners – for example, sponsors in regional areas would not be in a position to contribute to training Australians to address their needs for local medical practitioners.

In our own case the undertaking for a sponsor to accept certain principles in relation to the training of Australian workers is difficult to accept. The issue for GMAHS is not a lack of trained medical officers per se, but rather a shortage based on geographic distribution. Therefore committing to an undertaking for training of Australian workers is not necessarily going to improve the provisions of medical officers in rural and remote areas. (Submission from the Greater Murray Area Health Service)

2.28 Consideration will need to be given to which visas this requirement should apply and whether there should be any exceptions within a visa to this requirement – like the exception for business sponsors (under 457 visa arrangements) who are introducing new or improved technology or business skills. Exceptions within a visa may be justifiable in recognition of other factors, for example, special contributions to the Australian economy:

...there are cases where a training commitment is irrelevant or inappropriate. For example, where a person is being sponsored to an organisation to assist with activities involving Australian exports, where the benefit to Australia is significant. There needs to be a trade-off between the value of training in larger organisations, and the value of export activity which usually involves small buying/purchasing offices with little or no need for training. Some visa categories are simply not appropriate for implementation of training obligations. (Submission from the Migration Institute of Australia)

2.29 The requirement for employers of overseas workers to demonstrate their commitment to training Australians is a key element of temporary residence policy. As a general rule it is therefore appropriate to require all sponsors of employees to demonstrate their commitment to training Australians. Further consideration will, however, need to be given to the sponsors and circumstances where this requirement would not be appropriate.

Assessing Employer’s Specific Training Plans – Current Arrangements

2.30 The mechanisms available to assess information about training undertaken and

planned also requires consideration. The current arrangements involve the following processes:

- information about training undertaken and training plans is provided to DIMIA as part of the business sponsor application (but not other sponsor applications). Sponsors who can demonstrate that their business will introduce to Australia or utilise or create in Australia new or improved technology or business skills are exempted from the requirement to provide this information;
- where the assessment is straightforward (either because the sponsor clearly meets the requirement or because they clearly do not meet that requirement or another requirement for the sponsorship approval) DIMIA makes the assessment of whether the sponsor has demonstrated their commitment to training Australians, and proceeds to make a decision on the sponsorship;
- where the assessment of the training information is not straightforward, the case is referred to DEWR for advice – the service standard for this advice is 5 days and it is usually met.
- where DEWR provides advice on a case, that advice is not binding on the DIMIA decision-maker, although the decision-maker will usually accept the advice of DEWR unless they have further information to satisfy them that the requirement is met; and
- where DEWR recommend that the sponsorship be refused because the sponsor has not demonstrated an appropriate commitment to training, the DIMIA officer will provide the sponsor with an opportunity to comment on this assessment, in accordance with natural justice principles, before making the sponsorship decision. This further delays the decision on the sponsorship.

2.31 While the current arrangements work well to send employers appropriate messages about training Australians, the current

arrangements could benefit from modification in some areas:

- the requirements do not apply to all temporary resident employees, but only for temporary business entrants; for other sponsors there are no requirements at all;
- DIMIA officers are currently assessing most of the training plans and records, even though training policy is not a core function of DIMIA and DIMIA does not have expertise in training matters;
- there is the potential for inconsistency in approach – this is because assessments are made by both DIMIA and DEWR regional offices. Referral processes themselves may be inconsistent;
- DEWR only obtains information on those cases that are referred to it for assessment, which is currently only about 15 per cent of the total caseload. DEWR is concerned about this low level of referrals because it means they do not get an opportunity to see the full spectrum of training activities, but rather a small segment of non-representative cases, and they do not get information about training activities and plans in all cases. They would prefer to receive information on more, preferably all, cases;
- the referrals to DEWR adds to the processing time for those applications affected. Most referrals are returned to DIMIA within five days. While this is a relatively short delay in processing for these applicants, any potential to reduce processing times should be considered, given the priority that applicants put on the speed of processing;
- where a DEWR assessment is unfavourable, the need to provide the sponsor with an opportunity to comment adds another 35 days (the prescribed time period for comment) to the processing time;
- only a very small number of sponsorships are refused on the grounds

of poor training record yet all temporary business entry applications are required to be assessed in relation to their training records as part of the sponsorship assessment, and this adds to the time to process all sponsorship applications;

- if the sponsor has no record of commitment to training, they can be approved as a sponsor by claiming to have a commitment in the future and presenting a credible training plan (although a past history of not adhering to sponsorship undertakings may lead to rejection). Follow-up to ensure the training plan has been delivered is resource intensive and is therefore, in the past, has been difficult to ensure for all sponsors.

2.32 The current arrangements for assessing training information could therefore be refined to achieve greater consistency in decision making and faster processing. In addition, consideration needs to be given to alternative mechanisms for assessing an employer's commitment to training Australians, to assess whether they might work better than the current arrangements.

Options for Assessment of Commitment to Training Australian Workers

2.33 The approaches for employers to demonstrate their commitment to training local workers that could be considered include:

- membership of an industry-based training organisation;
- payment of a training levy (for each overseas worker per annum); and
- assessment of individual training plans provided by the employer in relation to training of their staff and by their organisation.

2.34 In the course of the Review feedback from stakeholders and in particular, business, indicated that, to them, speed of processing is paramount. In considering how

commitment to training Australians should be assessed, the impact on processing times will be critical. It would be desirable to identify mechanisms that are quick to assess. Arrangements which would speed up processing associated with assessing an employer's commitment to training Australians should be considered.

2.35 In this respect, objective measures are preferable to measures that involve subjective assessments as they invariably allow for faster processing. Objective measures also result in more certain outcomes for applicants and greater consistency in decision making.

• ***Membership of an industry-based training organisation***

2.36 Membership of an industry-based training organisation could be used to assess commitment and would allow DIMIA to quickly ascertain that this requirement is met. This is already an option for employers in the ICT industry who can demonstrate their commitment to training Australians by membership of an industry-based training body like the skills transfer scheme.

2.37 This option is not used by employers of ICT workers to the extent that it could be. The Australian Information Industry Association is of the view that this reflects the fact that only one training body is currently available for this purpose and that body restricts its membership to larger companies. Therefore this option is not really available to many ICT companies. In order to provide better access to this option and greater transparency in its operation a list of relevant training organisations could be gazetted. Where no such industry-wide training body exists, alternative arrangements would be needed (such as those discussed below).

2.38 Membership of an industry-based training body might be viewed as a more preferable

option for assessing commitment to training Australians because it is objective and quick to verify, compared to DIMIA assessment of information about training, which is a more subjective assessment and which may involve delays associated with a referral to DEWR.

- **Training levy**

2.39 Introduction of a training levy for overseas workers sponsored per annum would be another means by which the requirement to demonstrate a commitment to training Australians could be assessed quickly. This would be consistent with the existing sponsor undertaking (that require sponsors to accept the Government's training policies and objectives) and would provide a mechanism for employers to prove their commitment in a tangible way.

2.40 A levy can also act as a mechanism to raise industry resources for training local workers. Any training levy paid by employers should go directly to the relevant industry training body for use in training Australian workers or be distributed via a competitive grants program for skills training programs. A training levy linked with a grants program for training of American workers is a requirement for the equivalent temporary skilled visas in the United States.

2.41 A levy may be particularly useful for overseas sponsors who would not normally have contributed to training Australians. However overseas sponsors might be resistant to such an approach if it included them, arguing that they have no responsibility in relation to training Australian workers. It is also worth noting that most overseas trade agreements require equal treatment of domestic and foreign businesses. Exempting overseas sponsors would breach this general principle and result in an additional burden for Australian employers over overseas sponsors.

2.42 While this approach has some merit, it would require further investigation (not least because appropriate industry or occupation-based training bodies would need to be identified and efficient means of channelling the levies paid to the training bodies would need to be developed).

- **Assessment of employer's specific training plans**

2.43 The other option for assessing an employer's commitment to training Australian workers is the current arrangements that assess individual employer's training activities and plans. This is the main option used by employers under current arrangements, because few sponsors can meet the "new technology or business skills" criteria and few sponsors in the ICT industry are using the membership of a training body option for ICT industry sponsors. Experience to date with this approach suggests that some modification would be beneficial. In particular, an ideal arrangement would incorporate the following features:

- all assessments would be done by the same organisation in order to ensure a consistent approach. This organisation could be either DEWR (as the body which currently undertakes the less straightforward assessments, or DEST as the body responsible for training matters) or DIMIA, under clear and detailed guidance from DEWR (and DEST) on implementing the Government's training objectives in this respect;
- referrals to DEWR during the processing of the sponsorship application would be minimised or eliminated, so that consideration of training information would not delay sponsorship or visa processing.

2.44 There appear to be 2 options that would achieve these objectives:

- DEWR (or DEST) could do all the assessments; or

- DIMIA could do all the assessments.
- 2.45 Under the option where DEWR (or DEST) would do all the assessments:
- The assessments could be considered to be formal assessments that would be taken by DIMIA as 'correct' (that is DIMIA would not override any assessments).
 - There could be a requirement introduced for all applicants to obtain their assessments (in the form of a certification) from DEWR prior to lodging the sponsorship application.
 - This certification could be available via Internet application and could involve an application fee to cover the cost of processing by DEWR.
 - This approach would reduce DIMIA processing times of sponsorship applications and DEWR would have access to training information from all companies.
 - However, employers might regard this approach as introducing an additional imposition; this might particularly be the case with the large proportion of employers who are currently meet the training requirement fairly easily and whose applications are not delayed through DEWR referral under current arrangements.
 - This approach could be seen as creating a fourth stage of processing.
 - There would probably need to be an additional processing fee to be paid by all applicants which is not currently charged (because of the potential workload implications on DEWR).
- 2.46 Alternatively, DIMIA could undertake all the assessments, with no referrals to DEWR during the processing of the sponsorships. This approach could work well with appropriate support and advice from DEWR (and DEST) at a general level, rather than a case by case basis. This approach could also involve:
- the introduction of a more detailed request for information to assist applicants to provide all of the information required to allow their commitment to training to be fully assessed. This would reduce the delays associated with requesting further information that currently occur;
 - the development (in conjunction with DEWR) of clear and detailed guidelines against which these assessments could be made, so as to ensure clear and consistent decision making by DIMIA officers;
 - the information could be lodged electronically;
 - these arrangements, in conjunction with the removal of the referral process and its associated delays, would allow for the assessments of training information to be made quickly and consistently;
 - training information thus provided to DIMIA could subsequently be provided to DEWR for all cases for them to use for their information base on employer training. This would allow them to evaluate the training undertakings, either on an individual or aggregate basis, as part of their overall monitoring of training by Australian employers. This would address DEWR's current concerns about the relatively low level of referrals under current arrangements. It would also allow DEWR to develop a list of sponsors who have a record of not delivering their training plans, which could be taken into account in subsequent sponsorship applications;
 - if DEWR consider that that sponsor did not demonstrate appropriate commitment to training Australians, and advise DIMIA of this, the sponsor might not be approved again to be a sponsor.
- 2.47 Given the range of possible approaches, it is appropriate that DIMIA and DEWR, in consultation with DEST, further explore possible options which may offer better

and faster methods of assessing an sponsor's commitment to training with a view to:

- identifying more streamlined arrangements, including identifying measures that are more objective and quicker to process; and
- avoiding referrals of cases during the processing of sponsorship applications.

Offering Employers a Choice

2.48 Any or all of the above approaches could be adopted. Which approach is appropriate may depend on the visa or the circumstances of particular applications. Alternatively, it might be appropriate to offer employers a choice of one of the above means by which to demonstrate their commitment to training Australians. Given the diversity of employers wishing to access overseas workers to fill temporary skill shortages a choice would allow prospective sponsors to choose the approach most suitable for their purposes. There may also be other alternatives that could be part of the arrangements. The implications of the various approaches would require further investigation prior to determining the exact approach and the options to be made available and DIMIA, DEWR and DEST should be asked to explore these.

2.49 Regardless of the approach determined following this consultation process, the arrangements should also include the following additional features:

- a sponsor declaration in relation to commitment to training Australians (ie consistent with the current sponsor declaration for temporary business entrant (subclass 457) sponsors – this declaration sends an important message to sponsors and a warning that sponsors who fail in this regard may lose their right to sponsor;
- arrangements for monitoring employer compliance with their training

commitments and plans as part of overall sponsorship monitoring. These arrangements should be developed by DIMIA in consultation with DEWR and DEST;

- evidence of any of the employer options outlined above could be lodged electronically based on guidance from DEWR;
- where it is found, for example, that a sponsor has not implemented the training plans on which basis the sponsorship was approved, the sponsorship could be cancelled (as well as the associated visa(s));
- sanctions for sponsors who fail to demonstrate a commitment to training Australians:
 - sponsors who fail to provide one of the above forms of evidence of their commitment to training Australians should not be approved as a sponsor;
 - where a sponsor provides information about their training plans and records, their sponsorship may be approved by DIMIA but if DEWR subsequently determines that the information provided does not demonstrate an appropriate commitment to training and advised DIMIA of this, this would be grounds for refusing a further sponsorship from that company;
 - consideration could also be given to prohibiting sponsors who fail to demonstrate a commitment to train Australian workers from sponsoring visa applicants for a set period. In order to facilitate greater transparency in the operation of such a ban a list of prohibited organisations could be gazetted. Sponsor sanctions are further discussed in Chapter 4.

2.50 In order to ensure that sponsor responsibilities in relation to training Australians are treated seriously by employers, it is appropriate that

arrangements for all visas that require sponsors to demonstrate a commitment to training Australians be accompanied by the following measures:

- a sponsor declaration in relation to training Australians on the sponsor application form; and
- sanctions for sponsors who fail to demonstrate their commitment.

2.51 In addition, it would be appropriate to review the arrangements introduced relatively soon after their introduction, say after six months, to evaluate their effectiveness and to consider possible further reforms, for example, the introduction of a training charge.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

2.52 In order to ensure that the entry of overseas workers does not undermine the pay and working conditions of Australian workers, overseas temporary workers are not permitted to be employed for wages or working conditions that are lower than those which apply to Australian workers. Many occupations have award structures and employers are obliged to pay their workers – whether they are local workers or overseas temporary resident workers – no less than the award rate.

2.53 In some cases this requirement is part of sponsorship undertakings. This allows DIMIA to refuse a sponsorship if it is clear that the sponsor does not intend to do this. In addition, a sponsorship can be cancelled if it becomes apparent that a sponsor has breached this undertaking. Future sponsorship applications could then be refused on this basis.

2.54 For some visas that have formal labour market testing that requires a position to be advertised in the local market, the position must be advertised at Australian

wages and conditions – if it is not, the labour market testing requirement will not be met and the sponsorship/visa application will be refused.

2.55 However, DIMIA officers are not experts on awards and DIMIA does not have responsibility for monitoring industrial award matters. The enforcement of industrial relations matters is left to the State and Commonwealth industrial relations bodies that have responsibility in this area. To this end DIMIA refers cases of possible breach of award rates for investigation where information about the salary paid suggests that it could be under the award level and where allegations are made that below award rates are being paid. Any breach of an award is considered a breach of sponsorship undertakings and where industrial relations agencies advise DIMIA that an award has been breached, DIMIA may cancel the sponsorship (and associated visa applications) and may refuse future sponsorship applications as a result.

2.56 These arrangements operate to ensure that the employment of overseas workers at below-award rates is not permitted and therefore that the conditions of Australian workers are not undermined by the entry of overseas workers. They also protect overseas residents from exploitation by local employers who may take advantage of the relative vulnerability of overseas workers who may not have good English, who may not understand local working arrangements and who may not have contacts in the community to provide them with advice.

2.57 However, these arrangements could be viewed as having a number of weaknesses.

- They are not comprehensive across all temporary residence visas.
- The sponsor can undertake to DIMIA to pay the overseas worker a particular salary under particular working conditions, in order to have their

sponsorship/nomination approved, but then agree with the employee to pay them a lower salary. Workers from developing countries are particularly vulnerable to this type of exploitation as the lower salary may still be considerably more than they would be able to earn in their home country. The separation of the sponsorship from the visa application process ‘conspires’ to support this practice.

- Arrangements for sanctions for employers who do not pay Australian wages and salaries are limited. The only power DIMIA has in relation to enforcing Australian salaries and working conditions is in relation to the approval and cancellation of sponsorships (and associated visas) – where an employer breaches their undertakings to pay Australian wages, DIMIA has no legal sanction to enforce the industrial relations law. It can, and does, refer the matter to the relevant industrial relations agency which handles matters of industrial law, when the case is brought to its attention.
- Industrial relations bodies have responsibility for monitoring compliance with industrial relations laws, for both Australian and overseas workers. But they are not necessarily in a position to be aware of which companies are employing overseas workers, who may be more vulnerable to exploitation. Occasional cases are brought to their attention but there may be other cases that go undetected. Improved information links between DIMIA and industrial relations bodies would assist them to monitor overseas workers better. They would then be in a position to undertake appropriate monitoring of compliance with industrial relations laws.

2.58 Temporary residence arrangements in this respect could be improved by the following approaches:

- the requirement for sponsors of employees to sign an undertaking that they will treat their overseas worker(s) in accordance with Australian pay and conditions should be extended to all employers of temporary overseas workers;
- all sponsors should be made more clearly aware that if they breach this undertaking, they can have their sponsorship cancelled so that they cannot sponsor any more overseas workers and any visas already granted under that sponsorship may be subject to cancellation.
- all sponsors should be required to provide details of the pay and conditions of the position not only to DIMIA but also to the proposed employee;
- employees should be made aware of their rights in relation to these matters and the remedies for breach of these undertakings (ie who to contact);
- DIMIA should provide the details for each approved position to the relevant industrial relations body;
- DIMIA should continue to alert the relevant industrial relations body of any breaches of these undertakings that come to its attention;
- arrangements should be put in place for the industrial relations bodies to advise DIMIA of sponsors who breach these undertakings and this information would be taken into account in considering future sponsorship and visa applications from that employer.

2.59 This Review makes a number of recommendations to this end – Chapter 4 discusses proposed sponsorship arrangements further.

NO NET COST TO THE AUSTRALIAN COMMUNITY

2.60 It is an underlying principle of temporary residence policy that sponsors and employers should be able to bring overseas

workers to Australia to work for them temporarily, for example, to meet skill shortages, without there being costs to the Australian community. The mechanisms for ensuring that the sponsor or employer bears any costs associated with that person being in Australia, including costs that are not incurred with Australian workers, like medical costs which are covered by Medicare, are the sponsorship mechanisms. Briefly, the sponsorship arrangements involve:

- requiring sponsors to sign a series of undertakings in relation to overseas employees;
- making those undertakings clear to sponsors;
- monitoring compliance with undertakings; and
- a range of sponsor sanctions where undertakings are breached.

2.61 The arrangements are designed to ensure that the sponsors and employers who benefit most from bringing in the overseas workers bear the costs associated with those workers. Given the importance of sponsorship, sponsorship arrangements and issues are discussed separately in detail in Chapter 4.

IMMIGRATION INTEGRITY

2.62 Immigration integrity is a fundamental part of DIMIA's role (see paragraph 1.35). The integrity of the temporary residence program is met if the policy settings and visa processes ensure that persons who are not intended to be granted visas are not granted visas. While the Terms of Reference for this Review focus on achieving more standardisation, simplification of requirements and processes, and greater efficiency, these must be achieved while retaining program integrity. Stakeholders recognise this:

There is much room for modifying the existing criteria and conditions to allow simplification of the visa class structure. But this should not be done at the expense of the structure's integrity. (Submission from The Australian Lebanese Christian Federation Inc) and

We are supportive of changes that will help speed up the process of assessing applications but not at the expense of what we regard as being an appropriate level of rigour being applied to the assessment of individual applications. (Submission from The Association of Professional Engineers, Scientists & Managers, Australia)

2.63 Specifically, there are two issues that need to be considered in relation to immigration integrity:

- whether visa applicants are bona fide in their stated intentions (ie, they are honest in what they say in their visa application in relation to the period of their intended stay, their intended activities, for example, whether they intend to work or not, etc). This requires that there be appropriate arrangements in place for assessing the bona fides of visa applicants and identifying genuine documentation and claims; and
- whether there are temporary residents who would like to remain in Australia permanently but who do not meet the requirements for a permanent visa and who therefore prolong their stay in Australia on a series of temporary visas. This requires that the temporary residence program is a genuine temporary program that addresses temporary shortages of skilled workers, that is, it is not an avenue to de facto permanent residence.

2.64 These are discussed in turn below.

Bona Fides of Visa Applicants

2.65 Once the policy settings for temporary residence are in place, there is still a need to ensure program integrity with respect to individual visa applicants. There is a need to check whether claims made are true and documentation provided is genuine and whether visa applicants are bona fide in their intentions, that is they really intend to do what they say they intend to do.

2.66 The issue of fraudulent documentation and validating claims is the same for temporary resident visas as for permanent visas. It is not possible to check every claim and every piece of documentation for its authenticity because of the cost and delay in doing so. In addition, it is often not possible to check a person's intentions except by their subsequent actions. Therefore a risk management approach (consistent with DIMIA's strategic plan) is taken involving:

- developed expertise in relation to incidence and type of fraudulent documentation and claims, including specialised local knowledge;
- legislative provisions that enable a visa to be cancelled if it was obtained as a result of misrepresentation or fraudulent claims.

2.67 An additional complication for temporary resident applications is the pressure to resolve them more quickly than permanent visa applications. Often a sponsor will claim they need a visa applicant urgently to undertake an important task urgently. This creates significant challenges in a risk management environment.

2.68 It is often difficult to assess an applicant's intentions because it is only after they have come to Australia and done what they claimed they intended to do, that their bona fides can be proven. In some cases

they may have genuine intentions, but circumstances change so that they need to stay longer or need to work for a different employer. This does not mean that they were not bona fide in their stated intentions.

2.69 In the visa context, bona fides are assessed on a number of factors, including any past behaviour of the visa applicant in terms of their compliance with immigration (and other) law and consistency of claims and intentions. If there is no reason to believe that an applicant is not genuine, it is policy to assume that a person is genuine. In addition certain visitor visa applicants will be affected by risk factor profiles. These profiles are based on quantitative data that indicate that persons who match the age, sex and nationality profile are more likely to overstay. Applicants are not refused on the basis that they match a profile though they will be required to satisfy a higher level of proof that their intention to only visit Australia is genuine. In such cases applicants will be required to provide documentary evidence to verify their claims.

2.70 Cancellation powers exist where false information is given or where circumstances change and the visa applicant does not notify DIMIA. These arrangements balance the need to send a clear message to applicants that they are expected to be truthful in their application and claims and honest about their true intentions, with the need to give applicants the benefit of the doubt where no adverse information exists.

Substantial Compliance with Conditions

2.71 Other criteria that support visa applicant integrity assessment require the applicant to have complied substantially with all the conditions on their current or last visa and for the decision maker to be satisfied that the applicant intends to abide by any

conditions to which this visa is granted. Under policy these criteria are considered satisfied unless there is evidence to the contrary. Therefore they do not involve much additional processing effort, yet provide clear criteria to consider and base a visa refusal decision on, where the applicant has breached previous visa conditions or where there is evidence to suggest that they will do so in the future.

- 2.72 Notwithstanding some difficulties in making judgements about future intentions of visa applicants, DIMIA decision makers support the retention of these criteria and consider that they should be standard for all temporary residence visas. Indeed the absence of these criteria for certain visas does not appear to be intentional or to reflect any particular policy objective.

There is no apparent reason why both these criteria should not be a standard requirement for all the temporary residence visas. (Submission from CSIRO)

- 2.73 It was also suggested that the policy regarding compliance with previous or current visa conditions could be clarified to make it clear that the criteria relates to the last 'substantive visa' held (eg visitor visa or student visa) as well as any intervening 'bridging visa'.

2.74 **RECOMMENDATION:**
That a standard criterion regarding compliance with previous visa conditions and intention to comply with any conditions attached to the visa be introduced for those temporary residence visas where it is currently omitted.

'No Further Stay' Condition

- 2.75 Certain bona fides concerns about particular applicants can also be addressed by imposing the 'no further stay' condition

on a visa. This condition prevents the visa holder from applying for any other visa (except a protection visa) while they remain in Australia. It allows an applicant to be granted a visa where the decision maker considers they meet the criteria for the visa and do not intend to breach any of the visa conditions but has serious concerns about their intentions to seek to extend their period of stay or to change status to another visa once in Australia. This visa condition is not intended as a substitute for refusing a visa to an applicant who does not satisfy DIMIA that they are a genuine in their stated intentions.

- 2.76 This condition needs to be used with caution because if the applicant's circumstances change after arrival in Australia they cannot apply for a further visa onshore and will generally need to travel offshore in order to apply for their required visa. There is provision to waive this condition but the circumstances under which it can be waived are limited.

The imposition of "no further stay" may cause inordinate expenditure of time and effort when there is a change of circumstances during the final period of the visa which may invalidate the original reason for the decision. (Submission from Paul Ingle and Associates)

- 2.77 This condition is currently a discretionary visa condition for all of the temporary residence visas in this Review except the Business (long stay) visa. This appears appropriate given that the inclusion of such a condition would be inconsistent with the streamlined arrangements of the temporary business visa.

Warnings on Forms

- 2.78 Another measure to maintain the integrity of the temporary residence program which

was suggested during consultations on this Review is to include warnings on application forms, that documentation and claims made in application forms will be verified. This measure is seen as particularly useful in high risk posts where it is seen as a means of reducing the level of fraudulent documentation being lodged.

The Temporary Residence Program is Genuinely Temporary

2.79 Traditionally the focus of public policy and scrutiny has been on the level and nature of permanent migration – the annual migration program (for permanent visas) is determined after a lengthy process of public consultation and Government consideration and is then subject to intense public scrutiny. Relatively little attention has been paid to the level and nature of temporary movements. This reflected the traditionally low levels of temporary movement.

2.80 However, over recent years, the level of temporary movement has risen. As a result, temporary resident movements now far outweigh the levels of permanent migration. Around 160,000 temporary resident visas were granted in 2000-01 (this includes around 75,000 working holiday visas which are not the subject of this Review). There were also around 125,000 short stay business visitors to Australia in 2000-01 – although this visa is part of the Visitor Program it is included in this Review.

2.81 The increase in temporary movements reflects a number of developments including an increasingly mobile labour market, increasing internationalisation of

economic activity and decreasing relative costs of international travel. With increasing globalisation, it can be expected that short and medium term movement for work and other business purposes will continue to increase. (See Table 2).

2.82 This has led to some suggestions that Australia is beginning to develop a guest worker regime similar to those operated in some other countries. However, Australia’s temporary resident program is very different from such guest worker arrangements:

- Australia’s temporary resident program focuses on skilled employees and persons with specialist abilities and attributes. There is almost no provision for unskilled workers (outside of the working holiday and student arrangements). On the other hand, guest worker arrangements tend to focus on unskilled work that local employees are unwilling to do.
- Australian employers must pay overseas temporary workers the same pay and employ them under the same conditions as Australian workers. Under guest worker arrangements overseas, workers do not have all the protections available to local workers.
- Overseas workers who qualify for a temporary resident visa may bring their dependants – their spouse and children – with them to Australia, for the duration of their stay.
- Their dependants are usually given full permission to work and study.
- There are provisions for temporary residents to change their status onshore to another temporary resident visa or a permanent visa, provided they meet the requirements for the visa. Many

TABLE 2: TEMPORARY MOVEMENTS

	1995-96	1996-97	1998-99	1999-2000	2000-01
Permanent (non-humanitarian) migration program	82,500	73,900	67,900	70,200	80,610
Temporary residents (Includes working holiday visas but excludes Business Short Stay (subclass 456) visas)	83,068	113,736	136,308	151,625	160,157

temporary residents would be eligible to apply for permanent visas – as skilled temporary residents they would generally meet the requirements for an equivalent permanent visa – provided an Australian employer offers them a permanent position.

- The Australian government does not discourage people from seeking permanent over temporary visas, either initially or after arrival.

2.83 Notwithstanding that the Australian temporary residence program is very different from guest worker arrangements, there is a need to guard against any potential growth in the stock of long-term temporary entrants who may have only limited opportunities to meet permanent resident criteria. This is especially important as the size of the program continues to increase. It will be important to ensure that none of the features of guest worker arrangements are allowed to develop in Australia's temporary residence arrangements. In this respect this Review examined three issues:

- maximum periods of stay on temporary resident visas;
- keeping pathways for permanent residence clear and accessible;
- ensuring that persons who are unlikely to be eligible for a permanent visa do not seek to obtain de facto permanent residence through ongoing extensions of their temporary visas.

- ***Initial period of stay allowed on temporary residence visas***

2.84 The standard period for a temporary residence visa currently varies:

- up to four years stay for temporary business entry (long stay) (subclass 457);
- up to three months for temporary business entry (short stay) (subclass 456); and
- up to two years stay for other temporary

resident visas, or a shorter period reflecting for example, the period of the sponsorship. There are some exceptions:

- the Foreign Government Agency visa (subclass 415), which allow for up to four years stay;
- the Educational visa (subclass 418), which allow for up to four years stay in some cases;
- the Special Program (subclass 416) and Family Relationship (subclass 425) visas which are granted for up to twelve months.

2.85 Comments made during consultations about these initial periods suggest that they are generally supported as broadly appropriate for their purposes.

2.86 However one issue that arose was that under current processing practices, there are cases where a visa is granted for a period longer the period required for the stated intention – the period granted is sometimes the full period allowed under that visa. This is not appropriate. There should be a link between the period of stay sought under the sponsorship and the period of stay granted. Unless there is a sound reason to vary the period, it is proposed to adopt the general principle of granting a visa for the period of stay sought (within the maximum period for that visa), to allow sufficient time to undertake the intended purpose. It would also be appropriate to add a short period to the period sought, say one month (but possibly shorter, depending on the length of the visa), to cover most contingencies without requiring the visa holder to seek a further visa. Where there is a sponsorship, the sponsorship would need to cover this additional period and this would be made clear to sponsors as part of the approval process. The one exception to this approach would be for the business visitor (subclass 456) visa which should be granted for a period of stay of three months (unless there

are concerns about the application which lead to the grant of a single entry visa for the period requested only).

2.87 *RECOMMENDATION:*

That the period of stay granted should correspond with the period of stay sought (plus up to one month as appropriate), up to the maximum period allowable for the particular visa.

• **Maximum periods of temporary stay – visa ‘extensions’**

2.88 Many persons who enter Australia on temporary resident visas stay a relatively short period of time. However a small number stay for a long period. Under current arrangements, temporary residents are permitted to extend their temporary residence indefinitely, provided they continue to meet the criteria for successive visas. In some cases, it can become more difficult to meet the criteria the longer the period of stay, but there is no fixed bar after a certain period of stay. Occasionally there have been instances of temporary residents remaining in Australia for 6-8-10 years and some stakeholders consider this is inappropriately long period of stay for a temporary resident.

2.89 On the other hand, temporary resident visas are granted on the basis that they benefit Australia by contributing to the economic, cultural or community life of Australia or Australia’s international relations objectives. The policy settings for each visa should ensure that only those visa applicants who benefit Australia are eligible for a temporary residence visas. If temporary residents are covered by a sponsorship, are not taking a job that could be done by an Australian and are benefiting Australia, then the period of total stay may not be an issue for policy concern. The reassessment of the visa applicant at the time of their applying for a further visa provides an opportunity to assess them against current requirements

and ensure that Australia is benefiting from their continued stay.

- 2.90 A maximum time limit might even be detrimental to Australia, for example, it could result in a skilled and critical position becoming vacant where there was no suitable Australian employee and the overseas employee had reached their maximum time limit. It could be viewed as arbitrary – it would be difficult to decide what the appropriate maximum should be and pressure to adjust it at the margin. In addition, the introduction of maximum time limits would add considerably to the complexity of the visa requirements, and would require decisions to be made about a range of policy matters including:
- the total period of stay allowed;
 - the basis for any exceptions;
 - which visas would ‘count’ for this purpose (for example, would periods on student visas also be included in the maximum period?); and
 - the ‘exclusion’ period before the person could return to Australia again.

- 2.91 Submissions to the Review were not generally supportive of a maximum time limit for temporary residents:

Fully agree that there is little point in losing benefit to Australia simply to satisfy an arbitrary ruling on maximum stay. To introduce a rule and provide for exemptions and appeal unnecessarily complicates the issue. In all cases extensions should be assessed on the same merit as the original applications are required to fulfil. (Submission from Paul Ingle & Associates)

An arbitrary maximum length of temporary stay may be more likely to prejudice those visa holders who continue to apply for the appropriate temporary visa. An artificial maximum length of temporary stay may also lead

applicants to engineer their qualification for a further visa, perhaps by a short period offshore. (Submission from AMIS Consultants Pty Limited)

2.92 In summary:

- there is no evidence of widespread “over-use” of temporary residence provisions;
- imposition of a maximum time limit would be administratively complex;
- such a time limit could create longer processing times and a perception of an opaque and needlessly complicated regime among clients, which would run counter to the thrust of this Review.

2.93 It is important that overseas workers understand that the expectation is that temporary residence visas only be used for temporary stay purposes, even though there will continue to be provision for persons to extend their stay beyond one temporary residence visa and there is scope to move to permanent visas. There is scope for departmental information on temporary residence visas to make this clearer. It would reinforce Temporary Residence policy objectives for client information to make it clearer that temporary residence visas are for temporary purposes only.

- **Processing of onshore extensions**

2.94 Where an extension of stay is sought by someone in Australia already holding a particular temporary residence visa, a fresh visa decision must be made. The current policy situation which is based on the assumption that applicants meet the visa criteria again in the absence of adverse information has given rise to the expectation of automatic “roll-over” of visas. This is not desirable. It might be more appropriate to have streamlined processing arrangements provided for in the processing guidelines rather than in regulatory criteria for the visa, so that appropriate flexibility is retained for the

decision maker to undertake whatever inquiries they consider reasonable to satisfy themselves that the person continues to meet all the criteria for that visa. Any minor extension of processing times would not disadvantage applicants or sponsors because the applicants would remain in Australia without loss of previous work rights or other visa entitlements.

2.95 The criterion for most temporary resident visas which provides for streamlined processing for onshore extensions could undermine appropriate processing of onshore extensions and conflict with the policy directions in relation to persons extending their visas.

2.96 **RECOMMENDATION:**

That when extensions of stay are sought by applicants in Australia they be required to demonstrate that they meet the criteria for the grant of a visa (reversing the onus of proof that currently exists under the Regulations).

- **Pathways to permanent residence**

2.97 Another key element of Australia’s temporary residence program is that temporary residents can apply for permanent visas should they wish to do so. If their temporary residence visa ceases they may remain in Australia during the processing of their permanent visa application. The main situation where this would arise is in relation to skilled temporary workers who would meet the requirements for a permanent visa on the basis of employment in their skilled occupation. It should also be recognised that in the global labour market permanent stay is not always an attractive option for highly skilled, highly mobile people. It is however important that the pathways to permanent residence for these skilled workers are clear (eg in client information) and accessible, so that Australia can retain

such workers permanently if possible. Where there are impediments to change of status, these need to be reviewed to consider whether they remain appropriate. In this respect the Government has over recent years steadily modified the legislation so that overseas students in Australia can more readily apply for permanent skilled visas onshore. This represents a significant change in the policy governing change of status onshore and a move away from the view that skilled permanent residence visas should be applied for overseas.

HEALTH AND CHARACTER ISSUES

Risks to Public Health

- 2.98 There may be a risk to the public health of the Australian community associated with the entry of people from overseas countries, especially in relation to the risk of tuberculosis, a highly contagious disease, which has been declared a global emergency and an epidemic by the World Health Organization. It is the biggest killer of adults in the developing world, but has been managed to very low levels in Australia for over a decade. Other health conditions and communicable diseases, like hepatitis, that are of concern in terms of the burden they place on health and welfare treatment and support resources.
- 2.99 All applicants are required to meet health requirements. It is the way of assessing whether an applicant meets the health requirement that differs among visa types. Applicants for visitor visas, for example, are generally considered to satisfy this requirement through a health declaration; applicants for permanent migration are required to undertake a full medical and X-ray examination. It would not be feasible to require every visitor, overseas student, and short term resident to undergo a complete medical check, but arrangements are in place to minimise the risks. Under these arrangements there are different processing requirements depending on the period of intended stay and the type of temporary resident visa. This reflects a number of factors including relative risks associated with different activities and different periods of stay, the need to ensure fast processing for visitors and temporary residents who intend a short stay and the need to provide a high standard of protection for the community in certain circumstances.
- 2.100 These arrangements include particular requirements for persons who may be in close contact with others, for example, persons who will be in a classroom situation or working in a hospital environment. The processing arrangements also give due regard to the relative risks of some source countries relative to others, particularly in relation to tuberculosis.
- 2.101 In terms of temporary residence, there has been a differentiation made between business temporary entry and other forms of temporary residence. Streamlined health processing arrangements for temporary business (subclass 457) entrants were introduced in 1996 following the Roach Review in response to calls from business for faster processing of visa applicants. This visa accounts for a large proportion of the total temporary residence visa grants (that are the subject of this Review). Consideration was not given to extending these arrangements to the other temporary resident visas that were not part of the Roach Review.
- 2.102 The rationale for streamlined processing for business entry is clear:
- Business entrants are sponsored by companies who must sign sponsorship undertakings (see Chapter 4) to cover any health costs incurred by the employees they sponsor;

- Such companies are expected to be in a financial position to cover such costs, or have arrangements in place to cover such costs, should they occur;
- Where an applicant fails to meet the health requirement but there is no risk to public health, there are provisions to allow companies to guarantee to meet any medical costs. Such a guarantee would enable entry to take place notwithstanding the applicant or a family member having certain medical conditions.
- Business entrants would not, in the normal course of carrying out their business, be in situations of special health significance as described above.

2.103 None of these aspects of business entry apply to the other forms of temporary residence under review:

- there is no expectation that sponsors of other temporary residents would have the means to guarantee to meet any medical costs;
- situations of special significance may arise for many of the other visas applicants.
- many sponsors of other temporary residents are not in an employer-employee relationship and would not be willing to take on responsibility for unknown health and medical costs under a streamlined health processing regime.
- only a very small proportion of the other temporary residence visas are granted for period of more than twelve months and so are subject to the mandatory health checking procedures.

2.104 The Review of Health Processing of Temporary Entrants recommended a clean sweep of procedures for health processing of temporary visas applicants. The main outcome of the Health Review was to introduce a framework of requirements that were based on internationally available

data on health risks (predominantly the incidence rates for tuberculosis provided by the World Health Organisation) and stratified by the period of intended stay of applicants.

2.105 The new health-examination framework was introduced on 1 July 2001 (see Appendix H). It divides countries into four levels of tuberculosis risk (low, medium, high or very high) according to the country's incidence rate of tuberculosis. The requirements for each level of tuberculosis risk are divided further by the applicant's intended length of stay (up to and including three months; greater than three months, up to and including 12 months; and stays of more than 12 months). The routine health processing is determined on these bases, but for any reason, at the discretion of the visa officer, may include formal examination.

2.106 Other outcomes of the Health Review dealt with strengthening the health declaration, increased requirements in high and very high risk environments but decreased processing for low and medium risk environments and some changes to special significance' arrangements. Streamlined arrangements for temporary business (subclass 457) entrants are largely retained, with two changes:

- applicants from low risk countries no longer need to undergo a chest X-ray no matter how long a stay (previously they were required to obtain one if they intended to stay more than 12 months); and
- applicants from very high risk countries are now required to have a chest X-ray if they intend to stay more than 3 months (previously they were only required to obtain one if they intended to stay more than 12 months, regardless of the health profiles of their country of origin).

2.107 In the interests of simplicity and consistency, the issue of extending the current streamlined health processing arrangements to other temporary resident visas could still be considered, subject to the findings of the recent Health Review and other public policy considerations that would need to be addressed. The streamlined health processing arrangements currently available for temporary business entrants enables faster entry to the benefit of Australian business and applicants and consideration could be given to extending it to other temporary resident visas if the risk to the Australian community including taxpayers is low. Implications for Medicare expenditure flowing from reciprocal health care agreements would also need to be taken into consideration in this context.

2.108 Health requirements could also be simplified by removing differences between the requirements of 'main' applicants and secondary applicants unless this meets an identified policy objective (eg one family member intends undertaking an activity of 'special significance' as described in Appendix H. Standardising requirements where there is no clear policy reason for variation should further enhance the new health-examination framework by making it simpler to administer and providing more consistent outcomes for families. In determining what requirements are appropriate consideration could also be given to whether a 'one fails all fail' requirement (as currently exists in relation to permanent entry visas) would be appropriate.

Risks to Public Safety

2.109 The immigration process also needs to ensure that the entry of people from overseas does not pose a danger to the Australian community in terms of criminal or dangerous activity or a risk to Australian

national security. All temporary residents are required to meet the same criteria in respect of these 'character' tests. However, it would not be feasible to require every visitor, overseas student, and short term resident to undergo a complete character clearance, involving police checks from every country they have lived or visited. Therefore arrangements are in place to minimise the risks. Under current processing arrangements for assessing the character criteria for temporary residents, there are different processing arrangements for temporary business entrants from other temporary residents:

- for temporary business entrants (subclass 457) and occupational trainee visas (subclass 442) penal clearances are only required if there is some indication that such checks are warranted;
- for other temporary residents who intend to stay over twelve months, these checks are mandatory for all countries where the visa applicant has spent more than twelve months in the previous 10 years.

2.110 The character processing arrangements for temporary business entrants were introduced in 1996 following the Roach Review in response to calls from business for faster processing of visa applicants. Removal of the requirement for mandatory penal checks meant that the processing of these applications is not delayed while penal checking, which can be quite lengthy in some countries, is done. At the time that those streamlined arrangements were introduced, consideration was not given to extending these arrangements to the other temporary resident visas because other visas were not part of the Review.

2.111 As a result there are anomalous arrangements for stays over twelve months whereby different character checking procedures apply according to the temporary resident visa applied for, for

example:

- teachers in a tertiary institution who use the Educational (subclass 418) visa must have mandatory character checking if they intend to stay in Australia for more than 12 months whereas teachers who use the temporary business (subclass 457) visa arrangements do not;
- skilled workers entering under the Exchange (subclass 411) visa must have mandatory character checks if they intend to stay more than 12 months but skilled workers entering under the temporary business (subclass 457) visa arrangements do not.

2.112 While there has not been the same pressure for faster processing for these other visas as there was for the business visas, these clients are likely to be just as eager to have their processing completed as smooth and quick as possible. Comments in submissions to the Review indicated that anything that will reduce the processing delay will be welcomed. From a policy viewpoint this inconsistency should only be retained if it supports a clear policy objective.

2.113 There are grounds for considering extending the current streamlined character processing arrangements to other temporary resident visas, subject to other public policy considerations that may need to be addressed. The streamlined character

checking currently available for temporary business entrants enables faster entry to the benefit of Australian business and applicants and consideration could be given to introducing some streamlined processing arrangements for the other temporary resident visas if the risk to the Australian community is low.

CONCLUSION

2.114 This chapter sets out the ways in which temporary residence achieves the policy objective of benefit to Australia against the five identified policy parameters. This Review has concluded that some of the current arrangements for meeting the temporary residence policy constraints and for maximising efficiency work reasonably well and do not need to be changed while others are not working as well and could benefit from either refinement or be replaced by alternative approaches.

2.115 The policy features discussed in this chapter clearly represent an ideal model that may not be able to be achieved in all aspects for all visas. However they represent the principles that are fundamental to temporary residence policy. The way in which administrative arrangements should be developed to give effect to this policy are discussed in the next chapter. More specific recommendations are included in the visa-specific chapters of the report.