

CHAPTER 5 – ECONOMIC STREAM: TEMPORARY BUSINESS ENTRY (LONG STAY)

BACKGROUND

Introduction of the Current Temporary Business Entry Visas

5.1 The temporary business entry (long stay) (subclass 457) visa came about as a result of the Review into the Temporary Entry of Business People and Highly Skilled Specialists in 1995. Following that review, the business and specialist visas were restructured into two visas:

- a visa for short stay (up to three months) – designed for short business visits and limited to work that cannot be carried out by an Australian. This is the subclass 456 visa, referred to as the short stay business visa (and subsequently the Electronic Travel Authority (ETA) its electronic equivalent). These are discussed in Chapter 6 – Economic Stream – Arrangements for Short Visits for Business Purposes. This visa was introduced in November 1995; and
- a visa which can be used for longer stays in Australia (up to four years), for the purpose of sponsored employment and a range of business activities (the subclass 457 visa, referred to as the long stay business visa). This visa was introduced in August 1996.

5.2 The arrangements introduced for this visa had a number of features designed to:

- provide effectively for the full range of temporary business activities for skilled and key personnel, including managers and executives;
- streamline processing for key personnel;
- retain flexible and prompt processing arrangements for business visitors (ie, short stay); and
- retain the integrity of temporary business entry policy.

5.3 While the long stay business visa is a relatively new visa, its operation has been closely monitored by the Business Advisory Panel. There has been wide praise of the policy settings for this visa in its first few years of operation and it is regarded by business as a clear improvement on the visa arrangements for business persons that operated previously. Comments made by stakeholders in the context of this review supported the visa as an improved model for business visas.

5.4 However, since the introduction of this visa, there have been a number of important developments, including the introduction of electronic visa arrangements for visitor and business short stay purposes. The speed and ease of processing these electronic visas contrasts significantly with the speed and ease for other temporary visas and has led to some people using those electronic visas for purposes for which they were not intended. In stakeholder comments in this review, speed of processing was clearly a major area of interest for this visa and submissions noted the significant costs to their organisations of delays in processing:

The major issue with any visa, but especially for short terms, is the speed of obtaining the visa. (Submission from the National Australia Bank)

The target processing time of 6-8 weeks for processing SBS and Nomination is rarely met and if one adds on processing time at overseas posts, it often takes 3-6 months for a Subclass 457 Visa to be issued...A delay of 6 months in the arrival of a key employee is not acceptable to most employers. The system needs to be revised... (Submission from Gilton Business Consultants)

5.5 It is timely to review the temporary business visa arrangements, drawing on the first four years of their operation, and consider their applicability or otherwise to other visas in the Temporary Residence Program.

Review by the Business Advisory Panel

5.6 The Business Advisory Panel (BAP) considered this visa as part of a broader review of all business entry programs (temporary and permanent) conducted in 1998-99. The BAP comprises nine senior business people from sectors that constitute a significant proportion of DIMIA's business clientele. That review was set up to examine the current policy settings and procedures for business visas to achieve better outcomes in terms of attracting good quality people, without compromising the integrity of the current processes.

5.7 The report of that review: "Business Entry in a Global Economy – Maximising the Benefits", made a number of recommendations in relation to temporary business entry, including measures to improve integrity and to address concerns about apparent abuse. For example, it recommended allowing a decision-maker to request that an applicant provide evidence of their claimed skills, where there are reasons to doubt the claims, in a larger range of cases than previously provided for. These changes were implemented in July 2000 and have been well received:

We would like to highly commend the 456 and 457 Business visa application and approval process. It has greatly assisted our business, and our country, to gain access to many specialised overseas IT Specialists that we would not been able to get into the country had the old cumbersome procedure still been in place. (Submission from cXc Downunder)

Current Arrangements

5.8 The long stay business visa provides for a range of business and sponsored employment purposes including:

- overseas personnel to be sponsored by an Australian, for a position in Australia
- overseas personnel to be sponsored by an overseas company, for a position in Australia
- persons covered by an industry agreement,
- persons intending to set up a regional headquarters of an overseas organisation,
- persons intending to develop a business in Australia, known as 'independent executives',
- service sellers, and
- persons accorded certain privileges and immunities (not covered by the Diplomatic visa arrangements).

5.9 The remainder of this chapter discusses the appropriate visa arrangements to meet the first four of these purposes in more detail. However, the last groups of applicants are not discussed further for the following reasons:

- The Independent Executive category is currently being reformed in line with broader changes to the Business Skills category. A Discussion Paper "Improving the Performance of Business Skills Migrants" has been circulated to key external stakeholders for comment as part of a wide ranging consultation process.
- The provisions for service sellers give effect to Australia's obligations under the General Agreement on Trade in Services (GATS), which require Australia to provide for the entry of service sellers for periods of six months and with no impediments to entry. These provisions allow service sellers to enter Australia for the purposes of negotiating or entering into agreements for the sale of

services, but not for the actual supply or direct sale of services. For example, a representative of a software manufacturer may enter Australia to attend trade fairs and to negotiate agreements for software retailers to sell their product in the Australian market. Currently there are very few visas granted on these grounds (around 9 in 2000-01). Given that these provisions exist to meet Australia's international obligations under the GATS the question of whether they would be better placed in the International Relations Stream has been considered. It does, however, appear that these provisions are currently well placed in the business visa provisions in that the activities of service sellers are entirely business related and there is little to distinguish service sellers from other temporary business entrants. As the period of stay to be provided for can be up to six months and no concerns have been raised with the current use of the long stay business visa for this purpose, it is recommended that these provisions remain in the long stay business visa.

- The provisions for persons to be granted certain privileges and immunities are discussed in Chapter 14 – International Relations Stream. Under those proposals, these provisions would be removed from the long stay business visa and combined with other like provisions.
- 5.10 The arrangements for the long stay business visa which were introduced in 1996 had a number of features designed to provide streamlined processing:
- a pre-qualified business sponsor status, that allows such sponsors to by-pass the sponsorship part of processing once such status is obtained;
 - a 'key activity' concept – positions assessed as satisfying the key activity criteria were not subject to labour market testing;
 - increased undertakings on sponsors;
- streamlined health and character processing; and
 - a monitoring regime for applicants and sponsors, to replace exhaustive checks of all sponsors and applicants before visa grant.
- 5.11 In addition, the arrangements included a range of mechanisms designed to protect employment and training opportunities for Australian citizens and permanent residents including the use of industry and regional headquarter agreements, labour market testing arrangements, skills assessment and sponsorship requirements.
- 5.12 The visa processing involves three separate stages:
- i. the employer must be approved as a sponsor (either a standard or a pre-qualified sponsor);
 - ii. the position must be approved as a nominated position; and
 - iii. the applicant must be approved as a suitable person for that position and must meet other visa requirements (for example health and character requirements).
- 5.13 This three-stage process was implemented for a number of reasons, predominantly to allow for separate review rights for the different stages of processing and the different parties to the process.
- 5.14 Following consideration of the issues raised by stakeholders, some of the changes to these visa arrangements proposed in this Review were implemented on 1 July 2001, in particular the introduction of a skill and salary threshold to replace the 'key'/'non-key' concept. The early implementation of these changes reflected the need to move quickly, rather than wait for the implementation of all the other outcomes of this Review, to address concerns raised about the use of this visa by unskilled workers. The changes should also result in faster processing of these visas. They are

therefore timely in addressing at an early stage calls for faster processing for this, the largest temporary residence visa group.

Growth in Temporary Residence for Business Purposes

5.15 Following the introduction of the business visa arrangements in 1996, the number of visas granted for long stay purposes (subclass 457) increased significantly above the numbers of visas previously granted for these purposes. That is, from less than

23,000 in 1994-95 (the year before this visa was introduced) to almost 40,500 in 2000-01. (See Table 4).

5.16 A wide range of industries and occupations use this visa. The communications sector (including information technology) and the manufacturing sector are significantly represented in the use of this visa. Managers and ICT professionals represent about half of the total usage. The following tables show visa grants by major industry

TABLE 4: GRANTS OF TEMPORARY BUSINESS (LONG STAY) (SUBCLASS 457) VISAS

	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01
Offshore grants	13,196	11,445	14,838	15,881	15,775	17,520
Onshore grants	9,616	13,923	18,746	17,284	19,231	22,973
Total grants	22,812	25,368	33,584	33,165	35,006	40,493

TABLE 5: VISAS BY INDUSTRY SECTOR

Industry	Percentage of total
Communication Services	24.6%
Personal and other Services	13.6%
Manufacturing	11.9%
Finance and Insurance	7.7%
Property and Business Services	7.6%
Health and Community Services	7.0%
Cultural and Recreational Services	4.4%
Hospitality	4.1%
Mining	3.5%
Retail Trade	3.3%
Construction	2.6%
Wholesale Trade	2.6%
Transport and Storage	1.9%
Electricity, Gas and Water Supply	1.8%
Education	1.4%
Agriculture, Forestry and Fishing	1.4%
Government Administration and Defence	0.6%
	100%

TABLE 6: VISAS BY OCCUPATIONS

Occupation	PERCENTAGE OF TOTAL
ICT Professionals	25.8%
Managers	16.1%
Nurses	4.4%
Accountants	3.9%
Engineers	3.0%
Other	46.8%
	100%

sector and major occupational groupings on the basis of the latest information available (Table 5).

- 5.17 A significant proportion of these visas are currently granted onshore – in 2000-01 more than 57 per cent of grants were to onshore applicants. The large proportion of visas applied for onshore is discussed below.

Major Issues Raised

- 5.18 The main issues raised in submissions to the Review were the following:
- difficulties (for clients and staff) with the 'key ' and 'non-key' distinction;
 - cost (both financial and in time) and veracity of current labour market testing arrangements;
 - the ability for unskilled persons to use the visa;
 - concerns about whether all employers have been paying overseas workers Australian wages and employing them under Australian working conditions;
 - the high level of incomplete applications; and
 - the effect of three-stage processing on the length of processing times.
- 5.19 These issues are addressed in the context of the five policy parameters (that is, impact on employment opportunities for Australians, training opportunities for Australians, pay and working conditions for Australians, costs for the Australian community and immigration integrity) and the need to maximise client service and administrative efficiency.

EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS

- 5.20 As discussed in Chapter 2, there are various mechanisms currently used to ensure that the entry of temporary overseas workers does not diminish employment opportunities for Australian workers. For

the long stay business visa a threshold applied, whereby activities classified as 'key' were not required to be subject to labour market testing.

The 'Key' and 'Non-Key' Distinction

- 5.21 Under the 'key'/'non-key' arrangements most proposed positions or activities for this visa were required to be classified as either 'key' or 'non-key':
- 'Key' activities were defined as those that are essential to the operations of the business and which require professional/ specialist skills or specialist knowledge of the business;
 - 'Non-key' were all other activities.
- 5.22 For 'key' positions (or for occupations on the MODL list of occupations in demand), labour market testing was not required and skills assessment was not necessarily required. This distinction sought to provide streamlined – and therefore faster – processing for positions that were considered 'key' to the business operations, while continuing to exclude unskilled positions.
- 5.23 In practice, this distinction proved problematic both for employers and for DIMIA staff – the guidelines did not make the decision 'clear cut' because they sought to provide a maximum amount of flexibility in the arrangements. However, this lack of clarity was an area of considerable comment in submission to this Review, for example:

In determining a key business activity it is noted that any trade skill is automatically excluded from this definition and it is required that the labour market test be conducted. I do not accept that all trade nominees ought to require a labour market test. This test is expensive both in advertising costs and administrative costs in responding to enquiries. A

submission based on sound evidence ought to be acceptable to the delegate in lieu of the labour market test. (Submission from Gilton Business Consultants)

MIA has a particular concern about Key and Non-Key activities as they are currently administered... Decision makers are frequently not sensitive to the increasing complexity of occupational descriptions and activities and are tending on the side of too much caution when deciding what is key or non-key. (Submission from the Migration Institute of Australia) and

DEWRSB experience suggests the key activity/non-key activity distinction is not working smoothly and would benefit from further clarification. This issue may be able to be addressed through the development of a key activity list so that employers know in advance of lodgement of a nomination whether labour market testing is required. (Submission from the former DEWRSB)

- 5.24 Moreover, there was an incentive for employers to nominate their activities as 'key', hoping to avoid labour market testing and skills assessment. If DIMIA did not agree with their classification of the activity as 'key', DIMIA could classify it as 'non-key', but this then required that labour market testing be done after all – thereby extending processing time significantly for that application. Therefore the arrangements which were designed to provide business with flexible and responsive arrangements resulted in a level of uncertainty that had consequences for both client convenience and good administration.
- 5.25 In the context of this Review both clients and staff sought a much clearer basis for

making this distinction between those positions that require labour market testing and those that do not.

Labour Market Testing Mechanisms

- 5.26 As well as difficulties with the 'key' and 'non-key' distinction, stakeholders raised a range of issues about the arrangements for testing the labour market that were required for those positions not classified as 'key', including:
- that the reported results of labour market testing by employers were difficult to verify – the process could be relatively easily contrived or manipulated to give the desired outcomes;
 - the processes were viewed by many as anachronistic;
 - 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. The requirement undertake labour market testing can delay overseas recruitment by up to six weeks;
 - whether formal labour market testing was required or not depended on whether the activity was classified as 'key' or 'non-key'. As indicated above, this was often unclear. As a result, the need for labour market testing was uncertain;
 - that the arrangements did not reflect all the modern mechanisms for recruiting staff, for example use of recruitment agencies; and
 - that the processes did not give due regard to specialised knowledge of the employer of the particular labour market – when asked to undertake labour market testing, some employers would

point out that if they could recruit a suitable employee from within Australia, they obviously would do so given the costs of recruiting from overseas:

More recognition of an employer's knowledge, as well as that of industry organisations and recruitment consultants would seem warranted. Employers of professionals with highly specialised skills are able to demonstrate a high degree of knowledge of sectors of the labour market specific to them. The vagaries of the local labour markets need to be considered. Australia is not a homogenous labour market. There are occupational shortages specific to areas and localities...

(Submission from AMIS Consultants Pty Limited)

- 5.27 In practice, many nominations were assessed by DIMIA as involving 'key' activities, which meant that streamlined processing applied, including exemption from labour market testing. But the uncertainties associated the 'key' activity concept (discussed above) diminished the efficiency of this arrangement. There was scope to reduce uncertainty by moving to another basis for assessment of labour market needs. This approach would be much clearer for sponsors than the 'key'/'non-key' approach:

The distinction between key and non-key activities...should be standardised. The skill categories provided for skill migration is a big improvement over past practice, as can be seen in the much higher success rate of visa applications. The same format can be applied to 457 visa applications whereby certain skill categories (i.e., those requiring higher education or training and a certain period of work experience) are considered "key" whilst others (i.e., less demanding

ones) would be considered "non-key". This would remove a lot of uncertainty for the applicants and make the task a lot easier for assessors. It does require DIMIA to work out an elaborate list or occupations but the list supplied for skill migration may be a useful guide. DEWRSB should be called upon to assist with preparing a more elaborate list. (Submission from Dr K.K. Shum)

Introduction of a Minimum Skill Threshold

- 5.28 It was clearly timely to move to a more effective means of achieving labour market testing objectives. This Review therefore recommended the introduction of a skills threshold as a replacement for the labour market testing arrangements. A number of submissions explicitly indicated their support for a skill threshold instead of the 'key' and 'non-key' arrangements.

We would suggest that minimum skill or experience level be applied for IT specialists applying for 457 visas. Other than that the process is great. (Submission from cXc Downunder)

- 5.29 The Minister for Immigration and Multicultural Affairs decided to implement this change on 1 July 2001. The skill threshold involves the use of the Australian Standard Classification of Occupations (ASCO) code for occupational and skill classification already used as a standard within the visa system for skill levels. Occupations within major groups 1-4 of this classification are considered to meet the skills threshold and are eligible for the visa. This level of skills includes managers and specialist administrators, professionals (for example, engineers, accountants, lawyers, scientists, social workers, teachers, registered nurses), associate professionals (for example, dental therapist, library technician, chef, futures

trader), tradespersons and related workers (for example, carpenter, electronics technician, aircraft maintenance engineer, panel beater). Occupations with lower level skills levels do not meet the skills threshold and therefore such applicants are not generally eligible for this visa. This skills threshold does not apply to persons who enter under a Labour Agreement or Regional Headquarters Agreement who instead remain subject to the terms of the particular agreement and associated labour market testing requirements (see discussion below).

- 5.30 Under this arrangement the discretionary skills assessment has been retained, so that if the decision maker has serious doubts about the claimed skill levels of the visa applicant they can request evidence (including formal skills assessment if necessary and appropriate) of the claimed skills. In all cases visa applicants have the option of doing the skills assessment before lodging the visa application if they wish.
- 5.31 Where the case is not clear, the matter should be decided by an expert third party skills assessment body. Applicants should be given a set time period within which to provide their independent skills assessment, to ensure that this part of the processing is not used to extend processing time by onshore visa applicants. After that time period passes, the application should be refused if no skills assessment is received.
- 5.32 The discretionary skills assessment that currently exists under the long stay business visa arrangements should be retained for the temporary business visa (457) applicants.

Adjusted Skill Threshold

- 5.33 The ASCO code level could be considered too blunt an instrument. Some refinement

of the list of ASCO code level 1-4 would allow flexibility for specific labour market shortages or surpluses – the list could exclude certain occupations that are considered to be in oversupply and include certain other occupations (below the skill threshold) that are considered to be in shortage. Such ‘exceptions’ to the ASCO coding threshold could be developed in response to specific labour market situations and could also be used to reflect developments in the labour market that have not yet been reflected in the ASCO classification system, for example, new occupations not yet classified. This is the approach that has been implemented. The list of skilled occupations for the purposes of this visa represents the ASCO list of skilled occupations in major groups 1-4, less those occupations considered inappropriate (apprentices, parliamentarians), too generic (some supervisory positions) or catered for by another visa (sportspersons, medical practitioners). The list is based on DEWR advice and closely aligns with the Skilled Occupation List (SOL) used for skilled permanent visa eligibility. The list will be subject to periodic update, as required, based on advice from DEWR. The current gazetted list is at Appendix M.

Salary Threshold

- 5.34 In addition to a skill threshold, the Minister considered it was necessary to include a salary threshold, to ensure that employers do not classify overseas visa applicants inappropriately (for example, over-classify a person providing administrative support as a general manager) in order to secure an appropriate skill classification. The salary threshold needs to be sufficiently high to exclude unskilled workers and should preferably be linked to an independent salary level that is regularly indexed. This is the approach that was chosen. The salary threshold chosen by the Minister was

average weekly earnings, which currently equates to \$34,075 pa.

5.35 A salary threshold is consistent with the approach being taken in Germany and has similarities to the approach in the United States:

- In Germany there is a salary threshold of almost AUD\$94,000 pa for temporary resident employees in the information and communication technology industry;
- In the United States employers using the equivalent visa are required to pay an annual wage equivalent to the wage of other workers or the local area prevailing wage for that occupation (whichever is the higher). The median prospective wage reported by employers for the equivalent visas is over AUD\$98,000.

5.36 By comparison, the threshold mentioned above for temporary business (subclass 457) visas (AUD\$34,075) should not be onerous on employers who are seeking skilled workers and professionals. The salaries currently being paid to long stay business visa holders support this – an approximate median salary for a sample of 457 visa nominations in 1998-99 was \$57,500. Given the lower wages structure in Australia compared to the US and Germany, the proposed threshold of average weekly earnings could be considered to be a relatively low threshold in international terms. This salary level would place fewer impediments in the path of Australian employers wishing to sponsor skilled workers.

5.37 The approach adopted on 1 July 2001 does not allow for any salary packaging. This salary threshold chosen is relatively low for skilled positions and is also relatively low compared with the average salary levels for these visa applicants under the previous arrangements (around \$57,000 in 1998-99). In any event, if there are

occasional cases where labour market shortages and low salary levels coincide, labour agreements could be used as a safety net to ensure that the legitimate needs of Australian businesses are met.

5.38 The intention with these arrangements is that they ensure that both the position must be sufficiently skilled and the applicant must have the appropriate skills to perform the duties of that position. The combination of the skill threshold and the salary threshold should ensure that the proposed position is appropriately skilled. The skill level of the position and the salary threshold will be tested as part of the nomination process. The skills of the applicant will continue to be assessed as part of the visa application process.

5.39 RECOMMENDATION:

That the 'key' and 'non-key' activity concept and the current labour market testing arrangements be replaced with skill and salary thresholds. (implemented 1 July 2001)

5.40 This skills threshold arrangement is accompanied by a question, as part of the nomination approval process, asking the sponsor to outline the efforts they have made to find a suitable Australian employee for the position. This is important in sending the appropriate message to employers that Australian workers are still to be given first preference for positions under these arrangements.

5.41 RECOMMENDATION:

That as part of the nomination approval process, the sponsor is asked to provide details of the efforts they have made to fill the position from the Australian labour force. (implemented 1 July 2001)

NO NET COST TO THE AUSTRALIAN COMMUNITY

Sponsorship

- 5.42 Sponsorship is a requirement for most applicants under this visa; for applicants who enter under a Labour Agreement or Regional Headquarter Agreement the similar requirements are assessed as part of the development of the agreement and the nomination of the position. Also, where the employer is an overseas employer, the same requirements must be met as for an Australian sponsoring employer.
- 5.43 The sponsorship arrangements for the long stay business visa introduced in 1996 sought to respond to the business community's need for more streamlined (faster) processing, while retaining integrity. These streamlined arrangements reflected the general principle that it is not appropriate to subject every visa application to intense scrutiny because of the resource implications and processing time associated with this approach. Instead there should be a risk management approach to processing of sponsorships and visa applications, accompanied by appropriate monitoring arrangements after sponsorships are approved and visas are granted.
- 5.44 Maintaining the integrity of this visa is particularly important as it is the 'largest' visa in terms of the numbers of visas granted and therefore involves the most overseas workers. Integrity for these visa arrangements is retained through:
- a monitoring regime that has a number of mechanisms for identifying cases that do not meet the policy expectations;
 - a regime for visa and sponsorship cancellation if the employer does not abide by their undertakings; and
 - discretionary visa requirements which may be invoked if the DIMIA officer is

not satisfied that the claims being made are genuine (eg formal skills assessment can be requested if the decision-maker has doubts about the skills claimed).

Sponsor Undertakings

- 5.45 The sponsorship undertakings for sponsors of temporary business entry (long stay) visa applicants were introduced in 1996; since then they have been subject to some minor modification.
- 5.46 The current undertakings for sponsors of temporary business entry applicants are the following:
- accept responsibility for obligations to the Commonwealth for sponsored persons. For example,
 - ensure that the tax instalments are deducted from salary or wages and eligible termination payments, and Fringe Benefits Tax is paid;
 - make superannuation contributions;
 - pay debts owed to the Commonwealth as a result of a sponsored person and/or dependants receiving or using Commonwealth benefits or services to which they have no entitlement, eg Medicare, social security benefits;
 - comply with Australian industrial relations laws, Australian levels of remuneration and conditions of employment;
 - accept financial responsibility directly or indirectly or through acceptable medical insurance arrangements, for all medical and hospital costs incurred in Australia by sponsored persons and their dependants;
 - ensure that sponsored persons hold the necessary licence, registration or membership where it is mandatory for work of the kind proposed in Australia;
 - be responsible for repatriation costs for sponsored persons and their dependants;

- inform DIMIA immediately if any sponsored person ceases to be in the business's service;
- comply with immigration requirements;
- co-operate fully with DIMIA in monitoring sponsored persons, including providing monitoring reports as required by the Minister;
- co-operate fully in any audit checking relating to employment of persons from overseas;
- notify DIMIA of any change in circumstances that may affect the business's capacity to honour its sponsorship obligations, or any change to the information provided on this form.

and for businesses operating in Australia:

- accept as good practice the desirability of creating appropriate career opportunities for Australian citizens and permanent residents both in Australia and, where the business operates international, overseas; and
- accept that the recruitment of labour from overseas must not counter Government training policies and objectives of producing a highly skilled and flexible Australian workforce.

5.47 Comments by stakeholders during the consultations on this review were generally supportive of the need for sponsorship and the appropriateness of the current sponsorship undertakings as set out on the sponsorship form. The need for greater clarity of the meaning of some undertakings and improved sponsor awareness of the undertakings and sanctions was discussed in Chapter 4 (see 4.59–4.60).

Sanctions Against Sponsors

5.48 Employers of these visa applicants are required to sign an undertaking to pay them Australian wages, and to employ them under standard Australian working

conditions for that field of employment. This undertaking is a key element in achieving the policy objective that the entry of overseas workers does not undermine pay and working conditions for Australian workers. It is therefore important that this undertaking is treated seriously and that there are appropriate sanctions in place where these undertakings are breached.

5.49 Occasionally employers breach these requirements, for example, by paying overseas workers below award wages. Appropriate sanctions in such cases and the role DIMIA plays in applying them were discussed in Chapter 4.

Monitoring of Sponsors and Sponsorships

5.50 Monitoring is a key element in streamlined processing arrangements and stakeholders appreciate the importance of monitoring:

There should be close monitoring ... Those found to be not abiding by the visa conditions should be subjected to visa cancellation with right of review. (Submission from Dr K.K.Shum)

5.51 DIMIA has formal arrangements for reporting and monitoring designed to achieve consistent, demonstrable and systematic monitoring practices that provide data that can be used to audit compliance at the local level and for analysis purposes at the program level. This should address concerns raised in submissions about the previous monitoring arrangements:

The Labor Council of New South Wales believes there is a need for greater emphasis on assessing whether the principles of a business wishing to sponsor overseas workers have ever been involved in conduct where they have failed to provide workers with their legal entitlements or have breached any relevant State or Federal

industrial responsibilities. It is essential that DIMA is able to ensure that no employer or director of any company intending to sponsor workers has participated in exploiting local or overseas workers. (Submission from the Labour Council of NSW)

5.52 The current regime involves the following elements:

- targeted monitoring of clients;
- database of individuals/companies of concern;
- links to other agencies; and
- statistical reporting.

• **Targeted monitoring of clients**

5.53 This involves a range of mechanisms including requests to self-report, announced and unannounced site visits, examination of records and referral to DIMIA investigations staff. Monitoring targets are set for each office based on their respective caseloads, and monitoring plans are then developed on the basis of caseload composition of each state/regional area. The following focus groups for targeting have been identified:

- Newly started businesses without a proven record;
- Companies providing marginally acceptable applications (due to such factors as a low capital base, vague business plans or relatively scanty training proposals);
- Clients with particular profiles, such as sponsors from those industry sectors where there are particular sensitivities about the possible over-reliance on imported labour and with particular focus on occupations with low skill levels;
- Sponsors or visa holders on whom adverse third party information has been received ('dob-ins') particularly where below Australian award wages and conditions are alleged to have been

offered or paid;

- Sponsors referred from DEWR because their training record seems unsatisfactory.

5.54 Recent enhancements to monitoring arrangements involve a target of monitoring 10 per cent of business sponsors and (through the monitoring survey form) all temporary business sponsors who have sponsored visa applicants for periods of stay of 12 months or more.

5.55 Consideration could be given to the extended use of the 'Survey of business migrants' form, to provide a regular and systematic source of information about sponsor activity. The form could also be revised to ensure that necessary information about all sponsor undertakings, including information to be provided to other agencies for their monitoring purposes, is also obtained.

5.56 A number of 'dob-ins' are received each year and these contribute to the targeting of client monitoring.

5.57 Revocation of sponsorship status may result from an investigation. The threat of this sanction is particularly relevant to sponsors who intend to be repeat sponsors and for whom the sanction of not being able to sponsor would be a hardship.

• **Database of Individuals/Companies of Concern**

5.58 Reporting on monitoring activities is currently required as part of the monthly reporting framework for Business Centres. It is planned to introduce software to all offices in Australia for recording and reporting on monitoring activities. This program has already been developed and is currently being refined. In the longer term, it is intended that this monitoring

system be part of the department-wide client system so that the information can be integrated into program-wide analysis and reporting.

- **Links to other agencies**

5.59 As well as monitoring sponsors in terms of their meeting their sponsor undertakings, DIMIA is in a position to provide information to certain other government agencies to assist them in performing their monitoring functions. Such links are discussed in more detail in Chapter 4 (paragraph 4.74–4.77).

- **Statistical reporting**

5.60 Statistics on program performance are compiled monthly. Currently the following activities are included in the monthly reporting:

- number of monitoring forms sent out and numbers returned;
- number of interviews conducted;
- number of site visits;
- number of cases referred to Investigations (in relation to organised malpractice);
- number of cases referred for compliance action;
- number of sponsorships cancelled; and
- number of visas cancelled.

5.61 This reporting is a management tool to ensure that processing standards are being met. The reports produced are also used to respond to internal and external requests for data and information on the relative program activity and performance of Business Centres and overseas posts.

5.62 Since March 2000, the Minister, the Business Advisory Panel, Business Centres and overseas posts are provided every quarter with a detailed analytical report on key issues and milestones in processing and program outcomes, providing forecasts

and trends in program performance and service standards.

5.63 Difficulties with the production of data on onshore processing are yet to be resolved, following introduction of a new onshore system. Improved data accuracy will enable analysis by industry and occupation to be undertaken in future reports.

5.64 All of these mechanisms support the temporary business visa regime consistent with the concept of a 'light touch' at the front-end of visa processing, backed up with effective monitoring and reporting to support the integrity of the arrangements.

5.65 DIMIA should continue to progress monitoring and reporting arrangements to ensure that sponsors and clients are abiding by their undertakings and visa conditions. The business sponsor monitoring survey form works well although DIMIA should consider appropriate redesign of the form to ensure that all necessary information is sought. DIMIA should also consider extending the use of this mechanism to other temporary resident sponsors.

CLIENT SERVICE AND ADMINISTRATIVE EFFICIENCY

Incomplete Applications

5.66 Notwithstanding client calls for faster processing, there continues to be a large proportion of long stay business visa applications that are not complete on lodgement, containing insufficient information or documentation for the decision maker to process the application. The kinds of documents that are often missing from these applications include:

- evidence that the business is lawfully and actively operating in Australia,
- financial reports from the business, and
- information to demonstrate commitment to training Australians.

- 5.67 Incomplete applications can be due to a number of factors:
- until recently, some client information did not always make it clear what information and documentation was required for which applicants;
 - client information could make it clearer that DIMIA prefers and expects complete applications (if at all possible) and could better explain the consequences of incomplete applications (for example, in terms of longer processing times);
 - under current arrangements applicants cannot anticipate whether they will be required to provide evidence of their skills or a formal skills assessment because that requirement is discretionary; and
 - prior to 1 July 2001, information about labour market testing where the employer classified the proposed work as 'key' rather than 'non-key' and DIMIA subsequently classified it as 'non-key', thereby requiring information about labour market testing to be provided.
- 5.68 A number of recent developments should reduce the level of incomplete applications:
- improvements in client information (eg the new application booklet introduced in January 2001) should make it easier for clients to identify the information that is required to be lodged with their application, in order for it to be 'complete' and allow processing to proceed – the requirements for each type of applicant are now much clearer. It includes a checklist of documents to be included in the application;
 - the booklet also encourages applicants to lodge complete applications and explains the consequences (in terms of longer processing times) for incomplete applications;
 - the removal of the 'key'/'non-key' concept from the arrangements and their replacement with a gazetted list of skills; and
- in some offices applications are being 'streamed' to differentiate between complete and incomplete applications with complete applications receive very fast processing relative to incomplete applications, thus providing a positive incentive for complete applications.
- 5.69 It is in the interests of clients who want faster processing to provide all the necessary information at the time of lodging an application. Nevertheless, this may remain an area of difficulty, particularly where applicants in Australia are seeking to delay their departure by lodging an application where there is little prospect of a visa grant. It is also a consequence of having discretionary criteria (eg the skills assessment) where the visa applicant cannot anticipate whether they will be asked to provide certain information or not.
- Encouraging Complete Applications and Requiring X-Rays to be Provided with Applications**
- 5.70 Under current arrangements, many of the visa applicants for this visa are required to have a chest X-ray as part of assessing their health. If they do not provide this with their application, it is requested after the application is lodged, and the time it takes to obtain the X-ray can contribute to longer processing times. While current client information encourages the visa applicant to lodge their X-ray with their visa application, it is not a requirement to do so. As a result, not all applicants currently lodge these documents at the time of making their application.
- 5.71 Consideration could be given to requiring visa applicants to provide their chest X-ray at the time of lodging their visa application. There would be operational implications with this approach, for example, some but not all applicants would also need to have a full medical (as well as obtaining an

X-ray). There could also be an increased risk of fraud in high risk posts – under current arrangements the medical assessments and X-rays are provided direct to DIMIA from the doctors, thereby reducing the risk of client substitution or clients altering doctor annotations.

- 5.72 This Review therefore does not propose that applicants be required to provide an X-ray at the time of lodging their visa application. However, applicants should be encouraged to obtain these as early as possible in the process, even before lodging their application where the DIMIA office can make appropriate security arrangements for the X-ray results.

Consolidation of Applications into One Package (and Concurrent Processing)

- 5.73 One of the features of the current arrangements for this visa is the separation of processing into three separate stages, which often proceed sequentially as follows:
- application by the employer for approval as a sponsor;
 - nomination of a particular position; and
 - visa application by overseas resident (who may be in Australia or overseas when applying).
- 5.74 Under current processes the three applications can be lodged together and this is encouraged in order to speed up total processing time. For onshore applicants this occurs in around 55 per cent of cases, allowing the processing to proceed concurrently. Where sponsorship status has already been obtained under PQBS or SBS arrangements, only two applications (nomination and visa application) need be lodged. There is, however, no requirement to lodge the applications together. In fact, these separate application processes can be initiated in separate immigration offices, either in Australia or overseas and at
- different times. This creates a challenge for coordinating the related applications and for ensuring speedy processing for the client (and DIMIA).
- 5.75 Another consequence of the current arrangements is that some of the checks that need to be done may not be initiated until the prerequisite applications have been approved. These checks sometimes require referral to other Government departments or agencies which have their own processing lead times. Such delays in initiating checks and processing is the product of sequential processing and contributes significantly to longer processing times than can be achieved if all processing is done concurrently to the extent possible (that is, subject to restrictions such as the need to have an approved sponsorship and nomination prior to approval of a visa). For this reason DIMIA has been moving to encourage applicants to arrange all necessary checks, for example, health assessments, as soon as possible.
- 5.76 The separation of these three stages was deliberate and has a number of advantages (discussed below at paragraph 5.88). While these considerations still apply, the current arrangements offer scope for improvement in respect of a more coordinated process for both the client and DIMIA.
- ***Single application process and application package***
- 5.77 There would be significant advantages if all three application elements could be brought together into one application package where it suits business to lodge all applications concurrently, for example where the sponsor is an Australian business and the visa applicant is in Australia. This would see the three separate applications lodged together (that is, there would be no delay in the lodgement of the subsequent applications) and would allow

the three parts of the process to be commenced immediately and processed concurrently. This should allow for faster overall processing.

- 5.78 This would, however, mean that applicants could no longer wait to see if their sponsorship is approved before lodging their nomination or wait to see if the nomination is approved before lodging the visa application. The views of business suggest that they see faster processing as essential to their operations and this approach would have the advantage of permitting concurrent processing and therefore a faster total processing time.
- 5.79 Such arrangements could still involve prerequisite requirements, for example, preventing approval of a visa application without an approved sponsorship and nomination. The Department could still continue to use different immigration offices to undertake part or all of the processing regardless of where an application pack is lodged, for example, where a particular office has relative expertise.
- 5.80 Where possible, it would, however, be preferable for the three separate applications to be brought together in one office so that the employer could have one point of contact for processing all applications and so that processing on all three elements could commence immediately and be done concurrently. This would address comments made in submissions about the three step process, for example:

The separate processing of sponsorship status, nomination and visa application can create difficulties...The 3-step distinct application process should be simplified. (Submission from The Australian Lebanese Christian Federation Inc.)

- 5.81 As discussed later in this chapter the continuation of arrangements for temporary business entry whereby multiple positions can be sponsored is supported. As such this means that the single application package will need to allow for pre-qualified business sponsors and standard business sponsors with approval for more than one position to still benefit from bypassing the sponsorship step in subsequent applications.
- 5.82 The proposal to bring the three applications together is consistent with the recommendation in Chapter 3 to combine applications (recommendation at paragraph 3.67 refers) and that concurrent processing be introduced where possible (paragraphs 3.58-3.61 refer).

- **Single point of contact**

- 5.83 As well as combining the three applications, it would be easier for employers if there were to be a single point of contact in relation to each application. Current temporary resident processing is characterised by different parts of the processing for one visa application being completed in different offices of DIMIA. For example, sponsorships are processed in the Australian offices, which are considered to have better information about sponsors' claims in relation to local labour market shortages. Visa applications are generally processed in the office in which they are lodged and applicants who are overseas generally lodge their application at the relevant overseas office. This means that the sponsor is dealing with staff in one Australian office about the sponsorship (and nomination) part of the process, and the visa applicant is dealing with the overseas office in relation to the visa application part of the process. This has the potential for confusion about the approval process and associated delays.

5.84 Ideally, it should be possible to focus communication between the employer who is seeking to bring an overseas resident to Australia and DIMIA to one contact officer in one DIMIA office. In the case of sponsored employees – where the reasons that the temporary resident is coming to Australia is to meet a need for their skills by an Australian employee or business – the appropriate contact link would seem to be between the sponsor and the relevant Australian office. Under the above proposal to amalgamate the applications, the sponsor would lodge the application pack.

5.85 Creating one point of contact should be more convenient and efficient for both the clients and DIMIA. For clients it would eliminate delays associated with DIMIA trying to make separate contact with more than one party in relation to one application; for DIMIA it will put the onus on the sponsor and the employee to communicate with each other rather than through DIMIA.

5.86 Amalgamation of the application processes, and concurrent processing would also operate most effectively under the one case officer model. This is consistent with the proposals in Chapter 3 (paragraph 3.66 refers).

5.87 In addition to the above initiatives, which will contribute to greater administrative efficiency, the proposals in relation to training plans and training records (discussed in Chapter 3) will eliminate assessment of this information (sometimes including referral to DEWR) during the processing of the sponsorship application, and eliminate associated processing time for this assessment.

- **Retain three separate decisions**

5.88 If the three stages and three application forms were consolidated in this way to provide for a one-stage/one application package, it would still be possible to retain three separate decisions. This is desirable

because of the advantages of legally separate decisions, that is:

- it allows employers with established employment and training credentials, or those who will introduce or use new technology, and who are frequent users of the visa system, to be exempted from repeated sponsorship processing under the pre-approved sponsor arrangements;
- it allows for separate review rights to be provided for each step of the process – this separate review right allows Australian businesses to be able to pursue their interests even where the overseas visa applicant is not interested in seeking review;
- it keeps the three decisions procedurally separate – this has the advantage of making it clearer for clients which factors are relevant for which decision and which information must be provided by the sponsor/employee, making it clearer for decision makers and therefore providing a clearer structure for lawful decision making (so that only relevant information is taken into consideration in each decision), and to make it clearer which matters are being reviewed at each stage of review.

5.89 The advantages of the three separate decisions were recognised in submissions to the Review:

[The] 3 step process results in better decision making. The application for sponsorship status endeavours to ensure that sponsors are reputable and accountable, nomination of position allows DIMA to monitor the process and safeguard the current Australian Labour Market and the Visa application (either onshore or offshore) allows DIMA to focus on the applicant's suitability. We [recommend] that the 3 step process for Long Stay Business Sponsors be retained. (Submission from Dentist Job Search)

There is a difference between the sponsorship and nomination stages...DEWRSB disagrees with any proposal to amend (or remove) either the nomination or sponsorship stage of the business (long-stay) visa as it has the potential to undermine the provision of employment and training opportunities to Australians. From a DEWRSB perspective, the sponsorship stage provides the opportunity for an assessment of an employer's training record in respect of Australians, while the nomination stage provides the opportunity for comment on the labour market test (at market rates of remuneration), the labour market status for and skill level of a position, and the existence of mandatory registration and licensing requirements. In contrast, the visa application relates not to the position but to a proposed nominee. (Submission from the former Department of Employment, Workplace Relations and Small Business)

5.90 Keeping the three decisions separate can be achieved administratively through appropriate form design, drafting of legislation and staff training, while still achieving a single application form and application process.

Streamlined Arrangements for Certain Employers

5.91 Visa requirements and processes should be as clear, simple and quick as possible. Streamlined visa arrangements for certain types of sponsorships and where there are labour and regional headquarter agreements in place contribute to the ease of use and efficiency of the system. This Review supports the retention of many of these streamlined arrangements, with some minor refinements discussed below.

The changes to arrangements for taking labour market issues into consideration (discussed above under 'Employment opportunities for Australians') will also make the system much simpler to use for all clients, and contribute to more efficient and therefore faster processing.

- **Pre-qualified sponsor arrangements**

5.92 Under the current pre-qualified sponsor (PQBS) arrangements, sponsors who obtain pre-qualified status can nominate an unlimited number of visa applicants within the two-year period of that status, without having to have their sponsorship status assessed each time. These arrangements allow for them to bypass the sponsorship step in the process on subsequent occasions and therefore results in faster total processing time. These arrangements received widespread support during the consultation process. Indeed there was support for the extension of these arrangements if possible. Therefore any refinements to arrangements or introduction of alternative arrangements should retain the ability of sponsorships to provide for the entry of multiple persons.

5.93 Currently pre-qualified sponsor status is valid for two years. After that time the sponsor must apply for renewal of their status, which is valid for 12 months. This means that one approval and one renewal provide unlimited sponsorship status for a total of three years. The sponsorship may be further renewed for periods of 12 months at a time. Renewal is relatively straightforward, provided the sponsor continues to satisfy sponsor requirements and has complied with previous sponsor undertakings. Monitoring and cancellation mechanisms allow for a sponsorship to be cancelled during this period where a sponsor fails to meet the sponsor undertakings and therefore would no longer meet our requirements for this

status. Given these arrangements, one possibility would be to extend the current period of pre-qualified sponsorship renewals. Business has indicated that it would like consistency in the period of initial approval and subsequent renewal.

5.94 Extending the period of sponsor renewal would reduce the burden on business to apply for renewal of their status sooner and allow for more streamlined processing of visa applications, once their initial sponsorship is approved and they establish a good track record. This would not constitute any risks for program integrity because the cancellation provisions provide adequate protection. The BAP report into business entry recommended that renewals last for two years rather than the current 12 months, as a measure to reduce the administrative burden on business.

5.95 This would mean that large companies and employers of significant numbers of overseas workers would be processed for sponsor approval once and then effectively retain that status indefinitely. Subject to their meeting their sponsor undertakings and to minimal processing as part of the renewal process (once every two years) the sponsor could continue to sponsor long stay business visa applicants for as long as they desired.

- ***Standard business sponsorship arrangements***

5.96 Standard Business Sponsorships (SBS) allow for the sponsorship of a limited number of employees up to a specified maximum during the sponsorship. Under current arrangements they are valid for 12 months and are not renewable. The sponsorship status ceases once these positions have been filled or at the end of the 12 months. If a business wishes to re-establish their right to sponsor, they must complete full application details and resubmit all documentation as part of a new

sponsorship application (as though they are a new sponsor who has never had any dealings with DIMIA). In practice however, where an employer with a previous immigration history lodges a new SBS application and that employer has abided by immigration requirements and their sponsor's undertakings in respect of their employees (or nothing adverse is known) then this new application effectively becomes a 'renewal'. It should therefore be possible to have streamlined processing of such sponsorships, because DIMIA would already have most of the required information about the sponsor (unless there have been changes in details). As well DIMIA has information about the sponsor's actual sponsorship history in terms of abiding by their undertakings as a sponsor. Recent changes to monitoring arrangements (discussed in Chapter 4) will increase the amount of information that is available for all sponsors and visa applicants.

5.97 It therefore seems reasonable to introduce a renewal process that involves reduced paperwork and shorter processing time for such sponsors. The renewal period could be for another 12 months. This reduced administrative burden would be viewed favourably by users of the standard business sponsor arrangements, who currently account for around 95 per cent of sponsors for this visa and around 60 per cent of visa applicants.

- ***Comparison of PQBS and SBS***

5.98 PQBS sponsors can nominate an unlimited number of employees within the two-year period of the sponsorship approval. SBS allows for the sponsorship of a limited number of employees (up to a specified maximum) during the sponsorship, which ceases once these positions are filled, or at 12 months. In both PQBS and SBS, a major consideration in assessment is whether the employer can satisfy the sponsor's

undertakings in respect of the unlimited or maximum number of nominations sought. Some medium sized enterprises struggle to satisfy PQBS criteria as the decision maker must be satisfied that the sponsor can meet its undertakings in respect of a potentially 'unlimited' number of employees. Further, PQBS, because of its ability to sponsor unlimited numbers of employees, becomes very similar in its operation to labour agreements, which normally provide for the sponsorship of larger numbers of employees. Under SBS, there is no limit to the number of positions that the employer may seek to nominate, as long as there is an agreed set maximum. In this sense, SBS could arguably meet the needs of current PQBS sponsors by providing for a significantly large, although still limited, number of employees.

5.99 Both PQBS and SBS therefore allow for the employer to sponsor multiple employees without having their sponsorship status revisited on each occasion. This facility permits faster processing without any impact on the integrity of the sponsorship processes. This compares with sponsorships for the other temporary resident visas, which are only valid for one visa application per sponsorship. There are provisions to cancel sponsorship status where a sponsor defaults on their undertakings. Once a sponsorship is cancelled, no further visas may be granted. Consultations on this review indicated significant support for the ability to obtain pre-approved sponsor status, particularly as a means of reducing the administrative burden on business and reducing processing times for subsequent visa applications. This review therefore supports the continuation of the ability to sponsor multiple positions for temporary business entries.

5.100 Anecdotally, the fee structure is the major criterion employers consider in choosing whether to apply for PQBS or SBS:

For larger companies (companies sponsoring over 50 persons a year) with PQBS status, there is very little benefit over SBS – aside from the removal of the nomination fee. We believe the PQBS process should be streamlined to provide very real benefits and incentives for companies that are high users of the visa system. (Submission from Price Waterhouse Coopers on behalf of Nortel Networks Australia)

- 5.101 PQBS becomes the cheaper per unit cost if the employer sponsors more than 14 employees during the life of a sponsorship, while SBS is cheaper if 14 or fewer employees are sponsored. However, many temporary business sponsors only sponsor one or two employees. Approximately 97 per cent of all sponsors are approved as SBS while the remainder are approved as PQBS. The current cost structure and the fact that most employers require significantly fewer than 14 persons are clearly factors in the limited use of PQBS. The range of sponsorship vehicles also creates confusion and complexity for some sponsors, particularly first-time users. Business Centres have estimated that between 25% of employers (in the larger cities) and 60% of employers in the smaller cities are one-off users of the sponsorship arrangements. Employers who are one-off users comment that they find the range and detail of sponsorship options complex. For example, PQBS and SBS differ in terms of their:
- validity period – PQBS is valid for 2 years while SBS is valid for one year;
 - renewability – PQBS is renewable while SBS is not renewable;
 - sponsorship cost – PQBS costs \$3,250 while SBS is free;
 - nomination cost – nominations under a PQBS are free while SBS nominations are \$225;
 - limitations on nominations – PQBS is unlimited while SBS is limited.

5.102 The proposals relating to consolidation of application forms and the associated changes to application fee structures will mean, amongst other things, that the appropriateness of the 'bulk' processing fee arrangements that currently exist for pre-qualified sponsors will need to be given further consideration. Alternatively, the two sponsorship products could be simplified into a single sponsorship product which retains the best features business enjoy: multiple nominations; renewability; and certainty in terms of the number of people they can sponsor.

5.103 Those visas, which it is recommended to incorporate into the temporary business visa (subclass 457), would benefit from PQBS/SBS arrangements. Given the overall success of these arrangements and the fact that in certain instances there is a considerable number of multiple sponsorships for other visas (which remain separate from the business visa), the facility for pre-approved sponsorship status should be explored in such cases. In making this recommendation, it is however, recognised that the benefits coming from such a system would be of use to a limited number of sponsors.

- **Labour Agreements**

5.104 A labour agreement is a formal agreement between an employer or industry group and the Commonwealth Government (represented by DIMIA and DEWR) and sometimes other relevant parties (for example, unions and professional organisations). Under current arrangements, where an employer is party to a labour agreement, the sponsorship application process is not required, although there is a process whereby they must nominate the position to be filled and that nomination must be approved. Approval of the nomination only requires correct nomination and that the position meets the terms of the particular labour

agreement. Labour market testing is not required, nor do the new skill or salary thresholds apply.

5.105 These arrangements therefore streamline sponsorship and nomination processing and permit faster processing for persons entering under labour agreements. These arrangements have the support of stakeholders and appear to work well on the basis of feedback during the public consultation process:

Through the Labour Agreement Frontier has had to comply with certain regulations regarding sponsorship, labour market testing and training obligations. We have found these requirements to be fair and without bias towards companies such as ourselves which are forced to turn to markets beyond Australia. The labour Agreement has become an imperative asset to our company (Submission from Frontier Recruitment)

5.106 Any refinements to temporary business entry (subclass 457) visa arrangements will need to retain provisions for labour agreements and streamlined arrangements for persons entering Australia under such agreements.

- **Regional Headquarters Agreements**

5.107 International companies considering Australia for their Regional Headquarters (RHQ) in the Asia-Pacific region may apply for RHQ status through the Department of Industry, Tourism and Resources. An RHQ Agreement allows an organisation to access streamlined immigration arrangements for key expatriate executive and specialist employees of the company who are essential to the establishment and management of the Australian based regional operations. The main features of these streamlined arrangements are:

- flexible provision for the company to

specify at the outset the number of positions they wish to fill;

- guaranteed facilitation by DIMIA, including priority processing of visa applications for key personnel and their families;
- there is no labour market testing requirement;
- there is no skill threshold; and
- applicants are only required to satisfy standard health and character requirements.

5.108 RHQ Agreements are technically a form of 'labour agreement', however, applications under these agreements get priority over applications to which a standard labour agreement applies. The result of all these arrangements is faster processing times for these applicants.

5.109 While a relatively small number of applicants use these provisions each year, the provisions need to be retained to support the operation of these organisations in Australia. Persons who are entering under a Regional Headquarters Agreement do not need to meet the newly introduced skill and salary thresholds, but continue to be required to meet the terms of the particular agreement.

Period of Stay

5.110 Currently the business short stay visa 456 is for periods of stay up to three months whereas the business long stay visa 457 is for periods of stay over three months. However, there are other differences apart from the period of stay allowed, that is:

- the short stay (456) visa is essentially a business visitor visa, which can also be used for the purposes of conducting some business, or attending an event or undertaking a one-off short-term highly skilled contract, where the work could not otherwise be done by an Australian. There is a specific form and

fee and streamlined processing in recognition of the 'visit' nature of this visa. Statistical reporting on this visa is made in the visitor program.

- the long stay (457) visa is predominantly intended for sponsored employees. A separate visa application form, different fees and different processing arrangements distinguish this visa from the short stay visa in almost all respects. Reporting on this visa is part of the Temporary Residence program. Most importantly the long stay visa requires sponsorship and allows employment.

5.111 Under the proposals in this Report, the temporary business entry (long stay) visa will also need to provide for shorter periods of stay in some circumstances. In practice, few applicants who intend short stay of three months or less would need to obtain this visa because they would be eligible for a short stay business visa. However, in a small number of cases, a person intending a stay of less than three months would need to obtain a 457 visa. This would occur where they had not been able to meet the criteria for a 456 visa. If they wished to pursue a stay in Australia they would need to apply for a long stay visa and go through a sponsorship process. These two visas should therefore not be viewed as complementary visas distinguished only by the period of stay. This Review proposes that the minimum visa period for the temporary business (long stay) visa be removed.

Electronic Lodgement of Visa Applications

5.112 DIMIA is working towards establishing a facility to lodge temporary business visa applications electronically. Under the arrangements being developed, clients will retain the option of traditional application procedures, but will be encouraged to use electronic options because of the savings – in time and expense – involved in that approach. This pilot may operate as a

model for wider implementation of electronic lodgement facilities. This is consistent with Chapter 3 (paragraph 3.27 refers) to pursue electronic communications and transactions where feasible.

Processing Times

5.113 The current processing arrangements for temporary business entrants represent a significant change from the visa requirements and processing that applied before 1996. Some streamlining of processing was introduced (for example, streamlined health and character checking procedures and removal of labour market testing for 'key' activities), which have resulted in relatively short processing times for certain applications. However, processing times have remained a source of comment. Business often needs to recruit someone at short notice and pressure for shorter processing times is therefore not surprising.

5.114 The large number of applications which are made onshore (more than 55 per cent of total visa grants in 2000-01 were onshore) suggests that applicants are using other visas to travel to Australia where they then lodge their application for a long stay business visa. Anecdotal evidence suggests that many applicants are using the short stay business visa and visitor visas (including the electronic visas) for this purpose. In addition to issues regarding the appropriateness of such visas for this purpose (see Chapter 6 for discussion regarding the short stay business visa), the effect of this is a significant shift of work onshore. Also, by applying for two visas applicants potentially create greater processing delays as two applications require processing rather than the applicant getting the appropriate visa overseas in the first place. Any increase in processing time in turn results in greater use of the short stay visa to enter Australia when longer

stay is intended, thus the delays can become increasingly long because of the sheer volume of applications lodged. Employers and applicants are left in a situation of uncertainty until applications are resolved.

5.115 There is clearly widespread pressure for faster processing for temporary business applicants and current processing times still fall short of business expectations. The replacement of 'key/non-key' distinction with skill and salary thresholds introduced on 1 July 2001 should permit faster processing times. The proposed changes to assessment of training plans and other processing arrangements should further reduce the processing time for many applicants. There also needs to be better information to potential employers about the lead times they need to allow for when sponsoring an overseas resident.

Inclusion of Other Temporary Residence Visas

5.116 Some of the other temporary resident visas also involve sponsorship of skilled employees to meet the needs of an Australian employer. At the time that the temporary business visas were introduced, these other occupation-based visas were left unchanged because they were not part of the terms of reference of the review that resulted in the creation of the temporary business visas.

5.117 Incorporation into the temporary business entry (subclass 457) visa would standardise requirements and processes for these visas with requirements for other sponsored employees, and this will make the visa arrangements easier for both clients and staff to understand and use. Greater standardisation reduces confusion and can result in greater efficiency.

5.118 In the context of this review consideration has therefore been given to which of the

other occupation-specific temporary resident visas could be incorporated into these generic arrangements for sponsored employees, taking into consideration the introduction of the skill and salary threshold for that visa and other proposed changes discussed in this Chapter. There are five visas (or parts of visas) that could be incorporated into the temporary business (long stay) visa (subclass 457) arrangements:

- persons on staff exchanges who currently use the Exchange visa (subclass 411) – see Chapter 13 – International Relations Stream;
- persons who will be working in a school, technical college, tertiary institution or research institution as an academic, librarian, technical or laboratory demonstrator who currently use the Educational visa (subclass 418) – these are discussed below;
- representatives of overseas news organisations who currently use the Media and Film Staff visa (subclass 423) – these are discussed in Chapters 6 (Economic stream – Arrangements for short visits for business and work purposes) and 10 (Cultural and Social stream – Entertainment);
- public lecturers who currently use the Public Lecturer visa (subclass 424) – these are discussed in Chapters 6 and 8; and
- sports people such as sponsored employed coaches and instructors, judges and adjudicators who are entering for the purposes of employment (eg a martial arts instructor in a gym) who are currently provided for under the Sports visa (subclass 421) – these are discussed in Chapters 6 and 12.

5.119 Of these, the Educational Visa is numerically the most significant for those staying 12 months or longer. Around 1,700 Educational visas were granted in 2000-01. Many of the users of this visa depart Australia within three months. These are

all skilled sponsored positions and would clearly meet the new skill thresholds for the long stay business visa. Sponsorship is already required for all applicants (unless they are intending to stay less than three months). These applicants would appear to fit well into the temporary business arrangements and indeed many of the persons covered by this visa already use the temporary business entry visa. Visa arrangements for persons who wish to stay in Australia for up to three months are discussed in Chapter 6. Most, if not all, persons entering for these purposes will be eligible for a short stay business visa under those arrangements. This Review recommends that all these persons use the temporary business entry provisions and that the Educational visa be abolished.

5.120 Amalgamation of provisions for certain occupations into the generic provisions of the temporary business visa eliminates the need to identify which visas these sponsored employees need to apply for and the need to satisfy a different set of criteria.

5.121 **RECOMMENDATION:**

That the Educational, Exchange, Media and Film Staff and Public Lecturer visas be abolished and that the generic provisions for sponsored employees (subclass 457) and the short stay business visa (subclass 456) be used.

Fee Exemptions for Certain Visa Applicants

5.122 Chapter 13 discusses proposed new arrangements for representatives of foreign governments and persons accorded status under Privileges and Immunities Acts. Under the proposed arrangements, these persons would be eligible for a new visa which would retain the streamlined processing arrangements for these visa applicants. For the persons accorded privileges and immunities there would continue to be no visa charge.

5.123 Under those proposals it will be unnecessary for any of these applicants to continue to apply for the business visa (subclass 457) and therefore the provisions for them, including the exemption from the visa application charge, will be able to be removed.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

5.124 One of the sponsorship undertakings under this visa is that the sponsor will comply with Australian industrial relations laws, Australian levels of remuneration and conditions of employment.

5.125 Occasionally employers breach these requirements, for example, by paying overseas workers below award wages. Sanctions for sponsors who breach their undertakings are discussed in Chapter 4. There was some comment in the context of this review about DIMIA's role in sanctioning employers who fail to comply with industrial relations law. Given DIMIA's roles and responsibilities, it would be inappropriate for DIMIA to manage remedies and sanctions for such industrial relations issues. This is not a function that DIMIA has any expertise in, and to take on this function would duplicate the functions of DEWR and state/territory agencies responsible for industrial relations. DIMIA will continue to refer any information about breaches in industrial relations laws to the appropriate industrial relations body, as is current practice. This matter is discussed further in Chapter 4.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

Training Australians

5.126 Temporary residence policy seeks to ensure that the entry of overseas temporary workers is not used as a means of Australian employers avoiding the provision

of training opportunities for Australian workers. Arrangements for assessing an employer's commitment to training Australians – for both the temporary business entry (subclass 457) and more generally – were discussed in Chapter 2.

IMMIGRATION INTEGRITY

'Self-Sponsorship'

5.127 Further to the generic immigration integrity issues discussed in Chapter 2, an issue that has been raised in relation to this visa is whether the provisions should allow a person to sponsor themselves. Self-sponsorship is not a defined term or concept in immigration or corporations law. Rather it is a sequence of events whereby an individual (or a principal individual as part of a group of persons) establishes a business entity that applies for a sponsorship and then proposes that same individual as the visa applicant to fill a nominated vacancy under that sponsorship. There have been instances where businesses have provided little benefit to Australia, as they were not actively operating in Australia.

5.128 Submissions to the Review were generally not supportive of provisions which allow self-sponsorship, for example:

We are strongly opposed to any proposal that applicants be able to sponsor themselves for a category 457 visa by establishing a shelf company. We believe this will lend itself to manipulation of the system and greater difficult in determining applications that are genuine as opposed to those that are not. (Submission from The Association of Professional Engineers, Scientists and Managers, Australia)

5.129 Non-genuine cases will usually not meet the requirements (because, for example, a shelf company may not be judged as being

actively engaged in a business in Australia or because it would not have sufficient financial standing to support the sponsorship obligations). Such sponsorships are therefore usually refused. However, where a visa applicant is refused and there are review rights, the review process can take up to 18 months and there is evidence that a growing number of applicants are using this means to obtain a period of work – albeit temporary – in Australia.

- 5.130 Because this mechanism sometimes results in the establishment of good-quality businesses that benefit Australia, it would be undesirable to close off this option entirely. Consideration could be given to limiting these applications so that the visa must be applied for offshore – this would have the effect of removing the review right, thereby addressing concerns with non-bona fide applications, while maintaining access to these arrangements for genuine persons. However, such businesses could be functioning successfully with the principals reluctant to leave the country to apply overseas as Independent Executives.
- 5.131 All cases should continue to receive close scrutiny and trends should be monitored.

Other Integrity Issues

- 5.132 Based on available departmental statistics, there are no other integrity issues with this visa:
- Only a small proportion of these visa holders apply for other short-term visas (eg tourist or student visas) after their 457 visas ceases. This is not considered a problem and is not inconsistent with the purpose of temporary residence visas.
 - A significant number of these visa holders apply for another subclass 457 visa while onshore. This is consistent with the continued need for their skilled

labour and the inability of the employer to find appropriately skilled personnel locally. Applicants are reassessed and must meet the same threshold of requirements as they initially met. Provided the need for that skill is ongoing, there is no concern with this pattern. (The issue of people extending their stay on another temporary resident visa of the same kind was discussed in Chapter 2 at paragraphs 2.88–2.96).

- Some long stay business visa holders apply for permanent residence while in Australia, primarily on the basis of a permanent skilled position or having established a business in Australia. The 457 visa is considered a legitimate avenue to these visas and there is no concern with people transferring to these permanent skilled visas. Indeed, people who have already worked and lived in Australia offer better settlement prospects than other migrants who may not have identified a job prior to their arrival or may not adapt as well to the Australian working conditions and lifestyle.
- A small proportion applied for Spouse visas. This is not surprising - many of these visas holders would be young people obtaining overseas experience. Spouse visa applications are subject to considerably scrutiny and a permanent visa is only granted if the relationship is still ongoing after two years. There are no concerns about this pattern of movement.
- The rate of visa cancellation was very low (around 1 per cent in the last year). More than half of these were cancelled while the visa holder was outside Australia.
- Statistics regarding overstayers indicate that only a very small proportion of long stay business visa holders remain in Australia beyond the validity of their visa, for example only around half a per cent in 2000-01.

