

PREFACE - SCOPE OF THE REVIEW AND REVIEW PROCESSES

TERMS OF REFERENCE

The Review of Temporary Residence Visas was announced by the Minister on 4 July 2000, with the following Terms of Reference.

The Department of Immigration and Multicultural Affairs [now the Department of Immigration and Multicultural and Indigenous Affairs] is to conduct a review of the operation of Australia's Temporary Entry program (limited to visas in the 400 stream but excluding entry for Humanitarian, Retirement or Working Holiday purposes; see attached list of visas relevant to the review). The review will build on the principles established by and published in the Report of the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists in 1995.

In conducting this review, the Department will report to the Minister for Immigration and Multicultural Affairs [now the Minister for Immigration and Multicultural and Indigenous Affairs] through a reference group of eminent people representative of a wide range of interest areas appointed by the Minister.

The review will be conducted with particular reference to:

1. Whether the legislative and procedural framework of the temporary resident program is consistent with the policy objectives of the program.
2. The extent to which existing criteria and conditions can be modified to allow simplification of the visa class structure, with a view to improving client service and the efficiency of visa processing.
3. The opportunity to:
 - investigate and resolve areas of specific concern identified with individual visas; and
 - examine technical inconsistencies existing within the legislative framework for these visas.
 - The opportunity to reduce government regulation and compliance costs to Australian business, particularly small business, and foster industry self regulation.

The review will have regard to the legislative review provisions of the Competition Principles Agreement.

The review will consult with internal and external stakeholders, including government departments, employer organisations, unions, a range of employers and current users (particularly sponsors) of the visa subclasses in question and other interested groups and persons.

The objectives of the review were therefore to simplify the current regime, with a view to removing unnecessary complexities and inconsistencies, standardising requirement where appropriate, and maintaining the integrity of the temporary residence program. The short description of each visa included in the review is at Appendix A.

Office of Regulation Review

The Office of Regulation Review was consulted in relation to the proposed Terms of Reference and the proposed review methodology and consultation process.

Consultation Process

The review was conducted by the Business Branch of DIMIA [formerly DIMA]. The review process commenced with a public discussion paper. The discussion paper (over 120 pages in length) covered:

- the current temporary resident regime and temporary resident policy in detail;
- issues stemming from the current regime; and
- options for consideration intended to promote discussion and comment.

While the discussion paper sought to cover all the key areas, it did not purport to be exhaustive in its coverage, because of the large range of visas involved and the large range of possible policy and procedural issues. Respondents were invited to raise any issue in relation to temporary residence, even if not covered in the discussion paper.

This discussion paper was made available for internal and external consideration. Its availability and the invitation to make public submissions were advertised in the national press and on the DIMIA website. It was also forwarded to identified stakeholders, including a range of employers and other current major users of these visas (particularly sponsors), employer organisations, unions, relevant Government departments and other interested groups. A summary of the consultation processes for the review is at Attachment B.

Submissions

Submissions were invited in relation to issues raised in the discussion paper as well as any other issues of interest or concern in the temporary resident visa program. One hundred and one submissions were received from a broad range of persons and organisations. Appendix C lists the respondents and shows their distribution in terms of types of businesses and organisations. The large number of respondents meant that it was possible to identify issues of concern and interest to a range of clients.

Many respondents had an interest in a particular visa or particular aspects of the temporary residence program.

Respondents made many favourable comments about the current temporary residence system. They were particularly supportive of the temporary business visa arrangements introduced in 1995 and 1996. The Review concludes that the current system largely works well, especially for regular users of the visa arrangements. Nevertheless, there was broad support from all respondents for a simpler system, and for a more standardised approach to visa requirements and processes.

Respondents identified a large range of issues with the current operation of the temporary residence visas. Some of these problems can be easily addressed, for example, by providing clearer information to clients. Other difficulties require consideration of the current policy settings and their continued appropriateness. Some issues can be addressed by changing procedures so that the requirements are more transparent, easier for clients to identify, and simpler for clients to demonstrate that they meet the requirements.

There were also a number of detailed submissions from DIMIA offices which provided technical feedback on the operation of the current regime as well as raising a valuable range of issues occurring in assessing and processing temporary residence applications.

External Reference Group

The Minister appointed an External Reference Group (ERG) of eminent persons to guide the review. Details of the members of the ERG are at Appendix D. These people represented a wide range of community interests and brought their particular areas of expertise and experience into the review process, providing an important external perspective.

The ERG was involved throughout the review process, including consideration of the draft discussion paper, review processes, issues raised in submissions, options for each visa, proposed recommendations and the draft report to Government.

Other Consultations

Following the publication of the discussion paper and the identification of specific issues requiring negotiation with other Commonwealth Departments, there were a number of meetings with DEWR, DEST, DoHA and DCITA to clarify issues, identify options and determine the preferred approach.

Structure of the Report

This Preface outlines the methodology and consultation processes for the Review.

Following the Executive Summary, the report explains the context for the Review, the composition of the Temporary Residence Program, the key policy parameters for temporary residence, and how these are currently achieved (Chapter 1-3). It then discusses the issue of sponsorship in some detail, reflecting the important role of sponsorship in balancing rights and responsibilities in this area (Chapter 4).

The report then discusses the various visas in the temporary residence program in turn, their current operation and possible scope for improvement. Some visas have a separate chapter dedicated to them, reflecting the number and complexity of the issues for discussion for those visas. Other visas are discussed in clusters of related visas (eg Chapters 8 and 13) where the issues and discussion overlap. Discussions cover the feasibility of different approaches, including retaining the current policy unchanged, and in effect, cover all available options.

The outcomes of the report include the identification of:

- findings of principle in relation to policy or procedures;
- matters where the Review considers the current policy or procedures are working well and therefore do not require any change;
- areas that could benefit from some policy clarification;
- areas that would benefit from further consideration;
- issues that require further consultation with other relevant Departments to consider alternative approaches and
- Recommendations for Change where there is a specific change to existing policy or procedures proposed. The Recommendations for Change are included in the Executive Summary. Appendix E shows the outcomes of the review for each visa and where they are discussed in the report.

Implementation of Review Outcomes

The review will aim to implement the necessary legislation and policy changes at the same time where possible, probably in the July 2003 legislation amendment round. Some changes may be possible earlier and some may require more lengthy implementation lead times. The Government has already implemented the salary and skill threshold for the temporary business (subclass 457) visa (on 1 July 2001) reflecting the gains to be had from early introduction of these changes.

Many of the recommendations for change relate to 'what' is proposed to be done, rather than 'how' it should be done. In some cases, this will necessitate consideration of alternative ways of achieving the recommendation. This will be done during the implementation phase and will involve further consultation with users.

Implementation of the regulation and policy changes flowing from these recommendations will not be the end of this process. In a number of areas, the report points to other issues that would benefit from further consideration, including with other Departments. These are largely more technical considerations or areas that will require specialised consideration in their own right. These matters will be subject to consideration and subsequent implementation.

In addition, this review should not be regarded as representing the final position for temporary residence policy into the future. The temporary residence program, like all government policy, is subject to ongoing assessment and consideration in response to developing trends and needs, and views from the community. Refinement of policy is an ongoing process. This Review has sought to take a more holistic approach to the broader issues of temporary residence policy and position the policy for the current and future challenges that Australia faces in this century.

EXECUTIVE SUMMARY

TEMPORARY RESIDENCE PROGRAM

Australia's temporary residence program provides for the entry, on a temporary basis, of people to come to Australia for specific purposes that result in benefit to Australia. These benefits derive from the work and other activities of temporary residents that contribute to the economic, cultural and social development of the Australian community and help to foster international relations and goodwill. Temporary residents:

- bring to Australia new ideas, contacts, understanding, skills and technology;
- help Australia remain competitive and integrated in a rapidly evolving global community; and
- contribute to Australia's taking its place in the international environment.

Economic and Budgetary Benefits

Temporary residents provide many benefits but the largest impact is substantially economic. Two recent studies, carried out by Access Economics, a leading economic consulting firm, on "The Impact of Temporary Migrants on the Commonwealth Budget" (October 2001) and "The Impact of Temporary Migrants on Australia's Living Standards" (October 2001) highlight the positive impact that the temporary residence program has for Australia.

The report on the impact on the Budget found that:

[they] are typically paid well because of their unique skills or familiarity with a particular corporate culture. (p. 1)

One of the important characteristics of temporary entrants is that principal applicants enter on the basis of a firm job offer. (p. 8)

Incomes and full employment add to the Budget revenues generated by temporary business migrants. (p. 1)

Temporary business migrants cannot claim social security benefits, Medicare reimbursements, assistance under the Pharmaceutical Benefits Scheme, or any other health care support, except where reciprocal agreements exist between Governments. In addition, temporary business migrants have no entitlement to settlement services...and receive no labour market assistance or other form of payment from Centrelink. (p. 1)

Higher incomes and lower eligibility for Government-funded services ensure that temporary business migrants have the most favourable Budget bottom line impact of the any of the migrant classes that Access Economics has examined... (p. 19)

Temporary business migrants contribute to a Budget surplus for each year they are in Australia, while the accumulated interest earnings on the surplus add to the net positive impact. (p. 2)

The report on the impact on living standards found that:

One of the objectives of the temporary migrant program is to allow business to fill strategic positions expeditiously, by bringing in skilled or experienced people from overseas, rather than suffering a skills shortage. Thus the program is designed to fill new employment positions (which could not otherwise be readily filled) rather than 'displace' existing positions. (p. 8)

Compared to the Australian average, temporary business migrants tend to be employed in occupations requiring higher qualifications and higher skills not readily otherwise available in the Australian labour market. The proportion of temporary business migrants employed as professionals, managers and administrators is

significantly higher than the proportion for the population as a whole. (p. 8)

[they] are generally employed in the professions and in managerial roles, with many in highly specialised positions. (p.8)

The direct impact of the 'new' employment is an improvement in Australia's productive capacity. The availability of migrants has created new jobs and their wages are a direct contribution to GDP ... (p. 8)

...benefits accrue to Australia's foreign debt from the heightened economic activity generated by temporary migrants, as well as their contribution to productivity. This allows more to be produced and in a more productive manner, including for export, which helps to improve Australia's balance of trade and reduces the need to take on additional debt. (p. 12)

Other Benefits

Of the visas included in this Review, those for skilled workers account for the majority of the temporary residence visas granted each year. The other visas in the Temporary Residence Program bring broader benefits to Australia that are less direct and less specific than the economic benefits derived from skilled overseas employees, but which contribute to Australia's cultural, community and intellectual life in a number of areas. For example, there are visas intended to facilitate collaborative research, exchange opportunities, community program activities, family visits for children, religious work, and other benefits to Australian society.

New technology has provided the capacity to communicate instantaneously with the markets of the world; it has made us aware of the interdependence that is a feature of the global economy. To identify and respond to the needs of

rapidly changing markets around the world, we need to form direct relationships, draw on international best practice, and integrate into this global environment. The movement of temporary residents contributes to this.

The increase in temporary movements in the last decade 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.

This growth in temporary residence has led to some suggestions that Australia is beginning to develop a guest worker regime similar to those operating in some other countries that import cheap unskilled labour. However, Australia's temporary resident program is very different from such guest worker arrangements. It focuses on skilled employees and persons with specialist abilities and attributes, with almost no provision for unskilled workers. Australian employers are required to pay overseas temporary workers the same pay and employ them under the same conditions as Australian workers. Overseas workers have all the protections available to local workers, in contrast to the economic under-class created by guest worker arrangements overseas.

Goals of Temporary Residence Program

While the temporary residence program provide substantial benefits, it is important to note that their benefits will only be derived if there are effective arrangements in place to minimise the potential costs. These arrangements must aim to:

- ensure there are no adverse impacts on job opportunities for Australians;
- protect pay and conditions for Australian workers;
- provide training opportunities for Australians;

- ensure the program does not result in net costs to Commonwealth and State Budgets; and
- maintain the integrity of entry to and stay in Australia.

The arrangements put in place to minimise the potentially negative impacts must be delivered with a view to maximising client service and administrative efficiency.

Each visa under review has been examined against the above five policy parameters and their delivery mechanisms. These are outlined in further detail below.

Protecting Employment Opportunities for Australians

Protecting the employment opportunities of Australians is a key objective of temporary residence programs. The Review found that there have been two major developments in this regard that must be factored into the design of temporary residence programs:

- a) the changing nature of Australia’s economy has meant that the demand for skilled workers has increased significantly more rapidly than for unskilled workers. This is reflected in the fact that unemployment rates of skilled workers are generally very low while those for unskilled workers are high (usually well above the national average); and
- b) traditional approaches to labour market testing have become anachronistic. Requirements that involve employers having to show a minimum number of “unsuccessful” advertisements for a position can be readily manipulated by those seeking to do so.

It is against this background that the Review recommends (as has already been adopted for the subclass 457 visa) that the objective of protecting the employment opportunities of Australians be pursued, where possible, through the use of appropriate salary thresholds and identification by DEWR of highly skilled occupations in which there

is some degree of shortage such that filling by an overseas temporary resident would be appropriate.

Pay and Conditions for Australian Workers

It is essential that employers who sponsor temporary residents pay them at least minimum award wages and conditions for three main reasons (apart from the fact that it is illegal to do otherwise):

- a) employers who bring in skilled workers from overseas should not obtain an unfair advantage over employers who do not;
- b) the job opportunities of Australians must not be undermined; and
- c) the overseas workers must not be exploited.

The Review found that while there is a good level of compliance with the payment of Australian awards and conditions, this is a matter that requires close ongoing monitoring, including via site visits. It is also important that there are appropriate immigration sanctions against employers who breach these requirements in addition to these employers being referred to other relevant agencies (eg the Australian Taxation Office and State and Commonwealth Industrial Relations agencies).

Training Opportunities for Australians

Australia’s Temporary Residence Program is designed to provide opportunities for Australian employers to bring in overseas workers to meet specific skill shortages, provided that:

- the fundamental principle of Australia’s temporary residence arrangements that Australian employers are expected to participate in training Australians is observed;
- Australian employers do not abrogate their responsibilities or minimise their involvement in providing training opportunities for Australian workers, on the basis that they can obtain a worker from overseas; and
- employer sponsorship undertakings ensure that this commitment is maintained.

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, because they do not invest in any training themselves, can pay higher salaries to already trained workers. This may be an increasing problem in the context of the persistent shortages of highly skilled workers. There are a number of mechanisms currently used to assess whether an employer has an appropriate level of commitment to training Australian workers. This Review recommends extension and enhancement of these arrangements, mainly with a view to:

- a) introducing more objective benchmarks to enable assessment of training records/commitment based on advice and training from DEWR;
- b) greater streamlining of processes to assess training records/commitment; and
- c) increased emphasis on monitoring and site visits to ensure compliance with training commitments.

No Net Cost to the Australian Community

Temporary entrants do not have access to Medicare or social security benefits. Policy expects that their Australian employers/sponsors accept responsibility for any costs associated with them. Sponsorship means a sponsor accepts responsibility for all financial obligations to the Commonwealth incurred by the applicant arising out of their stay in Australia. The Report recommends standardisation of the sponsorship requirement where it does not currently exist and clarification of sponsor undertakings. Increased monitoring and site visits are also important to ensure compliance.

Immigration Integrity

The lawful and orderly entry and stay of people is DIMIA's responsibility. The integrity of its arrangements in this regard is fundamental. The Review identifies a range of measures to protect Australia in relation to public health and safety, bona fides of visa applicants and periods of stay,

as well as providing statistics on visa-specific issues such as compliance, visa cancellation and overstay.

The Review found that the temporary residence regime works well, especially for those people who are regular users of the visa arrangements. As with all areas of Government administration, there is scope for improvement. In this regard the Review makes a number of recommendations are directed at:

- policy clarification;
- structural changes;
- standardising requirements;
- improving sponsorship arrangements;
- streamlining processing; and
- other matters for further consideration.

Policy Clarification

The Review noted that many areas of the temporary residence regime are working well. Policy clarification in terms of guidelines and interpretations would provide more certainty for clients and result in faster processing of applications, for example:

- sponsorship guidelines for all visas (Chapter 4);
- 456 Business (Short Stay) to clarify types of work, and amount of time in work, allowed by the visa and use of this visa by persons with longer term intentions (Chapter 6); and
- clarification of specific aspects of a number of visas including Special Program (416) - the focus on youth (Chapter 9), Occupational Trainee (442) - work experience and internships (Chapter 14), Entertainment (420) - the meaning of "net employment benefit" and "non-commercial" (Chapter 10), Visiting Academic (419) - the use of the visa and extent of the living allowance payable (Chapter 8), and Sport (421) - limitations on incidental work (Chapter 12).

Structural Changes

Some of the activity-specific or occupation-specific visas could be abolished and more generic visas used:

- it is proposed that some visas that provide for sponsored employees be amalgamated into the existing provisions for sponsored employees in the temporary business visa (subclass 457). As a result, the Exchange (411) visa, Educational (418) visa, Media and Film Staff (423) visa and Public Lecturer (424) visa would be abolished (Chapter 5);
- it is proposed that visas which do not allow the holder to work be abolished and other temporary entry visas used instead (for example that persons who use the Expatriate (432) visa instead use visitor visas and persons who use the Family Relationship (425) visa instead use visitor or student visas) (Chapters 13 and 8 respectively);
- it is proposed to abolish the Confirmatory (446) visa and that holders of emergency visas instead apply for the same type of visas as originally applied for overseas (Chapter 3); and
- it is proposed that consideration be given to abolishing the Supported Dependant (430) visa (Chapter 13).

This should result in simpler arrangements for clients and faster visa processing which submissions to the Review called for. It should also contribute to greater administrative efficiency by reducing the number of different visas that need to be managed.

Some provisions are not well placed in their current 'location' and the result is confusion for clients and staff. This Review recommends that these provisions be transferred to other visas, in order to group like visa provisions together. These include:

- persons entering under country-to-country agreements, currently contained in seven visas - it is proposed that these be consolidated into a new visa (Chapter 13);

- persons granted privileges and immunities which are currently spread over several visas - it is proposed that these be consolidated into a new visa (Chapter 13); and
- provisions for film staff currently provided for in the Media and Film Staff visa - it is proposed that these be transferred to the Entertainment (420) visa and combined with provisions for other persons working in the entertainment industry (Chapter 8).

Following the abolition of certain visas, the creation of some new visas, and the moving of some provisions, there is scope for the three temporary residence streams to be rationalised to better reflect the focus of the policy objectives (see Appendix E for the proposed new stream breakup).

Greater Standardisation

Clients would benefit from standardised requirements and processes, including:

- the requirement for a sponsorship (except 456 and where there is an agreement in place that obviates the need for a sponsorship) and a standard set of sponsorship undertakings, for all periods of stay (Chapter 4);
- more standardised approach to bona fides issues and visa conditions (Chapters 2 and 3); and
- a standard time period of 28 days within which to apply for a subsequent visa onshore after the previous temporary residence visa expires (Chapter 3).

Improvements to Sponsorship Arrangements

With the introduction of a standard sponsorship requirement comes a need for measures to improve sponsorship arrangements, including:

- increasing sponsor awareness of the sponsor undertakings and sanctions, including introduction of a 5-year ban for sponsors involved in a serious breach of their undertakings and further measures to

- improve monitoring of sponsor undertakings and their enforceability (Chapter 4);
- ensuring that there are sponsorship guidelines for all temporary residence visas (Chapter 4);
- providing visa applicants with information about the sponsor responsibilities and undertakings, remedies available for breaches of sponsor undertakings, and details of the proposed pay and working conditions conveyed to DIMIA in the sponsorship application (Chapter 4);
- cessation of certain sponsor undertakings once the sponsor notifies DIMIA that the visa applicant is no longer in their employment, and failure to notify DIMIA to be considered a breach of sponsor undertakings (Chapter 4);
- that there continue to be provision for a second sponsor to take over the employment and sponsorship undertakings from an initial sponsor (Chapter 4);
- introduction of provision for renewal of standard business sponsorships and changes to renewals for pre-qualified business sponsors (Chapter 5);
- further avenues for regular transfer of information and data between DIMIA and other relevant Government agencies to assist them in enforcing their legislation in relation to temporary residents and their sponsors (Chapter 4).

Streamlining Processing

The Report discusses current processing arrangements for the different visas. Some simplification and standardisation of visa requirements would lead to faster processing. In addition, this Report discusses a number of changes to processing arrangements that are designed to achieve more efficient processing, greater integrity in decision-making and faster processing of applications:

- greater use of objective (rather than subjective) criteria (Chapter 2);
- use of expert third parties to make assessments that are not part of DIMIA's core responsibilities and areas of expertise (Chapter 2);
- consideration be given to which requirements for each visa could be met as part of lodging an application (Chapter 3, paragraphs 3.10-3.13);
- measures to increase the number of complete applications, including the introduction of checklists for all applications, client information that encourages complete applications and explains the consequences of incomplete applications, and streaming of applications so that complete applications receive faster processing (Chapter 3, paragraphs 3.6-3.9);
- provision of clear information about service standards, processing times and processing steps (Chapter 3, paragraph 3.6);
- Exploring further opportunities for electronic communications in relation to client information, client communication, application lodgement, processing and visa grant (Chapter 3, paragraph 3.25-3.29).

Other Matters for Consideration

In addition to the recommendations for change included in this Report, the Review noted a number of areas that require further consideration in their own right. These include the following matters:

- extending the streamlined health and character processing arrangements for 457 to other temporary resident visas (Chapter 2);
- provision for interdependent partners to be granted temporary resident visas so as to be able to accompany their partners to Australia (Chapter 3);
- the ongoing need for a specific visa for Supported Dependents (subclass 430) (Chapter 13); and
- the feasibility of removing the restriction that the applicant must be in the same location (ie onshore or offshore) as at the time of application in order to have the visa granted (Chapter 3).

RECOMMENDATIONS BY CHAPTER

Chapter 2 - Temporary Residence Policy Objectives

Chapter 2 discusses the current policy objectives of the overall Temporary Residence program and its three streams (economic, cultural and social and international relations) and confirms the continued relevance of these objectives. Conscious of the Roach Review of temporary business entry and the invaluable foundation it provides, it sees benefit in making improvements in two areas:

- reinforcing the benefit to Australia that derives from the Temporary Residence program through specific clarification of the nature of that benefit for each type of temporary resident visa;
- restructuring the composition of the three streams to reflect more accurately their individual policy objectives.

This chapter also lays out the policy parameters by which benefit to Australia may be considered:

- no adverse consequences for employment and training opportunities for Australians;
- payment in accordance with Australian awards and conditions;
- no net cost to the Australian community; and
- immigration integrity.

Each subsequent visa chapter reflects these parameters.

1. **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. (paragraph 2.74)

2. **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. (paragraph 2.87)

3. **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). (paragraph 2.96)

Chapter 3 - Giving Effect to Temporary Residence Policy

This chapter sets out the principles by which temporary residence policy is put into practice, namely client service and administrative efficiency. Each chapter includes consideration against these principles.

Fundamental to introduction of these changes is the need for clear client information. A range of processing improvements are aimed at improving the quality and completeness of applications and thereby enabling speedier decisions and better client service. Improved processing would make the operation of the Temporary Residence program easier to all concerned, for clients, for staff and for other stakeholders, thus responding to the concerns about complexity and efficiency commonly expressed.

This chapter also discusses the principles of replacing subjective criteria with objective criteria, so as to eliminate as much as possible the need for subjective judgments and to provide for greater certainty for clients.

Proposed processing changes also include the transfer of certain assessments that involve matters which are not DIMIA's core business to more appropriate specialist bodies that are expert in the matters.

In such a large group of visas it is inevitable that visa requirements will have diverged over time,

where there is no intended policy distinction. This review provides an opportunity to address a number of generic issues with a view to greater consistency. These recommendations constitute a “tidying up” of technical requirements which would remove unpleasant legal technicalities for clients, inconsistencies which are difficult for staff to explain or justify to clients, and achieve an overall regime which does not rely on exceptions and exemptions. In particular it proposes a fee regime that eliminates unwarranted special treatment for some clients and is defensible to all in a fee-for-service environment.

4. RECOMMENDATION:
That holders of an emergency (temporary) visa apply for and be considered for a visa of the same kind as that originally applied for overseas, and that the Confirmatory Visa be abolished. (paragraph 3.21)
5. RECOMMENDATION:
That, while in Australia, overseas students (other than AusAID students and overseas-government sponsored students) be able to obtain any of the temporary residence visas included in this Review (subject to their having completed their course, not being subject to the restrictions for AusAID and overseas government sponsored students and their meeting all the criteria for the visa). (paragraph 3.40)
6. RECOMMENDATION:
That time limits for lodging further temporary residence applications onshore where the previous temporary residence visa has expired be standardised to 28 days for all temporary residence visas. (paragraph 3.47)
7. RECOMMENDATION:
That, where appropriate, a single application package be developed to replace the sponsorship, nomination

(where applicable) and visa applications. (paragraph 3.67)

8. RECOMMENDATION:
That, where appropriate, processing fees be amalgamated into one application charge. (paragraph 3.71))
9. RECOMMENDATION:
That existing unrestricted permission to work be retained for family members accompanying temporary residents to Australia in cases where:
 - *the visa is part of the economic stream;*
 - *the visa is diplomatic in nature or contributes to Australia’s international relations objectives;*
 - *the ‘main’ visa holder is approved for an intended period of stay longer than 12 months or*
 - *the applicant has been granted a Supported Dependant (subclass 430) visa. . (paragraph 3.102)*
10. RECOMMENDATION:
That fee exemptions for the temporary residence visas included in this Review apply only to sponsorship and visa applications lodged together and with complete documentation unless provided for under international treaties. (paragraph 3.114)
11. RECOMMENDATION:
That group discounts for the temporary resident visas included in this Review apply only to sponsorship and visa applications lodged together and with complete documentation. (paragraph 3.123)

Chapter 4 - Sponsorship Requirements and Sponsorship Obligations

The operation of the sponsorship arrangements are fundamental to the temporary residence

regime. Consistent with the terms of Reference for this Review, the report proposes standardisation of sponsorship requirements and obligations as a means of achieving greater integrity and more simplicity. While aiming to standardise as much as possible, the proposals also recognise the differing characteristics of sponsoring organisations and the need to reflect different sponsor relationships. The discussion and recommendations in this chapter:

- rationalise the need for sponsorships;
- propose a general principle that all temporary residents should be sponsored;
- propose a standardised set of sponsor obligations and, recognising that some sponsors are not the employers of the visa applicants, provide a separate standardised approach for these sponsors;
- propose measures to clarify sponsor obligations in client information, legislation and in the sponsor declarations where appropriate;
- broaden who can sponsor so as to provide explicitly for non-employer sponsors; and
- cater for change of sponsor.

A more consistent sponsorship regime would protect the interests of all employers (and sponsors) and their employees, benefit clients through its transparency and lead to better and more efficient administration, client service and program integrity.

12. **RECOMMENDATION:**

That sponsorship be a requirement for all temporary residents except under the short stay business visas or where there is an agreement in place which obviates the need for a sponsorship. (paragraph 4.17)

13. **RECOMMENDATION:**

That there should be a standardised sponsorship, involving standardised undertakings, for temporary resident visa sponsors. (paragraph 4.21)

14. **RECOMMENDATION:**

That there be a five year ban on

sponsoring introduced in cases of serious breaches of sponsor undertakings and that this be made clear to sponsors in sponsor information. (paragraph 4.83)

Chapter 5 - Economic Stream - Temporary Business Entry (Subclass 457 Visa)

The introduction of the temporary business 457 visa was the linchpin of the Roach review. That visa is the main component of the broader Economic stream of the Temporary Residence Program in terms of the number of visas granted each year. It provides a model on which to build and a model for other visas. This chapter discusses the scope for enhancement based on several years' operational experience since its introduction and, conscious of the concerns clients have expressed regarding speed, certainty and clarity, makes a number of recommendations in this regard. These relate to two main areas: ensuring no disadvantage to the Australian labour market, and the achievement of greater efficiency for both clients and staff through a range of processing improvements.

Consequently the recommendations relate to:

- streamlining the labour market testing arrangements so that they rely instead on skill and salary thresholds while at the same time ensuring training commitments are reinforced through inclusion in sponsorship undertakings;
- improving processing arrangements through a range of measures including the introduction of a single application form and process, measures to deal with incomplete applications, front-end loading of supporting documentation, continued exploration of electronic lodgement arrangements and improvements to arrangements for obtaining and renewing sponsorship status for Australian employers;
- the incorporation of certain occupation-specific arrangements in the more generic temporary business visa arrangements

where there is an employer/employee relationship. The visas recommended for incorporation would benefit from the improvements in the temporary business visa.

The Minister decided to implement the recommendations of this Report for the introduction of skill and salary thresholds for this visa on 1 July 2001. The early implementation of these changes allows for the benefits of this new approach to labour market considerations to be realised now. These changes have been well received.

15. **RECOMMENDATION:**

That the 'key' and 'non-key' activity concept and the current labour market testing arrangements be replaced with skill and salary thresholds. (paragraph 5.39)

16. **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. (paragraph 5.41)

17. **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. (paragraph 5.121)

Chapter 6 - Economic Stream – Arrangements for Short Visits for Business and Work Purposes (Subclass 456 Visa)

This chapter explores the temporary business entry (short stay) visa – usually referred to as the

business visitor visa – which provides for short stays of up to three months.

This chapter discusses the range of activities permitted under the business visitor visa and the need for policy clarification in a number of areas, along with clarification of the use of this visa where a longer stay is intended at time of application. Improved guidelines in these areas would be of benefit to both clients and staff. It also discusses the broader usage of this visa in line with the views already expressed by the Minister.

This chapter also discusses whether this visa should be able to be extended onshore which is currently not possible. It recommends the maintenance of this restriction, given the availability of the business long stay visa for those wishing to remain for a longer period. Moreover, the enhancements to that visa proposed by this review should reduce the need to use the short stay visa where longer periods of stay in Australia are intended.

Chapter 7 - Economic Stream – Medical Practitioner (Subclass 422 Visa)

Chapter 7 commences with a detailed discussion of whether a separate visa needs to be maintained for medical practitioners. It concludes that, because of the unique nature of the requirements and processing arrangements for the entry of overseas doctors, a separate visa should be maintained.

Its subsequent recommendations mainly relate to the maintenance of appropriate safeguards for this profession, and a range of processing arrangements that would enhance processing efficiency, for example, front-end loading of supporting documentation, and exploration of further flexibility in relation to the sponsorship requirement. The most significant procedural enhancement relates to the breaking of the nexus between period of registration and period of stay. This would allow visas permitting longer stays to be granted and would obviate the need for annual

visa renewal (including annual health assessment) which was the subject of significant criticism from sponsors and visa applicants.

18. RECOMMENDATION:

That the policy for medical practitioners for period of stay on a visa be changed to allow the visa granted to reflect the period of sponsorship (up to a maximum of two years for registered doctors and four years for those who have passed the Fellowship examination of an appropriate Australian clinical college), with accompanying provision for cancellation of visas if registration is terminated. (paragraph 7.38)

19. RECOMMENDATION:

That the possibility of streamlined health processing for medical practitioners should be explored by DIMIA. (paragraph 7.58)

Chapter 8 - Cultural and Social Stream (Subclass 419, 423, 424 and 425 Visas)

This chapter discusses a number of visas in the cultural and social stream which contribute to the Australian community through a wide range of sporting, entertainment, academic and cultural activities. A number of these visas would benefit, as appropriate, from clarification, standardisation and simplification, so that they better reflect their policy intentions and place in the overall cultural and social stream. Changes are also recommended to enable certain visas to be more appropriately covered by other visa provisions. This chapter covers the Family Relationship (Subclass 425) visa and proposed changes for it.

20. RECOMMENDATION:

That the Family Relationship (subclass 425) visa be abolished and that persons use either a visitor visa or a student visa, depending on the nature of their stay. (paragraph 8.31)

Chapter 9 - Cultural and Social Stream – Special Program (Subclass 416 Visa)

This is the first of a number of chapters about specific visas in the cultural and social stream, all of which are recommended to remain as separate visas. This chapter explains the role of the Special Program visa, which benefits Australia in a number of ways. It identifies ways of improving its operation, including by refocussing the visa. Making its youth focus and other benefits explicit would be consistent with the recommendation made at the outset of this Report in relation to benefits to Australia from all the temporary resident visas. Other recommendations relate to operational matters that would improve the integrity of the Special Program visa.

21. RECOMMENDATION:

That approval of Special Programs be for a specific time period after which time re-approval must be sought. (paragraph 9.39)

22. RECOMMENDATION:

That approval as a Special Program be dependent on providing appropriate responses to a standard set of questions about:

- *the purpose of the Special Program and its benefit to Australia;*
- *its employment, training and salary consequences for Australians;*
- *for programs seeking approval as a youth exchange program (ie category (b)), details of reciprocal opportunities offered and taken up by Australians overseas; and*
- *undertaking to participate in annual reporting.*

For re-approval of existing programs, providing appropriate responses to questions about:

- *all of the above; and*
- *appropriate participation in monitoring arrangements and*

reporting on the operation and use of the Program. (paragraph 9.43)

Chapter 10 - Cultural and Social Stream – The Entertainment Industry (Subclass 420 And 423 Visas)

This chapter discusses the special nature of the entertainment industry. As a consequence it recommends the maintenance of a separate visa for overseas workers in this industry. It also recommends a more logical consolidation in the Entertainment visa of provisions for overseas documentary and commercial film makers currently provided for in a different visa.

The report recommends the introduction of arbitration for live performances where promoters and unions cannot reach agreement on net employment benefit issues. This would remove DIMIA officers from being required to make judgements in these areas of cultural policy.

In response to issues raised by stakeholders in this industry, the report also recommends greater clarification of a number of terms.

23. RECOMMENDATION:

That consultations be undertaken with industry representatives and relevant unions to clarify the definition of ‘net benefit to the entertainment industry’ and draft an agreed set of guidelines for assessing this criterion. If a sufficiently robust definition of net employment benefit can not be developed then establishment of an expert panel to determine ‘net employment benefit’ in the small number of cases where promoters and unions are in dispute could then be explored. (paragraph 10.25)

24. RECOMMENDATION:

That reference to ‘cultural and

non-commercial’ be changed to ‘non-commercial’ and that this be clearly defined in the Migration Regulations following further consultation with industry stakeholders. (paragraph 10.30)

25. RECOMMENDATION:

That provisions for employed models and mannequins should be removed from the Entertainment (subclass 420) visa policy and they should instead use the generic provisions for sponsored employees under the temporary business (subclass 457) visa arrangements or the short stay business visa (subclass 456). (paragraph 10.48)

26. RECOMMENDATION:

That provisions for persons making a commercial or documentary exclusively for overseas use would be more appropriately included in the Entertainment (subclass 420) visa rather than the Media and Film Staff (subclass 423) visa. (paragraph 10.54)

Chapter 11 - Cultural and Social Stream – Religious Worker (Subclass 428 Visa)

This chapter discusses the role of the religious worker visa in an environment of increasing religious diversity and the emergence of a large range of smaller and less established religious institutions in the Australian community.

The recommendations in this chapter would lead to:

- greater clarity in relation to what constitutes a religious organisation by using a whole of government interpretation;
- greater flexibility in the interpretation of religious activities and a recognition that traditional religious hierarchies are not always appropriate for newer organisations; and

- better monitoring and reporting of the use made of this visa through the use of formal agreements and reporting arrangements.

These recommendations respond to concerns which have been expressed by a number of religious organisations in relation to current arrangements.

27. RECOMMENDATION:

That the range of activities allowed under the religious worker visa be broadened and clearly specified, and that commercial activities be specifically excluded. (paragraph 11.28)

28. RECOMMENDATION:

That the religious worker visa incorporate provisions for agreements with individual religious institutions, and that these agreements be for a fixed period and subject to regular monitoring, including site visits, and reporting. (paragraph 11.40))

of the special arrangements for sportspersons and some standardisation of sponsorship arrangements.

29. RECOMMENDATION:

That persons who are entering Australia to work as coaches, instructors, judges or adjudicators as employees should use the arrangements for sponsored employees under the temporary business entry (subclass 457) visa, unless they are operating at the elite level of the sport. (paragraph 12.11)

30. RECOMMENDATION:

That persons who are entering Australia as elite sports persons and elite level coaches and instructors should have a letter of support from the relevant Australian national sporting body to attest to the fact that the person seeking entry is operating at an elite level and their entry will be of benefit to the relevant Australian sport. (paragraph 12.36)

Chapter 12 - Cultural and Social Stream – Sport (Subclass 421 Visa)

This chapter discusses appropriate arrangements for persons visiting Australia as sportspersons or persons associated with the sporting industries. It recommends that some persons (eg employed instructors or amateur competitors) who currently use this visa could more appropriately use the temporary business (long stay) visa (subclass 457) or the business visitor visa (subclass 456) or a visitor visa.

It is recommended that the remaining provisions in the Sports visa be refocussed to re-emphasise the special arrangements for elite players and coaches that this visa seeks to provide.

It also recommends clarification of the nature of incidental work allowed to be undertaken as part

Chapter 13 - International Relations Stream (Subclass 415, 427, 430, 432 and 411 Visas)

While the objective of the International Relations stream remains relevant, the makeup of the stream and the operation of its visas reflects Australia's needs of some time ago. This chapter recommends the updating and broadening of the visa arrangements in this stream in order to recognise the international environment of today. The recommendations for change are aimed at:

- sharpening the focus of the International Relations stream;
- consolidating country-to-country agreements in the one visa, which would enable smoother processing and client service, and improved reporting on these agreements and how DIMIA plays its part in them;
- consolidating the specific provisions relating to privileges and immunities

currently in the Economic stream to the International Relations stream; and

- replacing the Foreign Government agency visa, with its emphasis on arrangements for a small specified list of cultural bodies, with a broader visa which would include provision for employees of a range of international bodies not currently provided for.

31. **RECOMMENDATION:**

That the Expatriate (temporary) visa be removed and the provisions for these persons be transferred to the long stay visitor visa. (paragraph 13.25)

32. **RECOMMENDATION:**

That provision for persons accorded privileges and immunities currently covered in the temporary business visas be consolidated together and moved into one visa in the International Relations stream of the Temporary Residence Program. (paragraph 13.42)

33. **RECOMMENDATION:**

That the visa provisions for international relations purposes be rationalised and a specific visa (or visas) be introduced with provisions that more clearly provide for representatives of international organisations and better reflect the objectives of the International Relations stream. The provisions of the foreign government agency visa should be folded into one or more of these new and broader international relations visa(s). (paragraph 13.53)

34. **RECOMMENDATION:**

That existing country-to-country agreement provisions be consolidated into a single visa, to be included in the International Relations stream. (paragraph 13.64)

Chapter 14 - International Relations Stream – The Occupational Trainee Visa (Subclass 442 Visa)

This chapter reviews the ongoing appropriateness of this visa and its policy settings, in the context of globalisation of skills development.

It concludes that provisions for occupational trainees are best retained in a separate visa, in recognition of the different nature of training activities from other employed positions. Reflecting the focus on training that this visa has, it is proposed that the visa be viewed either as part of the Student Program, reflecting its emphasis on training, or as part of the Economic Stream, reflecting its provisions for sponsored work, rather than the International Relations Stream of the Temporary Residence Program.

However, it does propose a number of changes to current arrangements to align the provisions of this visa with other temporary residence visas, including the introduction of a sponsorship requirement and a requirement that persons be employed in accordance with Australian wages and working conditions, albeit for training positions.

It also proposes that the visa provide more explicitly for internships and work experience which may be required as part of obtaining professional qualifications.

35. **RECOMMENDATION:**

That the nominators/sponsors of occupational trainees be required to employ them under standard Australian pay and conditions for training positions. (paragraph 14.27)