

**Visa Subclass 457
Integrity Review**

Issues Paper #1:

Minimum Salary Level / Labour Agreements

July 2008

Version 1.0

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Overview of this issues paper

This paper includes the following sections:

- Executive summary
- The Visa Subclass 457 Integrity Review
- Visa Subclass 457
- Minimum Salary Level
- Labour Agreements.

The paper includes the following attachments:

- a list of the references used in the compilation of this paper
- the text of the media release from the Minister for Immigration and Citizenship announcing the appointment of industrial relations commissioner Ms Barbara Deegan to examine the integrity of the temporary skilled migration program
- a compilation of Visa Subclass 457 statistics
- a set of examples of the calculation of Minimum Salary Levels from the applicable Legislative Instrument

Note on nomenclature

When the phrase ‘the department’ is used in this report without further attribution it should be read as “the Department of Immigration and Citizenship (DIAC)”.

References to submissions in this report refer both to written submissions and conversations with stakeholders.

Note on references

To avoid repetition, references in this report are generally concise. Full details on each reference may be found in the references list in Attachment A.

Note on occupational classifications

It is intended that the Australian and New Zealand Standard Classification of Occupations (ANZSCO) will replace the existing Australian Standard Classification of Occupations (ASCO) Second Edition and the New Zealand Standard Classification of Occupations (NZSCO) 1999 used in Australia and New Zealand, respectively.

It is likely that this will lead to changes in the classification system used for temporary skilled migration visa purposes. Details on the new classification system may be found at the Australian Bureau of Statistics website:

<http://www.abs.gov.au>

List of abbreviations

ABS	Australian Bureau of Statistics
ANZSCO	Australian and New Zealand Standard Classification of Occupations
ASCO	Australian Standard Classification of Occupations
AWOTE	Average Weekly Ordinary Time Earnings
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
ENS	Employer Nomination Scheme
ERG	Visa Subclass 457 External Reference Group
ICT	Information and Communications Technology
JSCM	Joint Standing Committee on Migration
LMT	Labour Market Testing
MSL	Minimum Salary Level
SBS	Standard Business Sponsorship

Section 1 - Executive summary

This is the first in a series of issues papers to be released as part of the Visa Subclass 457 Integrity Review (the Review) being conducted by Ms Barbara Deegan. This paper will focus on Minimum Salary Levels and Labour Agreements, and will provide the basis for structured feedback from interested stakeholders.

The issues raised in the paper have been compiled from DIAC and Department of Education, Employment and Workplace Relations (DEEWR) resources and from a series of informal consultative meetings between Ms Deegan and a selection of stakeholders. The issues outlined in this paper are designed to prompt debate and provide interested parties with an opportunity to supply the Review with written submissions.

This work builds upon stakeholder input to earlier reviews of the temporary skilled migration program, including the Joint Standing Committee on Migration of 2007 and the External Reference Group (ERG) earlier in 2008 (see Attachment A for references).

Section 2 - The Visa Subclass 457 Integrity Review

Following concerns raised about the exploitation of migrant workers, salary levels and English language requirements within the temporary skilled migration program the Minister for Immigration and Citizenship, Senator Chris Evans, announced the establishment of an integrity review process (see Attachment B) to be conducted by Barbara Deegan (a member of the Australian Industrial Relations Commission).

The terms of reference for the Review include examining:

- measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program
- the employment conditions that apply to workers employed under the temporary skilled migration program
- the adequacy of measures to protect 457 visa holders from exploitation
- the health and safety protections and training requirements that apply in relation to temporary skilled workers
- the English language requirements for the granting of temporary skilled migration workers' visas
- the opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The Review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented in October 2008.

The Review is independent of DIAC which provides accommodation and secretariat support.

The Integrity Review

Barbara Deegan

Barbara Deegan holds a law degree from the University of Tasmania. After a time in private practice, and then a period with a TAFE teachers' organisation, she joined the Australian Public Service in the Department of Employment and Industrial Relations.

She held the position of Assistant Secretary of the Legislation Branch of the Department of Industrial Relations for a number of years before being appointed as the Principal Registrar of the Australian Industrial Relations Commission.

Subsequently she became the Australian Government's representative at the International Labour Organisation in Geneva, and was appointed to her current position as a Commissioner with the Australian Industrial Relations Commission in 1996.

Secretariat

The secretariat function for the Review has been provided by the following DIAC staff:

- Tony Davison - Project Manager Business Branch
- Penelope Robinson - Director Business Branch
- Felicity Lloyd - Project Officer Business Branch.

Secretariat members coordinate the activities of the Review, provide expert advice in their departmental domain, draft discussion papers and reports, manage meetings and assist with the consultation process.

Please note that the members of the secretariat carry out their roles independently of DIAC and that the Review itself is being carried out independently of the department.

The temporary skilled migration reform agenda

The Skilled Migration Consultative Panel has been established to provide advice to the Government on proposals aimed at improving Australia's temporary skilled migration program and how it integrates with the employer sponsored permanent skilled migration program.

The Review is working closely with the Consultative Panel and will provide it with advice on integrity matters relevant to its operation. The independent work of the Review is limited to the scope of its terms of reference and the subject matter of the issues papers it will release from time to time.

If you are interested in contacting the Consultative Panel please address your correspondence to:

temporary.business.strategies@immi.gov.au

Submissions

The Review welcomes submissions on the issues raised in this paper and/or on its terms of reference. All submissions should be sent via email to the following email address:

457IntegrityReview@immi.gov.au

The closing date for submissions for this issues paper is **8 August 2008**.

At the end of Sections four and five of this paper you will find questions in bold text (like this). These are designed to stimulate discussion on particular issues. The questions should be viewed as prompts and should not be seen as restrictive. Please feel free to provide comments on any issues of interest.

Please note that the content of submissions may be made public. If confidential submissions are submitted they should be sent separately from any public submission and clearly marked as confidential and not for publication.

Future work program

This is the first in a series of issues papers the Review will be releasing to prompt discussion and seek submissions on integrity issues relevant to the temporary skilled migration program. At this stage it is anticipated that further issues papers will be:

- #2 - The English Language requirement and Occupational Health and Safety (expected to be issued late in July 2008)
- #3 - Integrity and Exploitation (expected to be issued in August 2008).

The content of submissions received on all three issues papers, along with input from face-to-face meetings, will inform the final report of the Review to the Minister for Immigration and Citizenship and the Deputy Prime Minister in October 2008.

Disclaimer

The views and issues in this paper do not necessarily reflect the views of the department or of the government. The paper is intended to stimulate discussion and covers a wide range of views and opinions, some of which may be contradictory.

Acknowledgements

The Review would like to thank all of the groups and individuals who have contributed to the Review to date through the initial consultation process which comprised a series of informal consultative meetings between Ms Deegan and a selection of stakeholders to identify issues for this paper.

Section 3 - Visa Subclass 457

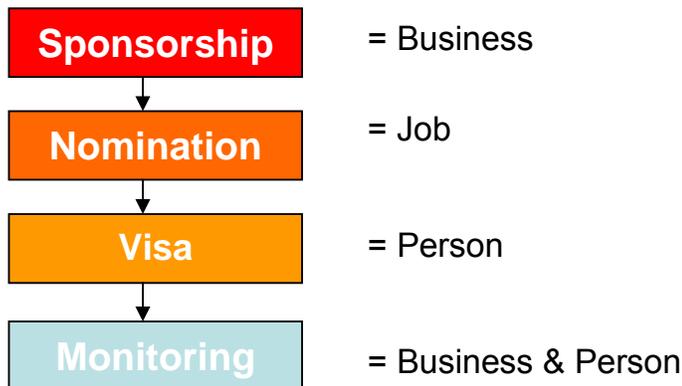
Managing the Subclass 457 visa program

Managing the program poses two critical and potentially competing challenges:

- remaining internationally competitive in facilitating labour movement, particularly skilled labour, in the context of Australia's changing demographic and skill needs, and in meeting international trade commitments; and
- safeguarding employment and training opportunities for Australians and protecting overseas workers from exploitation.

Subclass 457 visa processing process

There are currently three processing steps in the Subclass 457 visa program, followed by ongoing monitoring, as shown in the following diagram:



The business sponsorship process involves assessing the employer to ensure:

- they are actively and lawfully operating
- the entry of the visa holder will benefit Australia, such as by contributing to Australian trade, improving international business links, contributing to competitiveness
- they will either introduce new technologies to Australia or demonstrate a record of, or commitment to, training Australians
- they are directly employing the visa holder
- they are able to meet their sponsorship obligations.

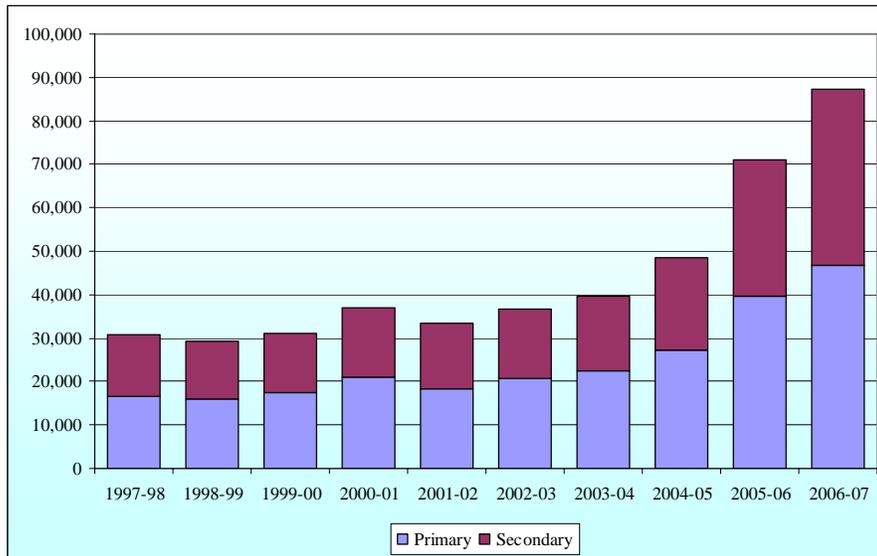
The nomination process involves the assessment of the position (job) to ensure it meets minimum skill and salary requirements.

The Subclass 457 visa application process assesses:

- the appropriateness of the match between the nominated position and the personal attributes/employment background of the Subclass 457 visa applicant
- the applicant against health and character requirements
- the extent to which the nominated salary is known to the applicant and meets the minimum salary requirement.

The duties of the position sought must be equivalent to those of an occupation prescribed under migration regulations and the position must attract a salary of at least the Minimum Salary Level set for the program.

The number of Subclass 457 visas granted over the last 10 years is shown in the graph below.



Subclass 457 Visa Grants (Source: DIAC)

In this paper the term “Subclass 457 visa holder” applies only to primary visa holders unless otherwise noted.

Section 4 - Minimum Salary Level

History of the Minimum Salary Level (MSL)

The Minimum Salary Level (MSL) for Subclass 457 visa holders was introduced in July 2001 when the concept of 'key' and 'non-key' activities was abolished, the latter activities having previously been the subject of Labour Market Testing (LMT). The decision to discontinue LMT was based on the premise that it would be replaced by the imposition of minimum skill and salary levels.

The MSL aims to deliver three main policy objectives:

- to provide a price signal to employers to encourage training and hiring of Australians first, noting that there may also be other costs for employers associated with recruiting overseas skilled workers
- to ensure that employers gain no benefit from 'inflating' the skill description of positions they wish to fill in order to imply that the positions require a higher level of skill than is actually the case
- to ensure that overseas workers maintain a standard of living broadly commensurate with that of Australian citizens noting that they do not have access to the same level of government services as Australians (while having access to the same industrial relations protections as local workers they do not have access to, for example, social security).

MSL characteristics

Other characteristics of the MSL include:

- The introduction, from February 2004, of a separate and much higher MSL for Information and Communications Technology (ICT) occupations. This followed the dot-com crash in 2001 and was based on a concern that the crash led to a significant number of Australians with ICT skills losing employment. The higher MSL was designed to increase the likelihood of Australians being considered by employers first but without preventing employers from accessing overseas employees to fill gaps in higher-end ICT positions. It should be noted that in some parts of the ICT industry skill gaps have remained and indeed, are now growing. This is substantiated by the large number of ICT occupations that are currently on the national shortage list produced by DEEWR. The ICT MSL from 1 August 2008 will be \$59 480.
- Specification, from 1 July 2006, of a standard working week of 38 hours. The purpose of this was to make clear the intention of the MSL was to reflect a standard working week and to avoid the mechanism being undermined through its application to working weeks in excess of 38 hours (e.g. paying the MSL but requiring an employee to perform work for 60 hours per week for no additional payment).

- The introduction, from 1 July 2006, of a separate MSL for regional Australia set at 90 per cent of both the standard and ICT MSLs (from 1 August 2008 these will be \$39 100 and \$53 530 respectively). The regionally-certified MSLs establish a floor for salary levels approved by Regional Certifying Bodies (RCBs). This complemented the existing requirements under regional provisions that are intended to ensure that the salary is in accordance with workplace legislation and awards.
- The MSL only has application to the extent that it prescribes a salary greater than that specified in any applicable industrial instrument (e.g. an award, certified agreement or AWA). If the industrial instrument applicable to the employment provides for a salary higher than the MSL, then that higher salary must be paid.

Salary levels and allowable deductions

The standard MSL was based on a seasonally adjusted average of Average Weekly Ordinary Time Earnings (AWOTE) for all employees data produced by the Australian Bureau of Statistics. The initial MSL was gazetted at \$34 075 per annum. The standard MSL has been updated periodically since then and from 1 August 2008 will be set at \$43 440 (based on a 38 hour week) [see discussion of the 38 hour week below].

MSL is calculated exclusive of all deductions other than PAYG (Withholding) Tax, 100 per cent Tax deductible items and items that are exempt from Fringe Benefits Tax (Attachment D of this paper is an extract from the Legislative Instrument and provides an example of MSL calculation).

Issues with the MSL

Issues raised by stakeholders regarding the MSL include:

- effectiveness of MSL
- level of the MSL
- appropriateness of the regionally-certified MSL
- treatment of hours worked above the standard 38 hours
- treatment of non-salary benefits
- difficulties caused by the indexation of salaries of Subclass 457 visa holders
- lack of clarity in the manner in which the MSL operates
- lack of understanding on the part of both sponsors and visa holders of the operation of the MSL
- displacement of local workers by Subclass 457 secondary visa holders who are not subject to MSL requirements.

Overall approach to the MSL

The MSL is set at a level intended to balance two potentially conflicting requirements:

- the need for a clear ‘price signal’ to employers to always consider training and hiring Australians first; and
- the setting of a MSL that is not so high that it will limit access to overseas skills in areas where a legitimate need exists, including obtaining overseas skilled people who will assist in training more Australians.

It has been suggested that a better system could allow market mechanisms to determine the pay rates that should apply to temporary skilled workers from overseas and that the MSL should be abolished.

While it has also been suggested that Subclass 457 visa holders should be paid ‘market rates’, which would suggest both a fair and desirable outcome (particularly in that all workers doing a particular job at a particular location would be paid comparable wages), the concept of regulating payment of ‘market rates’ (as opposed to allowing the market to determine the rate at which that person is paid) is not simple.

In addition, the MSL is also set at a rate intended to create a ‘premium’ which compensates Subclass 457 visa holders for their inability to access services (such as health, social security and education) otherwise available to local workers.

Clearly arriving at a ‘market rate’ could be difficult in practice. In a dynamic market it reflects the salary required to hire the next worker (the rate at which the market clears). It has been suggested by some stakeholders that what the market is facing is not a skills shortage as such, but an unwillingness to pay the amount required to attract the desired worker.

At the extreme, the wage price signal is a mechanism which suggests that if the business cannot afford to profitably pay the price asked by the next worker then they should not be seeking to employ them. In such circumstances it could be argued that the skilled visa program amounts to a wage subsidy and could be viewed as a market distortion which inhibits capital moving into more profitable sectors of the economy. Thus it is essential that the MSL is set at an appropriate level to balance market forces and desired labour market policy outcomes.

Another issue which has been raised concerning the MSL is that it is too blunt an instrument and that it should include further variations based on region, industry or occupation. Setting a range of MSLs could involve a complex series of calculations (assuming available data supported such an analysis), particularly at the regional level.

The level of the MSL

The standard MSL is based on a seasonally adjusted average of AWOTE data for all employees produced by the Australian Bureau of Statistics (ABS). This data includes junior, part-time and unskilled workers. One suggestion that has been made is that a more appropriate measure would utilise ABS data on full-time adult skilled workers only.

Another suggested option is to set the MSL at the '75th percentile' of the salary of Australian workers in the occupation concerned which would encourage employers to fill the vacancy with Australian workers if available while also allowing some premium for the overseas worker. A variation would see Subclass 457 visa holders paid the median salary in the industry/region with an additional salary component added to account for government services foregone (the latter could be worked out by calculating the average cost of providing such services by family).

The level of the MSL is not usually an issue for sponsors of visa holders at the more skilled end of the market, as they tend to pay their employees above the MSL in response to market pressures. This is reflected in Attachment C to this paper which shows average salaries paid to Subclass 457 visa holders by Industry. Apart from the Accommodation, Cafes and Restaurants sector, the average of most salaries appear to be well above the applicable MSL.

Issues arise for employers who wish to fill positions paid at the MSL or only slightly above it. It tends to be these cases that cause the most concern and it is this area where the majority of allegations arise about both exploitation of Subclass 457 visa workers and displacement of Australians. All Australian governments have made their opposition to exploitation and/or displacement of Australians very clear and it may be that employers in this category require a visa other than the Subclass 457 to meet their needs, as suggested by Recommendation 13 of the External Reference Group Final Report (2008):

“The ERG is of the view that the Visa Subclass 457 visa is not suitable to meet market requirements for semi-skilled and unskilled labour except through Labour Agreements for semi-skilled. Hence, the ERG recommends that the Australian Government pilot other approaches to the provision of a range of labour in specific industries”.

The regional MSL

The regional MSL has been set at 90 per cent of the standard MSL. This is based on ABS data that shows average incomes outside the major metropolitan centres of Sydney, Melbourne, Perth and Brisbane are around 10 to 15 per cent lower than incomes for the rest of Australia. A number of employers from regional areas have argued that the regional MSL has been set at too high a level given the difficulties that regional and remote Australia faces in attracting skilled workers and the generally lower salaries in regional Australia.

Any consideration to continue applying a lower MSL in regional and remote Australia needs to be carefully balanced against other government labour market mechanisms which encourage Australians, and in particular Indigenous Australians, into the workforce in these areas.

Treatment of hours worked above the standard 38 hours

In order to comply with MSL requirements sponsors must pay at least the hourly MSL for hours worked in excess of a 38 hour week. Under many awards and agreements penalty rates apply to hours worked in excess of ordinary hours. As employers must meet both MSL requirements and the requirements of relevant industrial instruments a level of complexity can be added to wage calculations that may increase the risk of an inadvertent breach of the MSL requirement or the relevant industrial instrument.

Treatment of non-salary benefits

Employers and employees commonly seek to enter into non-salary arrangements for the provision of accommodation, cars, travel, health insurance or other benefits. Non-salary benefits (in the form of salary packaging) are particularly common in the higher ASCO categories (ASCO 1-3 in particular) and the inability of employers to use such benefits in the calculation of MSL salaries is seen by some employers as an impediment to the recruitment of skilled staff.

Improved understanding of the MSL

The large majority of sponsors under the Subclass 457 visa program are and wish to remain compliant with Australian laws. It may be that much of the non-compliance that occurs in relation to the holders of Subclass 457 visas is a result of a misunderstanding as to the requirements and obligations attaching to the sponsorship. Employer organisations have indicated that the obligations of employers are not stated clearly enough and that some employers have been unaware of their obligations. The Review notes that steps are in train within DIAC to improve information provision, processes and materials.

Indexation of the MSL

Subclass 457 visas can be granted for up to four years. Until recently sponsors were considered to be complying with their MSL requirements where they continued to pay the MSL that was in force at the time of visa nomination or decision (as applicable). This meant that unless employers acted to independently raise the salaries of existing Subclass 457 visa holders in response to salary movements, some visa holders approved several years ago may have been paid at levels well below the currently applicable MSL.

With the most recently announced indexation of MSLs, the percentage increase will apply to all Subclass 457 visa holders that an MSL applies to, based on the MSL applying at the time of their visa grant (which could potentially be below the current MSL rate applicable in the industry/region). The history of recent MSL indexation is summarised in the table below.

Summary of MSL Indexations

Minimum Salary Levels (MSLs) – Subclass 457			
MSL Instrument Period of Effect	MSL Occupation Category	Current MSL	New MSL from 1 August 2008
11/02/04 to 08/04/05	Non-ICT	\$37,720	\$39,150
	Regionally-certified	Industrial Award	Industrial Award
	ICT	\$46,620	\$48,390
09/04/05 to 02/05/06	Non-ICT	\$39,100	\$40,590
	Regionally-certified	Industrial Award	Industrial Award
	ICT	\$50,775	\$52,700
03/05/06 to 30/06/06	Non-ICT	\$41,850	\$43,440
	Regionally-certified	Industrial Award	Industrial Award
	ICT	\$57,300	\$59,480
01/07/06 to date	Non-ICT	\$41,850	\$43,440
	Regionally-certified (non-ICT)	\$37,665	\$39,100
	Regionally-certified (ICT)	\$51,570	\$53,530
	ICT	\$57,300	\$59,480
10/09/2007 to date	English language exemption	\$75,000	\$77,850

Note: Regionally-certified MSLs are set at 10% below the standard and ICT levels.

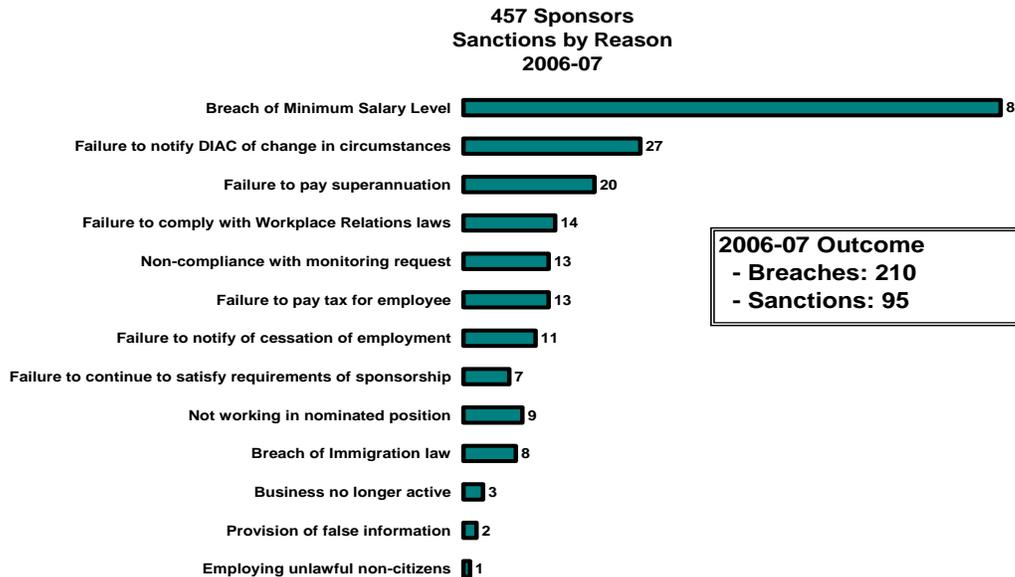
In May 2008, DIAC estimated that over 40 000 Subclass 457 visa holders (of a total of around 70 000) may be unaffected by the increased MSL at 1 August 2008. Circumstances where a current Subclass 457 primary visa holder will remain unaffected by the MSL indexation would include a visa holder who:

- On 1 August 2008 (when the indexation takes effect), will be receiving a salary which is greater than the indexed MSL (this accounts for the bulk of cases).
- Entered under a regional concession arrangement that applied prior to 1 July 2006. Due to arrangements that applied prior to this time, no separate MSL applies to this group.
- Entered under a Labour Agreement that specified a particular salary arrangement.

Monitoring and compliance

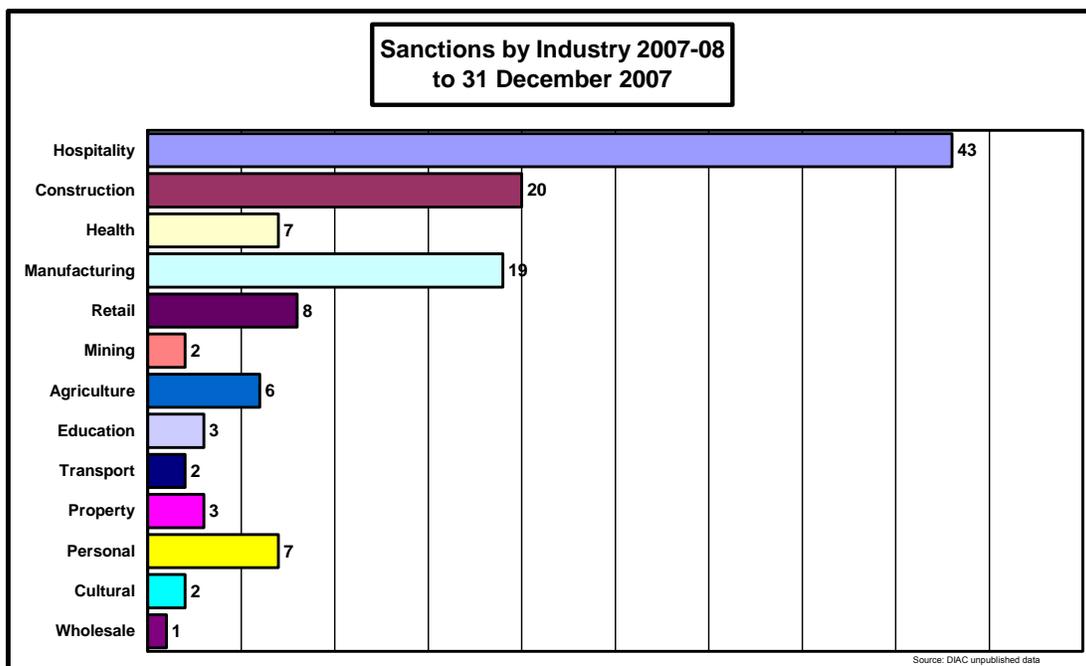
The majority of employer breaches of Subclass 457 visa sponsorship undertakings identified during monitoring are for breaches of the MSL, as shown in the chart below.

This corresponds with the most common allegations received across all industries which include underpayment of salary, working excessive hours and unauthorised pay deductions.



Source: DIAC internal report

Sanctions by industry are shown in the chart below, which covers the first half of the 2007-08 financial year. The increased number of sanctions compared with the 2006-07 figures in the chart above is primarily due to the introduction of a risk-based monitoring regime at DIAC in late 2006 which should better identify businesses likely to be in breach of sponsorship undertakings.



Subclass 457 secondary visa holders

Secondary visa holders (who include the spouse and children of the primary visa holder) are entitled to work, without restriction, while in Australia. The chart in Section 3 of this paper shows that secondary visa holders comprise approximately 40 to 45 per cent of Subclass 457 visa holders.

Given that secondary visa holders are not subject to the MSL, and that they may be prepared to work for minimum wages, they could in some circumstances displace local workers. This is not an intended purpose of the scheme.

It has also been claimed that, depending upon the region and applicable MSL, sponsoring a primary visa holder with working age dependents could be a cost-efficient way for an employer to use the Subclass 457 program as an avenue to gain access to additional unskilled labour (it should be noted that a number of employer undertakings which apply to primary visa holders also apply to secondary visa holders).

MSL - Some issues for consideration

Set out below are some of the issues that have been raised in relation to the MSL. Any comments concerning other relevant matters will be appreciated.

Is the MSL the most effective mechanism to ensure that employers make every attempt to fill skill shortages with Australian workers rather than recruiting overseas?

Is the MSL the most appropriate mechanism to ensure that Subclass 457 visa holders receive a salary sufficient to maintain themselves while working in Australia?

If the MSL should be retained:

- **Is the method of calculation of the MSL satisfactory? If not, what improvements could be made?**
- **Is the MSL set at an appropriate level?**
- **Should the MSL have more (or fewer) levels to account for industry, regional and occupational variation?**
- **Should the MSL vary between regional and metropolitan areas? If so, by what amount?**
- **How should non-salary benefits be treated in calculation of the MSL?**
- **Should the MSL be indexed? If so, how often should this be done and which workers should it apply to?**
- **Are there difficulties in complying with the MSL (for example, confusion over the applicability of the MSL vis-a-vis the requirements of applicable industrial instruments)?**
- **Are there difficulties reporting on MSL compliance? If so, please give examples.**

If the MSL is not the most effective mechanism to protect the jobs of Australian workers and ensure that overseas workers receive an income sufficient to maintain themselves (given the lack of access to the welfare system):

- **What other premium could be imposed to ensure overseas workers are not used in preference to Australian workers?**
- **How could there be an assurance that overseas workers will be engaged on a wage that is sufficient for them to maintain a reasonable standard of living?**

Should the spouse or families of Subclass 457 visa holders who are granted visas as a consequence of the granting of the primary visa be allowed to work in Australia? If so, should there be any limitations on the terms of that employment?

Section 5 - Labour Agreements

Background

This section of the issues paper will set out the current arrangements for Labour Agreements in the Australian industrial landscape within the context of the temporary migration program and raise questions for consideration about these arrangements.

Australian employers who wish to employ temporary skilled overseas workers may access the Subclass 457 Temporary Business (Long Stay) visa program through either a Standard Business Sponsorship (SBS) or Labour Agreement pathway.

Labour Agreements aim to provide a flexible response to the needs of employers experiencing skill shortages while ensuring that overseas recruitment does not prevent the longer term improvement of employment and training opportunities for Australians.

Labour Agreements can be used to facilitate:

- up-grading skills of existing Australian workers in a company
- training of Australians
- the integrity of the skills assessment processes
- a balanced dispersal of Australia's migration intake through regional concessions
- the reduction of skill shortages in regional Australia
- mobilisation of skilled personnel for major infrastructure projects.

What is a Labour Agreement?

Labour Agreements are formal arrangements between the Australian Government (represented by DIAC and DEEWR) and an employer or industry association seeking to access overseas skilled workers where a significant economic benefit or public interest case can be established. Separate groups of Labour Agreements also exist where overseas companies seeking to establish regional headquarters in Australia have gained the support of Invest Australia, which in the past has appeared in lieu of DEEWR as the third signatory.

The *Migration Regulations 1994* provide for Labour Agreements and contain specific Labour Agreement visa subclasses for permanent entry and provision within the Subclass 457 visa for temporary entry.

How do Labour Agreements come into existence?

Labour Agreements usually arise from an approach to the Australian Government (DIAC or DEEWR) by a company, industry body, or state and territory government agency seeking approval for the entry of overseas workers.

If agreement is reached, the terms and conditions of the agreement are formalised in a document that is signed by representatives of these three parties and any other parties to the agreement, such as state governments or other Commonwealth departments.

What are the most common types of temporary skilled workers that come to Australia under a Labour Agreement?

The table below sets out Subclass 457 visa grants to primary visa holders by financial year of visa grant from 30 June 2005 to 31 May 2008 under Labour Agreements in the major ASCO groups.

As a group 'Professionals' are the largest proportion of the Subclass 457 visa case load under a Labour Agreement. The majority of these are nurses employed by state governments.

Subclass 457 Visa Grants to Primary Applicants under Labour Agreements

ASCO Major Group	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
1 Managers and Administrators	130	3.9%	140	4.0%	80	4.1%
2 Professionals	2 250	68.0%	2 590	73.8%	1 320	67.0%
3 Associate Professionals	370	11.2%	350	10.0%	100	5.1%
4 Tradespersons and Related Workers	190	5.7%	200	5.7%	210	10.7%
5 Advanced Clerical and Service Workers	0	0.0%	0	0.0%	0	0.0%
6 Intermediate Clerical, Sales and Service Workers	170	5.1%	130	3.7%	60	3.0%
7 Intermediate Production and Transport Workers	140	4.2%	70	2.0%	60	3.0%
8 Elementary Clerical, Sales and Service Workers	70	2.1%	30	0.9%	0	0.0%
9 Labourers and Related Workers	10	0.3%	0	0.0%	0	0.0%
Not Recorded	0	0.0%	0	0.0%	140	7.1%
Total	3 310	100.0%	3 510	100.0%	1 970	100.0%

Source: DIAC

Note: A primary applicant is the main visa holder who may also bring with them secondary visa holders.

External Reference Group (ERG) – April 2008

The External Reference Group (ERG) noted the labour market pressures and skills shortages apparent in the Australian economy. In this context the ERG made a number of findings in relation to Labour Agreements.

The recommendations included the following key points:

- that Labour Agreements be promoted as a tool to manage the temporary entry of overseas workers to meet the range of labour needs for large projects that are in the national interest and have significant economic benefit to Australia; and
- that the process for approving Labour Agreements be made more open to improve transparency and accountability.

Historical use of Labour Agreements

Alternative pathways to Standard Business Sponsorship

Labour Agreements can provide an alternative pathway where SBS arrangements do not meet the particular needs of an industry or employer or where there are community or labour market issues that need to be taken into account.

Precedents for use of Labour Agreements

Labour Agreements have historically been utilised to facilitate the recruitment of a specific number of skilled workers where one or more of the following conditions existed:

- (a) Large numbers of workers were needed for short term projects. Typically, these are large construction projects in the mining and resources sectors requiring professionals and tradespersons in numbers not available through onshore recruitment.
- (b) Ongoing entrenched skills and/or labour shortages in the occupations were evident.
- (c) Flexibility was sought in the application of the English Language requirement.
- (d) New and emerging skilled occupations not found in ASCO, or covered by existing temporary visa programs, were needed.
- (e) The salary 'market rate' for the occupation or in the relevant region was less than the Minimum Salary Level requirement under the Subclass 457 program.
- (f) A number of different occupations were needed for the same company or project.
- (g) Concerns existed about aspects of industry practice that could be best addressed through the controls of a Labour Agreement.

The table below sets out Subclass 457 visa grants to primary applicants under Labour Agreements by sponsor industry by financial year of visa grant from 2005-2006 to 31 May 2008.

Subclass 457 Visa Grants to Primary Applicants under Labour Agreements

Sponsor Industry	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
Accommodation, Cafes and Restaurants	140	4.2%	120	3.4%	80	4.1%
Agriculture, Forestry and Fishing	30	0.9%	10	0.3%	20	1.0%
Communication Services	230	6.9%	630	17.9%	470	23.9%
Construction	20	0.6%	< 5		0	0.0%
Cultural and Recreational Services	380	11.5%	280	8.0%	130	6.6%
Education	< 5		< 5		10	0.5%
Electricity, Gas and Water Supply	0	0.0%	0	0.0%	0	0.0%
Finance and Insurance	170	5.1%	380	10.8%	120	6.1%
Government Administration and Defence	0	0.0%	0	0.0%	0	0.0%
Health and Community Services	980	29.6%	970	27.6%	570	28.9%
Manufacturing	90	2.7%	90	2.6%	250	12.7%
Mining	100	3.0%	70	2.0%	0	0.0%
Personal and Other Services	130	3.9%	60	1.7%	70	3.6%
Property and Business Services	910	27.5%	440	12.5%	90	4.6%
Retail Trade	10	0.3%	< 5		< 5	
Transport and Storage	30	0.9%	< 5		< 5	
Wholesale Trade	0	0.0%	0	0.0%	0	0.0%
Not Recorded	100	3.0%	450	12.8%	160	8.1%
Total	3 310	100.0%	3 510	100.0%	1 970	100.0%

Source: DIAC

Key negotiation points for Labour Agreements

Negotiations between the Australian Government and the third party focus on:

- company and industry structure and background
- occupations, skill levels and qualifications of the proposed overseas nominees
- proposed salaries
- evidence of shortages in the required skills
- education and training, including expenditure on training and details of any initiatives taken to train Australians and reduce dependence on overseas recruitment
- information on the award or other workplace agreement that applies to the occupation.

The consultation process with Labour Agreements

Employers who wish to enter into a Labour Agreement must meet certain criteria (including the provision of training for Australians as under the SBS stream) and undertake community and industrial stakeholder consultation. For the meat processing industry and the On-hire industry, Labour Agreements have been the only pathway available to access overseas workers under the Subclass 457 program since 10 September 2007 and 1 October 2007 respectively.

For any new Labour Agreement, consultation with industrial stakeholders relevant to the occupations contained in the proposed Labour Agreement is now mandatory, though not determinative. This is intended to assist with transparency and encourage public acceptance of the wider use of Labour Agreements.

The role of the states and territories in Labour Agreements

Labour Agreements often involve entry of a significant number of skilled workers and their families to regional locations. Some state governments have been signatories to meat industry Labour Agreements. Only parties to the Labour Agreement can access the details in the Agreement due to the contractual nature of the documentation.

Information usually contained in a Labour Agreement

- the range of occupations approved, listed by ASCO code
- the number of persons approved for entry on a permanent and/or temporary basis for the first year of the agreement
- a minimum gross salary that is expected to be paid to overseas workers, by occupation where there are salary differences
- the minimum qualifications and experience that overseas workers are expected to hold, by occupation
- agreed length of stay in Australia for the overseas workers
- expectations in relation to a company's training achievement and expenditure
- expectations of information provision to enable DIAC and DEEWR to monitor compliance with the terms and conditions of the Agreement.

Separately, visa applicants must meet certain global visa requirements including health, character and immigration compliance history.

Opportunities for Labour Agreements to contribute to integrity

Stakeholders have raised concerns about delays, complexity and uncertainty in the Labour Agreement negotiation process.

The ERG found that there is a need to deliver a high quality service to stakeholders and a more flexible response to skills shortages in various sectors of the economy. It was suggested by the ERG that one way of supporting public confidence in the system is for the Labour Agreement negotiation and consultation process to be open and transparent (whilst taking into account commercial realities) and the need for certainty in the process.

Training requirements in Labour Agreements

Labour Agreements contain training requirements intended to ensure that employers sponsoring Subclass 457 visa holders are also committed to training Australians. Concerns have been raised through the ERG process and in other forums about the inflexibility of these training requirements, particularly for the On-hire and Hospitality sectors. Labour Agreements contain obligations for companies who are a party to the Labour Agreement to demonstrate their commitment to training Australians, for example:

*“The On-hire company must continue to demonstrate a commitment to the provision of employment, training and career path progression opportunities to Australians. For each year of the Agreement the company must ensure that it meets at least **one** of the following three training standards:*

- (i) 5% of its skilled Workforce are Recent Australian Graduates;*
- (ii) 15% of its trade Workforce are Australian Apprentices;*
- (iii) has Training Expenditure of 2% of gross wages expenditure.”*

Labour Agreements - Some issues for consideration

Set out below are some of the issues that have been raised in relation to Labour Agreements. Any comments concerning other relevant matters will be appreciated.

In what circumstances can the use of Labour Agreements contribute to the integrity of the Subclass 457 visa process?

If the use of Labour Agreements does contribute to the integrity of the system are they necessary or desirable for Subclass 457 visa holders at all skill or salary levels?

Would it assist in the integrity of the Subclass 457 visa system if state and territory governments were parties to every Labour Agreement in their respective states and territories?

Do the training requirements currently included in Labour Agreements fulfil the purpose of their inclusion; should these requirements be made more flexible or should they be further enhanced?

What type and level of consultation should be required as part of Labour Agreement negotiations?

Labour Agreements are currently negotiated on a commercial-in-confidence basis:

- **Does this affect the integrity of the process or impact on the integrity of the Subclass 457 visa process?**
- **Does this impede the ability of Subclass 457 visa holders employed under the agreement to access information about rights and obligations?**

Attachment A - References

Joint Standing Committee on Migration, *Temporary visas ... permanent benefits*, Parliament of the Commonwealth of Australia, 2007

Visa Subclass 457 External Reference Group, *Final Report to the Minister for Immigration and Citizenship*, April 2008

Attachment B - Minister's media release

Included below is the text of the media release from Senator Chris Evans on 14 April 2008 announcing the establishment of the Integrity Review. The biography of Ms Deegan included in the original media release is included in Section two of this report.



IR expert to oversee temporary skilled migration review

Monday, 14 April 2008

The Rudd Government has appointed industrial relations commissioner Barbara Deegan to examine the integrity of the temporary skilled migration program, the Minister for Immigration and Citizenship, Senator Chris Evans said today.

Senator Evans said Ms Deegan will address concerns about the exploitation of migrant workers, salary levels and English language requirements

'Ms Deegan will draw on her extensive expertise in the industrial relations sector to review the Temporary Business Long Stay subclass 457 program and provide options to improve the integrity of the scheme,' Senator Evans said.

'Ms Deegan will take leave from her current position as Commissioner of the Australian Industrial Relations Commission for six months to undertake this independent role.

'Ms Deegan will consult with overseas workers, union and industry representatives as well as relevant Commonwealth, state and territory agencies.'

A working party of industry and trade union leaders will be formed to provide a forum for Ms Deegan to access relevant information.

The terms of reference for the review include examining:

- Measures to strengthen the integrity of the temporary skilled migration (Subclass 457 visa) program;
- The employment conditions that apply to workers employed under the temporary skilled migration program;
- The adequacy of measures to protect 457 visa holders from exploitation;

- The health and safety protections and training requirements that apply in relation to temporary skilled workers;
- The English language requirements for the granting of temporary skilled migration workers' visas; and
- The opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The review will report periodically to the Minister for Immigration and Citizenship and the Deputy Prime Minister with a final report to be presented by 1 October 2008.

Senator Evans said Ms Deegan's review would complement the recommendations of the External Reference Group, which was established in February to look at ways to streamline visa processing times and improve the flexibility of the temporary skilled migration program for employers.

'The Rudd Government is determined to address the skills and labour shortages we are currently experiencing,' Senator Evans said.

'We are working with industry to improve the efficiency of our skilled migration program while ensuring we continue to provide employment and training opportunities for Australian workers.

'The External Reference Group has consulted widely and in an interim report has flagged the concept of establishing an accreditation system whereby 'low risk' employers with a good track record can have 457 visa applications fast-tracked by the department.'

The final reports from Ms Deegan and the ERG form part of the Australian Government's medium and longer term strategy to improve the transparency, accountability and integrity of the temporary skilled migration program.

Any recommended initiatives will also complement broader labour market policies, including the development of a new fair and flexible workplace relations system.

Media contact: Simon Dowding – (02) 6277 7860 or 0411 138 541

Attachment C - Visa Subclass 457 statistics

Table 1 - Movements in Visa Subclass 457 salaries paid.

Average Salaries

Nomination Industry	2005-06	2006-07	2007-08 to Dec 07
Accommodation, Cafes and Restaurants	\$43,000	\$45,000	\$44,600
Agriculture, Forestry and Fishing	\$43,000	\$47,300	\$54,800
Communication Services	\$78,000	\$84,800	\$80,400
Construction	\$73,000	\$72,400	\$77,600
Cultural and Recreational Services	\$49,000	\$53,900	\$65,800
Education	\$59,000	\$62,200	\$64,700
Electricity, Gas and Water Supply	\$68,000	\$77,000	\$78,000
Finance and Insurance	\$92,000	\$90,400	\$92,900
Government Administration and Defence	\$73,000	\$82,600	\$85,900
Health and Community Services	\$62,000	\$66,400	\$71,400
Manufacturing	\$66,000	\$66,600	\$64,300
Mining	\$87,000	\$95,200	\$103,700
Not Recorded	\$57,000	\$84,100	\$56,300
Personal and Other Services	\$64,000	\$65,900	\$67,200
Property and Business Services	\$63,000	\$69,100	\$72,000
Retail Trade	\$58,000	\$55,900	\$54,100
Transport and Storage	\$65,000	\$64,000	\$71,600
Wholesale Trade	\$70,000	\$82,000	\$87,300
Overall Average Salary	\$66,000	\$71,600	\$73,400

Source: DIAC

Subclass 457 Visa Grants

The table below sets out Subclass 457 visa grants to primary applicants by financial year of visa grant from 30 June 2005 to 31 May 2008, classified by ASCO group.

Table 2

Subclass 457 Visa Grants to Primary Applicants

ASCO Major Group	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
1 Managers and Administrators	4 100	10.4%	4 230	9.1%	4 950	9.5%
2 Professionals	21 510	54.4%	27 210	58.3%	30 860	59.0%
3 Associate Professionals	4 480	11.3%	5 580	12.0%	6 670	12.8%
4 Tradespersons and Related Workers	8 430	21.3%	8 640	18.5%	8 970	17.1%
5 Advanced Clerical and Service Workers	10	0.0%	10	0.0%	10	0.0%
6 Intermediate Clerical, Sales and Service Workers	360	0.9%	330	0.7%	280	0.5%
7 Intermediate Production and Transport Workers	480	1.2%	540	1.2%	350	0.7%
8 Elementary Clerical, Sales and Service Workers	70	0.2%	30	0.1%	0	0.0%
9 Labourers and Related Workers	20	0.1%	0	0.0%	0	0.0%
Not Recorded	80	0.2%	120	0.3%	230	0.4%
Total	39 530	100.0%	46 680	100.0%	52 310	100.0%

Source: DIAC

The table below sets out Subclass 457 visa grants to primary applicants by financial year of visa grant from 30 June 2005 to 31 May 2008, classified by Sponsor Industry.

Table 3

Subclass 457 Visa Grants to Primary Applicants

Sponsor Industry	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
Accommodation, Cafes and Restaurants	2 220	5.6%	2 630	5.6%	2 870	5.5%
Agriculture, Forestry and Fishing	1 100	2.8%	800	1.7%	880	1.7%
Communication Services	3 280	8.3%	4 730	10.1%	4 780	9.1%
Construction	3 490	8.8%	4 170	8.9%	5 240	10.0%
Cultural and Recreational Services	910	2.3%	830	1.8%	890	1.7%
Education	1 960	5.0%	2 000	4.3%	2 290	4.4%
Electricity, Gas and Water Supply	810	2.0%	760	1.6%	830	1.6%
Finance and Insurance	1 450	3.7%	2 130	4.6%	2 880	5.5%
Government Administration and Defence	450	1.1%	790	1.7%	660	1.3%
Health and Community Services	5 690	14.4%	7 520	16.1%	8 360	16.0%
Manufacturing	4 000	10.1%	4 340	9.3%	4 950	9.5%
Mining	2 840	7.2%	3 590	7.7%	4 100	7.8%
Personal and Other Services	2 730	6.9%	3 070	6.6%	3 740	7.1%
Property and Business Services	4 890	12.4%	4 510	9.7%	5 270	10.1%
Retail Trade	1 190	3.0%	1 230	2.6%	1 720	3.3%
Transport and Storage	650	1.6%	740	1.6%	960	1.8%
Wholesale Trade	1 120	2.8%	880	1.9%	1 100	2.1%
Not Recorded	750	1.9%	1 950	4.2%	790	1.5%
Total	39 530	100.0%	46 680	100.0%	52 310	100.0%

Source: DIAC

The tables below set out Subclass 457 visa grants to primary applicants by financial year of visa grant from 30 June 2005 to 31 May 2008, classified by Government Sector under the SBS pathway and under a Labour Agreement.

Table 4

Government Sector	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
Commonwealth	50	0.1%	200	0.4%	220	0.4%
Local	50	0.1%	60	0.1%	80	0.2%
State / Territory	3 490	8.8%	5 150	11.0%	5 370	10.3%
Non-government	35 950	90.9%	41 270	88.4%	46 640	89.2%
Total	39 530	100.0%	46 680	100.0%	52 310	100.0%

Table 5

Government Sector	Financial Year of Visa Grant					
	2005-06		2006-07		2007-08 to 31/05/08	
Commonwealth	0	0.0%	0	0.0%	0	0.0%
Local	0	0.0%	0	0.0%	0	0.0%
State / Territory	930	28.1%	910	25.9%	540	27.4%
Non-government	2 380	71.9%	2 600	74.1%	1 420	72.1%
Total	3 310	100.0%	3 510	100.0%	1 970	100.0%

Source for Tables 4 and 5: DIAC

Attachment D - MSL Example

IMPORTANT NOTE: This extract from the Legislative Instrument applying to MSLs is for information purposes only and is not complete - it has been edited for readability. The full version is available from the following link:

<http://www.comlaw.gov.au/comlaw/comlaw.nsf/sh/homepage>

*Federal Register of Legislative Instruments (FRLI)
F2007L04062, 10 October 2007*

IMMI 07/078

Commonwealth of Australia

Migration Regulations 1994

MINIMUM SALARY LEVELS FOR TEMPORARY BUSINESS LONG STAY VISA

I, *KEVIN ANDREWS*, Minister for Immigration and Citizenship:

4. SPECIFY for the purposes of regulation 1.20B that the ***minimum salary level*** at a point in time is to be worked out in the following way and paid on a weekly, fortnightly or monthly basis:

- (A) where the Subclass 457 Business (Long Stay) visa holder works an average of more than 38 hours per week in a given period:

minimum salary level = $\frac{\text{applicable base salary} \times \text{number of hours worked in the given period}}{\text{number of hours in an average year}}$

- (B) where the Subclass 457 Business (Long Stay) visa holder works an average of 38 hours per week in a given period or in any other case not covered by (A):

minimum salary level = $\frac{\text{applicable base salary} \times \text{number of weeks worked in the given period}}{\text{number of weeks in an average year}}$

5. FOR THE PURPOSES of this Instrument:
- (a) the **number of weeks in an average year** (taking into account leap years) is: 52.1775 weeks; and

 - (b) the **number of hours in an average year** (taking into account leap years and based on a 38 hour week) is: 1982.745 hours; and

 - (c) the **applicable base salary** is:
 - ~ (i) AUD 41,850 for occupations listed in Schedule A;
 - ~ (ii) AUD 57,300 for occupations listed in Schedule B;
 - ~ (iii) AUD 37,665 for regionally certified occupations listed in Schedule C;
 - ~ (iv) AUD 51,570 for regionally certified occupations listed in Schedule D;unless the relevant Subclass 457 Business (Long Stay) visa was granted on the basis that the visa holder fell within the scope of subclause 457.223(6), in which case the **applicable base salary** is AUD 75,000; and

 - (d) the **amount of salary paid to a person in a given period**:
 - (i) includes the person's base salary before tax and separate from any allowances, bonuses, packaged items (other than those mentioned in (ii)(B)) and the like; and
 - (ii) excludes any deductions from that amount except:
 - (A) Pay As You Go (PAYG) taxation; and
 - (B) Any amount that would be 100% tax deductible (for the person) or otherwise exempt from Fringe Benefits Tax (FBT)*.

NOTE: Deductions mentioned in (ii) may be made from amounts not included in (i).

* Businesses should seek their own professional advice on whether an item is 100% tax deductible or otherwise exempt from FBT. Further information is available from the Australian Taxation Office website: www.ato.gov.au

Illustrative examples

Example 1 – In this example, the Department is monitoring a private hospital in Brisbane to check to see whether the hospital paid at least the minimum salary level last financial year to Susan, a nurse they sponsor on a Subclass 457 visa.

Susan worked 50 hours a week for 52 weeks (2600 total hours) and was paid a weekly salary of \$875 *before tax*. The total payments for the financial year were \$45,500.00 *before tax*.

Schedule A applies to Susan, as she works in a non-Information and Communication Technology occupation in a non-regional area. Therefore, the **applicable base salary** is \$41,850 per year.

As Susan worked an average of more than 38 hours a week, the applicable **minimum salary level** for the financial year can be worked out by applying the formula set out in paragraph 4(A) of this Instrument:

$$\frac{\$41,850 \times 2600 \text{ hours}}{1982.745} = \mathbf{\$54,878.46}$$

The amount of salary paid to Susan in the given period was **\$45,500.00**, which is less than the applicable **minimum salary level** in the circumstances: **\$54,878.46**. The hospital has therefore breached their undertaking to pay Susan the **minimum salary level**.

If Susan had only worked 38 hours a week, the hospital would have been paying above **minimum salary level** and therefore would not be in breach of the minimum salary level undertaking.

Example 2 – In this example, a Perth marketing firm wants to check whether they have met the minimum salary level for the previous fortnight pay period for Rita, a marketing specialist they sponsor on a Subclass 457 visa. This differs from Example 1 as it considers the impact 100% tax deductible items have in relation to the minimum salary level.

Rita works 38 hours a week and was paid a fortnightly payment of \$1,635 *before tax*. Rita's employer deducted \$50 per fortnight because Rita elected to salary package a mobile phone/PDA to keep track of her many work appointments and to make work calls. In Rita's circumstances the mobile phone/PDA is 100% tax deductible.

Rita's fortnightly before tax salary of \$1,635 has only one component using the definition of **amount of salary paid to a person in a given period** (at paragraph 5(d)):

– base salary including FBT exempt items: + \$1,635

The \$50 mobile phone/ PDA is included in this amount as it is FBT exempt.
--

Schedule A applies to Rita, as she works in a non-Information and Communication Technology occupation in a non-regional area. Therefore, the **applicable base salary** is \$41,850 per year.

As Rita worked 38 hours per week in the given period, the **minimum salary level** for the previous fortnight can be worked out by applying the formula set out in paragraph 4(B) of this Instrument:

$$\frac{\$41,850 \times 2 \text{ weeks}}{52.1775} = \$1,604.14$$

As the deduction is 100% tax deductible and does not impact on the amount of salary paid to Rita in the given period (**\$1,635**), Rita is being paid above the **minimum salary level** of **\$1,604.14**.

Had the \$50 deduction not been 100% tax deductible or otherwise exempt from Fringe Benefits Tax, then the amount of salary paid to Rita in the given period would have been \$1,585 (\$1,635 - \$50 deduction), which is below the **minimum salary level** of \$1,604.14. If this were the case, Rita's employer would have breached their undertaking to pay the **minimum salary level**.

Example 3 – In this example, a computer company in Melbourne wants to check whether they have met the minimum salary level for the previous fortnight pay period for John, a software engineer they sponsor on a Subclass 457 visa. This differs from the Examples 1 and 2 as it considers the impact allowances and tax deductions in combination have in relation to the minimum salary level.

John works 38 hours a week and was paid a fortnightly payment of \$2,500 *before tax* which included Living Away From Home Allowance (LAFHA) of \$200. The business also deducted \$500 from John's *before tax* salary because he has elected to salary package a car. In John's circumstances the car was not 100% tax deductible or otherwise exempt from FBT.

John's fortnightly before tax salary of \$2,500 has three components using the definition of **amount of salary paid to a person in a given period** (at paragraph 5(d)):

- base salary including FBT exempt items: +\$2,300
- other allowances: +\$200 LAFHA
- non FBT exempt deductions: - \$500 salary packaged car

LAFHA and the salary packaged car cannot be included in the base salary as they are defined as allowances or non-FBT exempt items.

Schedule B applies to John, as he works in an Information and Communication Technology occupation in a non regional area. Therefore, the **applicable base salary** is \$57,300 per year.

As John worked 38 hours per week in the given period, the ***minimum salary level*** for the previous fortnight can be worked out by applying the formula set out in paragraph 4(B) of this Instrument:

$$\frac{\$57,300 \times 2 \text{ weeks}}{52.1775} = \$2,196.35$$

The business could use the LAFHA (\$200) salary component to pay some of the \$500 *deduction* for the car from John's *before tax* pay. The \$300 balance, would then be subtracted from the base salary component \$2,300 – \$300 = **\$2,000**.

This means that John's actual amount of salary paid to John for the fortnight is \$2,000, which is less than the applicable ***minimum salary level*** of **\$2,196.35**. The business has therefore breached their undertaking to pay John at least the ***minimum salary level***.